Navigating ESG Landmines and Pitfalls: A Race to Compliance

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Introduction to ESG

What is ESG?

- An acronym for “environmental, social and governance.”
- The term ‘ESG’ was first coined in 2005 in two landmark studies commissioned by the United Nations.
- These two studies resulted in two UN-sponsored programs:
  - NYSE Principles for Responsible Investment in 2006
  - Sustainable Stock Exchange Initiative in 2007

What is ESG? (cont'd)

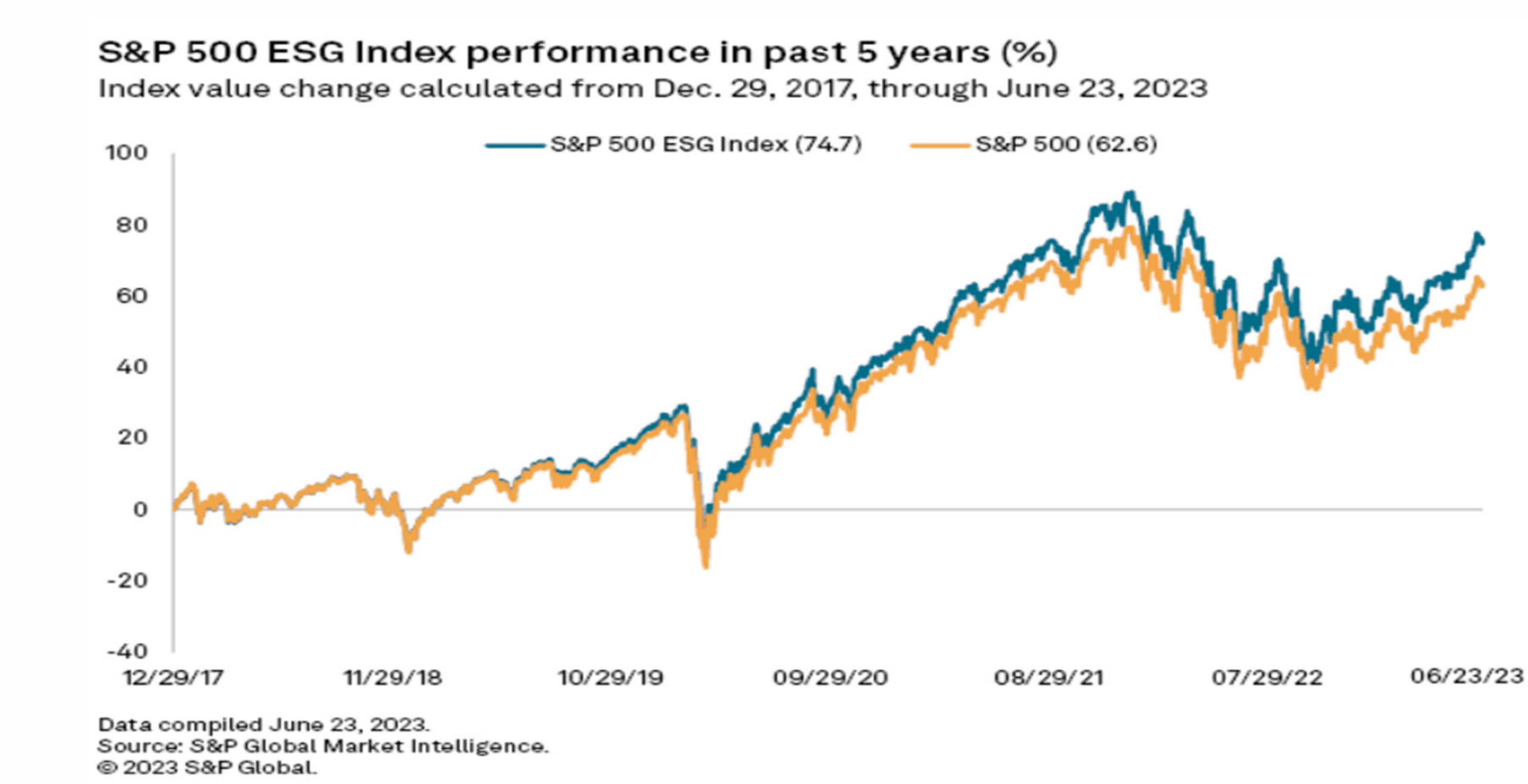
- ESG gained more ground in 2013 and 2014 when academic studies concluded that good corporate-sustainability performance is associated with good financial results.
- ***ESG has evolved from nice-to-have to a must-have.***
- Given its importance, ESG should be treated as a risk management function aimed at preserving shareholder value by anticipating and managing material issues.
- **ESG (a framework to help stakeholders understand how an organization manages risks and opportunities concerning ESG matters) is not impact investing (strategy intentionally focused on generating measurable social or environmental advances), policymaking or promotion of political agendas.**

Importance of ESG

Advantages of ESG

- Reputational
  - Consumer
  - Employees / Recruiting
  - Suppliers
- Financial
  - Competitive interest in claims (investors, government)
  - Encourage anticipation and planning for financial risks
  - Attract sustainability-minded investors
- Legal
  - Increased awareness of potential liabilities and risks

Advantages of ESG (cont'd)

