ESG Update – Fall 2023

There are numerous sustainability conversations happening across our economy today. From new regulations, to court rulings, to key conferences, these conversations offer enormous insight into the trends shaping the industry today and signal how companies will need to position themselves to take advantage of these prevailing trends.

To help illuminate the many sustainability issues at hand, we've rounded up ten key issues on our radar this fall.

Here are the top 10 stories that we are following, what you need to know, and what to do about it.

1. SEC Proposed Climate Regulation

A. According to a report from Jefferies and other sources on the ground, the crystal ball says October may be the time to expect an update from the SEC on their proposed climate disclosure rule

B. The SEC is taking its time to finalize because of litigation expectations, which if it loses, means it can't be brought up for another 5 years

C. Two of the most contentious issues are requiring scope 3 calculations and third-party assurance

What to do:

- Keep your eyes and ears open for the announcement
- Research the current state of your carbon calculations relative to your 10K reporting boundaries, and familiarize yourself with TCFD, since that is the framework to deploy
- Plan for the potential carbon measurement and TCFD reporting if you haven't already, because even if the SEC doesn't mandate it, this is the direction the global markets are moving and many stakeholders, not just regulators, expect companies to do this

2. US House Hearings on ESG

A. July was ESG month, and the House held several congressional hearings that may result in four bills being marked up, such as:

   i. Limit retirement plan fiduciaries to consider only "pecuniary" (e.g., financial) factors when selecting investments

   ii. New guidelines for proxy voting of index-fund shares

   iii. Restrictions and registration requirements for proxy advisory firms

   iv. Limit the material disclosures that could be mandated by the SEC

What to do:

- Continue to monitor Congress' activities, realizing these bills are very early in the process and may or may not materialize

3. European Sustainability Reporting Standards (ESRS)

A. The European Commission adopted in July the European Sustainability Reporting Standards (ESRS), subject to the law called the Corporate Sustainability Reporting Directive (CSRD). The ESRS take account of the ISSB/SASB standards and GRI

B. Here are a few ESRS highlights:

   i. Enforces the concept of double materiality – impact (GRI) & financial (ISSB/SASB)

   ii. Detailed list of disclosure requirements per topic – sector specific guidance in process

   iii. Requires reporting of Scope 1,2 and 3 GHG emissions

   iv. Limited 3rd party assurance is also required

What to do:

- If the ESRS/CSRD framework and law apply to your organization (check here), then you may need to be ready to comply as early as 2025
- If they do not apply, then take note of the key highlights because they are indicators of best practice and the direction that you may want to take your ESG program anyway to satisfy other stakeholders

4. ISSB issues IFRS1 and 2 guidance on SASB standards

A. You may know that the IFRS Foundation has formed the International Sustainability Standards Board, which builds on the CDSP (CDP), TCFD and SASB frameworks in a move toward globalization and cooperation among sustainability standards

B. Following these governance changes, there are two recent and important outcomes to be aware of:

   i. The ISSB has issued its first guidance called IFRS S1 and S2. IFRS S1 requires companies to consider the SASB Standards to identify sustainability-related risks and opportunities and disclose related information. IFRS S2 provides accompanying guidance derived from the climate-related topics and metrics in the SASB Standards

   ii. GRI and IFRS are currently collaboratively mapping their standards

What to do:

- Familiarize yourself with these acronyms, the similarities, and differences in their objectives, and how the organizations are structured
- Monitor their continued evolution and adapt how you refer to these entities both verbally and in your written communications accordingly
- Apply the standards to your sustainability reporting. For US companies, we recommend SASB. For European companies we recommend GRI. For climate reporting we recommend TCFD. For impact reporting globally, align with the UN's Sustainable Development Goals (UNSDG)

5. European ESRS compared to IFRS

A. Many companies are global, and they find themselves having to adhere to both European and US regulations and practices. If this applies to you, you might want to look at a document produced by EFRAG, which provides advice to the European Commission on sustainability reporting

What to do:

- Review this link to a report from EFRAG that compares the ESRS and IFRS standards

6. We've all heard the anti ESG rhetoric, but is it having an effect?

A. A recent reporting from Just Capital says it is in the following ways:

   i. According to a survey of 300 Bloomberg terminal users 67% said their companies "will stop saying 'ESG' but keep doing it." Only 18% of respondents view the backlash as an obstacle and the overwhelming majority want politicians to stop interfering

What to do:

- Reflect on your use of the term ESG and if you use it, make sure that you use it in line with the technical definition from the PRI (Principles for Responsible Investment)
- From a marketing and communications perspective, determine if using terms like corporate responsibility or sustainability etc. are appropriate alternatives

7. Supreme Court Ruling on Diversity, Equity, and Inclusion (DEI) in Admissions

A. On June 29, 2023, the U.S. Supreme Court upended affirmative action in higher education admissions in its landmark Students for Fair Admissions vs. Harvard decision. The decision will no doubt force colleges and universities to reevaluate how they determine the makeup of their student bodies

B. US employers will want to consider how their DEI programs are structured and whether their initiatives may be challenged by individual plaintiffs, third-party advocacy groups, state attorneys general, or administrative agencies tasked with enforcing equal opportunity at work (such as the US Equal Employment Opportunity Commission (EEOC)). However, the chair of the EEOC quickly announced the ruling does not apply to employers

What to do:

- Review statements and approaches to DEI with a keen eye on things like quotas or goals, which could be considered a form of affirmative action, and reflect on whether publicly disclosing these quotas or goals is riskier than before and if you want to pull back any of that language

8. COP28

A. The 2023 UN Climate Change Conference will convene from 30 November to 12 December 2023 in Dubai, United Arab Emirates (UAE)

B. COP is intended to drive global transformation towards a low-emission and climate-resilient world, fosters ambitious climate action and facilitates implementation, including support

What to do:

- The outcomes from COP28 may have direct implications for your company's approach to climate, so follow the news coming out of COP this November and December

9. ESG Fund Flows

A. According to Morningstar, global sustainable funds attracted USD 18 billion of net new money in the second quarter of 2023, compared with over USD 31 billion in the previous quarter:

   i. Despite the challenging macro backdrop, European sustainable funds garnered USD 20 billion of net new money, although down from near USD 34 billion in the previous quarter, while investors pulled USD 635 million from U.S. sustainable funds, recovering slightly from USD 5 billion-plus losses in the two previous quarters

   ii. Despite the lower net inflows and helped by higher valuations, global sustainable fund assets inched higher and hit nearly USD 2.8 trillion at the end of June

   iii. Slowdown in product development continued. Europe saw the most significant reduction of new sustainable fund launches

What to do:

- Despite the fluctuations in flows, ESG funds continue to be an additional source of capital. Consider your companies ESG profile relative to your potential inclusion in ESG indices and other ESG assessment methodologies and have a capital raising and investor engagement strategy in place that incorporates access to ESG capital

10. Climate Action 100 and Trends in Shareholder Engagement

A. Climate Action 100+, the world's largest investor-led engagement initiative on climate change, has launched its next phase to inspire greater corporate climate action

B. Engagement is moving from disclosure related objectives to implementation of reduction plans

What to do:

- Irrespective of whether you are on the list for Climate Action 100, the changes that they are making in their engagement approach are consistent with the direction of the overall market
- Have in place a credible plan to measure and report your approach to emissions in line with TCFD, have a credible plan in place for how to reduce emissions over time, and be prepared to disclose and discuss that plan with institutional investors

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