

Integrating ESG in Corporate Practices: The Role of Counsel

Akin Gump

STRAUSS HAUER & FELD LLP

October 7, 2020



© 2020 Akin Gump Strauss Hauer & Feld LLP

Why Are We Here?

“Who Cares Wins.”

Ivo Knoepel, catalyst of modern ESG investing

Agenda

- Overview of Environmental, Social and Governance (ESG)
- What Investors (and Other Stakeholders) Want to See
- Preparing for ESG Programs and Reporting: Drafting to Implementation to Continuous Improvement

Overview

- What is ESG?
- Why Care about ESG?
- How is Corporate America Responding?

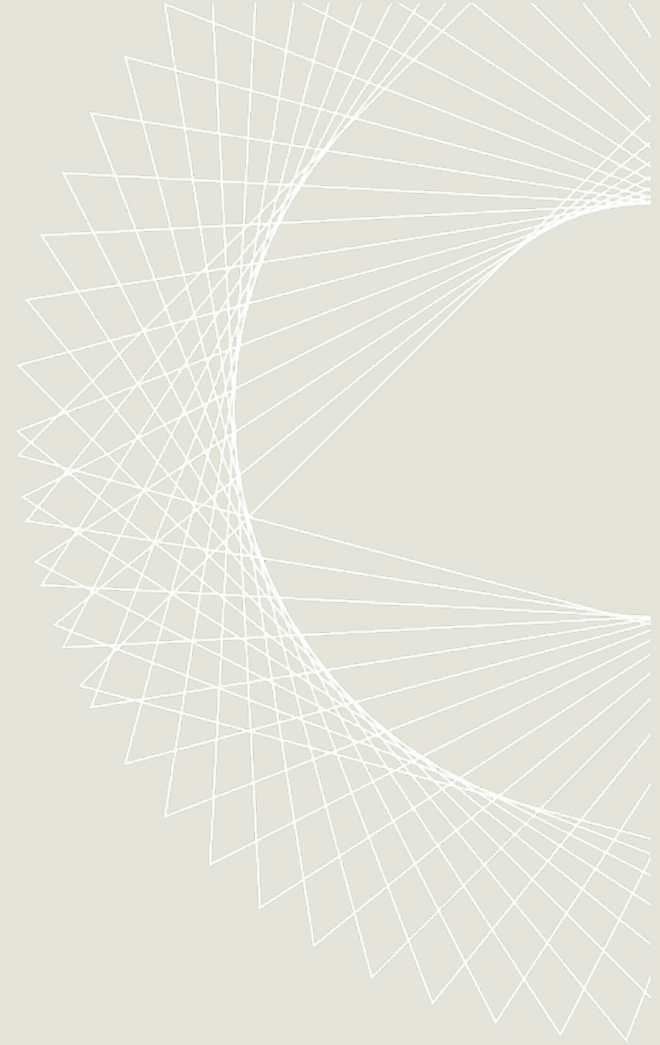
Investors/Stakeholders

- Reporting Frameworks
- Reporting Mechanisms
- Strategic Considerations and Risks

Getting Started

- Creating and Updating a Policy
- Defining Goals and Setting Targets
- Assessment and Accountability

Overview of ESG



What is ESG?

ESG is evolving rapidly into a prominent role in the way companies communicate with customers, employees, shareholders, investors, regulators, and virtually every other stakeholder.

Companies integrate ESG measures into their operations to showcase corporate responsibility, enhance their value proposition, differentiate their brand, commit publicly to measurable targets, and embrace the reality of doing business in the twenty-first century.

