KILPATRICK TOWNSEND

ACC Association of Corporate Counsel CHARLOTTE

ACC Charlotte:

ESG Elements & Considerations

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Setting the Stage: What is ESG?

What is ESG?

Environmental

Social


EMPLOYEE
WELLNESS
POLITICAL CONTRIBUTIONS
DIVERSITY
&INCLUSION
CHARITABLE CONTRIBUTIONS
HUMAN
RIGHTS
PHILANTHROPY
AVOID
ETHICAL SOURCING
"SOCIAL WASHING"

Governance

GOAL SETTING
FINANCIAL INCLUSION
BUSINESS STRATEGY ALIGNMENT
RISK MANAGEMENT
SUSTAINABLE FINANCE
ACCOUNTABILITY
AUDITING & TESTING
PROCESS CONTROLS
DISCLOSURES
COMPLIANCE
MONITORING
DATA PROTECTION & PRIVACY

Poll Question

Which area of ESG challenges your company the most?

- E
- S
- G

What Considerations Should an ESG Program Include?

Poll Question

Does your company have an integrated and comprehensive ESG program?

- Yes
- No
- Working on it!

ESG Program

- ESG is a broad term that covers a range of ever-evolving topics and issues.
- Not all ESG topics are relevant or material to a company.
- There is not a “one size fits all” approach.
- ESG is a journey and takes time.

VALUES-BASED

Successful ESG programs are values-based. The company's values determine the relevant ESG topics and goals.

METRICS

Using a risk-based and tailored approach to determine and satisfy ESG metrics is critical.

DISCLOSURES

Any ESG-related voluntary or mandatory disclosures must be accurate.

STRATEGY & OPERATIONS

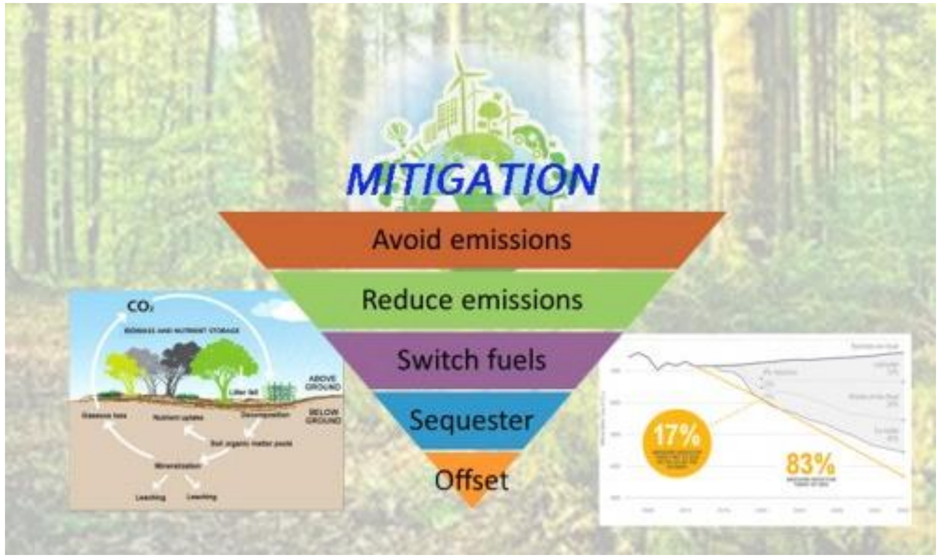
ESG goals should be part of the overall corporate strategy and operations.

Who is Involved in Corporate ESG Efforts?

Focusing on the “E”

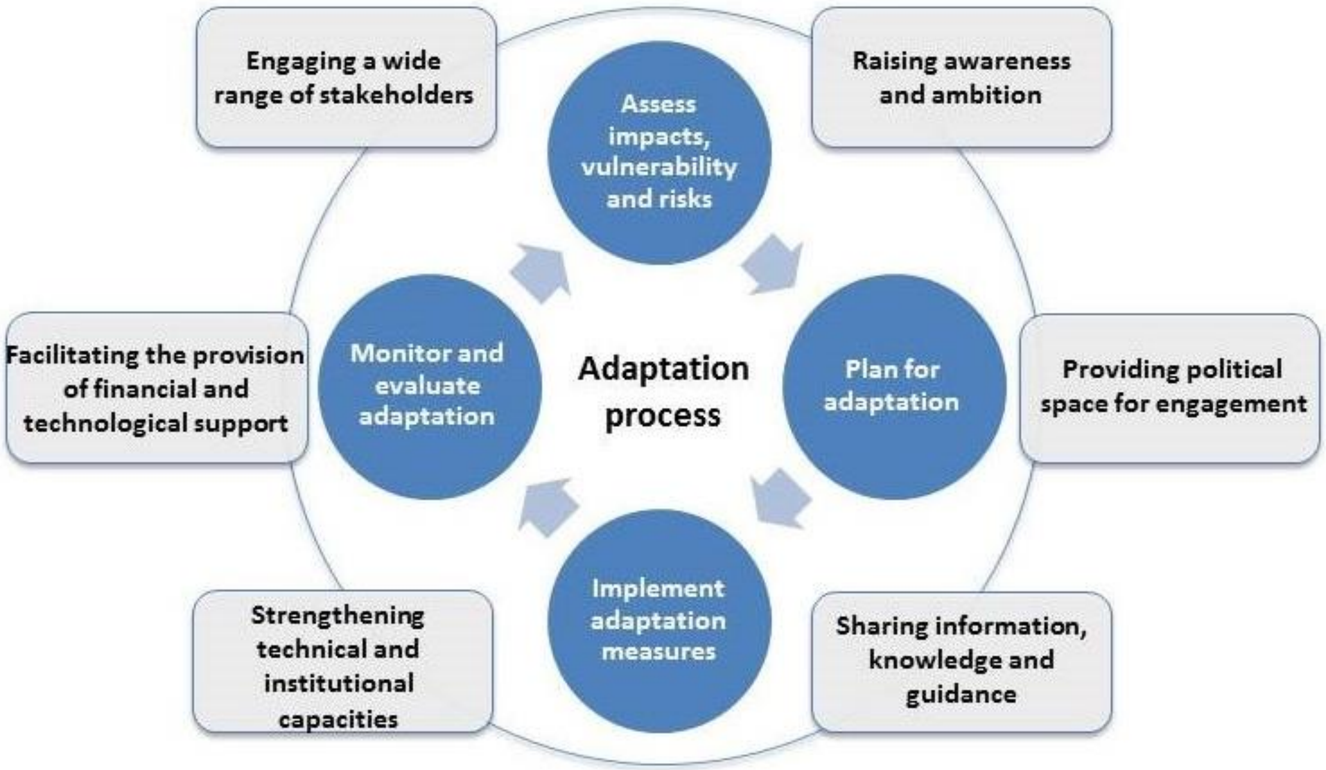
Environmental

Mitigation



https://climatechange.lta.org/mitigation/

Adaptation/Resilience



https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/what-do-adaptation-to-climate-change-and-climate-resilience-mean

Poll Question

Has your company published a sustainability report?

- Yes
- No
- Planning or working on it!

The Big Picture

90%

of major U.S companies* published a sustainability report in 2019, up from 86% in 2018 and 20% in 2011.

NEW METRIC FOR 2021!

16%

of public U.S. companies mentioned ESG in their SEC filings

>1,500

companies backed the reporting framework in 2020, 5X the number in 2017.

