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Responding to the ESG Paradigm Shift: Practical Steps for Boards and Management

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Environmental, social and governance, or "ESG", considerations are seemingly ubiquitous in the current financial, corporate and regulatory landscape. In parallel with the socio-economic upheaval of 2020 and a continuing academic debate around corporate purpose and the efficacy and forms of stakeholder governance,[1] investors are increasingly using ESG factors in decisions about how to allocate their capital.[2] This trend is seen in investors of all varieties, from large institutions (such as BlackRock and State Street, each of which has regularly published annual letters to the companies in which they are invested emphasizing ESG matters, including in 2021[3]), to a growing number of ESG-themed funds seeing increasing capital inflows, to ESG-focused activist investors, to venture capital firms. It is critical that boards of directors and management understand this paradigm shift and recognize, plan for and respond to the related dynamics and demands in the short term.

Despite its obvious importance, it can be challenging to make sense of the ESG space. There are a number of stakeholders advancing different – and sometimes competing – agendas and requests for information and commitments, increasingly requiring year-round engagement and new, sometimes resource-intensive, types of data gathering. There are also numerous data collectors, standards-setters and other bodies all providing different frameworks, rating scores and other services related to ESG. While there are signs that calls to standardize the ESG reporting environment may be leading to some consolidation,[4] it remains to be seen whether these efforts will be successful in bringing clarity to this space; for now, developments in the "private ordering" of ESG will continue to remain fluid. On the regulatory side, ESG matters will be a significant part of the agenda for the White House and the Securities and Exchange Commission (SEC) during the Biden administration.[5] Congress could also preempt SEC rule-making and pass legislation directly requiring reporting of certain ESG metrics.[6]

For all of these reasons, it is critical that boards of directors and management take concrete steps, both to respond to short-term ESG demands and prepare for the long term. Despite the uncertainties continuing to surround both the regulatory process and private ordering in the ESG space, as well as the fragmentation in reporting demands and expectations, the potential risks posed by inaction or delay are serious. These risks include, among others, falling out of favor with key investors or ratings providers, reputational damage with customers and suppliers, lost business opportunities and being significantly behind other companies in implementing ESG-related practices if they do become necessary (either as a result of continually increasing investor pressure or promulgation of applicable regulations by the SEC and/or Congress). However, the multiplicity of standards, frameworks, investor coalitions, initiatives and data and service providers means that companies also face risks from becoming overextended in relation to ESG; no company could possibly respond to every development or report in line with every framework.

With these challenges in mind, we recommend the following practical steps for boards and management of all companies to address the increasing importance of ESG and to respond appropriately to expected and potential future developments. While ESG-related risks, opportunities, demands and strategies will vary by company, industry and jurisdiction, these steps are a starting point for companies to prepare for the ESG paradigm shift.

I. DEVELOP FOCUSED ESG KNOWLEDGE AND PROCEDURES TO MAINTAIN IT

While different companies will be at different stages in the evolution of their ESG programs, all companies, including their boards of directors, should understand the ESG space and how developments in it may present challenges or opportunities to the company. Both boards of directors and management should establish a process to triage ESG-related information to focus on (and, where possible, anticipate) the most significant and relevant developments and to assess how such developments may impact the company and its operations, customers and value chain. In particular, we recommend:

Learn and Appreciate the Breadth of "ESG"

Most fundamentally, formulating a response to the recent rise of ESG requires appreciating what is meant by "ESG" in the first place. This is a more nuanced undertaking than it may first appear. Clearly, the "E" in ESG is the most prominent in recent public conversations, with ESG often used as shorthand to refer just to issues related to climate change, such as disclosure of a company's greenhouse gas emissions or the potential physical or strategic risks climate change presents to a company. It is also well-understood that issues around diversity, equity and inclusion and management of human capital are prominent "ESG" topics. However, numerous other company policies and activities can be relevant to different conceptions of "ESG". For example, one leading ESG ratings agency includes metrics for topics as diverse as chemical safety, procedures for disposal of electronic waste, tax transparency, policies towards data privacy and whether companies improve access to services such as health care, banking or information technology in developing countries or historically underserved markets[7]. A critical step in responding to the rise of ESG is assessing what ESG issues are material to a particular company (see Section II below), which in turn means that companies should appreciate the full potential breadth of the term "ESG".