*ESG requires real commitments to **material** and **measurable** outcomes.*

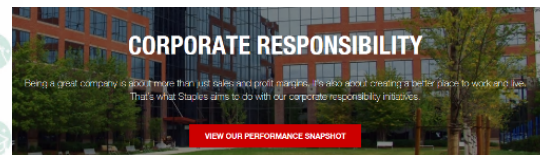
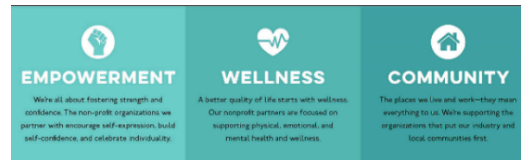


The ESG vocabulary is an outgrowth of Corporate Social Responsibility that enables companies to assess their impact across a number of issues and take action. Many companies look for ESG initiatives that align with their environmental and social impact goals in the communities where they do business.

Why Care about ESG?



We believe in the pursuit of doing good



Environmental, Social and Governance

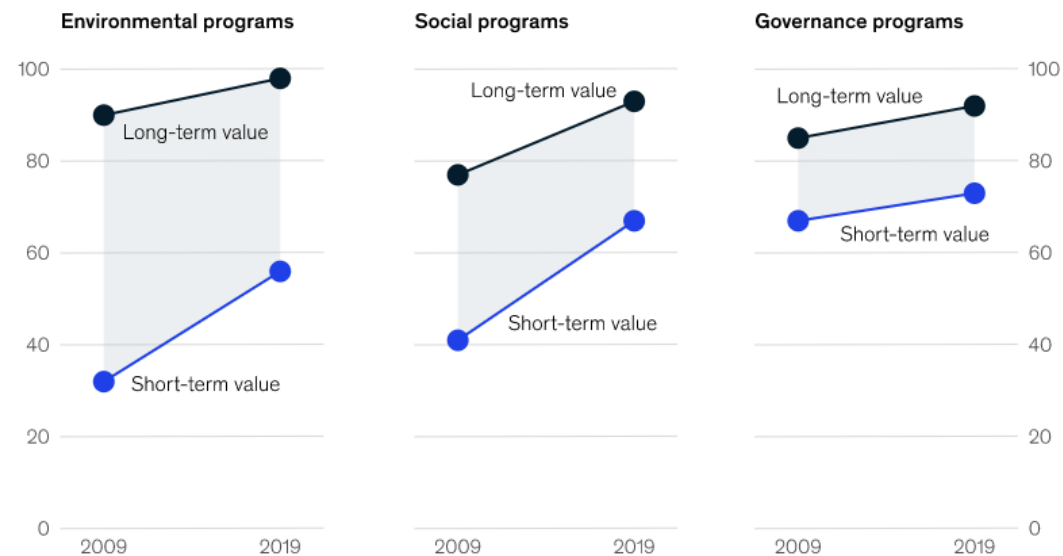
Walmart's sustainability journey began more than 10 years ago when we set ambitious goals to be powered by 100% renewable energy, create zero waste and to sell products that sustain people and the environment. Since then, we've deepened and broadened our aspirations to focus even more on our planet and on people—our associates who work at Walmart and the people who make the products we sell.

- Value creation
- Investors
- Geopolitical influences
- Populist dominance
- Public pressure

Value Creation

Among respondents who say ESG programs create value, the share seeing short- and long-term value has grown.

Share of respondents who say given program creates value, %¹



¹Question was asked only of respondents who said environmental, social, and governance programs increase shareholder value. Respondents who said "substantially negative," "negative," or "no effect" are not shown; total n = 136 in 2009 and n = 342 in 2019.

Investors Making an Impact

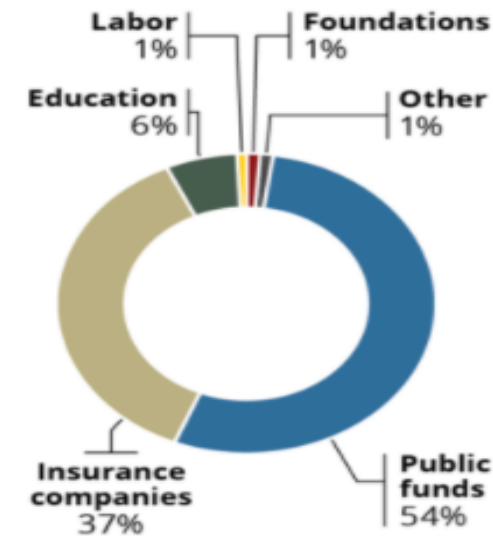
Institutions embrace ESG investing

Growth of ESG assets controlled by nearly 500 institutional investors surveyed, in trillions.



