



Why Diversity Matters to Your Business

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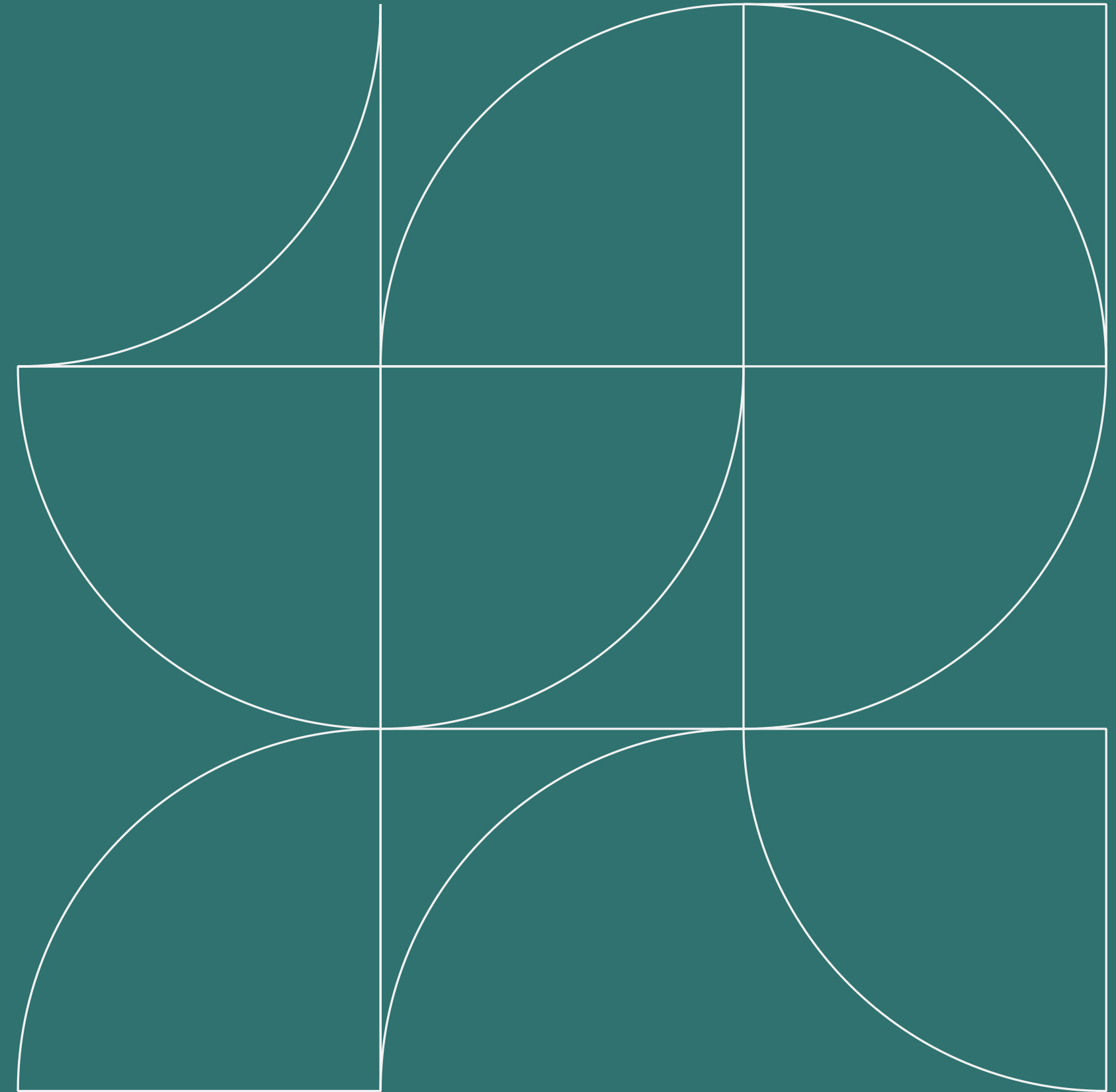
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The Rise of the “S” in ESG



The World of ESG and Sustainability

Environmental

- What are the natural resources a company uses in business operations (e.g., energy, water, land use, chemicals and plastics)?
- How does a company's use of natural resources impact the environment or climate?

