ACC-WI Annual Conference

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ESG Goes Mainstream: What In-House Counsel Needs to Know Now

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Overview

- ESG & Sustainability
- Investors are Increasingly Interested in ESG
- Recent Investor and Regulatory Pressures on ESG Disclosures
- BlackRock CEO Letter
- TCFD & SASB: A Closer Look

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General Definitions of ESG, Sustainability and Sustainable Investing

- ESG: Categorized as "non-accounting" information. It captures components important for valuations that are not traditionally reported.

(E) Environmental	(S) Social	(G) Governance
How a company performs as a steward of the natural environment	How a company manages relationships with employees, suppliers, customers and communities	A company's internal processes and leadership, including executive pay, audit and internal controls, and shareholder rights

- ESG and Sustainability - ESG is often used interchangeably with the term sustainability
- Sustainable Investing: Combining traditional investing with sustainability-related insights in an effort to reduce risk and enhance long-term returns.

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The Role and Oversight of Each Group on Sustainability & ESG Disclosures

Investors

- Investors include ESG metrics alongside traditional financial metrics and integrate ESG considerations into their decision-making processes. Importantly, the quality of the data that guides such decisions is getting sharper.

Board Members

- Directors who have contextualized ESG from both a strategic and business operations perspective tend to be better equipped to manage and understand risk and opportunities in the operations of the corporations they oversee.

Corporate

- When companies consistently disclose ESG information, it allows investors to compare and reward companies with strong performance in these areas.

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Increased Regulatory and Financial Pressures on ESG Disclosures

- **International Accounting Standards Board (IASB) Recommended that Companies Address ESG:** IASB published the report "IFRS Standards and Climate-Related Disclosures," which recommended that companies address material environmental and societal issues, and more specifically, issues driven by investor pressure to disclose climate-related risks. (November, 2019)

- **Institutional Shareholder Services' (ISS) Climate Awareness Scorecard to Proxy Reports:** ISS measures the depth and extent of disclosure and performance of a company related to climate change, along with the company's understanding and preparedness to face and mitigate the risk. (October, 2019)

- **The UK Companies (Director's Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018:** Requires companies to report energy use, greenhouse gas emissions, energy intensity, calculation methodology and action taken to reduce energy consumption in its Director's Reports.

- **The International Monetary Fund:** Calls for climate risk disclosures to be mandatory and part of international reporting standards. (May, 2020)

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ESG Indices and Funds Have Outperformed

- **What:** ESG indices and funds have outperformed the broader market during the pandemic crisis, fueling speculation that the strategy of prioritizing social goodwill continue to grow
- **Why Now:**
  - The MSCI ESG Leaders have outperformed by 10-190bp since the peak of the market, while the SRI Indices have outperformed by 270-440 basis points. *Source: MSCI, Morgan Stanley Research, April 29, 2020*
  - BlackRock believes assets in Global Exchange Traded Funds (ETFs) and index mutual funds will grow by roughly $1 trillion by 2030. *Source: BlackRock projection, April 2020, based on Morningstar data, as of March 2020*
- **Why IR Should Care:** Sustainable stocks and funds have outperformed during the recent selloff, partly because ESG funds are perceived to have superior risk management.

SASB – the *Sustainability Accounting Standards Board* sets voluntary, *industry-specific sustainability standards* tied to the concept of materiality to investors. The standards are intended to capture sustainability matters that are financially material.

TCFD – the *Task Force for Climate-related Financial Disclosure* was launched by the G-20 Financial Stability Board in 2015 to develop voluntary standards for companies to communicate with their stakeholders on *climate change*.

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BlackRock CEO Letter (January 14, 2020)

"Climate Risk is an Investment Risk"

This year, we are asking the companies that we invest in on behalf of our clients to: (1) **publish a disclosure in line with industry-specific SASB guidelines by year-end,** if you have not already done so, or disclose a similar set of data in a way that is relevant to your particular business; and (2) **disclose climate-related risks in line with the TCFD's** recommendations, if you have not already done so. This should include your plan for operating under a scenario where the **Paris Agreement's goal of limiting global warming to less than two degrees is fully realized**, as expressed by the TCFD guidelines.