Know the Most Relevant Stakeholders and Regimes

Directors and senior management would be well-served to invest the time to understand the most significant participants in the ESG conversation and the fundamentals of their respective approaches.

There are a large number of different private frameworks and standards that are influential in advancing ESG. While there is no need to know the full universe of entities in the highly fractured ESG space, leaders should be familiar with key groups and topics, including:

- the respective goals and methodologies of the most prominent disclosure regimes, such as those published by the Task Force on Climate-Related Financial Disclosure (TCFD), the Sustainability Accounting Standards Board (SASB) and the Global Reporting Initiative (GRI);
- the Stakeholder Capitalism Metrics developed by the International Business Council (IBC) of the World Economic Forum (WEF);
- the most prominent ESG ratings and data providers, such as the Carbon Disclosure Project (CDP), MSCI and Sustainalytics; and
- the IFRS Foundation's proposed approach to establishing a Sustainability Standards Board (SSB).

Regulators are also likely to be increasingly important participants in the ESG conversation. Senior figures at the SEC have recently made clear their intent to pursue ESG rulemaking and, in the short-term, conduct more vigorous ESG-related review and enforcement activities[8]. Awareness of such statements should affect how the company prepares its disclosures and other public statements.

Perhaps more important than day-to-day developments, however, senior leaders should understand conceptually what fundamental questions have led to the fractured ESG environment in the first place. For example, ESG standard-setters may not be fully aligned on what constitutes "ESG" (see above), which ESG areas are most pressing to address (whether, for example, they take a climate-first approach or a broader focus on sustainability and social factors more generally[9]) or what balance that ESG reporting should strike between qualitative reporting and quantitative line-item reporting. Understanding these kinds of conceptual questions, and which issues and frameworks are most important to the company's investors and other stakeholders, will allow company leaders to understand the most important developments in the rapidly evolving ESG area while separating signal from noise.

Recognize the Different Approaches to "Materiality" in ESG

Business leaders following the larger ESG conversation will soon realize that there is a glaring lack of consensus for how materiality should be understood in measuring and assessing ESG issues. This often presents a challenge because designing ESG-related governance and reporting frameworks requires understanding what types of information may be material. Different theories of materiality in ESG include "single materiality" (concentrating disclosure on ESG issues that are or may be financially material to investors); "double materiality" (additionally taking into account non-financial impacts of the reporting entity on the broader environment that would be material to a wider audience, such as consumers and employees); "nested materiality" (a hybrid approach of the single and double materiality theories); and "dynamic materiality" (materiality of certain ESG information may be changeable or fluid over time).[10] If a company reports in line with a particular ESG framework, it should be well-understood within the company how that framework defines materiality. While definitions will likely continue to develop, companies and their leaders seeking to respond to ESG developments should understand these nuanced ways "materiality" can be used and, critically, how these definitions may not align with a traditional notion of materiality embodied in current SEC disclosure requirements.

Consider International Regimes

The fragmentation of the ESG movement extends across borders. Companies with an international footprint should of course consider required ESG disclosures in the markets in which they operate, but even companies with operations only in the United States would also be well-served to maintain awareness of international ESG-related regulatory developments, particularly in Europe. The European Green Deal has prompted a flurry of new laws and reporting requirements,[11] suggesting a possible direction of travel for U.S. regulators. Even if the ultimate U.S. regulatory environment for ESG disclosures does not align with European requirements, investors seeking consistent reporting across their portfolio may drive private ordering towards adopting similar disclosure practices.[12]

Formalize Roles for ESG Knowledge Maintenance

Since the ESG space is both highly fractured and fluid, it can be overwhelming for an officer or director to track and consider all relevant developments. Hiring or designating a chief sustainability officer (CSO) or head of ESG matters can ensure there is centralized responsibility for monitoring developments in ESG, coordinating information-gathering and reporting across business segments or operating units and understanding how the company may be affected by ESG developments.[13] Indeed, investors are tracking how companies and their boards manage and oversee ESG concerns—some ESG metrics even score simply whether a company has a CSO or its equivalent or a dedicated board-level committee as a way to approximate the company's engagement with ESG.[14] While a CSO may not yet be necessary for companies of all sizes and industries, it is critical to establish responsibility for maintenance of the company's core ESG knowledge base and awareness of significant developments.