Social

- **Board diversity**
- Human capital (well-being, fair and equitable pay, health and safety, **talent management, inclusion, equity and diversity**)
- Supply chain management
- Human rights and labor standards
- Data Privacy
- Community & stakeholder engagement

Governance

- Board structure and independence
- Business ethics
- **Executive compensation**
- Cybersecurity
- Anti-Corruption
- Accounting practices

ESG Ecosystem: Increasing Expectations, Confusion and Complexity



SEC Requirements/Views

- Human Capital Disclosures



Ratings and Rankings

- Sustainalytics
- MSCI
- ISS
- 120+ raters & rankers



Investor Requests

- BlackRock
- SSGA



International Drivers

- SDGs
- WEC Metrics
- UN Global Compact



Voluntary Disclosure Frameworks

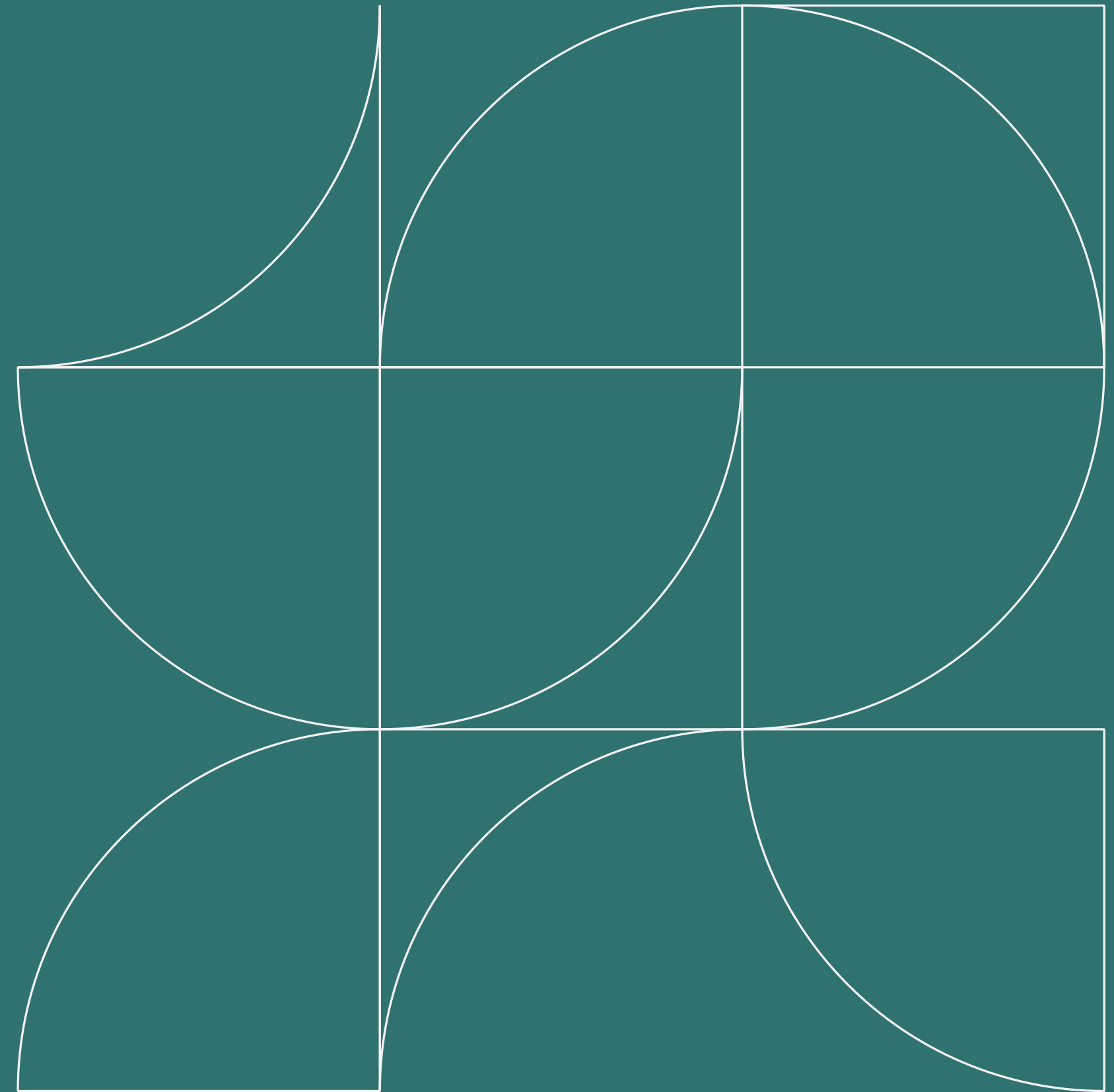
- SASB
- GRI
- UNGPs (Human Rights)
- TCFD (Climate)



International Regulatory Frameworks (sampling)

- UK gender pay gap reporting
- EU legal quotas for women on boards
- Proposed ESG Disclosure Rules
- OECD Guidelines on Multinational Enterprises
- Modern Slavery Acts (UK, AUS)

The Business Case and Strategy for Workforce DE&I



“

[Diversity] benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.

Grutter v. Bollinger,
539 U.S. 306, 324 (2003)

”

- **Diversity, Equity, and Inclusion** – Historically viewed in the context of discrimination and harassment claims. Metrics could be helpful or harmful depending on the workforce.

Reminder – You cannot use race as a factor in making employment decisions – even if you have good intentions to balance out your workforce.

DE&I is increasingly used as **a measurement in human capital**, which is more difficult to quantify.