Climate Risk

Major global companies* are on track for >3°C warming, falling

72%

short of required emissions reductions to achieve the Paris Agreement**.

Major global companies face $284 billion carbon pricing costs in 2025, representing

13%

of earnings.

Nearly

95%

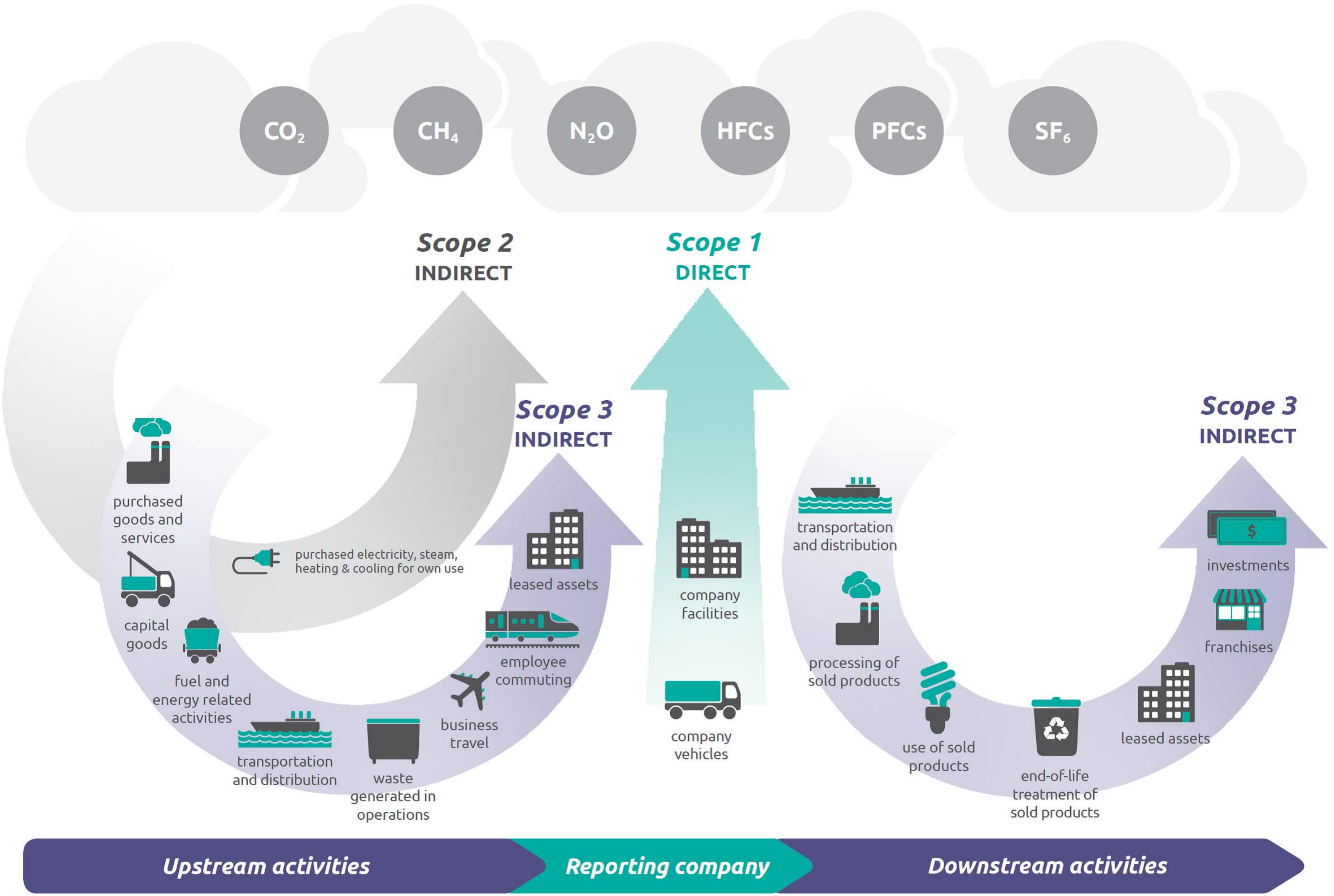
of major U.S. companies and 80% of major global companies will face moderate physical risk by 2050.

Corporate Performance

Major U.S. companies achieved an average S&P Global ESG score of

40/100

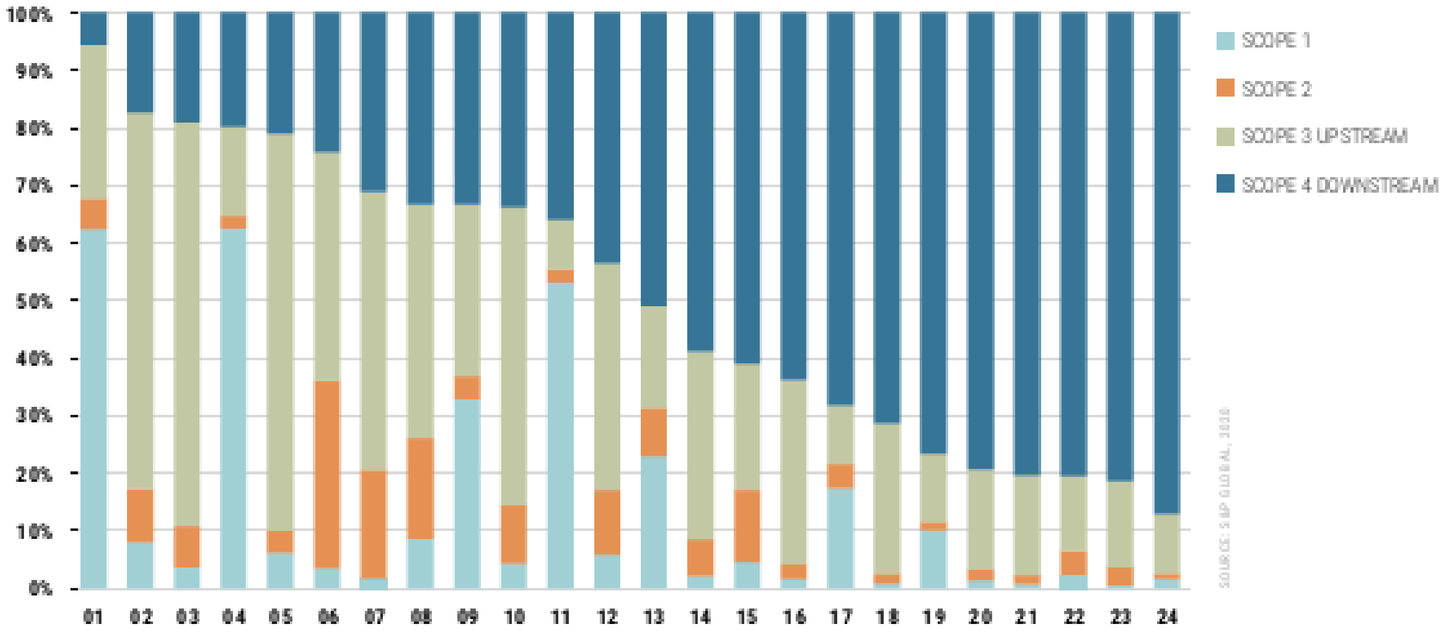
in 2019, while their major global companies achieved 47/100.