Source: US SIF Foundation

Institutional investment in ESG assets by investor type as of 2018.



Geopolitical Influences

Political risks and rising global tensions result in less overall stability and predictability, greater economic uncertainty, and new barriers to sustainability efforts that depend on international cooperation.

Political risk is among the largest threats to growth

Social polarization, spreading public discontent, and increasing social unrest threaten stability

Geopolitical tension can contribute to trade wars, restricted borders that inhibit the free exchange of ideas, and heightened national security concerns

Populist Dominance

Figure 1: Strength of populist tendencies in 20 large economies

	Fiscal	Immigration	Trade	Governance	"Strong" leader in power
Eurozone countries					
Netherlands	Moderate	Strong	Moderate	EU	No
France	Limited	Strong	Strong	EU	No
Italy	Moderate	Strong	Moderate	EU/domestic	No
Spain	Moderate	Limited	Moderate	Limited (Podemos)	No
Germany	Limited	Strong	Moderate	Limited	No
Other advanced countries					
USA	Strong	Strong	Strong	Anti-Washington	Yes
South Korea	Moderate	Limited	Limited	Corruption	No
UK	Moderate	Strong	Moderate	Anti-EU	No
Japan	Limited	Moderate	Limited	Limited	No
Canada	Moderate	Limited	Limited	Limited	No
Australia	Limited	Moderate	Moderate	Limited	No
Switzerland	Limited	Moderate	Limited	Migration referenda	No
Emerging economies					
Mexico	Moderate	Limited	Moderate	Corruption/security	No
Brazil	Strong	Limited	Moderate	Corruption	No
Saudi Arabia	Moderate	Limited	Limited	Limited	No
Russia	Moderate	Limited	Moderate	Limited	Yes
Turkey	Limited	Moderate	Limited	Authoritarianism	Yes
Indonesia	Limited	Limited	Limited	Limited	No
India	Limited	Limited	Moderate	some	Partly
China	Limited	Limited	Moderate	Limited	Partly
Countries ranked by likelihood of populist party/leader					
Shading indicates strength of populist focus					
	Strong	Moderate	Limited		

Source: Business Insider UK, Oxford Economics, RobecoSAM

Public Pressure



**More CEOs are under pressure to do better by the world.
But it's complicated.**

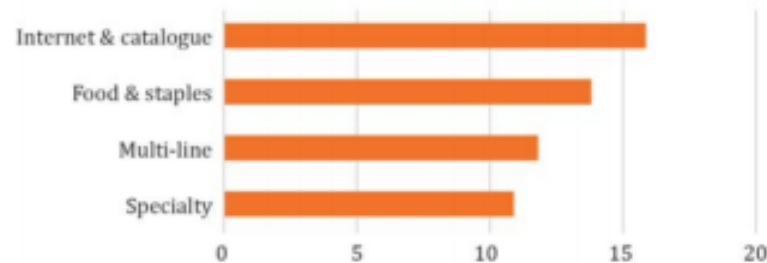


Figure 1. Revenue from products and services that contribute positively to environmental sustainability and societal health, as percentage of total revenue, by retail segment in the U.S. Source: Newsweek Green Rankings 2015.



Oil giants face shareholder pressure to act on climate emissions, set stricter greenhouse gas targets

Akin Gump

STRAUSS HAUER & FELD LLP

© 2020 Akin Gump Strauss Hauer & Feld LLP



change.org

What would you change?

Business Roundtable – Purpose of a Corporation

Group of top CEOs says maximizing shareholder profits no longer can be the primary goal of corporations

How the Business Roundtable's big green shift creates opportunity

Is the Business Roundtable Statement Just Empty Rhetoric?