- More inclusion leads to higher employee satisfaction
- Prevents turnover
- Builds loyalty
- Ultimately avoids expense of training new employees, handling complaints/internal investigations, and legal fees
- May decrease labor strikes

What is Human Capital? – Human capital is **an intangible asset** or quality not listed on a company's balance sheet. It is the **economic value of a worker's experience and skills**. Human capital includes:

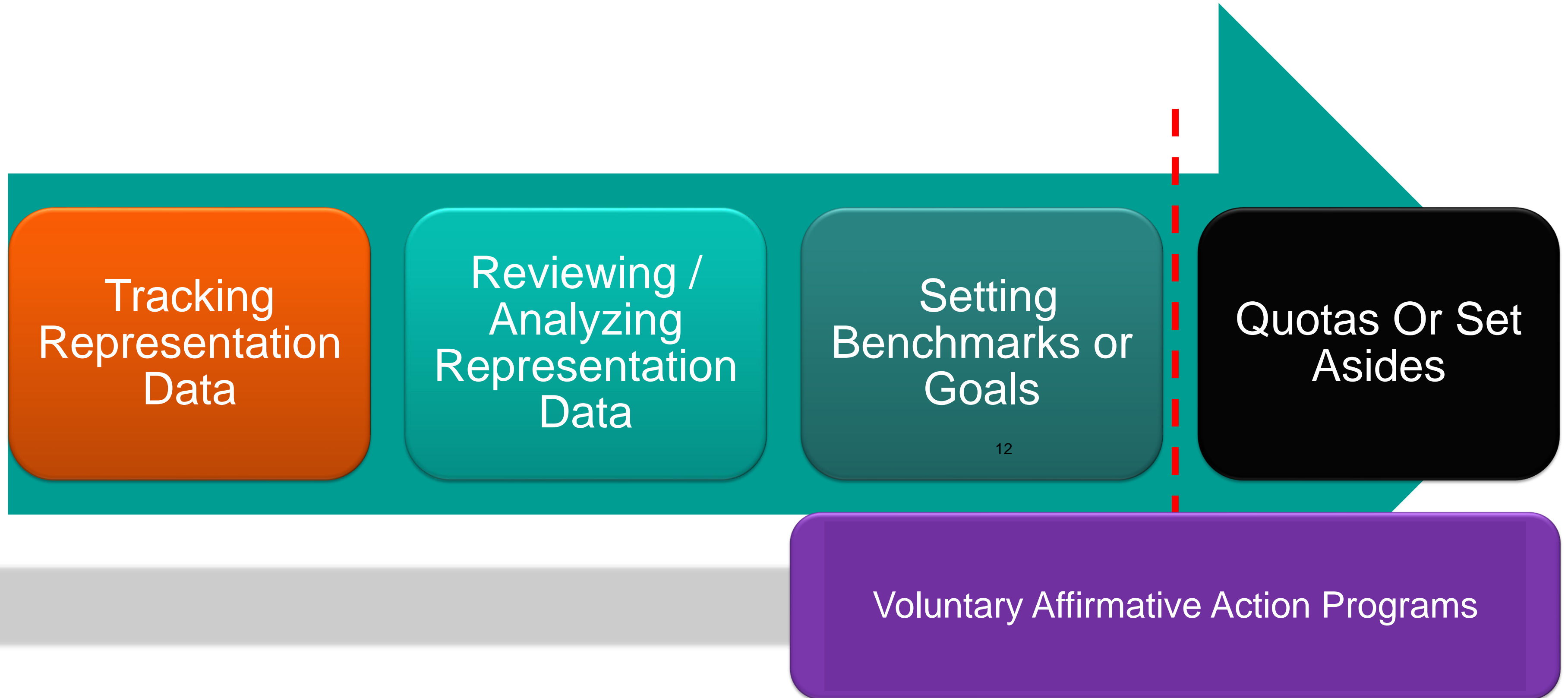
- Education
- Training
- Intelligence
- Skills
- Health
- Loyalty
- Punctuality

Human Capital is typically overseen and managed by Human Resources. Because HR traditionally handles employment recruitment, hiring, employee training and development, promotions, retention, and termination, **HR holds the key to development of a strong and satisfied workforce.**