https://www.epa.gov/climateleadership/scope-1-and-scope-2-inventory-guidance

Scope 3 Downstream Sources Are a Major Contributor to Total GHG Emissions

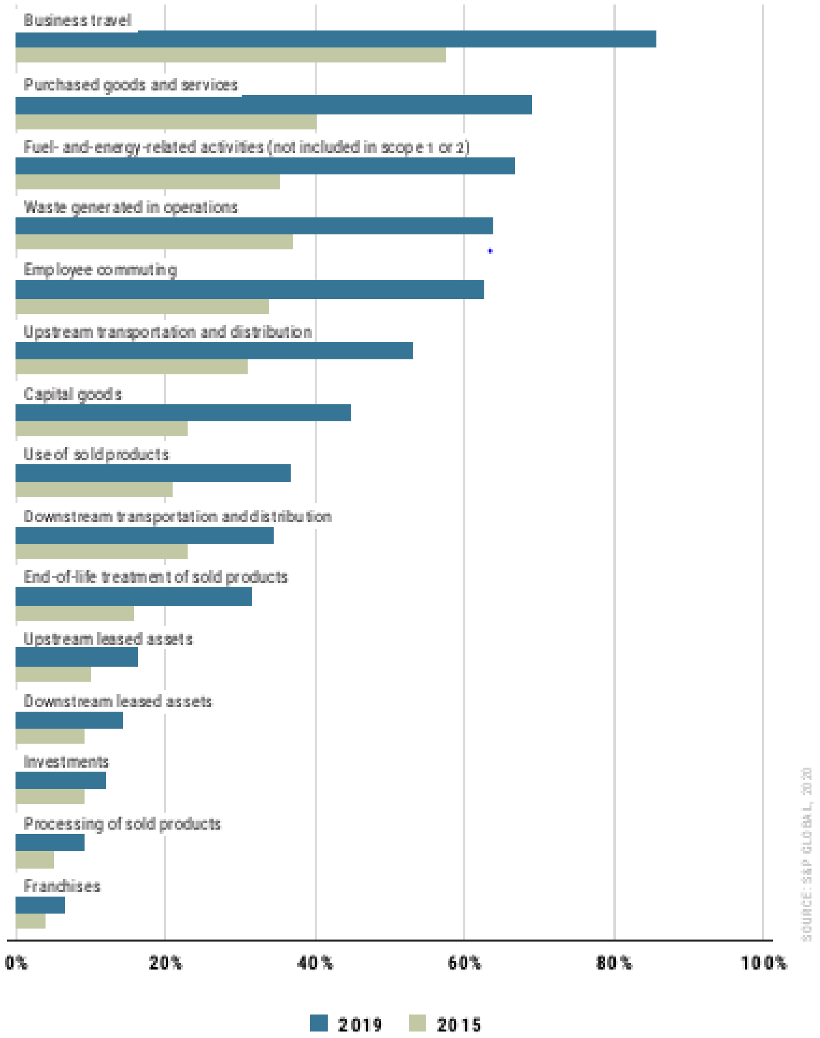
% OF TOTAL GHG EMISSIONS FOR GLOBAL COMPANIES IN 2019



01/ Commercial + Professional Services
02/ Pharmaceuticals, Biotechnology + Life Sciences
03/ Healthcare Equipment + Services
04/ Transportation
05/ Food, Beverage + Tobacco
06/ Telecommunication Services
07/ Software + Services
08/ Semiconductors + Semiconductor Equipment
09/ Diversified Financials
10/ Media + Entertainment
11/ Utilities
12/ Food + Staples Retailing
13/ Consumer Services
14/ Technology Hardware + Equipment
15/ Real Estate
16/ Consumer Durables + Apparel
17/ Materials
18/ Insurance
19/ Energy
20/ Household + Personal Products
21/ Automobiles + Components
22/ Retailing
23/ Banks
24/ Capital Goods

Companies Are Becoming More Transparent About Value Chain Emissions

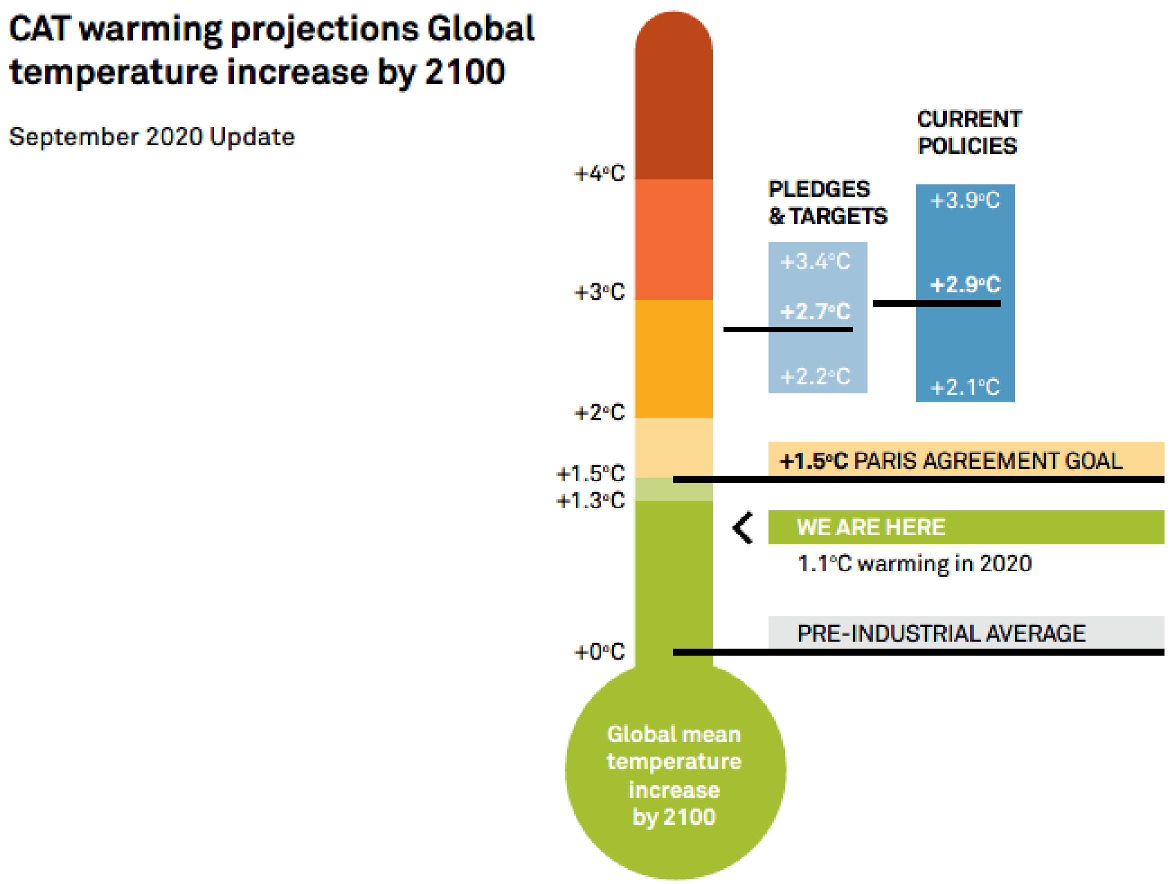
PERCENTAGE OF COMPANIES DISCLOSING EACH OF THE 15 GHG SCOPE 3 CATEGORIES



Paris Agreement

- Aims to substantially reduce global greenhouse gas emissions in an effort to limit the global temperature increase in this century to 2°C above preindustrial levels, while pursuing the means to limit the increase to 1.5°C.
- Includes commitments from all major emitting countries to cut their climate pollution and to strengthen those commitments over time.
  - NDCs
- Provides a pathway for developed nations to assist developing nations in their climate mitigation and adaptation efforts and creates a framework for the transparent monitoring, reporting, and ratcheting up of countries' individual and collective climate goals.
- While parties are legally obligated to have an NDC, and to pursue measures with the aim of achieving it, achievement of the NDC is not a legally binding or enforceable commitment.