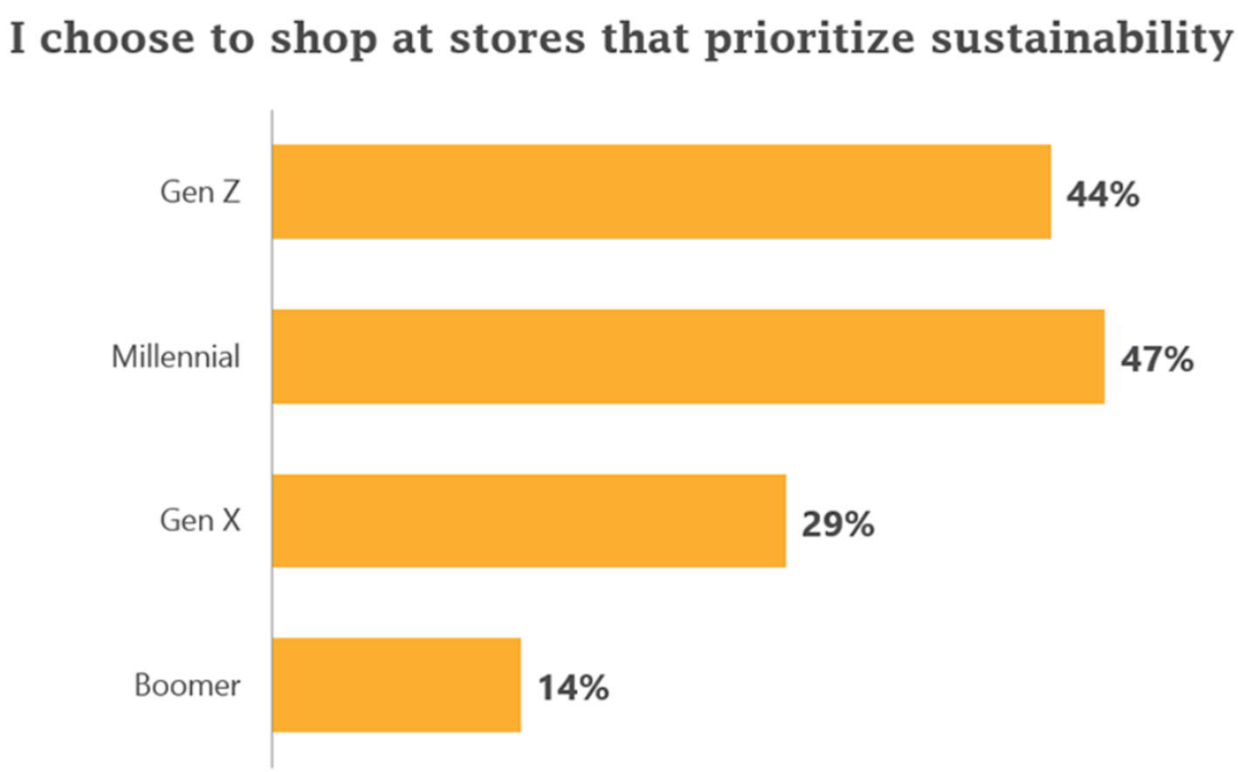


The Rise of the ESG-Minded Consumer

- 80% of millennial and Gen Z employees consider positive ESG ratings to be at least somewhat beneficial when making job decisions, versus just 61% of Gen X and Boomers.*
- 74% of millennial and Gen Z consumers said positive ESG ratings were beneficial when making purchasing decisions, compared to 57% for Gen X and Boomers.*
- "Products making ESG-related claims averaged 28 percent cumulative growth over the past five-year period, versus 20 percent for products that made no such claims."+
- "Companies will probably have a greater ESG impact and a better chance of achieving outsize growth if they incorporate high-impact ESG-related claims across multiple categories and products."+

Sources:
** More CEOS may be skeptical of ESG. Their millennial and Gen Z employees feel differently, May 19, 2023, by Alan Murray & Nicholas Gordon*
+ Consumers care about sustainability—and back it up with their wallets, February 5, 2023, by McKinsey & Company

The Rise of the ESG-Minded Consumer (cont'd)



Source: Younger Consumers Spotlight Sustainability, by the Food Industry Association, July 12, 2023

Ignoring ESG Commitment <u>Increases</u> Potential Litigation Risk in Range of Areas:

- Environmental protections against company harming environment
- Use of forced or child labor in supply chains
- Ethical sourcing issues beyond forced labor
- Employee safety
- Product safety
- Employment actions related to harassment/diversity claims
- Supply chain failures (human trafficking/forced labor/environmental impact)
- Consumer fraud
- Financial disclosure

Example of Economic Fallout from ESG Initiatives

Anheuser-Busch Bud Light

- March 2023: Bud Light launched the Easy Carry Contest sweepstakes, inviting customers to take a video of themselves holding as many Bud Lights as possible & post to social media using #EasyCarryContest for a chance to win $15,000.
- 4/1/23: Transgender social media influencer Dylan Mulvaney (as well as numerous other individuals) were retained to promote and advertise the sweepstakes. On that day, Mulvaney posted a video showing off a can of Bud Light commemorating her transition.
- Early April 2023: Various celebrities, politicians, and consumers expressed disdain for the video & encouraged a boycott of Bud Light & A-B products.
- 4/15/23: A-B CEO Brendan Whitworth released a statement that neither addressed the controversy directly, nor showed support for Mulvaney, sparking further criticism from LGBTQ allies.
- June 2023: After 22+ years of being U.S. top selling beer, Bud Light loses its spot to Modelo.
- August 2023: A-B reports that 2Q 2023 U.S. revenue fell more than 10% from a year earlier, "primarily due to the volume decline of Bud Light."
- Present Day: Bud Light brand sales remain down around 30% from September 2022.

ESG Lawyers to the Rescue!

- ESG will continue to evolve via, among others:
  - Increased and overlapping regulation.
  - Litigation – we have continued to see numerous lawsuits filed in every ESG sphere, and do not see that cooling off soon.
- "As businesses are increasingly expected to make their voice heard on social issues—or face reputational damage—and ESG compliance demands grow, ***legal teams have become vital advisers, with general counsel at the center of the firestorm***."
- "[T]he 2022 Association of Corporate Counsel study of chief legal officers found that one in four GCs formally oversees ESG/CSR (corporate social responsibility) functions, up from just 15 percent two years ago. The same study found that over 80 percent of GCs oversee compliance, nearly 50 percent ethics, 40 percent risk, and nearly 20 percent public affairs—all functions that have direct and substantial ESG implications in their own right."
- **According to a 2023 survey, 55% of the respondents reported that ESG compliance is led by chief compliance officers, but in 2022, 54% of the respondents reported that it was led by legal departments.**

Source: *General Counsel Face ESG Headwinds*, The Practice – Harvard Law School, January/February 2023

Is ESG on Life Support?

How ESG Works (And Why It's Bad News)

'ESG' is dead. Long live E, S, and G.

ESG Is Dying Its Inevitable Death

Good riddance, 'ESG'

ESG investing is dying. That's not a bad thing

Rethinking ESG: Not dead yet!