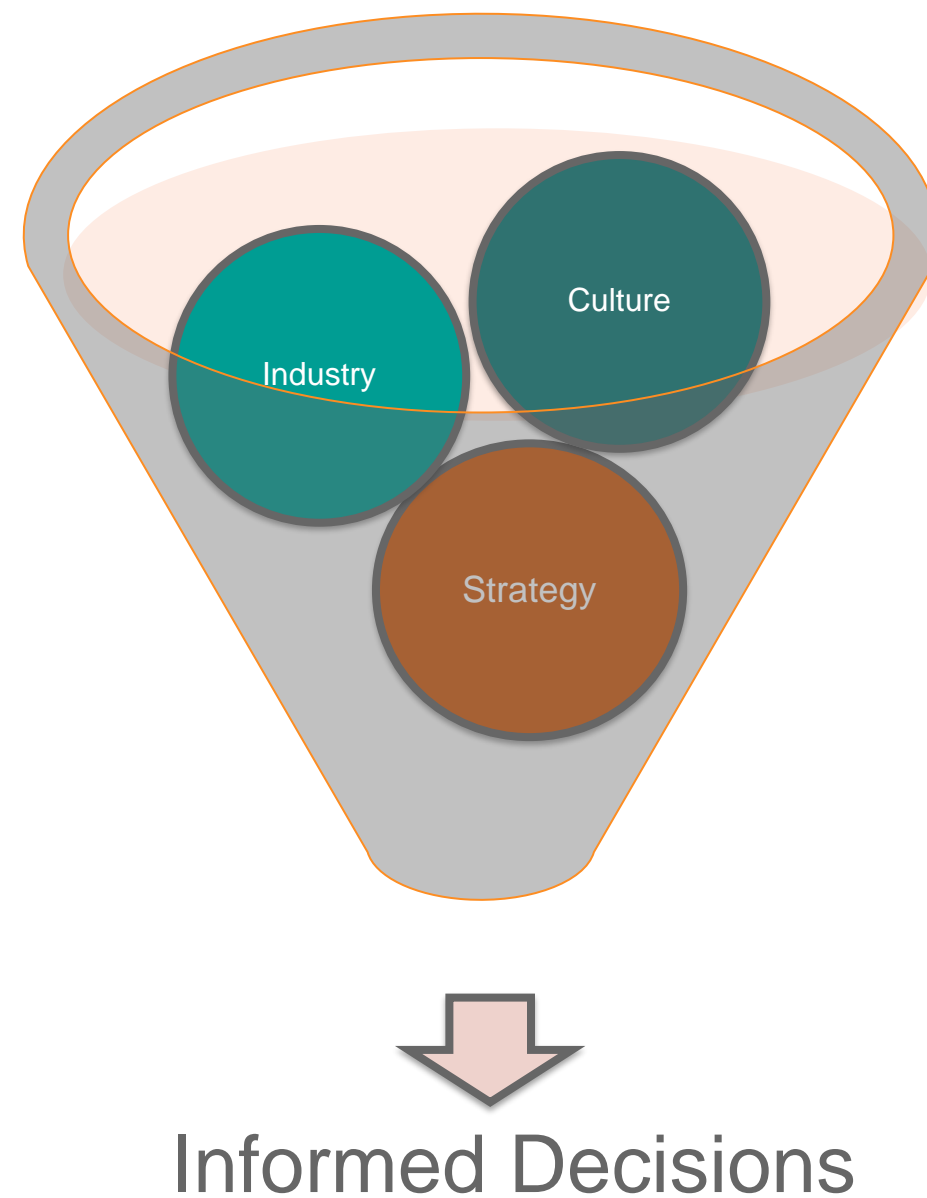
Valuing Human Capital

1. Compile a list of possible human capital metrics
2. Assess metrics based upon company principles and goals
3. Work with the Human Resources Department to value the workforce as an asset and demonstrate social responsibility

A Risk Spectrum for Establishing Goals and Benchmarks



Transparency: Balancing the Benefits and Risks of Sharing DE&I Successes and Challenges



Consider

What You Will Share?

With Whom Will You Share It?

Remember that what you share will be used against you!

