

CLIENT ALERT

SEC Charges Vale with Securities Law Violations after Brumadinho Dam Collapse

April 28, 2022

On April 28, 2022, the U.S. Securities and Exchange Commission (SEC) charged Vale S.A., a Brazilian mining company that trades ADRs [Ticker: VALE] on the New York Stock Exchange, with multiple violations of the Securities Exchange Act of 1934 and rules promulgated thereunder. Arising out of the tragic January 25, 2019, collapse of a massive iron-ore tailings dam (Brumadinho) at the Córrego do Feijão mine in Minas Gerais, Brazil, the complaint alleges that Vale knowingly or recklessly deceived investors and made materially false or misleading statements with regard to the safety and stability of its dams.

This action also comes several years after investors filed civil suits related to the collapse of the Brumadinho dam, which themselves were preceded by litigation related to the collapse of another Vale dam in 2015, also in Minas Gerais, Brazil.

In both the complaint and the related press release, the SEC links the alleged misstatements to, *inter alia*, periodic filings and ESG (Environmental, Social, and Governance) disclosures and webinars provided to investors. For example, the SEC claims that Vale knowingly used faulty laboratory data and concealed information from auditors to obtain declarations regarding the Brumadinho dam's stability, which it then touted to investors in ESG webinars.

This case reflects the SEC's continued focus on enforcing requirements surrounding adequate, accurate corporate disclosures and other public statements to investors. This action also highlights that the SEC will actively consider statements made in sustainability reports and that otherwise fall under the ESG rubric when deciding whether to bring enforcement actions. Indeed, the SEC referenced in the press release its 2021 formation of a Climate and ESG Task Force in its Division of Enforcement (described in a prior alert).

And yet, it is important to note that the counts in the complaint are standard SEC fraud claims, relying on decades-old laws and regulations. As attention is increasingly being directed to SEC disclosure requirements in the ESG area and concern about "targeting" ESG-related conduct is on the rise, the complaint provides important reassurance that the standards to which such conduct will be held have not changed.

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