Shareholder Value Is No Longer Everything, Top C.E.O.s Say

Chief executives from the Business Roundtable, including the leaders of Apple and JPMorgan Chase, argued that companies must also invest in employees and deliver value to customers.



181 CEOs have committed to:

- Deliver value to customers
- Invest in employees (e.g., compensation, benefits, training, D&I, respect)
- Deal fairly and ethically with suppliers
- Support communities by respecting locals and protecting the environment across all businesses
- Generate long-term shareholder value with transparent engagement

• August 19, 2019

Rise of the Benefit Corporation

**We believe
that business
should work for
everyone.**

Let's get to work.



LET'S GET TO WORK

Dear Business Roundtable CEOs,

We are part of a community of Certified B Corporations who are walking the walk of stakeholder capitalism. We are successful businesses that meet the highest standards of verified positive impact for our workers, customers, suppliers, communities and the environment.

We operate with a better model of corporate governance – benefit corporation governance – which gives us, and could give you, a way to combat short-termism and the freedom to make decisions to balance profit and purpose.

As you know, with continued resistance from investors on this new definition of business, we've got work to do to help them see that stakeholder governance builds trust and builds value.

More importantly, it also ensures that the purpose of capitalism is to work for everyone and for the long term.

Let's work together to make real change happen.

ALLBIRDS Joey Zwillinger & Tim Brown	AMALGAMATED BANK Keith Mestrich	BEAUTYCOUNTER Gregg Renfrew	BEN & JERRY'S Matthew McCarthy	BENEFICIAL STATE BANK Kat Taylor
BOLOCO John Pepper	CABOT CREAMERY COOPERATIVE Ed Townley	COTOPAXI Davis Smith	DANONE NORTH AMERICA Mariano Lozano	DATA.WORLD Brett A. Hurt
EILEEN FISHER Eileen Fisher	GAIA HERBS Angela McElwee	GUAYAKI YERBA MATE Chris Mann	HAPPY FAMILY ORGANICS Anne Laraway	INTREPID TRAVEL James Thornton

Which companies are certified?



WARBY PARKER



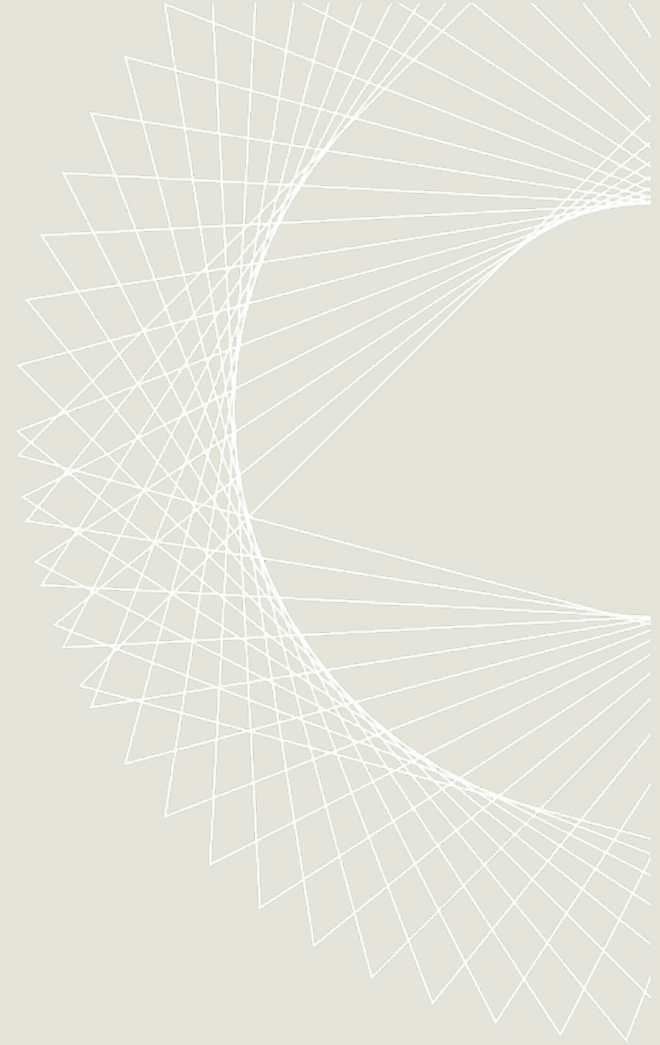
DANONE



Which companies are certified in the DMV?