Directors and senior management that develop a firm grasp of the key concepts and developments in ESG will be able to better assess their company's ESG risks and strategies, while empowering a CSO or other officer can keep the company abreast of the most relevant day-to-day developments in this active space.

II. “KNOW THYSELF” AND ASSESS THE DEMANDS OF STAKEHOLDERS

Now is a critical time for directors and management to engage in a realistic and honest self-assessment, both internally and via engagement with external stakeholders, of where their organization stands on ESG issues and processes. Section III below provides recommendations for the most likely areas for improvement in ESG-related corporate procedures, but any required steps will ultimately be company-specific and evolve based on sector and stakeholder demands. This means that any prospective improvement and integration of ESG practices will require a detailed understanding by the company of its own starting point on ESG matters.

Assess the Material ESG Issues

Companies should carefully assess what ESG matters are most relevant for and material to their business, shareholders and other relevant stakeholders (such as employees, customers, vendors or communities where they do business) and the company’s reporting and performance in these areas. These areas of relevance will be determined in part by the company’s industry or jurisdictions of operations, and stakeholders such as employees or investors have likely already raised ESG-related issues that indicate the most important ESG-related topics for a given company. Directors and managers should compare themselves against applicable reporting frameworks and determine which ESG areas may need the most improvement. In doing so, it should be clear that this is an exercise both in evaluating the reporting of ESG performance to stakeholders, as well as a substantive review of how ESG issues and performance may or may not be meaningfully incorporated into the company’s practices or strategic planning. Doing this type of multifaceted assessment should indicate ESG-related areas, improvements and opportunities that both may have the greatest impact on investor decisions if publicly reported, as well as those that will have the greatest benefit to the company’s strategic business decisions and fundamental long-term value. If a company already assesses itself in this way against one ESG framework, consider a different reporting framework to see if other ESG issues may be identified – as noted in Section I, different framework providers offer different philosophies and points of emphasis.

Assess Governance Practices and Policies

An ESG self-assessment should also evaluate the company’s corporate governance policies and practices. For example, is it clear under the company’s existing governance guidelines or management practices who will identify ESG-related issues if they arise? Is there a clear line of reporting oversight on ESG-related issues? How and by whom is progress on ESG-related projects being assessed? Most fundamentally, boards and managers should assess whether they have clear procedures for identifying the most relevant ESG risks facing the company and developing responsive strategies to these risks, as well as know what ESG-related metrics are being collected and used to assess ESG objectives.

Evaluate Controls

Management and directors, particularly on audit committees, should also carefully evaluate what internal control procedures already exist for ESG data collection and reporting. If the company prepares a sustainability report, it should be well-understood which functional areas have responsibility for its preparation and review, and how these processes intersect with the validation of information in the company’s mainstream financial filings. A realistic self-assessment may find that the sustainability reporting functions are not aligned with the company’s traditional control environment and are not adequate to produce ESG-related disclosure and metrics appropriate for incorporation into public reporting (see below) or that would withstand critical review. While a company’s audit committee can and should play a key role in developing and ensuring the accuracy of ESG metrics, companies may also be well-served to make ESG reporting a cross-functional exercise, drawing on the directors and executives whose expertise is best suited to address the company’s specific ESG issues.

III. IMPROVE ESG STRATEGIES, PROCESSES AND CONTROLS

Once a company has developed the right understanding of fundamental ESG issues and has realistically assessed where it stands on ESG matters and procedures, it may become clear that improvements are needed to adequately respond to the increased focus on ESG. As a fundamental principle, boards and management should ensure that the company is

speaking with one voice on ESG matters at all organizational levels. The steps below may not be either necessary or sufficient for every company to achieve this goal, but are worthwhile areas of consideration for companies responding to the demands of ESG.

Establish Processes for Board-level ESG Strategy and Supervision

Market participants increasingly judge companies on the public commitment to, and the ability to implement and deliver on, an ESG strategy. This requires understanding key ESG risks and opportunities; taking steps responsive to stakeholder demands; integrating ESG into management and oversight processes; and turning ESG commitments into measurable action. The tone for this high-level ESG strategy is set by the board of directors. Following self-assessment, it may become clear that greater strategic direction is needed to prioritize ESG matters or to identify the company's ESG risks and develop responsive strategies and goals. Companies should carefully weigh whether to establish a standalone ESG-focused board committee or, alternatively, more explicitly incorporate responsibility for review of ESG-related risks into traditional compliance programs and/or existing committees.[15] In any event, it may be appropriate to update existing committee charters or other governance policies to specifically assign responsibility for supervision of ESG matters.