Context is everything...and everything is discoverable

**Diversity materials, metrics,
and goals can be taken out of
context**

**Unless privileged, they are
discoverable in litigation**

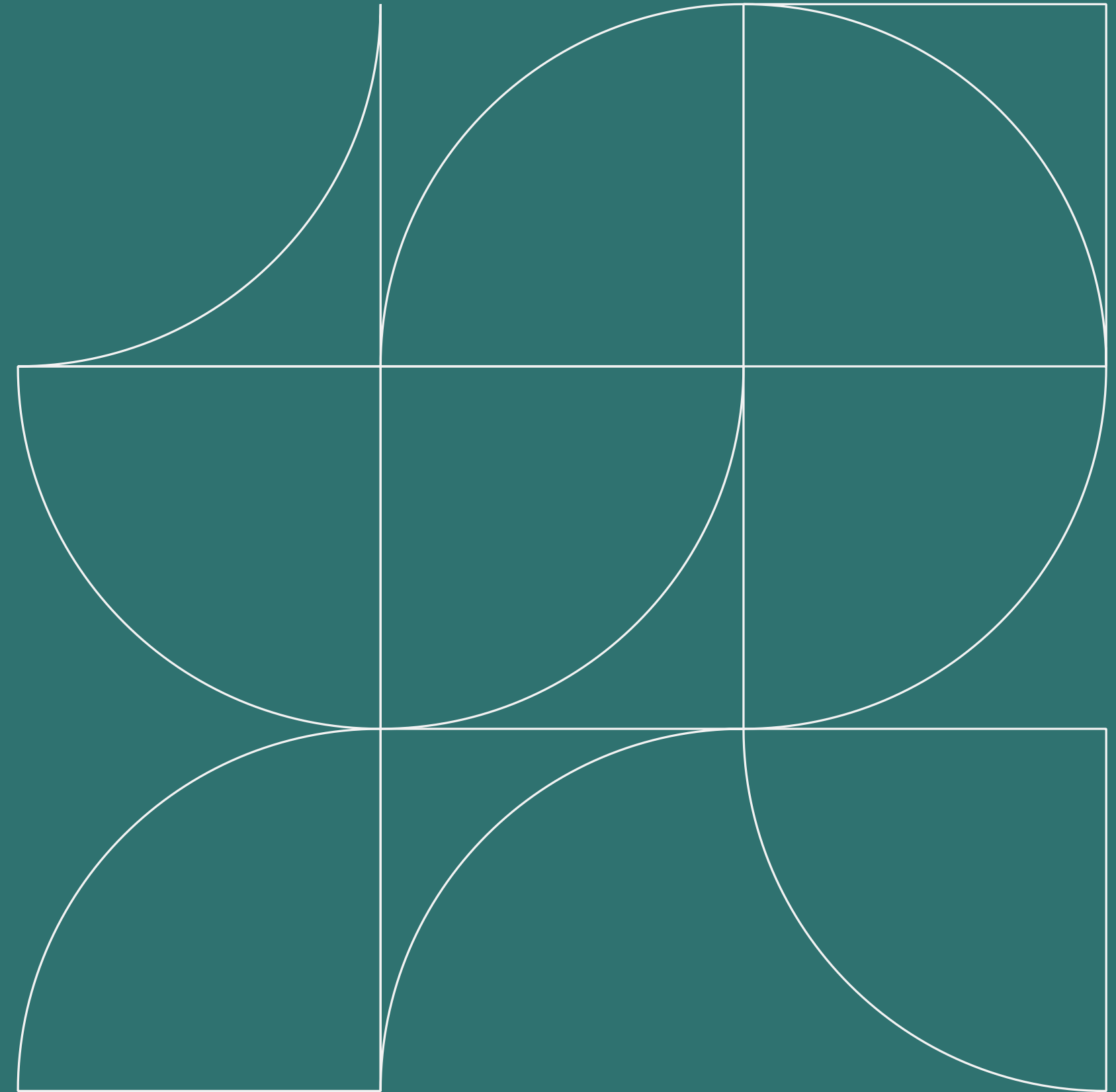
Solutions

- Standardize metrics to avoid differences between resource groups, D&I functions
- Develop governance around use and sharing of HRIS data
- Require legal involvement in sharing metrics
- Be cautious of language
- Use disclaimers: e.g., “Data is based on raw statistics that do not account for relative performance, qualifications or interest.”
- Diversity targets should not override non-discrimination commitments – always be mindful of the balance

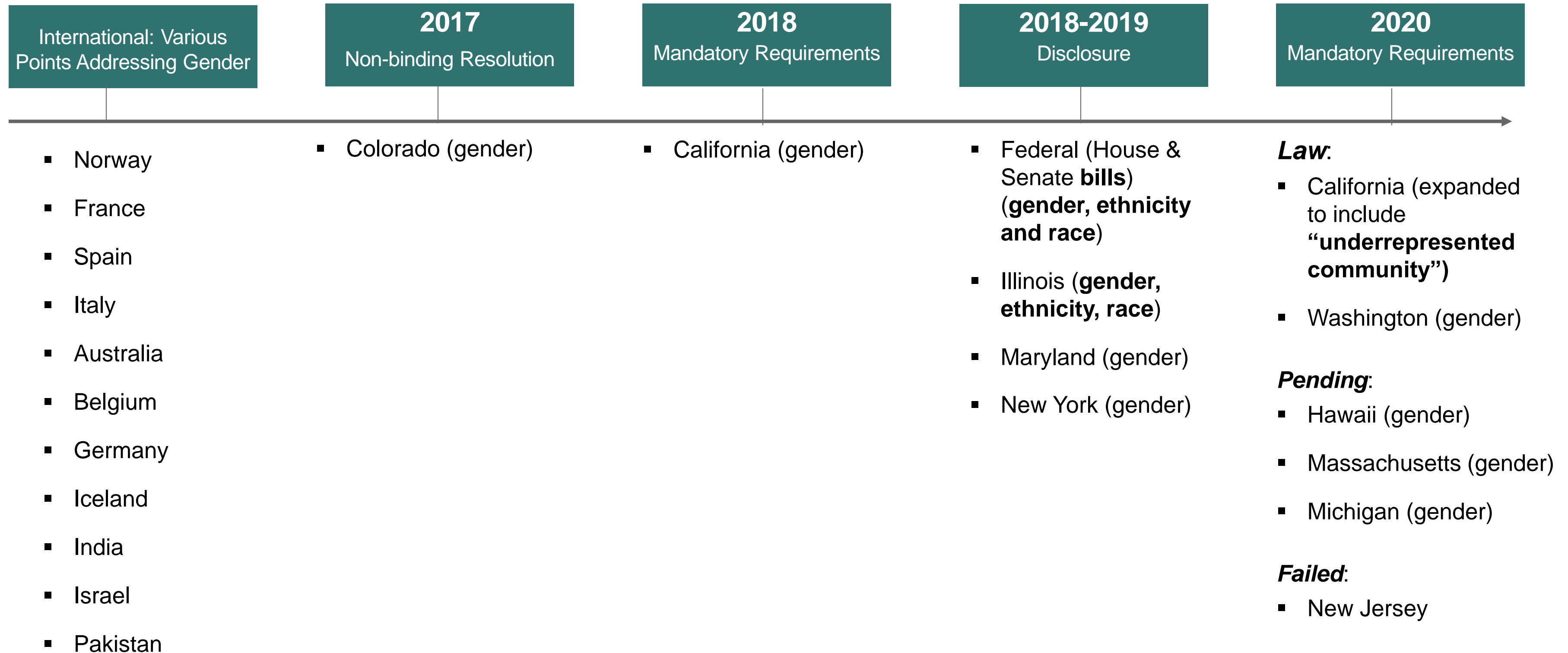
How to Communicate DE&I Goals and Concepts