What Do Investors (and Other Stakeholders) Want to See?



How to Disclose: Reporting Frameworks

- There are many ESG reporting frameworks, but they have a lot of **overlap**
- ESG is **broad** - start with **materiality** to focus on what is most important to your company and to your **stakeholders**.
- Starting with a simple, standalone and voluntary ESG report may be **more palatable** than jumping into disclosures in financial filings
- Companies receive “credit” for **transparency** and **long-term thinking** on ESG

Frameworks



Three disclosure frameworks are among the most prominent: The [Task Force on Climate-related Financial Disclosure](#) (TCFD) and the [Sustainability Accounting Standards Board](#) (SASB) share the belief that climate change is one of the biggest economic risks the world faces today. The [Global Reporting Initiative](#) (GRI) focuses on impacts including climate change, human rights and corruption.

TCFD	SASB	GRI
<ul style="list-style-type: none"> • Climate-based disclosures • Governance, strategy, risk management and key metrics and targets • Scenario analysis • Decision-useful information for investors • Chaired by Michael Bloomberg • Represents 477 investors with more than \$34 trillion in assets 	<ul style="list-style-type: none"> • 77 industry standards with predetermined material topics • Focus on the most material sustainability topics • Set of quantitative ESG indicators • U.S.-originated – being taken up across 200 different countries • Increasing adaptation 	<ul style="list-style-type: none"> • ESG disclosures with universal standards and topic-specific standards • Topic-specific standards are focused on most material topics • Alignment to Core or Comprehensive • Targets all stakeholders (not just investors)

Reporting Mechanisms

There are a number of ways to report:

Voluntary

- ESG/sustainability report
- Stakeholder-specific reports (e.g., investors, employees)
- Website

SEC

- 10-Ks
- 10-Qs

Benefit Report

- Benefit corporation reporting for shareholders (required in most states)

Strategic Considerations and Risks

Increasingly, companies are engaging in voluntary reporting related to their ESG commitments.

Reporting increases transparency and fosters a strong reputation, but can expose companies to risks.

Competitive edge: What are my peers doing? How do I measure up to my competitors? What do my investors, business partners, and customers want to see?

Risk management: Has my reporting identified areas where I can better manage operational risk? How can I do better or report better?

Legal risk: Have I made promises I can't keep? Have I made false or inaccurate disclosures that could mislead investors, regulators, or anyone else who could raise a claim against me?

Preparing for ESG Programs and Reporting

EVERY CONNECTION COUNTS



Programs

- Simple, internal programs can be a good **start** for an ESG program
- **Engaging** employees is a great way to make progress and to instill pride
- **Story-telling** can help demonstrate progress to stakeholders while your company may still be strengthening statistics and formal strategies
- ESG programs typically have a **benefit** to the company (for example, cost savings, risk mitigation or a tactic for recruitment/retention of employees)

The Basics

The following elements are central tenets of the ESG programs implemented by companies with established ESG programs.



Overarching ESG Commitment/Policy

- Published policy or mission statement by senior leadership articulating firm's commitment to ESG.
- E.g., statement of foundational principles; letter from CEO; online ESG visibility.

Clear Framework of Self-Governance

- Internal infrastructure and initiatives that enable firm to fulfill ESG commitment/policy.
- E.g., key personnel and business functions; key internal initiatives such as environmental, diversity and inclusion and supply chain.

Established Approach to Management

- Structure for engaging business units (e.g., subsidiaries, portfolio companies) in ESG in their operations.
- Incorporating ESG into business unit decisions.
- E.g., resources and training; ESG reporting by business units; ESG due diligence.