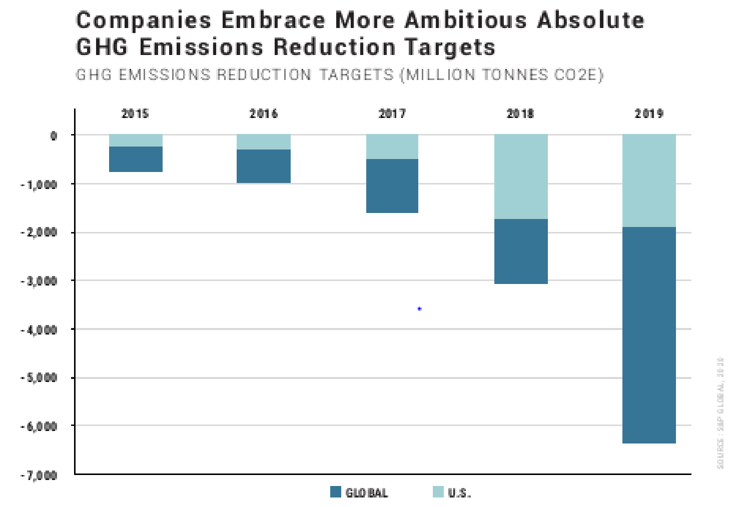
Figure 1: Climate Action Tracker Warming Projections

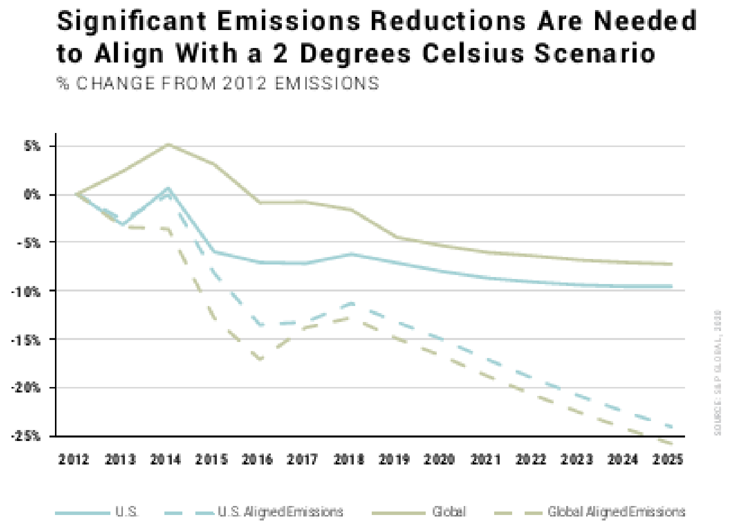


Source: Climate Action Tracker, September 2020.

U.S. Path to Reduce Emissions

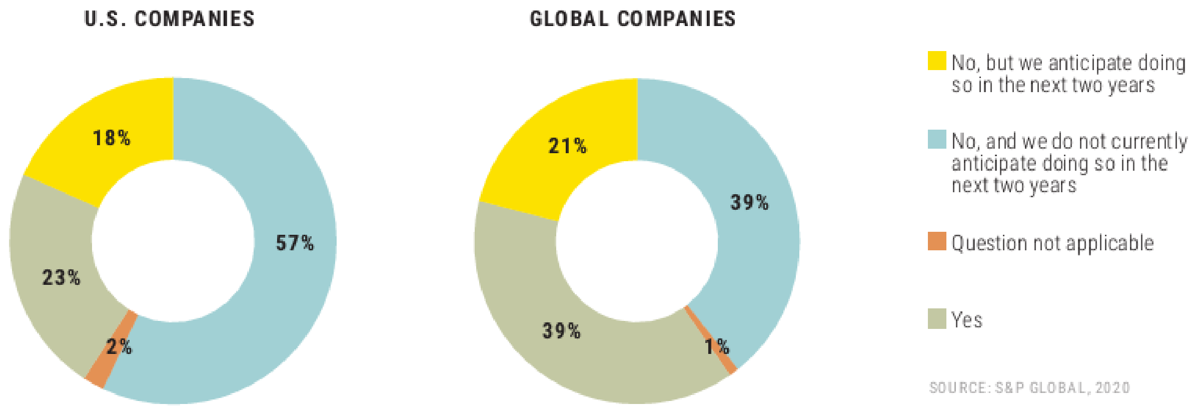
- U.S. has committed to cut GHG by 26 to 28% below 2005 levels by 2025 and by 50 to 52% below 2005 levels by 2030.
  - Climate Change Executive Orders
  - GHG Tailoring Rule - GHG emissions from the largest stationary sources were, for the first time, covered by the PSD and title V Operating Permit Programs beginning on January 2, 2011.
  - Automotive fuel economy standards to reduce transportation emissions.
  - Clean Power Plan/Affordable Clean Energy Rule → Carbon Regulatory Limbo
  - Infrastructure Investment and Jobs Act
  - ESG initiatives/COP26
  - Carbon pricing – initiatives that put an explicit price on GHG emissions expressed in a monetary unit per tCO_2e (i.e., carbon taxes, emissions trading systems (ETSs), offset mechanisms, and results-based climate finance (RBCF)).





Minority of Companies Have Set Internal Carbon Prices, but More Plan to Do So in Next Two Years

