RECENT DEVELOPMENTS FOR DIRECTORS

A Quarterly Update on ESG for US Public Companies from the Public Company Representation Practice

May 2021

Central Focus on ESG Raises Reporting Questions

Reporting on environmental, social and governance (ESG) has become an essential component of many companies' disclosures to investors and stakeholders, prompting boards to consider:

- *How does our company establish ESG goals and metrics?* Companies are taking a fresh look at ESG priorities, reviewing both internal priorities and external goals of industry peers. Emerging ESG trends also merit attention as the pandemic has underscored issues such as working conditions, workplace diversity and supply-chain partner policies. Shareholder engagement initiatives also continue to shape ESG priorities.
- *Who is assessing our ESG efforts and why are their opinions important?* Third party ESG rating providers such as ISS, MSCI, Sustainalytics and many others rate companies based on proprietary scoring systems that may have little correlation with each other and lead to significant discrepancies in a company's ESG ratings. Institutional investors, asset managers and other stakeholders may rely on these ESG ratings in making investment and voting decisions on company ESG performance.
- *Do we use an ESG reporting standard?* Many companies provide sustainability and integrated ESG reporting based on a standard-setting organization such as the Sustainability Accounting Standards Board (SASB), the Taskforce on Climate-related Financial Disclosures (TCFD) and the Global Reporting Initiative (GRI). These frameworks have gained market acceptance among institutional investors and other stakeholders.
- *Does our company provide adequate quantitative ESG data?* As external ESG reporting continues to mature, companies fine-tune and may increase their reporting of quantitative metrics to facilitate period-over-period comparisons. Over time, users may expect increased sophistication and detail in the ESG information that companies report.
- *How does our company manage ESG reporting and tracking?* Companies continue to emphasize internal ESG reporting structures, with sustainability metrics included in periodic business or financial reviews to track ongoing performance. Boards are increasing their focus on understanding internal processes that support external reporting.
- *Does our board approve publication of the ESG report and ESG disclosures?* Many companies have adopted a board approval process that incorporates advance review by multiple parties beyond the ESG reporting team, including investor relations, legal, senior management and ultimately the board of directors. Companies increasingly apply rigor and significance to ESG disclosures in a manner similar to their financial reporting process.

An Active and Heated 2021 Proxy Season

Shareholder proposals highlight issues such as climate change, racial equity and political spending. Proposals regarding say-on-climate votes seek published climate-action plans that are subject to annual advisory votes. Proposals on workplace diversity and racial justice seek Equal Employment Opportunity Commission data, or EEO-1 disclosures, as well as third-party audits on how companies are promoting racial equity. Proposals regarding political spending seek policies for disclosure and accountability relating to political contributions.

Climate Change and ESG Disclosure Receives SEC Focus

Newly confirmed SEC Chair Gary Gensler has indicated a desire for SEC guidance on climate change disclosure. Earlier this year, then-acting SEC Chair Allison Lee directed the SEC Staff to review climate-related disclosures in SEC filings and requested public comment on climate change disclosures. The SEC has created an enforcement task force focused on climate-related and ESG disclosures, with one of the initial aims being to identify "any material gaps or misstatements in issuers' disclosure of climate risks under existing rules," including existing requirements to disclose known risks or uncertainties.

Companies Disclose Continuing COVID-19 Effects

The pandemic continues to affect a wide range of industries, and companies continue to disclose developments on how the pandemic may affect their business and operating results. Companies continue to apply SEC Staff disclosure guidance to provide transparency on the pandemic's historical and expected impact. These disclosures require ongoing updates as circumstances evolve based on dynamic factors including vaccinations, new-variant outbreaks and expected post-pandemic changes in supply chains, consumer demand and other changes.