Reporting and Metrics

- Measuring progress against established standards.
- Communicating impact to investors, portfolio companies, employees and the public.
- E.g., annual report; metrics for amount of charitable giving; volume of waste recycled.

Voluntary Reporting and Positioning

- Start with a simple ESG report and remember your company can **build** upon disclosures year over year
- Reporting is great **opportunity** to tell your ESG story in addition to fulfilling stakeholder expectations
- Since ESG is **broad** your company may have content and data readily-available
- Be able to create a **succinct summary** for different stakeholders
- If budget allows, work with an **expert** reporting firm

Example

One Connected World

Learn more at
www.te.com/responsibility



TE Connectivity's new corporate responsibility strategy builds on our purpose of creating a safer, sustainable, productive and connected future by mapping our journey to an extraordinary tomorrow

Environmental

- + 25% absolute and 40% normalized reduction in GHG emissions since FY2010
- + 23% reduction in absolute water usage since FY2010
- + 50 of our plants have ISO14001 certifications
- + Our conflict minerals policy and reporting, data management systems and supplier audits **enable transparency** and due diligence across our supply chain

Social

- + 74% of sites had 0 or 1 recordable safety incidents
- + Women occupy 19% of top leadership positions at TE and 29% of middle management positions
- + We conduct close audits to help suppliers adhere to TE's Guide to **Supplier Social Responsibility**
- + Our new Human Trafficking and Modern Slavery policy supports a **more comprehensive and global** human rights program

Governance

- + 99+ percent of active employees certified their compliance to our Guide to Ethical Conduct in FY2019
- + Our Ombudsman program **empowers** employees and partners to address issues of non-compliance
- + More than **one third** of our leadership team is diverse
- + **More than half** of our Board of Directors is diverse, with members representing different genders, countries of origin and ethnicities

FAST FACTS

\$13.4B
fiscal year 2019
sales

78,000
employees

270B+
products
manufactured
every year

\$640M+
investment
in research,
development
and engineering

\$2.4B
contributed to local
economies through
our localized
supply chain

OUR RESPONSE TO COVID-19

We have a longstanding commitments to the health and safety of our employees, giving back to our communities and producing life-saving products. Learn more about our response at www.te.com/covid