- Internal versus external communications should be aligned
- Consider:
 - SEC Annual Reports
 - EEO Reporting
 - Public statements to the media/customers in support of various movements or positions
 - Policies and Procedures
 - Anti-harassment Training Programs and Goals
 - NLRA, state laws prohibiting discussions regarding employee compensation

Board Diversity: States Taking a Lead



Evolution of Legislative Approaches



California & Washington: Mandatory Requirements

California – Public companies with principal executive offices in California

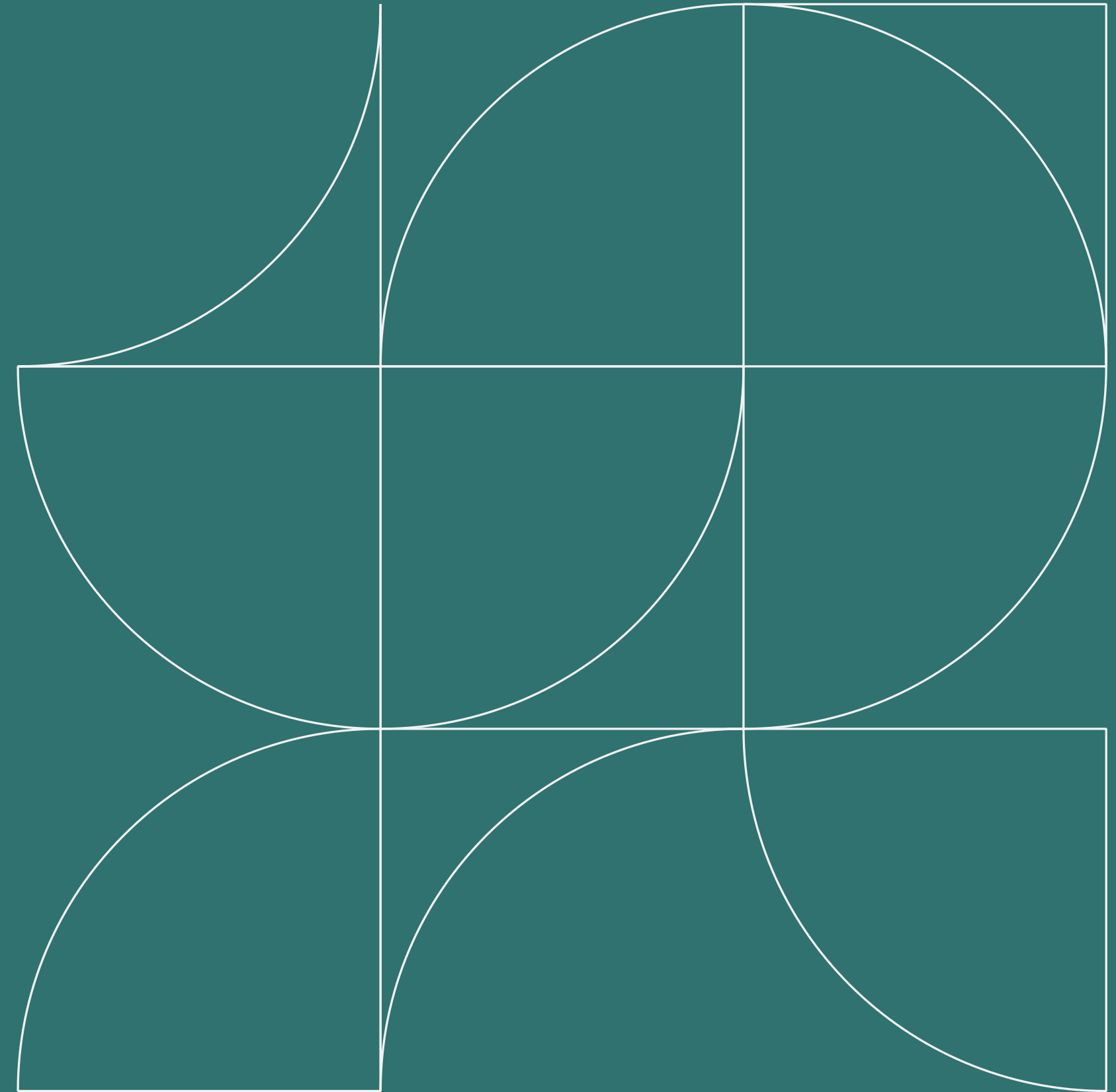
	Initial Requirement	“Step Up” by Board Size	Penalties
2018 (SB 826)	1 female director by 12.31.19	By 12.31.21: <ul style="list-style-type: none"> ▪ ≥ 6 directors - 3 ▪ 5-8 directors – 2 ▪ ≤ 4 or less - 1 	<ul style="list-style-type: none"> ▪ First Violation: \$100,000 ▪ Each additional: \$300,000
2020 (AB 979)	1 director from underrepresented community* by 12.31.21	By 12.31.22: <ul style="list-style-type: none"> ▪ ≥ 9 directors – 3 ▪ 5-8 directors – 2 ▪ ≤ 4 directors - 1 	<ul style="list-style-type: none"> ▪ First Violation: \$100,000 ▪ Each additional: \$300,000