ESG investing is not dead, or even in decline—it is growing up

A pushback, but ESG is here to stay

ESG movement thriving despite opposition from status quo naysayers

Too Legit: ESG Won't Quit

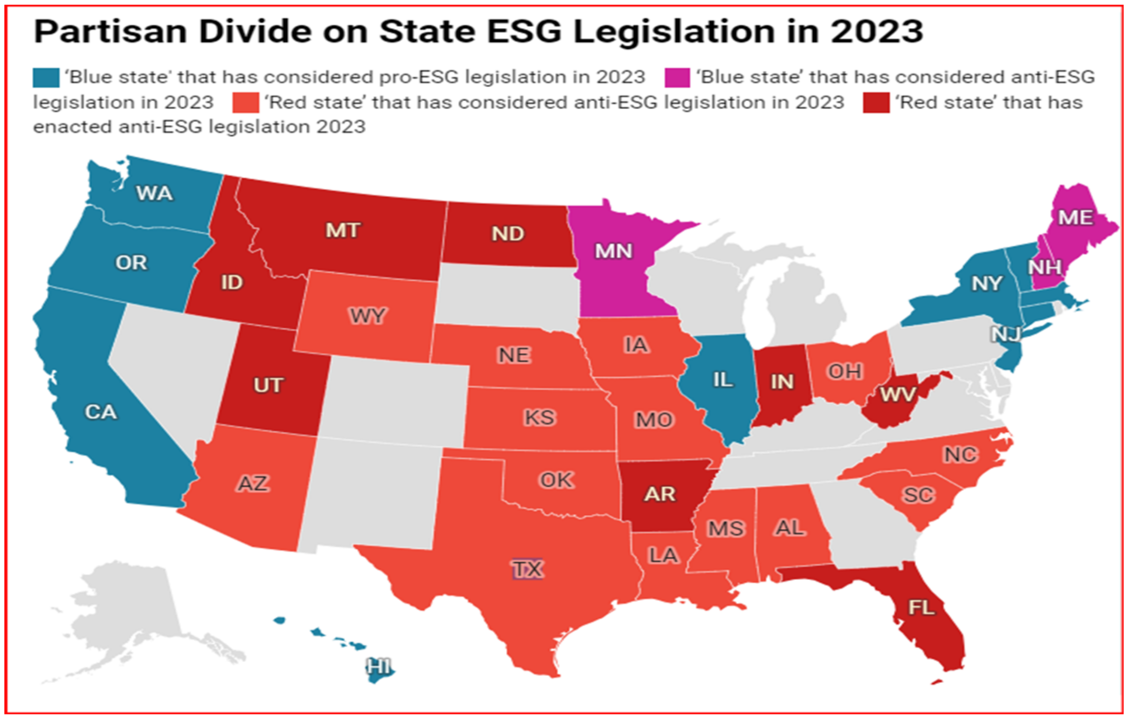
“The Great ESG Retreat”

- S&P Global, one of the top 3 rating agencies, announced it will no longer provide numeric ratings to securities based on ESG criteria.
- Larry Fink, CEO of Blackrock, stated that he no longer uses the term ESG because the term has become too politicized (“weaponized”).
  - Mr. Fink noted that ESG was never intended to be a political statement.
- 27 Anti-ESG funds have been established with an AUM of $2.42 billion (vs $313.4B for ESG-focused funds), of which three funds were closed in August 2023.

Political ESG Headwinds

- Most ESG-related ballot measures in 2023 have been anti-ESG, continuing 2022's trend
  - Between January and June, over 160 bills against ESG investment criteria were introduced in 37 states
  - *However, only 18 of these bills passed, bringing the total number of states with anti-ESG legislation up to 22*
  - In contrast, only 1 pro-ESG bill passed, bringing the total number of states with pro-ESG legislation up to 4
- Looking ahead to the 2024 legislative sessions, 22 states have proposed ESG-related bills
  - 14 are anti-ESG & 10 are pro-ESG
  - As the 2024 U.S. Presidential campaign starts to heat up, I would expect states to propose or adopt various ESG state proposals. The adoption of local and international ESG regulations may also contribute further anti-ESG rhetoric.

ESG Divide: Red-State v. Blue-State



Map based on analysis by Leah Malone and Emily B. Holland, attorneys with Simpson Thacher & Bartlett LLP's Environmental, Social and Governance (ESG) and Sustainability Practice, published in March 2023
Source: Harvard Law School Forum on Corporate Governance, State Net • Get the data • Created with Datawrapper

Environmental

Social

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Environmental Concerns

Mistakes: Greenwashing

Greenwashing:
A gap between the symbolic and substantive action taken by a company to gain an environmentally-friendly image. In short, it is false and misleading statements about the environmental impact of a product or other company practice.

Tide Purclean

- In 2016, Tide launched Purclean, a new brand of detergent claiming it was 100% plant-based.
- However, the National Advertising Division of BBB National Programs analyzed the claim four years later and found that Purclean was only 75% plant-based.
- In 2020, Procter & Gamble agreed to modify its labeling for Tide Purclean.

Mistakes: Greenwashing (cont’d)

- Cumulative number of climate-change related cases has more than doubled since 2015, to approximately 2,000 cases.
- 25% of those were filed between 2020-2022.
- False Advertising, Securities Fraud, Regulatory Oversight.
- **<u>Response to Greenwashing</u>**: Consider how some companies have turned to “greenhushing” in which they do not communicate or understate their green agenda or credentials to, among other things, avoid scrutiny, adverse market or regulatory reaction, possibly being labeled as “woke,” or for inadequate disclosures.
  - Blackrock has scrubbed ESG references from its website.
  - Vanguard has also removed references to climate initiatives from its webpages.
  - McDonalds, which has had its share of ESG issues and litigation, no longer references ESG on its website.
  - According to a Washington Post article, “Anheuser-Busch InBev has quietly stopped running Facebook advertisements that tout its goals of net-zero emissions by 2040 and 100 percent recycled packaging by 2025.”

‘Greenhushing’: Why Some Companies Quietly Hide their Climate Pledges, by Maxine Joselow, July 13, 2023, Washington Post.