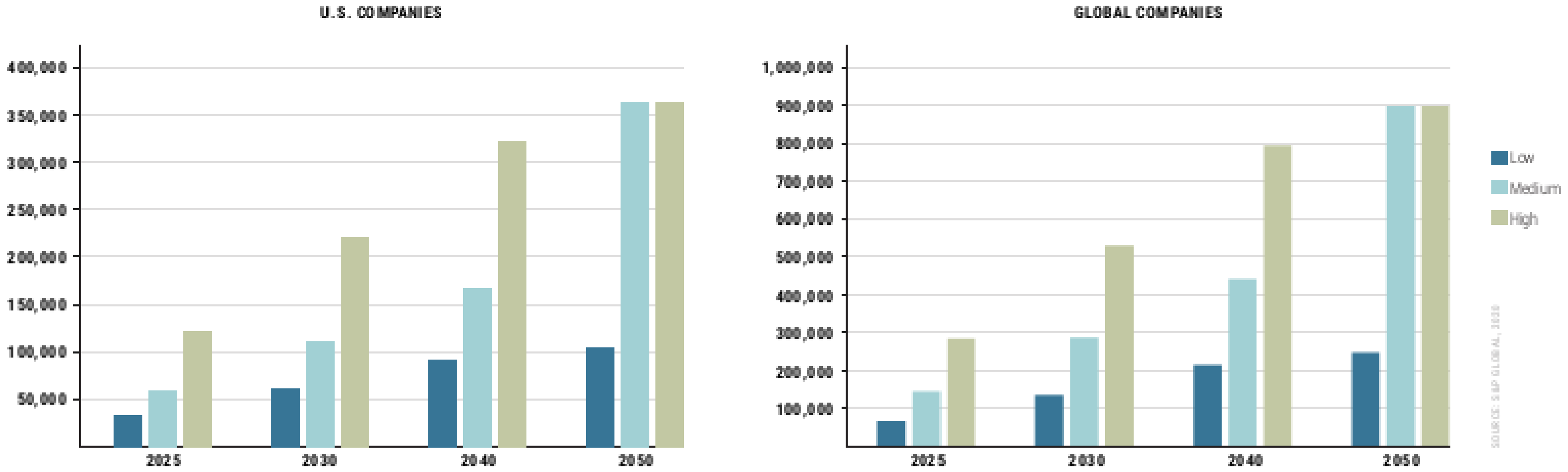
% OF COMPANIES SETTING A CARBON PRICE



State of Green Business 2021 – S&G Global

Hundreds of Billions in Unpriced Carbon Costs Expected by 2050

UNPRICED CARBON COST UNDER DIFFERENT SCENARIOS AND YEARS IN MILLION USD



What Should Your Strategy Be?

- It's not just about disclosures
- Quantify risks/opportunities
- Clear, defined strategy to address climate change
  - Attain resilience
  - Finance activities
  - Don't forget about opportunities
  - Achieve net-zero emissions
- ESG is a journey

Poll Question

Does your company have a plan to attain net zero?

- Yes
- No
- What is net zero?

Net Zero

- Clear, attainable plan
- Low-hanging fruit: energy conservation and renewable energy sources.
- Contractual Mechanisms
  - Physical and Virtual Power Purchase Agreements
  - Carbon Offsets – Emissions Reductions Purchase Agreements

Focusing on the “S”

Board of Directors Diversity Requirements

- The SEC is in the proposed rule stage.
- The Commission's Staff may look to the NASDAQ rules and California laws as useful inputs.

SEC Approves Nasdaq's Board Diversity Disclosure Rule

- On August 6, 2021, the SEC approved Nasdaq's Board Diversity Rule.
- The Rule requires companies listed on the Nasdaq U.S. exchange to:
  - Publicly disclose annually board-level diversity statistics using a standardized template; and
  - Have or explain why they do not have at least two diverse directors.
- Smaller reporting companies and foreign issuers can meet the objective by including two female directors.
- Companies with five or fewer directors can meet the objective by including one diverse director.

Nasdaq

Statement from Nasdaq on SEC's Approval of Board Diversity Disclosure Listing Rule

August 6, 2021

NEW YORK, Aug. 06, 2021 (GLOBE NEWSWIRE) -- Nasdaq today released a statement following the U.S. Securities and Exchange Commission's (SEC) approval of the company's board diversity disclosure listing rule:

"We are pleased that the SEC has approved Nasdaq's proposal to enhance board diversity disclosures and encourage the creation of more diverse boards through a market-led solution. We look forward to working with our companies to implement this new listing rule and set a new standard for corporate governance."

For additional information, please visit the Nasdaq Listing Center: listingcenter.nasdaq.com.

About Nasdaq:

Nasdaq (Nasdaq: NDAQ) is a global technology company serving the capital markets and other industries. Our diverse offering of data, analytics, software and services enables clients to optimize and execute their business vision with confidence. To learn more about the company, technology solutions and career opportunities, visit us on LinkedIn, on Twitter @Nasdaq, or at www.nasdaq.com.

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-NDAQF-

A photo accompanying this announcement is available at https://www.globenewswire.com/NewsRoom/AttachmentNg/212a3686-5967-4808-8580-ca7801bd1c50

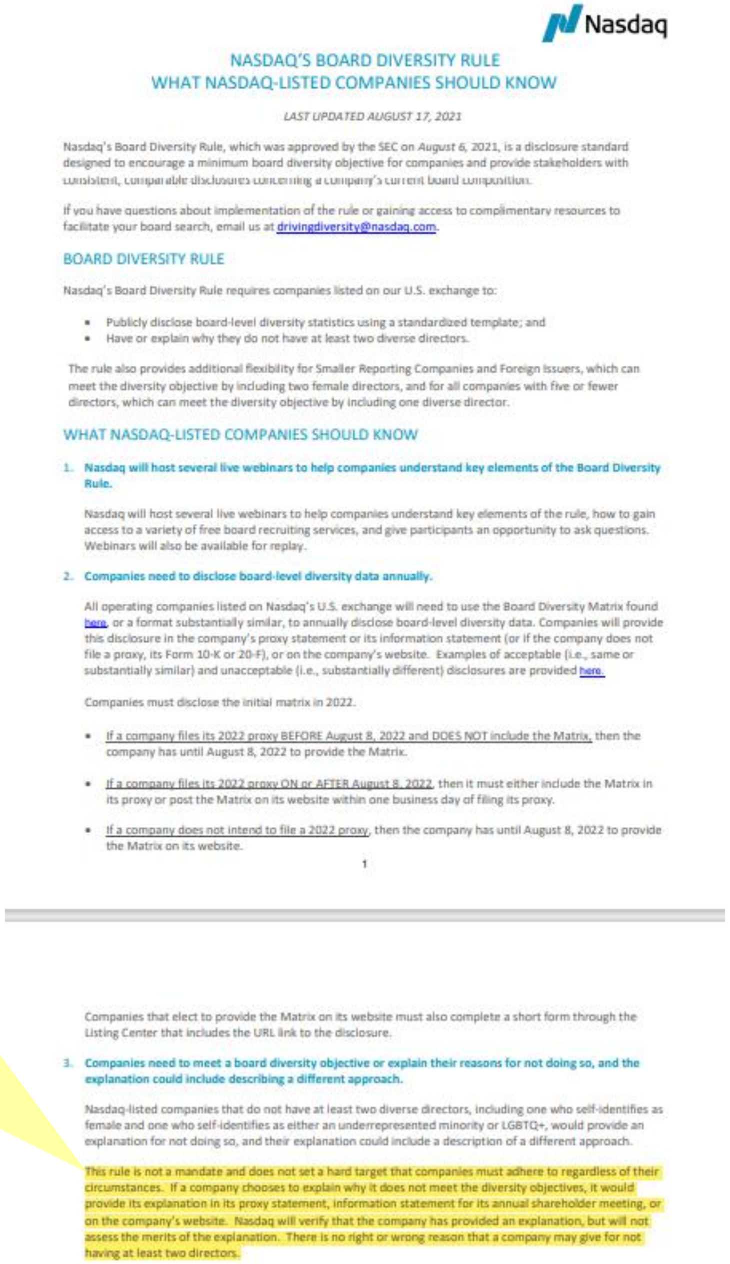
Nasdaq

Nasdaq Statement on SEC's Approval of Board Diversity Disclosure Listing Rule

Nasdaq released a statement following the U.S. Securities and Exchange Commission's (SEC) approval of the company's board diversity disclosure listing rule.

Nasdaq

This rule is not a mandate and does not set a hard target that companies must adhere to regardless of their circumstances. If a company chooses to explain why it does not meet the diversity objectives, it would provide its explanation in its proxy statement, information statement for its annual shareholder meeting, or on the company’s website. Nasdaq will verify that the company has provided an explanation, but will not assess the merits of the explanation. There is no right or wrong reason that a company may give for not having at least two directors.