* “An individual who self-identifies as Black, African-American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or self-identifies as gay, lesbian, bisexual, or transgender”

Washington – Different approach for certain public companies:

- Gender-diverse board of at least 25% female by January 1, 2022
- Failure triggers board diversity discussion and analysis to shareholders

Litigation Tides



Liability Theories

- Plaintiffs Federal securities fraud claims
- Consumer protection or consumer fraud claims
- Includes shareholders, non-governmental organizations and consumers

Multiple Industries

- Automotive, metals, mining, consumer goods & technology

ESG Topics at Issue

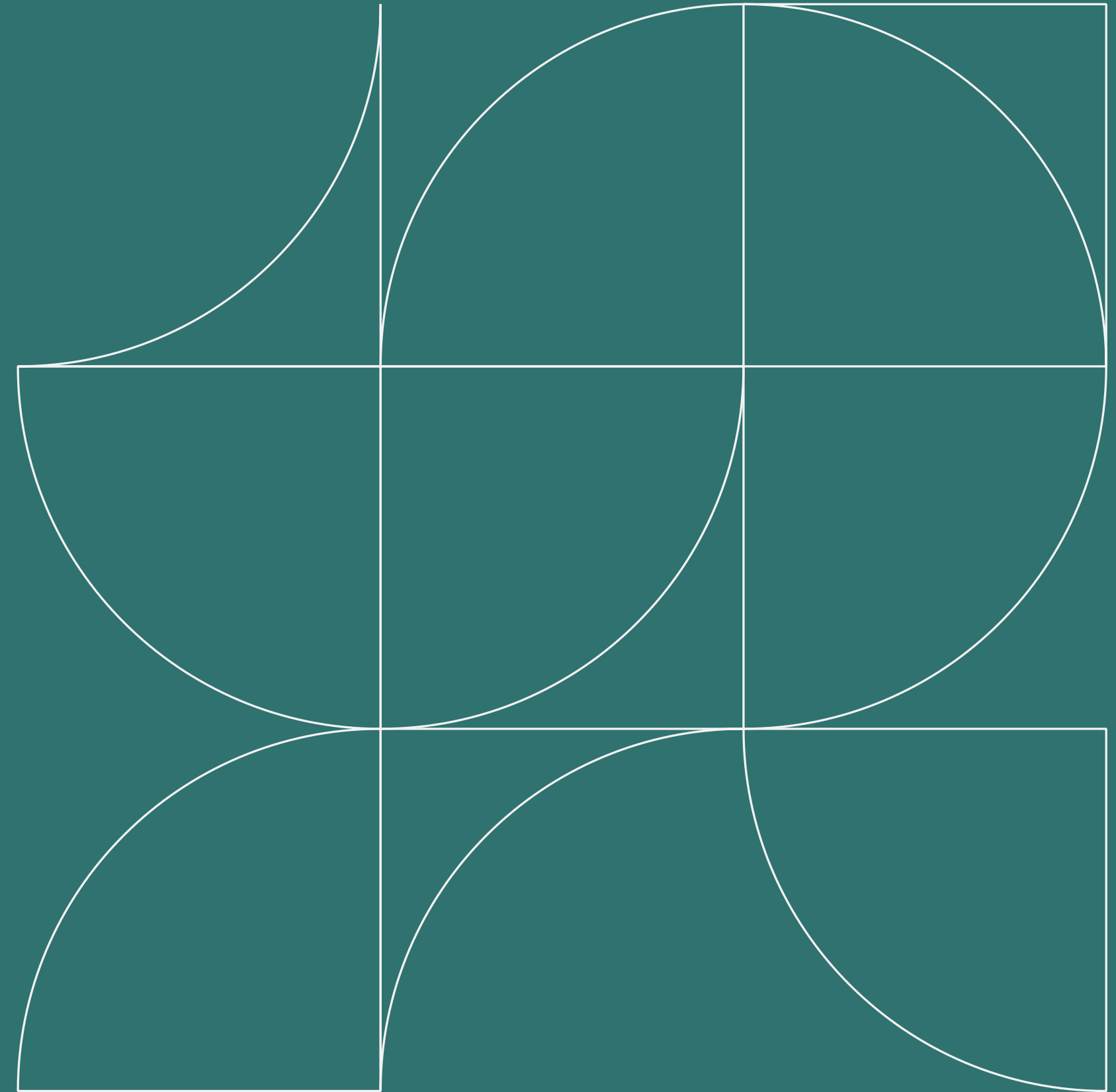
- Ethics, corruption, use of forced or child labor in supply chains, ethical sourcing, safety, the environment **and diversity**