Examples of Economic Fallout from ESG Environmental Failures

Volkswagen

- Mid-2000s: VW began to actively foster "a corporate image centered around sustainability" through diesel engine technology.
- 2015: EPA discovered Volkswagen diesel cars were emitting up to 40 times more toxic fumes than regulations permit.
- Combination of environmental liability, deceptive software on cars, and "greenwashing" led to significant liability.
- $6 billion for the "environmental" violations, but damages now estimated to be at $30 billion and counting.

bp

BP

- BP had publicly advertised itself as a responsible corporate citizen.
- But after disastrous 2010 oil spill, BP stock prices fell 51% in 40 days.
- Spill also highlighted BP's dismal safety record and consistent neglect of environmental standards.

Examples of ESG Environmental Initiatives

- In 2020, Microsoft announced that it **aims to be carbon negative by 2030** and remove all the emissions it has released by 2050.
- In 2021, Microsoft announced that it **purchased the removal of 1.3 million metric tons of carbon** from 26 projects around the world.
- Reported **$10 billion increase in sales** due to ESG initiatives.

- Costco has committed to sustainability through its **"Sustainable Business Strategy" program**, which has initiatives to reduce waste, promote sustainability, and invest in renewable energy.
- Reported **20% increase in customer satisfaction, 15% increase in employee engagement, and 10% increase in shareholder value** from ESG efforts.

- Mattel introduced "Sustainability 360" program to reduce its carbon footprint and promote sustainable practices throughout the supply chain.
- Reported **10% increase in customer satisfaction, 5% increase in employee engagement, and 5% increase in shareholder value** from ESG efforts.

Table 1: Overview of corporate climate responsibility good practice assessment for 24 companies in 2023

1 TRACKING AND DISCLOSING EMISSIONS		**GOOD PRACTICE**	**TRANSPARENCY & INTEGRITY**	
Comprehensiveness of disclosure	✓	Disclose full details on their GHG emissions on an annual basis, with a breakdown of the data to specific emission sources (including scope 1, 2, 3 and non-GHG climate forcers) and the presentation of historical data for each emission source.	Moderate ▲	
2 SETTING SPECIFIC AND SUBSTANTIATED TARGETS		**GOOD PRACTICE**	**AVERAGE PERFORMANCE* & CHANGE SINCE 2022** — TRANSPARENCY*	INTEGRITY*
Short- & medium-term targets towards 2030	✓	Set short- and medium-term emission reduction targets *towards* 2030 within five-year intervals that reflect a commitment to immediate action and accountability. Targets should be independent from offsetting and aligned with 1.5°C-compatible trajectories in the sector, across all emission scopes.	Moderate ▲	Very low —
Long-term targets beyond 2030	✓	Set specific long-term emission reduction targets *beyond 2030* that are independent from offsetting and aligned with 1.5°C-compatible trajectories in the sector, across all emission scopes, as a vision for deep decarbonisation.	Low —	Very low —
3 REDUCING EMISSIONS		**GOOD PRACTICE**	**AVERAGE PERFORMANCE* & CHANGE SINCE 2022** — TRANSPARENCY*	INTEGRITY*
Emission reduction measures	✓	Implement encompassing and deep decarbonisation measures and disclose details of those measures to support replication.	Moderate ▲	Low —
	✓	Refrain from using bioenergy where alternatives to combustion exist, and ensure that any bioenergy they use does not have negative sustainability implications.		
Renewable energy procurement	✓	Procure the highest quality renewable electricity available and disclose the details of that procurement.	Low —	Very low —
4 CLIMATE CONTRIBUTIONS AND OFFSETTING		**GOOD PRACTICE**	**AVERAGE PERFORMANCE* & CHANGE SINCE 2022** — TRANSPARENCY*	INTEGRITY*
Responsibility for unabated emissions	✓	Pursue high transparency and integrity on climate contributions and any neutralisation claims made today (see criteria below).	Low —	Very low —
Climate contributions	✓	Provide an ambitious volume of financial support to climate change mitigation activities beyond the value chain, without claiming to neutralise the company's own emissions.	Low ▲	Very low —
Offsetting claims today	✓	Clearly disclose offsetting claims and plans; avoid misleading pledges and claims; avoid risk of distraction by also committing to measures for deep emission reductions; commit to procure only high-quality credits from ambitious projects with a permanent climate impact; and commit to preventing any form of double-counting of climate impacts.	Low —	Very low —
Offsetting plans for the future			Low —	Very low —

*Transparency and Integrity columns: the bar indicates the distribution of our rating of the 24 companies (Poor, Moderate, High, n.a.); the text above the shaded bars represents the average rating across all the companies we assessed, calculated excluding non-applicable cases, on a 5-point scale (Very low, Low, Moderate, Reasonable, High); and an indication of progress since the last analysis in 2022 (▲ — ▼), based on the authors' interpretation of progress from the companies that were analysed also in 2022, against the current methodology version. Good practices were derived from the principles elaborated in the following subsections, and from a compilation of the practices identified from existing company strategies. Full details on the assessment methodology can be found in the accompanying methodology document, *Guidance and assessment criteria for good practice corporate emission reduction and net-zero targets: Version 3.0* (NewClimate Institute, 2023b).

Corporate Climate Responsibility Monitor

- February 2023 report evaluating the transparency and integrity of the corporate climate commitments of 24 major companies (self identified as "climate leaders").
- Despite promising pledges, their average integrity is very low (15 out of 24) and average transparency is low to moderate.
- **"Most companies' climate strategies are mired by ambiguous commitments, offsetting plans that lack credibility and emission scope exclusions, but replicable good practice can be identified from a minority."**
- But some improvement in transparency from the 2022 assessment (16 companies provided transparent emissions data).
- Misleading and offsetting claims are reputational and legal liabilities.

Source*: Corporate Climate Responsibility Monitor 2023* (Feb. 13, 2023), https://newclimate.org/resources/publications/corporate-climate-responsibility-monitor-2023.

Ongoing Challenges

> 2022 Sustainability Study found that while virtually all GCs expected sustainability workloads to increase over the next three years, almost all reported that they have neither the required funds nor the existing internal legal expertise to support their organization's sustainability initiatives.