Boards can also consider using compensation of management as part of their ESG strategy. Some companies are linking management compensation to achieving defined ESG milestones as a way to align management's incentives with the board's higher level ESG strategy and to promote integration of ESG into company values.[16] Though the trend is in its early days, we expect this to be a continued point of investor focus going forward.

Establish Clear Management Authority and Reporting Lines for ESG

Within management, it may be challenging to establish clear roles and responsibilities for implementing the board's vision for ESG at the company. It may be appropriate to hire a CSO (as noted in Section I) or establish an ESG-focused working group. Improving cross-functional coordination on ESG matters should allow ESG considerations to be more effectively incorporated into decision-making, and such coordination is also particularly critical as part of the growth of sustainability reporting. Functional areas that may not review standalone sustainability reports today may need to take a more active role in reviewing and preparing them to, for example, ensure the company maintains a consistent approach to materiality across the company's reporting and avoids statements in sustainability reports that are unsupported.[17] For this reason, we recommend that standalone sustainability reports be reviewed by the company's disclosure committee prior to publication.

Improve Control Procedures for ESG Metrics

A likely area of improvement for most companies will be strengthening their procedures and controls around quantitative reporting on key ESG metrics. Companies should focus efforts on developing robust procedures and controls to validate in particular those ESG metrics the company uses to measure its performance and assess its progress on ESG goals. Controls around these tracked ESG metrics, as well as the data collection processes underlying them, should be prioritized since they are the most likely to need to be disclosed. Steps here can include developing and documenting rigorous reporting procedures, formalizing data management systems for ESG-related data, ensuring processes for data to be reviewed and verified by appropriate functional areas and implementing steps to monitor ESG reporting policies over time to ensure consistency and make improvements. Though the trend is still in its early days, accounting firms are preparing themselves to offer more attestation procedures for ESG-related reporting.[18] Note that quantitative ESG reporting can be complicated by unclear or inconsistent definitions of relevant metrics or data collection that may lag behind the customary reporting cycles for the company's financial information, and implementing ESG control procedures may expand the workload and responsibilities for certain internal functions, such as finance or internal audit teams. Accordingly, this process may involve numerous discussions with the audit committee, external advisors and management across a number of operational, accounting, internal audit and legal functions. Given the potential complexity of this undertaking, boards and management would be well-served to start the process of developing more rigorous ESG-related controls now.

Establish a Process for Continuous ESG Re-evaluation

ESG is a quickly evolving field. While the space will hopefully coalesce into a more coherent and standardized regime in the short- to medium-term, for now there are likely to be numerous developments which may affect a company's ESG reporting and governance processes. We have already recommended establishing procedures to track these developments (see Section I), but companies should build into their board- and management-level ESG programs specific mechanisms to periodically revisit their ESG assessments and procedures. These will allow the appropriate strategies, processes and controls to evolve alongside developments in ESG more generally. These programs should also be re-evaluated in light of—and, where possible, in advance of—developments at the company as well, since company growth or other significant developments (such as acquisitions, new business lines, new operating geographies, etc.) may require revisions to the ESG governance process.

IV. INFLUENCE ESG DEVELOPMENTS

Last, the fragmentation of ESG and the lack of a standardized ESG disclosure regime in the United States may present challenges, but it also offers significant opportunities for companies to influence developments in this space. Companies interested in shaping the future of ESG reporting have a number of opportunities to have their voices heard. These include participating in bodies like the WEF's IBC, which have produced their own reporting standards incorporating the views of companies themselves. Standard-setters frequently solicit the input of reporting companies on feedback to their standards[19] or whether to pursue standards-making in the first place.[20]

Providing feedback to the SEC as part of their rulemaking process will also allow companies to influence developments. On March 15, 2021, Acting Chair of the SEC Allison Herren Lee released a public statement requesting input on potential climate change disclosures to facilitate the SEC's rulemaking efforts.[21] Companies can also prepare now for how they intend to review and potentially comment on proposed ESG rules or participate in future SEC roundtables as part of the agency's rulemaking activities.[22]

Finally, companies can make their views on ESG known through the political process, though they should carefully consider how their corporate political activities will be perceived in an era of heightened sensitivity to ESG matters. Companies should not underestimate the potential impact they can have on the direction of travel in ESG in the short-term.