We will use these disclosures and our engagements to ascertain whether companies are properly managing and overseeing these risks within their business and adequately planning for the future. In the absence of robust disclosures, investors, including BlackRock, will increasingly conclude that companies are not adequately managing risk.

We believe that when a company is not effectively addressing a material issue, its directors should be held accountable. Last year BlackRock voted against or withheld votes from 4,800 directors at 2,700 different companies. **Where we feel companies and boards are not producing effective sustainability disclosures or implementing frameworks for managing these issues, we will hold board members accountable.** Given the groundwork we have already laid engaging on disclosure, and the growing investment risks surrounding sustainability, we will be increasingly disposed to **vote against management and board directors when companies are not making sufficient progress** on sustainability-related disclosures and the business practices and plans underlying them.

Sustainability-integrated portfolios can provide better risk-adjusted returns to investors. Sustainability will drive the way we manage risk, construct portfolios, design products, and engage with companies."

Sincerely,

Larry Fink

Urges company to adopt SASB guidelines and TCFD recommendations by year end

Plan for operating under a scenario aligned with Paris Agreement

Hold board members accountable

Vote against management and board directors when their company is not making enough progress on sustainability practices and disclosures.

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Investors Call for Continued Focus on ESG

- **Nuveen:** "I'm asked if companies and investors are going to be pulling back from ESG, absolutely not," said Peter Reali, head of engagement for Nuveen. "If anything … it's going to become more relevant." *April 24, 2020*

nuveen
A TIAA Company

- **State Street Global Advisors: "**The long-term impact of climate change, both from an environmental, social and economic perspective could ultimately be even higher than that of the current pandemic." *April 15, 2020*

- **BlackRock:** "In 2020, we identified 244 companies that are making insufficient progress integrating climate risk into their business models or disclosures. Of these companies, we took voting action against 53, or 22%. We have put the remaining 191 companies 'on watch.' Those that do not make significant progress risk voting action against management in 2021." *July 14, 2020*

- **T. Rowe Price Group Integrated ESG into its Investment Process for the "Purpose of Maximizing Investment Performance":** T. Rowe utilizes The Responsible Investing Indicator Model (RIIM) to evaluate a company's sustainability approach.

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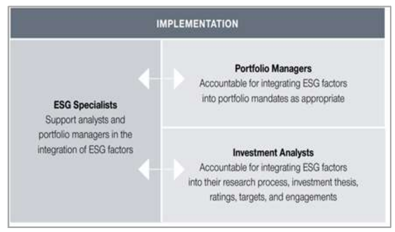
T. Rowe Price - Example

"Our mission is to help our clients reach their long-term financial goals. Consistent with that objective, we have an obligation to understand the long-term sustainability of the companies in which we invest. Which is why environmental, social, and governance (ESG) factors are key considerations in our investment approach."

T. Rowe Price 2019 Annual Report



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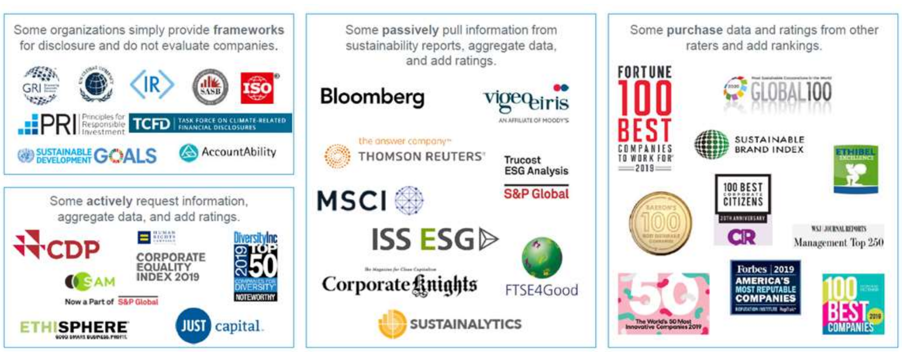
Who Makes Up the ESG Ecosystem?

Based on sustainability reporting standards and frameworks, there are 100+ organizations producing lists, rankings, ratings and scorecards of the "top" companies and "most sustainable" companies.