- Harvard Law School Center on the Legal Profession

General Counsels' views on sustainability workloads

Based on input from 1,0000 General Counsel

Growing workloads:

99% of General Counsel expect sustainability workloads to increase over the next three years

Budget shortfall:

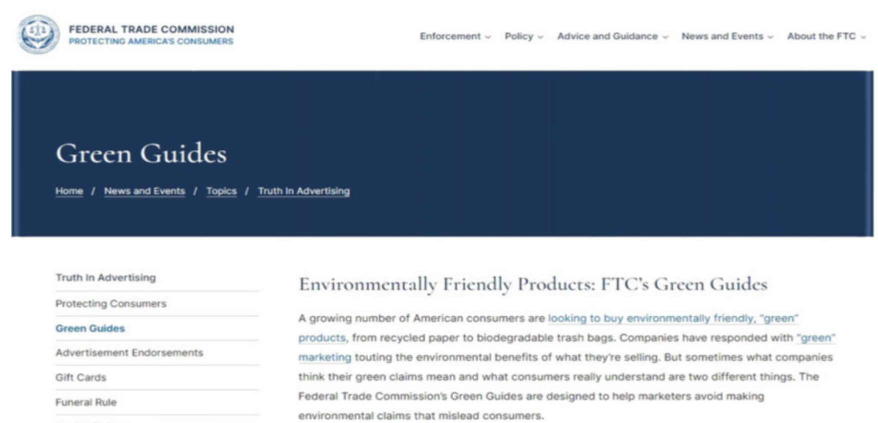
94% don't have the required funds to support their organization's sustainability initiatives

Expertise limitations:

96% believe their law department lacks the required legal expertise to manage sustainability issues

United States Federal Trade Commission

- The Green Guides set forth the FTC's current views about environmental claims in order to help marketers avoid making environmental marketing claims that are unfair or deceptive under Section 5 of the FTC Act.
- Considerations for product labeling re:
  - Biodegradable
  - Compostable
  - Recyclable
  - Renewable Energy



Source: https://www.ftc.gov/news-events/media-resources/truth-advertising/green-guides

Proposed SEC Climate Disclosure Rules

- **Enhancement and Standardization of Climate-Related Disclosures for Investors** (proposed March 2022)
  - Would require public companies to provide climate-related information in registration statements and public disclosure filings.
- **Enhanced Disclosures by Certain Investment Advisers and Investment Companies about ESG Investment Practices** (proposed May 2022)
  - Would amend rules and disclosure forms concerning funds' and advisers' incorporation of ESG factors.
- **Investment Company Names rule** (proposed May 2022)
  - Would add new requirements for funds that consider ESG factors in connection with their investment practices.

Proposed Rules – Disclosures and Timing

Must disclose climate-related information in its registration statements and periodic reports including:

- ✓ Climate-related risks and their actual or likely material impacts on business, strategy, and outlook.
- ✓ Governance of climate-related risks and relevant risk management processes.
- ✓ GHG emissions.
- ✓ Certain climate-related financial statement metrics and related disclosures in a note to its audited financial statements.
- ✓ Information about climate-related targets and goals, and transition plan, if any.

Timing of Adoption

- Originally targeted for adoption in April 2023.
  - But received thousands of comments, political pushback, and legal challenges.
- Adoption date now pushed back to **at least Fall 2023**.
- New disclosure requirements would likely not be due until 2024 or 2025.

Highlighting California's Climate Disclosure Bills

- California SB 253 "Climate Data Accountability Act" & SB 261 "Greenhouse Gases: Climate-related Financial Risk" were passed in September 2023. Governor Newsom has indicated his intent to sign these bills. If he does not sign nor veto them, they will come into law on October 14.
  - SB 253 applies to all entities with total annual revenues of $1B or more doing business in California, thus impacting over 5,300 companies.
  - SB 253 requires these "reporting entities" to annually report their direct, indirect, and upstream/downstream-related emissions as early as 2026 (direct, indirect).
  - Reporting requirements will be released by the State Air Resources Board by 1/1/25.

  - SB 261 applies to all entities with total annual revenues of $500M or more doing business in California, thus impacting over 10,000 companies.
  - SB 261 requires these "covered entities" to biennially report their climate-related financial risks and risk reduction measures as early as 1/1/2026.

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Environmental
Social
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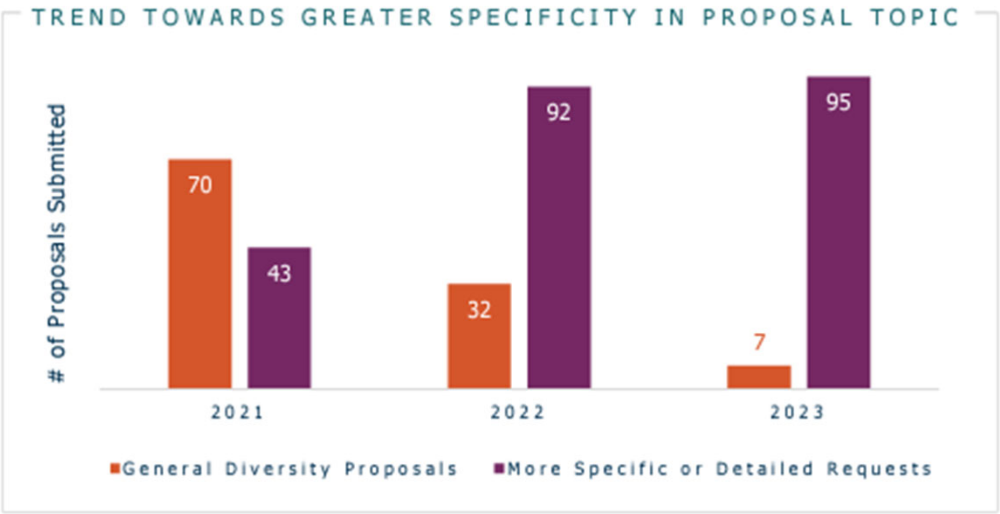
Box-ticking Culture out, Refined Particularity in

- Social issues are subject to greater scrutiny in light of past "box-ticking" efforts by companies.
- As a result, more socially focused proposals were voted on (231), but less passed (23) in 2022. Only 1 of 44 DEI proposals passed.
- Results for 2022 proxy season for companies within the Russell 3000 Index:

Source: https://content-assets.computershare.com/eh96rkuu9740/10MILtYjiumlKHJzpMilRF/c37212e1a6380a449790bdc3d728d6d7/Georgeson-Look-Back-at-2022-Proxy-Season.pdf

2023 Expectations

- Specificity will be a must. Trend away from general requests (EEO01 data and Board Diversity) to more specific undertakings (civil rights audits and effectiveness of DEI programs).