CONCLUSION

The rising importance of ESG issues, and the increasing demand for enhanced disclosures and transparency in reporting, seems poised to have a transformative effect on the governance and operations of companies both large and small. Even before definitive disclosure rules are announced and though the private ordering in the ESG space remains chaotic, directors and managers should act now to build their understanding of ESG, including the key organizations and debates; assess where their companies stand on ESG matters; implement sound processes, practices and governance structures related to ESG; and prepare to influence developments in the burgeoning ESG space.

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[1] Although the debate as to whether corporate purpose should expand from serving shareholder concerns alone to include concerns relevant to a broader set of stakeholders, such as customers, employees, vendors and the communities in which a company does business, began long before the COVID-19 pandemic, inequalities exacerbated by the COVID-19 pandemic and protests of social inequality following the death of George Floyd have forced this debate into sharp focus. *See*, *e.g.*, Business Roundtable, *Statement on the Purpose of a Corporation* (August 19, 2019), available at https://system.businessroundtable.org/app/uploads/sites/5/2021/02/BRT-Statement-on-the-Purpose-of-a-Corporation-Feburary-2021-compressed.pdf and recent related academic work, such as Lucian Bebchuk and Roberto Tallarita, *The Illusory Promise of Stakeholder Governance* (December 2020), available at https://papers.ssrn.com/abstract=3544978; Colin Mayer, *Shareholderism Versus Stakeholderism – a Misconceived Contradiction. A Comment on 'The Illusory Promise of Stakeholder Governance' by Lucian Bebchuk and Roberto Tallarita* (June 2020), available at https://ssrn.com/abstract=3617847; Dorothy S. Lund and Elizabeth Pollman, *The Corporate Governance Machine* (2021), available at https://ssrn.com/abstract=3775846.

[2] For example, according to a September 2020 Callan survey, 42% of institutional investors (and 47% of large funds) incorporate ESG factors into their investment decisions, and 33% of respondents not yet incorporating ESG factors into investment decisions were considering it, with the latter representing a three-fold increase from 2019. Available at https://www.callan.com/research-library/.

[3] Larry Fink, *Larry Fink's 2021 Letter to CEOs* (January 2021), available at https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter; Cyrus Taraporevala, *CEO's Letter on Our 2021 Proxy Voting Agenda* (January 2021), available at https://www.ssga.com/us/en/institutional/ic/insights/ceo-letter-2021-proxy-voting-agenda.

[4] For example, two prominent standard-setters announced their intent to merge. SASB, *IIRC and SASB announce intent to merge in major step towards simplifying the corporate reporting system* (November 25, 2020), available at https://www.sasb.org/wp-content/uploads/2020/11/IIRC-SASB-Press-Release-Web-Final.pdf. Additionally, following a December 2020 consultation process, the IFRS Foundation has announced they intend to move forward with the formation of a sustainability standards board that will promulgate sustainability reporting standards intended to aid investors, lenders and other creditors (available at https://www.ifrs.org/news-and-events/2021/03/trustees-announce-strategic-direction-based-on-feedback-to-sustainability-reporting-consultation). The institutional credibility of the IFRS Foundation may make its reporting attractive as a global standard; for example, the effort was recently endorsed by the International Organization of Securities Commissions (available at https://www.iosco.org/news/pdf/IOSCONEWS594.pdf).

[5] For example, during his nomination hearing before the U.S. Senate Committee on Banking, Housing and Urban Affairs, SEC Chair[-nominee] Gary Gensler testified that companies should not be permitted to hide material climate risk information from investors (available at https://www.c-span.org/video/?509429-1/sec-chair-cfpb-director-confirmation-hearing); in March 2021 the SEC Division of Examinations included a focus on climate-related risks in its 2021 examination priorities (available at https://www.sec.gov/news/press-release/2021-39); in March 2021, the SEC announced the formation of an ESG task force within the Division of Enforcement to focus on ESG-related misconduct (available at https://www.sec.gov/news/press-release/2021-42); in February 2021, SEC Acting Chair Allison Herren Lee announced that the Division of Corporate Finance would enhance its focus on companies' climate-related disclosures (available at https://www.sec.gov/news/public-statement/lee-statement-review-climate-related-disclosure); at a February 2021 conference, Acting Director of the SEC Division of Corporate Finance John Coates stated that the SEC "should help lead" the creation of ESG disclosure standards (available at https://www.reuters.com/article/us-climate-change-disclosures-idUSKBN2AI2CG); and President Joe Biden has made several Executive Orders addressing climate change policy (available at https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/).