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ESG Frameworks and Rating Agencies

Framework and Disclosures	Rating Agencies		
CDP	MSCI	SUSTAINALYTICS	ISS
The Carbon Disclosure Project, (CDP) requests information on climate risks and low carbon opportunities from the world's largest companies on behalf of over 525 institutional investor signatories with a combined US$96 trillion in assets. The TCFD Framework is embedded into the CDP.	MSCI ESG Research provides in-depth research, ratings and analysis of the environmental, social and governance-related business practices of thousands of companies worldwide.	Sustainalytics ESG Risk Ratings is designed to help investors identify and understand financially material ESG risks at the security and portfolio level.	ISS is a leading provider of corporate governance and responsible investment solutions for asset owners, asset managers, hedge funds, and asset service providers.

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TCFD Disclosures

- The Financial Stability Board (FSB) established the **Task Force on Climate-related Financial Disclosures (TCFD)** to develop recommendations for more effective climate-related disclosures
  - In 2019, the Carbon Disclosure Project (CDP) embedded the TCFD Disclosures into its reporting.
  - As of Feb, 2020, 1,027 organizations have supported one or more of the TCFD recommendations since the framework was first launched in June 2017.
  - The UK Government has said it will mandate TCFD-aligned disclosures for certain large organizations within three years, under its Green Finance Strategy.

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TCFD Disclosures

The TCFD Recommendations are organized into four categories and encourage corporate disclosures related to a company's:

- **Governance:** the organization's governance around climate related risks and opportunities
- **Strategy:** the actual and potential impacts of climate-related risks and opportunities for an organization's business, strategy and financial planning
- **Risk Management:** the processes used by the organization to identify, assess and manage climate-related risks
- **Metrics and Targets:** the metrics and targets used to assess and manage climate-related risks and opportunities

Governance	Strategy	Risk Management	Metrics and Targets
Disclose the organization's governance around climate-related risks and opportunities.	Disclose the actual and potential impacts of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning where such information is material.	Disclose how the organization identifies, assesses, and manages climate-related risks.	Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material.
Recommended Disclosures	**Recommended Disclosures**	**Recommended Disclosures**	**Recommended Disclosures**
a) Describe the board's oversight of climate-related risks and opportunities.	a) Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term.	a) Describe the organization's processes for identifying and assessing climate-related risks.	a) Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process.
b) Describe management's role in assessing and managing climate-related risks and opportunities.	b) Describe the impact of climate-related risks and opportunities on the organization's businesses, strategy, and financial planning.	b) Describe the organization's processes for managing climate-related risks.	b) Disclose Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas (GHG) emissions, and the related risks.
	c) Describe the resilience of the organization's strategy, taking into consideration different future climate scenarios, including a 2°C or lower scenario.	c) Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization's overall risk management.	c) Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.

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Key Steps in the TCFD Science-Based Climate Scenario Analysis

- **Step 1: Ensure Governance Is In Place**: (1) Integrate scenario analysis into strategic planning and enterprise risk management processes. (2) Align oversight with Audit Committee. (3) Identify internal stakeholders to participate in working group (legal, sustainability, operations, finance and procurement). (4) Define roles.
- **Step 2: Identify And Define Range Of Scenarios:** Leverage expertise of outside consultants to establish greater rigor and sophistication in the use of data sets and climate models.
- **Step 3: Evaluate Business Impacts:** Evaluate the potential effects on our organization's strategic and financial position under each of the defined scenarios. Analyze key sensitivities.
- **Step 4: Identify Potential Responses:** Use the results to determine applicable, realistic decisions to manage the identified risks and opportunities.
- **Step 5: Document And Disclose:** Document the process; communicate to relevant parties; disclose key inputs, assumptions, analytical methods, outputs, and potential management responses.

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SASB Framework – Sustainability Disclosure Topics and Accounting Metrics