Source: https://images.info.computershare.com/Web/CMPTSHR1/%7Ba71e7ae0-76c4-4d02-92bd-b8836254bf4e%7D_Georgeson-US-Early-Proxy-Season-Report-2023.pdf

ESG Benefits and Positive Economic Impact

- Social impact should not be designed with the intention of increasing profitability, but social benefits are tied to economic return via employee well-being and customer satisfaction.
- Long-term benefit: risk mitigation.
- Short-term benefit: investor recognition that a company promotes social responsibility.

Sources: https://hbr.org/2020/09/social-impact-efforts-that-create-real-value
https://www.irsg.co.uk/assets/Reports/IRSG-KPMG-Accelerating-the-S-in-ESG-report_final.pdf

A Broader Trend: ESG Backlash in 2023

- The Supreme Court's June decision in *Students for Fair Admissions* has put corporate DEI practices under further scrutiny.
  - In recent months, corporate DEI/ESG initiatives at Target, McDonald's, Progressive, & Kellogg have been challenged.
  - These challenges often come on discrimination grounds, but are getting more creative.
  - An August complaint alleges that Target committed securities fraud by deceiving investors about its oversight of risks related to DEI policies.
  - Shareholder Brian Craig said that Target falsely said it monitored social & political risk while focusing only on the risks associated with *not* achieving its ESG & DEI benchmarks.

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ESG Governance

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Global Organizations are Redesigning their Governance and Compliance Capabilities to Align with the Increasing Importance of ESG in Corporate Value

Pillars of an effective governance implementation approach

Ambition		Have **top management clarify governance principles** Align focus of top management on **strategic aspirations**
Structures	**Organization & Accountabilities**	Clarify and simplify **org setup and reporting lines** Define accountabilities and **decision processes** Limit **committees** to necessary cross-functional minimum
	Policies & Procedures	Develop simple but stringent **P&P hierarchy** Define **ownership** and **handling** routines Revise, standardize, and ensure **consistency**
	Processes & KPIs & Controls	Build **transparency** on core processes **across functions** Align and implement **KPIs & controls along key value drivers,** risks, and procedural setup
Enablers	**Culture & Communication**	Align governance **culture** with **ambition, accountabilities** **Communicate** ambition, train continuously layer by layer
	Systems & Infrastructure	Align management and IT **systems with governance** Set up essential **collaboration infrastructure**

Examples of Governance Issues

Anti-Corruption and Trade Issues

1. Was the charitable donation/sponsorship for an improper purpose?
2. Was the local hire related to a government official?