[6] For example, in March 2021, Democrats on the House Committee on Energy and Commerce introduced the Climate Leadership and Environmental Action for our Nation's (CLEAN) Future Act. If enacted, the bill would, among other things, require issuers to make annual climate-related disclosures and would amend the Securities and Exchange Act of 1934 to require the SEC to issue climate risk disclosure rules within two years. If the SEC does not issue climate risk disclosures within the two-year timeframe, the bill would allow compliance with the Task Force on Climate-Related Financial Disclosure as a backstop. The full text of the bill is available at https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/CFA%20Bill%20Text%202021.pdf. Additionally, state law may become increasingly relevant to ESG disclosure. The California state legislature recently introduced a bill that would impose greenhouse gas emissions disclosure obligations on publicly traded corporations that have annual revenue in excess of $1 billion and do business in California. Among other requirements, subject companies would be required to disclose Scope 1, Scope 2 and Scope 3 emissions. The full text of the bill is available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB260.

[7] See the MSCI ESG Industry Materiality Map, available at https://www.msci.com/our-solutions/esg-investing/esg-ratings/materiality-map.

[8] As noted above, SEC Acting Chair Allison Herren Lee announced in February 2021 that the Division of Corporate Finance would enhance its focus on companies' climate-related disclosures; Lee also stated in the announcement that the SEC would begin updating its 2010 guidance regarding climate change matters, which, rather than requiring line-item disclosures, reminded registrants that, if material to investors, climate change-related risks should be disclosed under existing Regulation S-K requirements.

[9] Proponents for a more holistic approach to ESG requirements have put forth a number of arguments, including that "[t]he challenges of 2020 have demonstrated the importance of focusing on a range of areas simultaneously" (Bank of America, available at http://eifrs.ifrs.org/eifrs/comment_letters//570/570_27502_SeanKearneyBankofAmericaCorporation_0_BACIFRSConsultationCommentLetter23Dec2020.pdf); "[g]iven the controversy around climate risk, a broader approach would be logical and may provide more opportunity to develop broad-based support for the project" (Institute of Public Accountants, available at https://www.publicaccountants.org.au/media/3102506/Sub-IFRS-Foundation-sustainability-reporting-21122020F.pdf); and that "[i]t should address the full range of sustainability factors that are material to enterprise value creation…Climate change is too narrow a focus, even as a starting point" (Morningstar, available at http://eifrs.ifrs.org/eifrs/comment_letters//570/570_27459_AndyPettitMorningstar_0_IFRSSSBMorningstarCommentLetter.pdf).

[10] For example, the European Non-Financial Reporting Directive uses a double materiality perspective (European Commission, *Guidelines on reporting climate-related information* (2019) available at https://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf). CDP, the Climate Disclosure Standards Board (CDSB), the Global Reporting Initiative (GRI), the International Integrated Reporting Council (IIRC) and SASB have advanced the concept of "nested materiality" (SASB, *SASB's Response to the IFRS Foundation's Consultation Paper on Sustainability* (December 11, 2020) available at http://eifrs.ifrs.org/eifrs/comment_letters/570/570_27198_SonalDalalSustainabilityAccountingStandardsBoard_0_SASBResponsetoIFRSConsultation11Dec2020.pdf).

[11] Examples include the Sustainable Finance Disclosure Regulation (available at https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2021/962778/JC%202021%2003%20-%20Joint%20ESAs%20Final%20Report%20on%20RTS%20under%20SFDR.pdf), the EU Taxonomy Regulation (available at https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-taxonomy-sustainable-activities_en) and the EU Non-Financial Reporting Directive (available at https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en).