MEMBER OF
Dow Jones
Sustainability Indices
In Collaboration with RobecoSAM



FORTUNE
WORLD'S MOST
ADMIRABLE
COMPANIES

2019-20
DERWENT
TOP 100
GLOBAL
INNOVATORS
Clarivate
Analytics

2019 WORLD'S MOST
ETHICAL
COMPANIES
WWW.ETHISPHERE.COM

BEST
PLACES TO WORK
2019 for LGBTQ Equality
WWW.CORPORATEEQUALITY.ORG



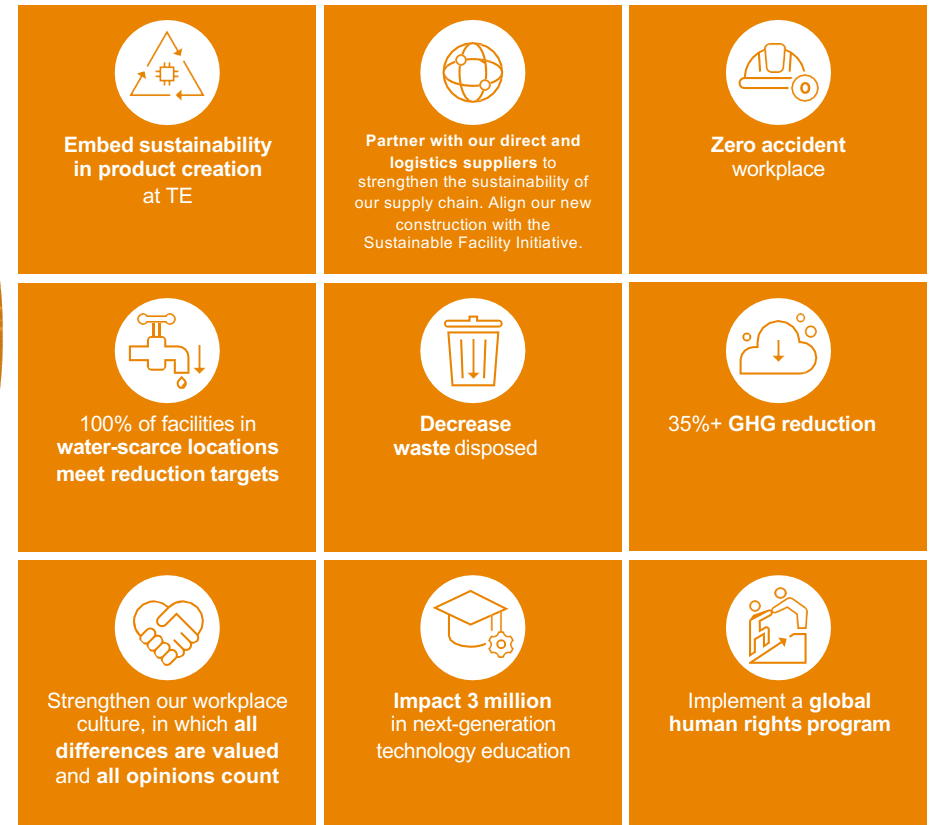
Defining Goals and Targets

- Start with **materiality** and stakeholder expectations
- Pick pillars and goals that are **authentic and attainable** for your company
- Work **cross-functionally** to develop a comprehensive strategy; or start with the most **important** area
- Be **flexible**: ESG is a **journey**, and any progress leads to a better impact for your company and for society

Example



One Connected World ESG Strategy & 2030 Ambitions



Assessment and Accountability

Always look to measure, evaluate, and improve

Strengths

Identify existing strengths to highlight in marketing efforts and to build upon.

Gaps

Identify gaps and risk areas that may warrant risk assessment and/or ESG advising.

Benchmark

Benchmark ESG engagement across like-companies or industries.

Harmonize

Harmonize company and business-unit data on ESG topics that are otherwise dispersed.

Communicate

Create data points for reports/statements communicating status and progress to investors, employees and the public.

Strive for continuous improvement

- Interface with agencies and standard-setting organizations.
- Facilitate participation in industry groups.
- Advise how ESG standards fit with current law and legislative debate.
- Advocate for federal bills that support meeting your ESG goals.
- Build relationships with the advocacy community on your ESG issue.

Conclusion

- Now that you know what ESG is, why it is important, and how to get started or make improvements, **now is the time to act**
- Wherever you are in your ESG journey, keep in mind that you can start with a **basic** policy and develop your program **incrementally** over time
- Although investors tend to receive the most attention, be sure to **consider** employees (at all levels), business partners, your community, regulators, and other stakeholders
- The key to an effective program is to **demonstrate progress** to stakeholders, which requires goal setting, recordkeeping, data gathering, and reporting
- Robust ESG programs **reap benefits** (e.g., cost savings, risk mitigation, employee recruitment/retention, reputational benefits, foundation for future compliance)

Contacts

Stacey Mitchell, Partner
Akin Gump Strauss Hauer & Feld LLP
Washington, D.C.
202.887.4338
shmitchell@akingump.com

Kenneth (Ken) Markowitz, Consultant
Akin Gump Strauss Hauer & Feld LLP
Washington, D.C.
202.887.4513
kmarkowitz@akingump.com

Kathleen Ambrose
VP, Global Government Affairs and Corporate
Responsibility
TE Connectivity
kathleen.ambrose@te.com

Patrick Samsel, Corporate Counsel
Fors Marsh Group
psamsel@forsmarshgroup.com

Lauren Benne, Global Manager, Corporate
Responsibility
TE Connectivity
202.251.9547
lauren.benne@te.com