Nasdaq

NASDAQ’S BOARD DIVERSITY RULE
WHAT NASDAQ-LISTED COMPANIES SHOULD KNOW

LAST UPDATED AUGUST 17, 2021

Nasdaq’s Board Diversity Rule, which was approved by the SEC on *August 6, 2021*, is a disclosure standard designed to encourage a minimum board diversity objective for companies and provide stakeholders with consistent, comparable disclosures concerning a company’s current board composition.

If you have questions about implementation of the rule or gaining access to complimentary resources to facilitate your board search, email us at drivingdiversity@nasdaq.com.

BOARD DIVERSITY RULE

Nasdaq’s Board Diversity Rule requires companies listed on our U.S. exchange to:

- Publicly disclose board-level diversity statistics using a standardized template; and
- Have or explain why they do not have at least two diverse directors.

The rule also provides additional flexibility for Smaller Reporting Companies and Foreign Issuers, which can meet the diversity objective by including two female directors, and for all companies with five or fewer directors, which can meet the diversity objective by including one diverse director.

WHAT NASDAQ-LISTED COMPANIES SHOULD KNOW

1. **Nasdaq will host several live webinars to help companies understand key elements of the Board Diversity Rule.**

   Nasdaq will host several live webinars to help companies understand key elements of the rule, how to gain access to a variety of free board recruiting services, and give participants an opportunity to ask questions. Webinars will also be available for replay.

2. **Companies need to disclose board-level diversity data annually.**

   All operating companies listed on Nasdaq’s U.S. exchange will need to use the Board Diversity Matrix found here, or a format substantially similar, to annually disclose board-level diversity data. Companies will provide this disclosure in the company’s proxy statement or its information statement (or if the company does not file a proxy, its Form 10-K or 20-F), or on the company’s website. Examples of acceptable (i.e., same or substantially similar) and unacceptable (i.e., substantially different) disclosures are provided here.

   Companies must disclose the initial matrix in 2022.

   - If a company files its 2022 proxy BEFORE August 8, 2022 and DOES NOT include the Matrix, then the company has until August 8, 2022 to provide the Matrix.
   - If a company files its 2022 proxy ON or AFTER August 8, 2022, then it must either include the Matrix in its proxy or post the Matrix on its website within one business day of filing its proxy.
   - If a company does not intend to file a 2022 proxy, then the company has until August 8, 2022 to provide the Matrix on its website.

1

   Companies that elect to provide the Matrix on its website must also complete a short form through the Listing Center that includes the URL link to the disclosure.

3. **Companies need to meet a board diversity objective or explain their reasons for not doing so, and the explanation could include describing a different approach.**

   Nasdaq-listed companies that do not have at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+, would provide an explanation for not doing so, and their explanation could include a description of a different approach.

   This rule is not a mandate and does not set a hard target that companies must adhere to regardless of their circumstances. If a company chooses to explain why it does not meet the diversity objectives, it would provide its explanation in its proxy statement, information statement for its annual shareholder meeting, or on the company’s website. Nasdaq will verify that the company has provided an explanation, but will not assess the merits of the explanation. There is no right or wrong reason that a company may give for not having at least two directors.

California

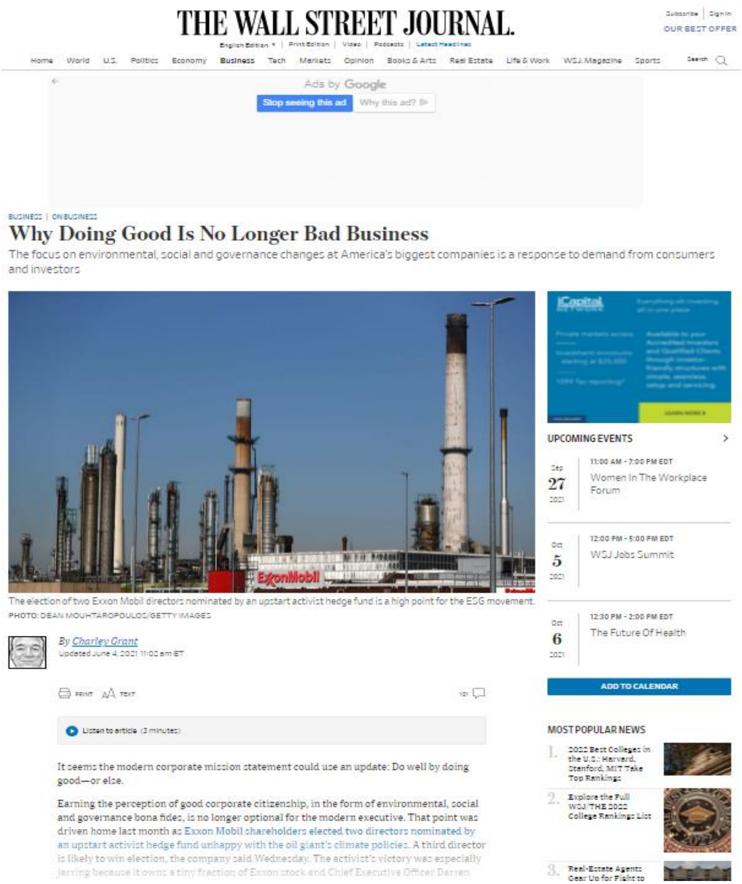
- In 2018 and 2020, respectively, California passed laws governing board diversity for public companies.
- The laws apply to foreign and domestic publicly-held corporations with principal executive offices in California.
- By the end of 2021, covered corporations must have at least one diverse director.
- By the end of 2022, companies with boards of nine or more directors, must have at least thee diverse directors; boards with between four and eight directors must have at least two diverse directors.
- Fine of $100,000 for the first violation and $300,000 for subsequent violations.

Ethical Sourcing Risks

Cotton from Xinjiang	Cobalt from the DRC	Managing E-Waste
		

Focusing on the "G"

"You Might Not be Interested in ESG, but ESG is Interested in You."


THE WALL STREET JOURNAL.

BUSINESS | ON BUSINESS

Why Doing Good Is No Longer Bad Business

The focus on environmental, social and governance changes at America's biggest companies is a response to demand from consumers and investors

The election of two Exxon Mobil directors nominated by an upstart activist hedge fund is a high point for the ESG movement.
PHOTO: DEAN MOUHTAROPOULOS/GETTY IMAGES

By Charley Grant
Updated June 4, 2021 11:02 am ET

It seems the modern corporate mission statement could use an update: Do well by doing good—or else.

Earning the perception of good corporate citizenship, in the form of environmental, social and governance bona fides, is no longer optional for the modern executive. That point was driven home last month as Exxon Mobil shareholders elected two directors nominated by an upstart activist hedge fund unhappy with the oil giant's climate policies. A third director is likely to win election, the company said Wednesday. The activist's victory was especially jarring because it owns a tiny fraction of Exxon stock and Chief Executive Officer Darren

- Stakeholders will continue to demand corporate ESG efforts and achievements.
- Current S&P 500 members issued 610 news releases referencing environmental, social and governance topics during the first five months of 2021.
- According to Sentieo, that is double the rate from the same time period last year.
- Companies, including compliance personnel, need to be ready to respond to this continuous pressure by determining a values-based ESG program, with accurate and complete disclosures, that can lead to competitive returns.