[12] For example, in January 2020, BlackRock encouraged portfolio companies to disclose climate-related risks in line with the TCFD framework (Larry Fink, *Larry Fink's Letter to CEOs* (January 2020), available at https://www.blackrock.com/us/individual/larry-fink-ceo-letter), a framework that the United Kingdom has recently announced that it intends to use as the basis for mandatory company reporting requirements (available at https://www.gov.uk/government/publications/uk-joint-regulator-and-government-tcfd-taskforce-interim-report-and-roadmap).

[13] In a recent survey of financial services firms by Deloitte and the Institute of International Finance, 99% of respondents stated that the role of CSO will grow in prominence over the next two years, with a strong majority also believing that over the next five years the CSO role will continue to be a distinct function with chief responsibility to "triage external initiatives and make connections among different developments" in the ESG space. Available at https://www2.deloitte.com/global/en/pages/financial-services/articles/the-future-of-the-chief-sustainability-officer.html.

[14] For example, CDP Worldwide, a non-profit organization that maintains a global disclosure system for environmental reporting, includes in its corporate Climate Change scoring methodology more favorable scoring for companies that have a CSO (available at https://guidance.cdp.net/en/guidance?cid=13&ctype=theme&idtype=ThemeID&incchild=1µsite=0&otype=ScoringMethodology&tags=TAG-599%2CTAG-605%2CTAG-646).

[15] Recent scholarship and commentary have increasingly drawn the connection between ESG issues and the board's discharge of its fiduciary duties. Additionally, ESG-specific board monitoring can serve an informational function to identify other business risks relevant for the duty of care that would have been missed in traditional compliance programs. *See*, *e.g.*, Chris Brummer and Leo E. Strine, Jr., *Duty and Diversity* (February 18, 2021), available at https://law-economic-studies.law.columbia.edu/content/working-papers; Leo E. Strine, Jr., Kirby M. Smith and Reilly S. Steel, *Caremark and ESG, Perfect Together: A Practical Approach to Implementing an Integrated, Efficient, and Effective Caremark and EESG Strategy* (July 30, 2020), available at https://scholarship.law.upenn.edu/faculty_scholarship/2196?utm_source=scholarship.law.upenn.edu%2Ffaculty_scholarship%2F2196&utm_medium=PDF&utm_campaign=PDFCoverPages.

[16] For example, in the last few years companies such as Clorox (available at https://www.thecloroxcompany.com/corporate-responsibility/environmental-sustainability/eco-governance/), Royal Dutch Shell (available at https://reports.shell.com/sustainability-report/2018/introduction/our-approach-to-sustainability/executive-remuneration.html) and Chevron (available at https://www.reuters.com/article/us-chevron-carbon/chevron-ties-executive-pay-to-methane-and-flaring-reduction-targets-idUSKCN1PW1V2) have begun tying executive compensation to the company's ESG goals.

[17] Companies should avoid the pitfall of making aspirational ESG-related statements that are not supported by company practices. Recently, a series of shareholder lawsuits have alleged that directors misrepresented the company's commitment to diversity by claiming to have a policy of diversity and inclusion while simultaneously lacking diverse board members and senior executives. *See City of Pontiac General Employees' Retirement System v. Bush et al.*, Case No. 5:20-cv-06651 (available at www.law360.com/articles/1313264/attachments/0); *Ocegueda v. Zuckerberg et al.*, Case No. 3:20-cv-04444, (available at www.law360.com/dockets/download/5eff0b472067a001b130dfd1?doc_url=https%3A%2F%2Fecf.cand.uscourts.gov%2Fdoc1%2F035119442423&label=Case+Filing).

[18] Center for Audit Quality, *ESG Reporting and Attestation: A Roadmap for Audit Practitioners* (February 17, 2021). Available at https://www.thecaq.org/esg-reporting-and-attestation-a-roadmap-for-audit-practitioners/.

[19] For example, feedback can be provided to SASB at https://www.sasb.org/standards/feedback/#:~:text=Providing%20Feedback%20on%20SASB%20Standards,establish%20and%20maintain%20the%20Standards.

[20] In response to its consultation paper, the IFRS Foundation received 576 comment letters from a diverse set of organizations and individuals. Available at https://www.ifrs.org/projects/work-plan/sustainability-reporting/comment-letters-projects/consultation-paper-and-comment-letters/).

[21] Available at https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

[22] Past examples include the 2020 Virtual Roundtable on The Role of Asset Management in ESG Investing. Available at https://www.sec.gov/news/speech/peirce-lucys-human-091720.