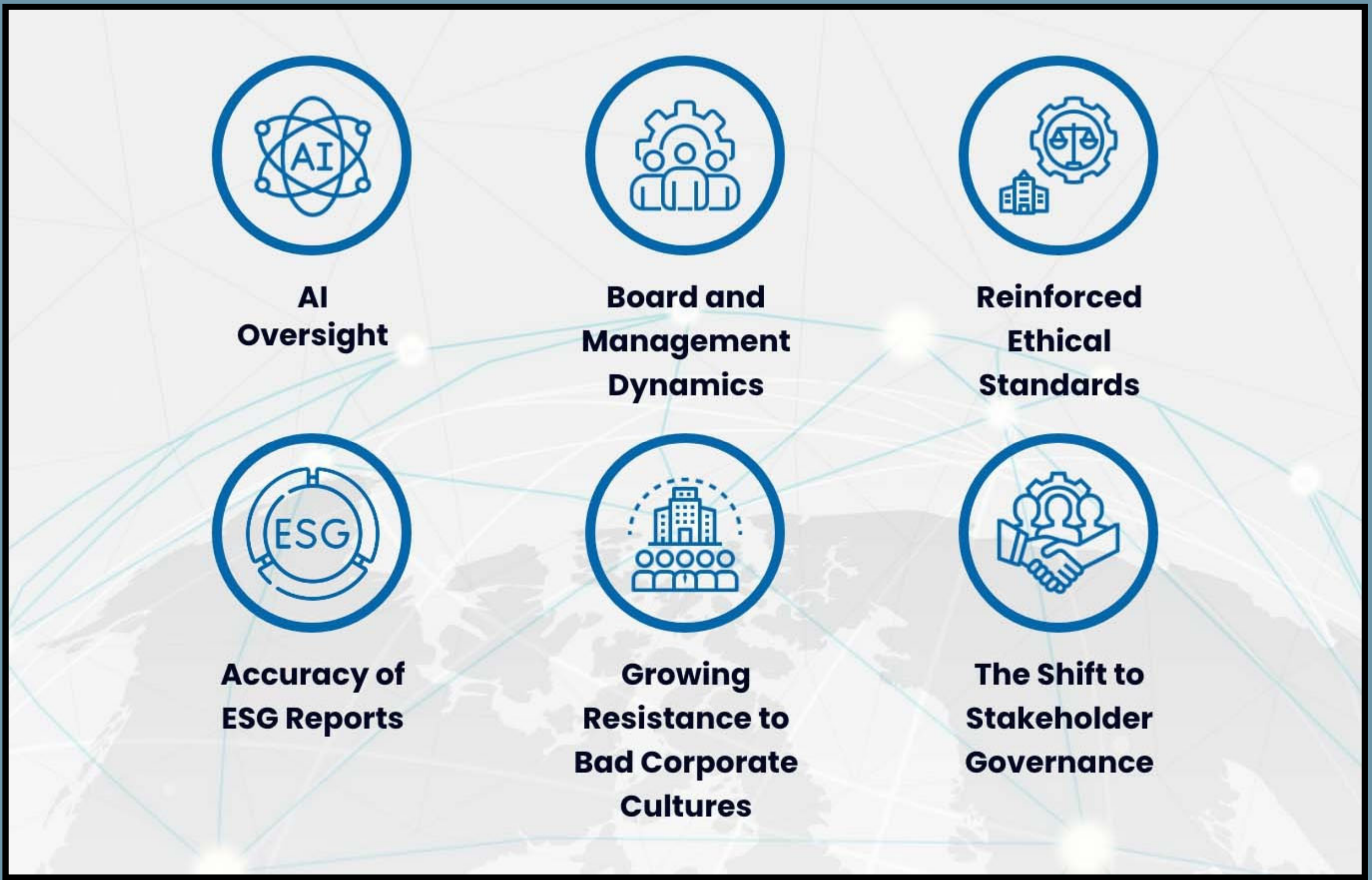
HR Issues

1. Was the volunteer time truly "volunteer"?
2. Is the focus on diversity only for show?

Governance Issues – FTX

- The dramatic collapse of FTX, one of the world's largest cryptocurrency exchanges, has shaken the cryptocurrency market and raised serious questions around governance and corporate controls.
- Corporate governance failures included not keeping proper books, records, or controls for digital assets, using software to conceal the misuse of customer funds, and even approving payments via the use of personalized emojis.

Governance Trends 2023



In-House Guidance

Managing Disclosure Risk

Rating Agency Discrepancies

In-House Focus

ESG Disclosure Risk

The Risk	Companies should be aware of increasing scrutiny of ESG statements. ESG-related communications perceived as false, misleading, or insufficient may lead to litigation or regulatory action.
2023 Survey of Corporate Counsel	28% of respondents: Exposure in ESG area has deepened within the past year. 37% of respondents: ESG-related class actions are an area of concern in 2023.
Basis for Claims	Section 11 of Securities Act of 1933. Section 10(b) of Securities Exchange Act of 1934 and Rule 10b-5.
Recent Trends	increased litigation and regulatory focus on allegations of "greenwashing."

Source: Norton Rose Fulbright, 2023 Annual Litigation Trends Survey, Perspectives From Corporate Counsel; Harvard Law School Forum on Corporate Governance, Legal Liability for ESG Disclosures, https://corpgov.law.harvard.edu/2020/08/03/legal-liability-for-esg-disclosures/.

Case Study: In re Signet Jewelers

In 2020, Signet Jewelers settled a securities class action claim for **$240M**.

Claim 1: Signet made misleading statements to investors when maintaining that its credit portfolio was **strong** and conservatively managed, when ultimately, 45% of the portfolio consisted of **subprime loans**.

Claim 2: Signet made misleading statements to investors when minimizing sexual misconduct claims against Signet as involving only **store-level** practices, when in reality, the claims also involved allegations against **senior executives**.

Source: Reuters, Signet Jewelers in $240 Million Settlement over Sexual Harassment, Loan Portfolio, https://www.reuters.com/article/us-signet-results/signet-jewelers-in-240-million-settlement-over-sexual-harassment-loan-portfolio-idUSKBN21D2WB; https://www.blbglaw.com/cases-investigations/signet-jewelers-limited

Managing ESG Disclosure Risk

1 Inventory

Take inventory of existing and proposed ESG policies, disclosures, and communications.

2 Accuracy

Examine ESG statements (filings, press releases, marketing, website, etc.) to ensure they accurately reflect the actions being taken by the company.

3 Controls

Implement disclosure controls and procedures.

4 Disclaimers

Where possible, include disclaimers within ESG communications.

5 Consistency

Develop a consistent approach for addressing and calculating ESG risks.

6 Vigilance

Remain vigilant for emerging ESG risks and scan competitor behavior.

Sources: Association of Corporate Counsel, *https://docket.acc.com/why-esg-disclosures-belong-legal-department*; AlixPartners, "Who Cares? Why the Right ESG Strategy Can Spell Business Success," July 2021.

In-House Guidance

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ESG Rating Services

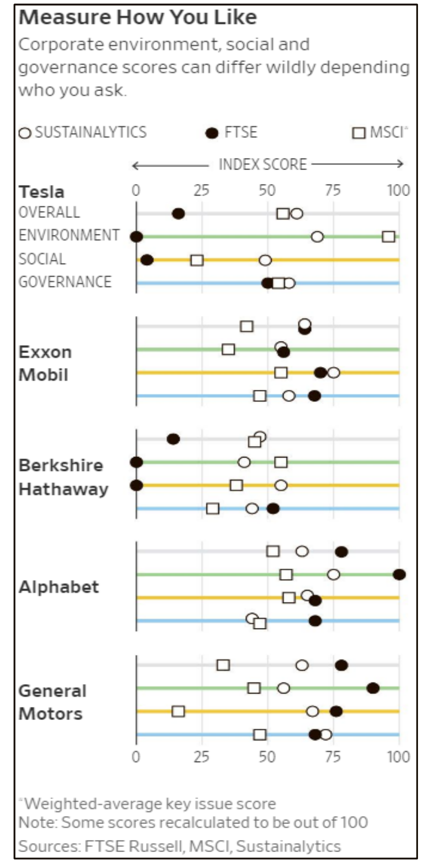
- There are a plethora of ESG rating services using generally opaque criteria resulting in confusing standards for issues.
- As of 2016, there were more than 125 ESG data providers, according to the Global Initiative for Sustainability Ratings.
  - Some of the leading ESG research companies now compete to supply ratings services, including Bloomberg, Thomson Reuters, and Dow Jones Sustainability.
  - The number of rating services more commonly relied upon will likely narrow to a handful over time.

AICPA and IOSCO Acknowledge that a Lack of Consistency between Ratings Agencies Creates Challenges for ESG Reporting

- <u>June 2021</u> – IFAC, AICPA, and CIMA issued a report that illustrated the lack of comparability of ESG disclosures between organizations:

  A **primary reason for lack of comparability was the use of multiple ESG disclosure frameworks** (i.e., there is not a single framework relied upon by American companies, and companies often reference multiple frameworks when preparing disclosure statements)

- <u>July 2021</u> – International Organization of Securities Commissions (IOSCO) released report, noting:
  1. Little clarity and alignment on definitions, including on what ratings or data products intend to measure.
  2. Lack of transparency about the methodologies underpinning these ratings or data products.
  3. Certain industries or geographical areas benefit from more coverage than others, thereby leading to gaps for investors seeking to follow certain investment strategies.