TOPIC	ACCOUNTING METRIC	CATEGORY	UNIT
Energy Management	Total energy consumed, percentage grid electricity, percentage renewable	Quantitative	Gigajoules (GJ), Percentage (%)
Water Management	(1) Total water withdrawn and (2) total water consumed, percentage of each in regions with High or Extremely High Baseline Water Stress	Quantitative	Cubic meters (m3), Percentage (%)
	discussion of water management risks and description of management strategies and practices to mitigate those risks	Discussion and Analysis	n/a
Responsible Drinking & Marketing	Number of advertising impressions, percentage made on individuals above the legal drinking age	Quantitative	Number, Percentage (%)
	Notices of violations received for non-conformance with industry and regulatory marketing and/or labeling codes	Quantitative	Number
	Amount of legal and regulatory fines and settlements associated with labeling and/or marketing practices	Quantitative	U.S. Dollars ($)
	Description of efforts to promote responsible consumption of alcohol	Discussion and Analysis	n/a
Packaging Lifecycle Management	(1) Total weight of packaging, (2) percentage made from recycled or renewable materials, and (3) percentage that is recyclable or compostable	Quantitative	Metric tons (t), Percentage (%)
	Description of strategies to reduce the environmental impact of packaging throughout its lifecycle	Discussion and Analysis	n/a
Environmental & Social Impacts of Ingredient Supply Chains	Percentage of beverage ingredients sourced from regions with High or Extremely High Baseline Water Stress	Quantitative	Percentage (%) by spend
	Suppliers' social and environmental responsibility audit conformance: (1) major non-conformance rate and associated corrective action rate and (2) minor non-conformance rate and associated corrective action rate	Quantitative	Rate
	List of priority beverage ingredients and discussion of sourcing risks due to environmental and social considerations	Discussion & Analysis	n/a

Currently disclosing (Aligned with 2025 Goals or OBP Reports)
Currently not disclosing, but easy to collect this data
Currently not disclosing; need to assess ability to collect data

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Best in Class Examples: TCFD and SASB Reportings

- Ford produced its first TCFD Index, SASB Index and 22-page Climate Change Scenario Report in 2019 referencing its responses to the recommendations
- Qantas produced a similar table in outlining its responses to the TCFD's specific recommendations
- Rio Tinto published a report in 2019, *Our approach to climate change,* outlining how the company plans to contribute to and leverage the transition to a low carbon future in line with the TCFD recommendations
- Citi Group published a 32-page TCFD Report, *Finance for a Climate-Resilient Future,* the first major US bank to do so. The report outlines Citi's business and operational climate performance and efforts to implement the TCFD recommendations
- JetBlue produced a combined 45-page SASB and TCFD Report to accompany its annual financial report after moving away from the GRI in 2016
- JPMorgan Chase has produced a shorter 16-page Climate Report in outlining its climate-related risks and opportunities

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Thank You.

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Phil Kappell is a Senior Attorney at Sensient Technologies Corporation, specializing in M&A and securities. In his role, he is responsible for corporate transactional work ranging from acquisitions and divestitures to commercial contracts and assisting in SEC reporting and compliance and other corporate governance matters.

Sensient is a leading global manufacturer and marketer of colors, flavors, and other specialty ingredients. Sensient uses advanced technologies and robust global supply chain capabilities to develop specialized solutions for food and beverages, as well as products that serve the pharmaceutical, nutraceutical, cosmetic, and personal care industries. Phil joined Sensient in April 2020, and was previously a Senior Counsel at Foley & Lardner LLP where he represented public and private companies in M&A transactions, debt offerings, securities compliance, and general corporate counseling.

Phil graduated *summa cum laude* from the University of Wisconsin-Green Bay and with honors from The University of Chicago Law School.

KIM MAROTTA

Global Senior Director Sustainability and Enterprise Risk Management

Kim Marotta is the Global Senior Director Sustainability and Alcohol Policy for Molson Coors, one of the world's largest brewers. In her role, she is responsible for developing and implementing strategic initiatives that promote sustainability, protect the company's reputation, deliver cost savings, manage long-term risk and fuel financial growth. Kim joined the beer business in 2004, and held similar positions for MillerCoors and Miller Brewing Company in the U.S.

Kim completed her undergraduate degree at Marquette University and is a graduate of the University of Wisconsin-Madison Law School. Prior to her career in the beer industry, Kim was a criminal defense attorney and served as an adjunct professor at Marquette University Law School.

Kim is a current member of the board of directors for The Nature Conservancy. She has served on numerous boards, including Milwaukee World Festivals, Alcohol Beverage and Medical Research Foundation, The Sustainability Consortium and Children's Hospital of Wisconsin Foundation. Kim is a keynote speaker, invited lecturer, and mother of four children.