The Many ESG Reporting Frameworks

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T U R
C N S
N F S A C
G D D S D
E R R G B P K
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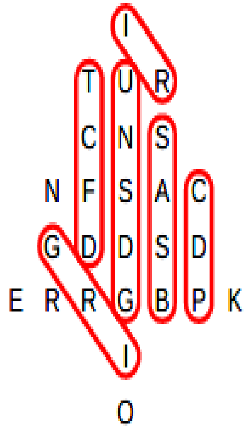


WORD LIST:

CDP	IR	TCFD
GRI	SASB	UN SDG

Potential Legal Risks of Disclosures

GOVERNMENT ENFORCEMENT

- SEC Regulatory Compliance
- International Regulatory Compliance
- State Regulatory Compliance
- Federal and State Consumer Protection Laws
- False Claims Act
- Fraud

SHAREHOLDER ACTIONS

- Directors & Officers Litigation
- Breach of Fiduciary Duty
- Misleading the Market
- Making False Statements
- Derivative Actions

CONSUMER ACTIONS

- Product Liability
- Discriminatory Practices
- Breach of Unfair Competition Statutes
- Breach of Consumer Protection Laws
- Unfair Trade Practices
- False Advertising

BUSINESS LITIGATION

- Breach of Contract
- Fraud
- Alternative Dispute Resolution

SEC Sample Letter on Climate Change Disclosures

September 2021

Name
ABC Corporation
Address

Dear Issuer:

We have reviewed your filing and have the following comments regarding compliance with the topics addressed in the Commission's 2010 Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 2, 2010). In some of our comments, we may ask you to provide us with information so we may better understand your disclosure. Please respond to these comments by providing the requested information and/or revising or updating your disclosure as applicable. If you do not believe our comments apply to your facts and circumstances, please tell us why in your response.

General

1. We note that you provided more expansive disclosure in your corporate social responsibility report (CSR report) than you provided in your SEC filings. Please advise us what consideration you gave to providing the same type of climate-related disclosure in your SEC filings as you provided in your CSR report.

Risk Factors

2. Disclose the material effects of transition risks related to climate change that may affect your business, financial condition, and results of operations, such as policy and regulatory changes that could impose operational and compliance burdens, market trends that may alter business opportunities, credit risks, or technological changes.
3. Disclose any material litigation risks related to climate change and explain the potential impact to the company.

7. If material, discuss the physical effects of climate change on your operations and results. This disclosure may include the following:
   - severity of weather, such as floods, hurricanes, sea levels, arability of farmland, extreme fires, and water availability and quality;
   - quantification of material weather-related damages to your property or operations;
   - potential for indirect weather-related impacts that have affected or may affect your major customers or suppliers;
   - decreased agricultural production capacity in areas affected by drought or other weather-related changes; and
   - any weather-related impacts on the cost or availability of insurance.
8. Quantify any material increased compliance costs related to climate change.
9. If material, provide disclosure about your purchase or sale of carbon credits or offsets and any material effects on your business, financial condition, and results of operations.

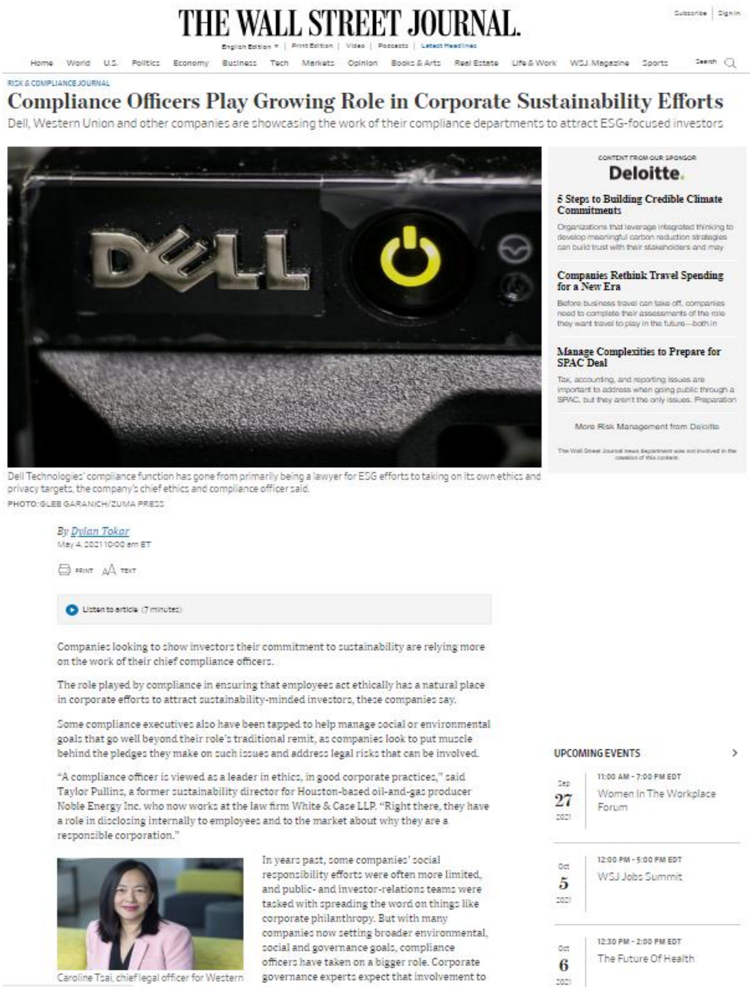
We remind you that the company and its management are responsible for the accuracy and adequacy of their disclosures, notwithstanding any review, comments, action or absence of action by the staff.

Sincerely,

Division of Corporation Finance

Compliance Department’s Increasing ESG Role

- Compliance departments have a role by providing:
  - Data and metrics;
  - Insight on laws and regulations; and
  - Best practices.
- “Some compliance executives also have been tapped to help manage social or environmental goals that go well beyond their role’s traditional remit, as companies look to put muscle behind the pledges they make on such issues and address legal risks that can be involved.”



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RISK & COMPLIANCE JOURNAL

Compliance Officers Play Growing Role in Corporate Sustainability Efforts

Dell, Western Union and other companies are showcasing the work of their compliance departments to attract ESG-focused investors

Dell Technologies’ compliance function has gone from primarily being a lawyer for ESG efforts to taking on its own ethics and privacy targets, the company’s chief ethics and compliance officer said.
PHOTO: GLEB GARANICH/ZUMA PRESS

CONTENT FROM OUR SPONSOR
Deloitte.

5 Steps to Building Credible Climate Commitments
Organizations that leverage integrated thinking to develop meaningful carbon reduction strategies can build trust with their stakeholders and may

Companies Rethink Travel Spending for a New Era
Before business travel can take off, companies need to complete their assessments of the role they want travel to play in the future—both in

Manage Complexities to Prepare for SPAC Deal
Tax, accounting, and reporting issues are important to address when going public through a SPAC, but they aren’t the only issues. Preparation

More Risk Management from Deloitte

The Wall Street Journal news department was not involved in the creation of this content.

By Dylan Tokar
May 4, 2021 10:00 am ET

PRINT TEXT

Listen to article (7 minutes)

Companies looking to show investors their commitment to sustainability are relying more on the work of their chief compliance officers.

The role played by compliance in ensuring that employees act ethically has a natural place in corporate efforts to attract sustainability-minded investors, these companies say.

Some compliance executives also have been tapped to help manage social or environmental goals that go well beyond their role’s traditional remit, as companies look to put muscle behind the pledges they make on such issues and address legal risks that can be involved.