"Is Tesla or Exxon More Sustainable? It Depends Whom You Ask," *The Wall street Journal, Sep. 17, 2018*

Sources: https://www.journalofaccountancy.com/news/2021/feb/reliable-esg-reporting-amid-growing-demand.html; https://www.aicpa.org/content/dam/aicpa/interestareas/frc/assuranceadvisoryservices/downloadabledocuments/auditdatastandards/ifac-sustainability-assurance-reporting-final.pdf; https://www.iosco.org/library/pubdocs/pdf/IOSCOPD681.pdf

Ways to Deal with these Discrepancies

- Actively monitor current ESG ratings.
- Compare the ESG ratings of different agencies, searching for consistently positive or negative scores.
- Develop an approach to engage rating agencies to ensure an accurate assessment of the company's ESG performance.
  - Confirm that ESG rating agencies are using correct data for their analysis.
  - Ensure your company's ESG data is accurate, consistent, and transparent.
- Compare your company's ESG performance with the performance of others in your industry in order to identify areas of improvement.
- Focus on material ESG factors most relevant to your company's industry and business model.

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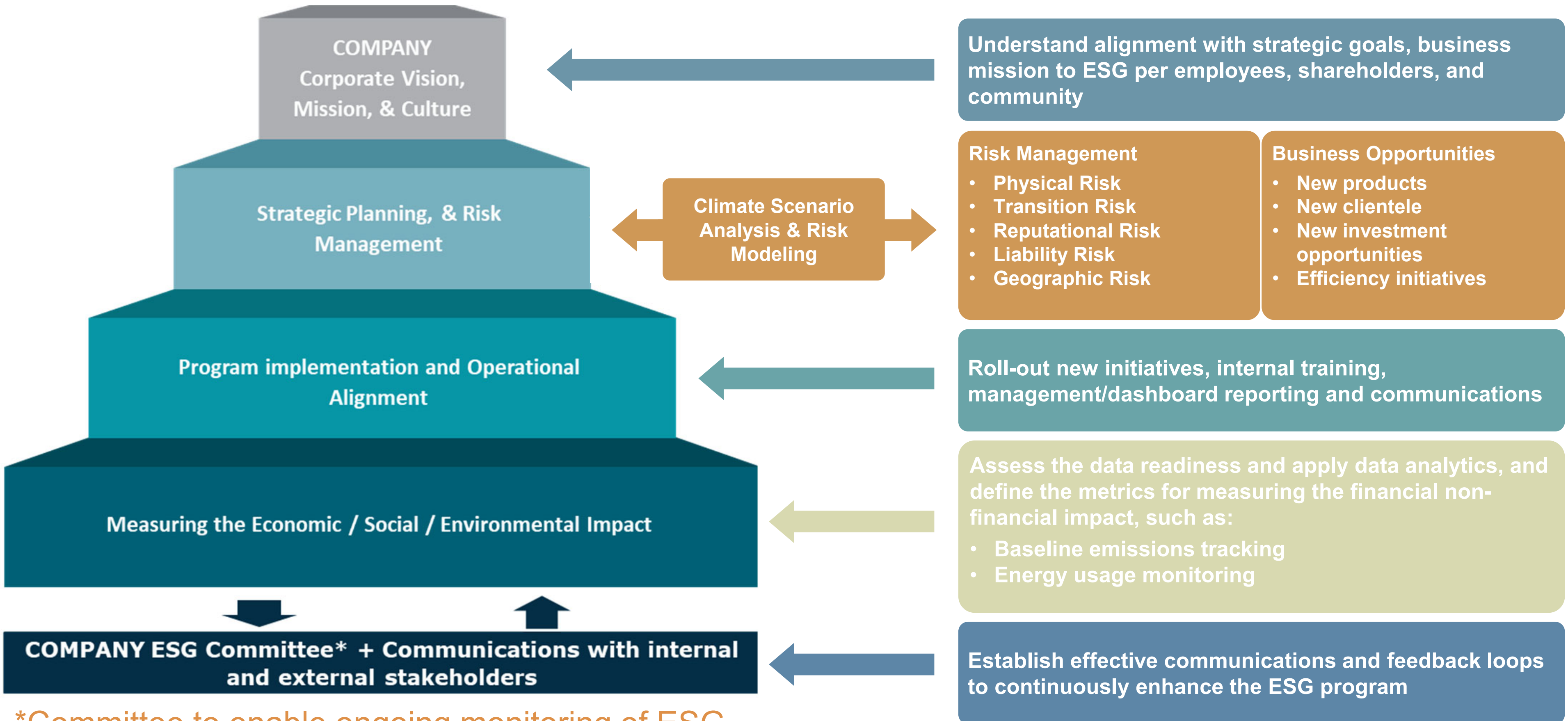
Adopting ESG: ESG Implementation Process



*Committee to enable ongoing monitoring of ESG risks and opportunities

Source: AlixPartners, "Who Cares? Why the Right ESG Strategy Can Spell Business Success," July 2021.

Questions In-House Counsel Should Be Asking Their Business Teams:

1. What does the company want to do about ESG issues?
2. Which ESG issues are priorities – and why?
3. What outside forces are pressuring the company regarding ESG issues?
4. Who owns the ESG process?
5. Who owns the data needed to support ESG issues?
6. What does the company want or need to report – or disclose – regarding ESG issues?
7. Who owns the vetting process to ensure data and reporting are accurate?

Sources: Thomson Reuters, Support ESG in small companies: Issue strategies for in-house counsel, https://legal.thomsonreuters.com/en/insights/articles/supporting-esg-efforts-issue-strategies-for-in-house-counsel

Preparing for an ESG Audit

- KPMG recently reported that 75% of firms globally are not prepared for new ESG rules/audits.
- “Being ESG assurance ready means identifying the relevant regulatory framework and having the right metrics with robust systems, processes, controls and governance for collecting and managing the data.
- Putting those preconditions in place now, in advance of the 2024 reporting cycle, will give companies an advantage not only when it comes to meeting new requirements but capturing the benefits of ESG assurance as well.”

Source: KPMG ESG Assurance Maturity Index 2023

Navigating ESG Landmines and Pitfalls: A Race to Compliance

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