- **Threshold Considerations**
 - Understand risk tolerance and whether the organization is disclosure-oriented or not
 - Who, what, where, when & why
- **Crafting the Disclosure**
 - Consider aspirational or forward looking statements
 - Include cautionary language
 - Confirm any factual statements can be verified
 - Ensure consistency across media (social media, sustainability reports, contracts, impact reports, packaging, investor statements)
 - Disclose areas for improvement
- **Identify relevant stakeholders and create a cross-functional team**
- **Create best practices for organization & trainings**



Board Oversight & Management Stewardship



Board & Management Alignment

Board's Role	Management
<ul style="list-style-type: none">• Expertise and Composition<ul style="list-style-type: none">– Self-Assessment– Diversity• Full Board or Committee Responsibility• Oversight of Strategy and Implementation<ul style="list-style-type: none">– Understand disclosure risks and opportunities– Management's understanding of multi-stakeholder concerns and priorities– Assess external reporting processes and controls	<ul style="list-style-type: none">• Strategy Development<ul style="list-style-type: none">– Assess ESG risks and opportunities– Material or relevant to company – both financially and non-financially– Consider stakeholder priorities– Establish long- and short-term goals• Implementation via Cross-Functional Team<ul style="list-style-type: none">– Resource allocation– Policy and procedure development and/or update– Monitor and update progress

Executive Compensation Considerations

Challenges	Benefits
<ul style="list-style-type: none">• Peer group drives many metrics• ESG metrics (beyond health and safety and diversity) are outliers• Ascribing measurements to non-financial metrics• Verifying achievement	<ul style="list-style-type: none">• Board governance tool to drive strategy and reward management• Increases accountability• Balance mitigating risk with creating opportunity• Signals the company's values and purpose to the stakeholders (e.g., investors, employees, and communities)• Reflects a move towards stakeholder capitalism• Creates a new dimension of transparency (particularly for public companies required to explain its compensation philosophies in the annual proxy)• Possible way to address the pay gap, diversity, environmental goals and other ESG targets• Cultural component

D&I and Executive Compensation

Requires clear understanding of the D&I strategy, a practical plan and realistic, measurable goals

- **Why:**

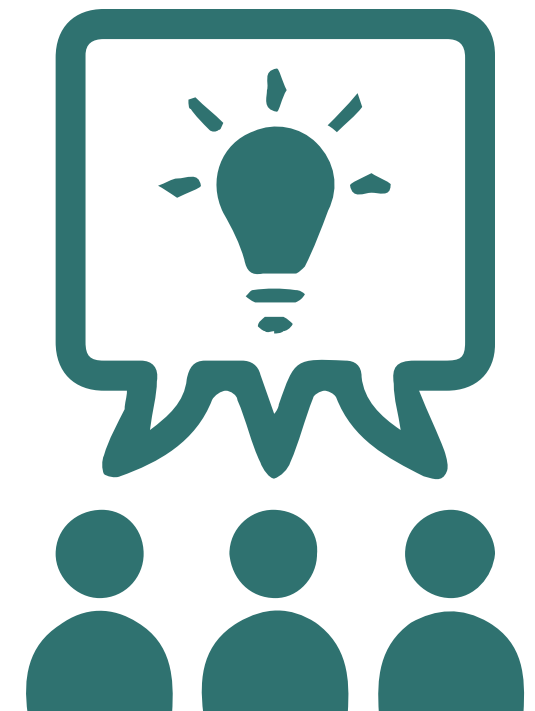
- Competitive advantage?
- Drive achievement of goals (and which ones)?
- Responsive to market dialogue on commitment?
- Mitigating risk or creating opportunity?

- **Where:**

- Short-term vs. long-term incentive

- **How and what to measure:**

- Quantitative (diversity/representation) vs. qualitative (leans to inclusion)



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Thank You!