“A compliance officer is viewed as a leader in ethics, in good corporate practices,” said Taylor Pullins, a former sustainability director for Houston-based oil-and-gas producer Noble Energy Inc. who now works at the law firm White & Case LLP. “Right there, they have a role in disclosing internally to employees and to the market about why they are a responsible corporation.”

Caroline Tsai, chief legal officer for Western

In years past, some companies’ social responsibility efforts were often more limited, and public- and investor-relations teams were tasked with spreading the word on things like corporate philanthropy. But with many companies now setting broader environmental, social and governance goals, compliance officers have taken on a bigger role. Corporate governance experts expect that involvement to

UPCOMING EVENTS

Sep 27 2021 — 11:00 AM - 7:00 PM EDT — Women In The Workplace Forum

Oct 5 2021 — 12:00 PM - 5:00 PM EDT — WSJ Jobs Summit

Oct 6 2021 — 12:30 PM - 2:00 PM EDT — The Future Of Health


Who is Interested in Your Corporate ESG Efforts?
Credit Rating Agencies
Investors
Pension Funds
Market Analysts
Partners
Suppliers
Society at Large
Government Clients & Purchasers
Financial Institutions
Customers
Insurance Analysts
Regulators

External Parties Can Bring About Change & Risk

- Activist shareholders
- Short Sellers/Researchers
  - Lordstown Motor Corporation
  - Nikola Corporation and its founder
  - Clover Health Investments Corporation
  - Ormat Technologies Inc.
  - DraftKings
- Courts
- Whistleblowers

Cautionary Tale: DWS Group

According to an August 2021 WSJ article, among other things, DWS

- Had difficulty defining and implementing an ESG strategy;
- Issued a 2020 annual report that may have painted a "rosier-than-realty picture" to the public on its ESG efforts;
- Referenced "ESG integration," in its report, when possibly "only a small fraction of the investment platform" applies the integration; and
- Allegedly terminated the former Sustainability Chief, the day before the report's issuance.

Cautionary Tale: DWS Group

The WSJ described how the former Sustainability Chief made an executive board presentation claiming:

- There was not a clear ESG strategy;
- The company lacked certain policies; and
- ESG personnel were treated as “specialists” and not part of decision-making.

After the WSJ article, both the U.S. Attorney's Office for the Eastern District of New York and the SEC initiated an investigation of DWS.

BaFin, a German regulator, also opened an investigation.

What’s Next?

Tougher Approach to Corporate Wrongdoing

DOJ

- Last week, the DOJ announced that it will launch a corporate crime crackdown.
- John Carlin, Principal Associate Deputy Attorney General explained: "You should expect in the days, months, years to come an unprecedented focus…on corporate accountability."
- The DOJ mentioned how it will reveal cases involving "some of the largest corporations" operating in the U.S.

SEC

- Although independent, SEC Chairman, Gary Gensler described how the DOJ's approach to prosecuting corporations is "broadly consistent" with how to handle corporate offenders.
- Mr. Gensler mentioned the importance of corporate accountability and cooperation.

What Was Voluntary May Become Mandatory

U.S. SECURITIES AND EXCHANGE COMMISSION

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Press Release

SEC Announces Enforcement Task Force Focused on Climate and ESG Issues

FOR IMMEDIATE RELEASE

2021-42

Washington D.C., March 4, 2021 — The Securities and Exchange Commission today announced the creation of a Climate and ESG Task Force in the Division of Enforcement. The task force will be led by Kelly L. Gibson, the Acting Deputy Director of Enforcement, who will oversee a Division-wide effort, with 22 members drawn from the SE specialized units.

Consistent with increasing investor focus a investment, the Climate and ESG Task For related misconduct. The task force will als including through the use of sophisticated registrants, to identify potential violations.

The initial focus will be to identify any mate climate risks under existing rules. The tas issues relating to investment advisers' and agency's other initiatives in this area, inclu Senior Policy Advisor for Climate and ESG address these risks to investors, the task f Offices, including the Divisions of Corporat Examinations.

Kilpatrick, Townsend & Stoc...

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Top SEC Official Suggests More ESG Enforcement Is Coming

By *Al Barbarino*

Law360 (July 13, 2021, 7:10 PM EDT) -- The acting head of the U.S. Securities and Exchange Commission's enforcement division on Tuesday hinted that funds touting green investments can expect increased scrutiny, and that more disclosure-related enforcement actions akin to September's Fiat Chrysler settlement could be on the horizon.

Melissa Hodgman, acting director of the SEC enforcement unit, noted at a Managed Funds Association webcast that retail investors and other market participants are focused on so-called environmental, social and governance issues, and that "boardrooms are putting time and energy into that, and

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TOP NEWS

Gensler Says Climate Disclosure Rules Among 'Top Priorities'

New U.S. Securities and Exchange Commission Chairman Gary Gensler said Thursday that rulemaking around climate risk and human capital disclosures will be "an early focus" of his tenure in light of investors' interest in the areas.

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ESG INVESTING

New EU Regulations on Sustainable Investing Could Hit U.S. Funds Soon

By Leslie P. Norton March 12, 2021 11:46 am ET

Text size

U.S. funds may see increased pressure to disclose their sustainable investing practices.

Spencer Platt/Getty Images

New regulations governing sustainable investing in the European Union could affect U.S. investors soon.

This week, new EU rules took effect for managers of sustainable funds—or those that invest according to environmental, social or governance (ESG) considerations. Now these fund managers must report specifics of how they do their investing. The EU's Sustainable Finance Disclosure Regulation, or SFDR for short, affects all asset managers that raise money in the EU, even if they are not based there. That means the new regulations have implications even for those funds offered to U.S. investors.

The rules are aimed to prevent so-called greenwashing, or funds being marketed as sustainable when they are only superficially so. Among other things, money managers in the EU must classify their funds either as non-sustainable; as owning investments with particular environmental or social characteristics; or as contributing to a specific environmental or social objective. This will require changes to disclosures and marketing materials, with money managers needing to report how they assess their companies across a range of metrics. The detailed disclosures must be supplied beginning in 2022.

Waiting for Certainty Given the Current Challenges

External Challenges

- Lack of clarity around:
  - Voluntary standards and frameworks
  - ESG ratings and rankings
- Rapidly changing regulatory landscape
- Lack of industry standards
- Pandemic's effect

Internal Corporate Challenges

- Lack of:
  - Buy-in from senior leadership or directors
  - Quality and consistent data
  - Resources
  - Internal expertise
- Not knowing where to prioritize

While Waiting For Certainty….

- Suggest that legal counsel as well as compliance personnel should get involved earlier to vet disclosures
- Begin constructing the interdisciplinary team that is needed to guide the company's ESG journey
- Focus on material ESG risks and opportunities
- Map out data sources that the company will rely on for ESG-related disclosures
- Develop training and awareness building for the board of directors and executive management on ESG risks
- Start engaging or building the skills sets of key departments on critical ESG risk topics for your company
- Understand from your external auditors what they plan to focus on with regard to ESG
- Begin measuring your ESG successes

Poll Question

Given what we covered in this CLE, what is your company's biggest challenge for handling ESG issues?

- Budget and resources for ESG programs and disclosures
- Creating more awareness surrounding ESG risks
- Creating an ESG interdisciplinary team
- Creating an integrated and comprehensive ESG program

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Questions?