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Jason M. Hille is a partner and business lawyer with Foley & Lardner LLP. Mr. Hille regularly represents public and private companies in a variety of industries regarding mergers and acquisitions, securities law compliance, corporate financings and general corporate matters. He is a member of the Transactional & Securities Practice and Sports Industry Team.

Mr. Hille regularly represents public and private companies in a variety of industries on transactional and corporate matters. He represents buyers and sellers in public and private mergers, acquisitions, dispositions and recapitalizations. Mr. Hille also represents issuers in public and private securities offerings. He provides continuing advice to a number of public companies in a variety of industries regarding federal securities law compliance, disclosure and reporting and corporate governance matters. Mr. Hille also regularly represents venture capital and private equity clients regarding fund formation and portfolio company acquisitions and dispositions.

Mr. Hille also regularly represents mutual funds, exchange-traded funds and publicly traded investment advisers with respect to all aspects of the Investment Company Act and the Investment Advisers Act, mergers and acquisitions, corporate governance, public disclosure and reporting and the offering of securities.

Education

Mr. Hille is a graduate of Marquette University (B.S., *summa cum laude*, 2002; M.S., 2003). He obtained his law degree from the University of Notre Dame Law School (J.D., *magna cum laude*, 2006), where he was a staff member and articles editor for *The Journal of Legislation*.

Admissions

Mr. Hille is admitted to practice in Wisconsin.

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Peter A. Tomasi is of counsel and a business lawyer with Foley & Lardner LLP, where he is a member of the firm's Environmental Regulation Practice. His practice focuses on regulatory compliance and renewable energy. Peter has further experience with general civil, commercial, and intellectual property litigation.

Representative Experience

- Representation of logistics providers and reverse distributors in rulemaking and enforcement matters involving hazardous waste pharmaceuticals
- Assisting clients with obtaining environmental permits from state, federal, and tribal agencies for mining operations as well as assisting clients in developing reclamation and general compliance plans
- Representation of clients in citizen suits brought under the Clean Air Act and Clean Water Act against utility and manufacturing facilities
- Assisting clients in preparing comments on federal regulations issued under the Clean Air Act, the Resource Conservation and Restoration Act, and the National Energy Policy Conservation Act
- Defending the adequacy of environmental assessments and environmental impact statements prepared in accordance with the National Environmental Policy Act (NEPA) and the Wisconsin Environmental Policy Act (WEPA)
- Providing ongoing consultation and advice to coal, biomass, and gas fired facilities regarding day-to-day compliance with the requirements of the New Source Review program, the New Source Performance Standards, the Title IV Acid Rain program and future greenhouse gas regulatory requirements
- Assisting clients with sustainability reporting, including developing its first carbon management and

climate change strategy, and revising annual Climate Disclosure Project submissions
- Advising clients regarding environmental and regulatory concerns relating to the construction and operation of renewable energy projects including biomass, solar and wind energy, including providing due diligence to lenders and tax equity investors for two wind farms, which also included an evaluation of the need for and completeness of efforts to obtain relevant federal, state, and local approvals

*These matters were handled prior to Foley.

Recognition

Peter has been listed in *Chambers USA: America's Leading Lawyers for Business* from 2011 – 2020 for his work with natural resources and environmental law. He has been listed in *Best Lawyers*® from 2010 – 2017 for his work in environmental law, as well as being recognized as the "Lawyer of the Year" in Milwaukee by *Best Lawyers*® for his work with energy law (2018). He has also been selected for inclusion in *Wisconsin Super Lawyers®–Rising Stars* (2008–2012).

Affiliations and Community Engagement

Peter is a member of the American Bar Association, as well as a board member for the Milwaukee Academy of Science. He is also the chair-elect for the Wisconsin Bar Association.

Education

Peter earned his law and master's degrees from Duke University (J.D., *cum laude* and M.E.M., 2001), where he was the symposium editor for the *Duke Environmental Law and Policy Forum*. He earned his bachelor's degree from the University of Chicago (B.A., *cum laude*, 1997), where he majored in chemistry.

Admissions

Peter is admitted to practice in Wisconsin, Illinois, the U.S. District Court, Eastern District of Wisconsin, the U.S. District Court, Western District of Michigan, and the U.S. Patent and Trademark Office.