

## Agenda

- ESG Basics
- Why ESG Matters
- SEC Disclosures
- Proposed Climate Disclosure Requirements for Federal Contractors
- ESG and Private Companies
- Multi-state ESG Compliance
- Conservative ESG

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## ESG Basics

### Environmental

- Climate change
- Greenhouse gas emissions
- Air and water pollution
- Energy consumption
- Water usage
- Waste and recycling
- Biodiversity
- Environmental justice



### Social

- Workplace and product safety
- DEI, anti-discrimination, and fair pay
- Collective bargaining
- Human and animal rights
- Conflict regions
- Charitable contributions and community programs
- Cybersecurity & data privacy
- Supply chain management

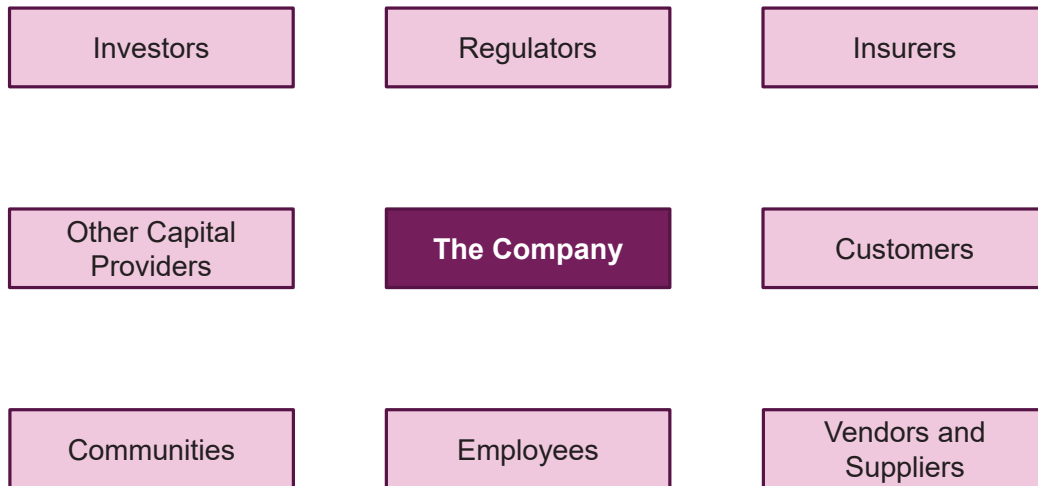
### Governance

- Anti-bribery, anti-corruption, and compliance
- Corporate purpose and stakeholder interests
- Evaluation and effectiveness
- Board diversity
- Board independence & effectiveness
- Executive compensation
- Political contributions and lobbying
- Shareholder rights (e.g., supermajority vote, written consent, ability to call special meetings, majority voting)

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## Why ESG Matters



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## Overview of SEC Climate Disclosure Proposal

### Key Disclosures Required by the Proposal

- » **Governance** of climate risk, including who has climate-related expertise, how climate-related goals are set, frequency board discusses risks, how management is informed about and monitors these risks and frequency of reports to board
- » **Climate-related risk management** strategy, business model and outlook
- » **Greenhouse gas (GHG) emissions data**, including Scope 1 and Scope 2 (and potentially Scope 3), and **assurance requirements**
- » **GHG emissions targets or goals**, and **scenario analysis**, if any
- » **Climate-related financial metrics** and related disclosure in a note to consolidated financial statements

### Comments to / Challenges to Rule

- » **Delay Effectiveness.** Need time to establish comprehensive disclosure and reporting capabilities for onerous data and analytical requirements
- » **Cost-Benefit Analysis.** Pare back requirements as benefits may not outweigh costs
- » **Scope 3 Emissions.** Do not require or, if required, enhance liability protection
- » **Audited Financials.** Disclosure is required if the financial impact on a line item is 1% or more of the total item (e.g. capital expenditures); change 1% threshold
- » **Legal Challenges.** Lack of authority, Administrative Procedures Act and potential First Amendment grounds

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## Where We Are Headed

- **SEC proposed climate change disclosure regulation:**
  - Comment letter process: Limited expectations for SEC changes to the rules from proposed to final.
  - Litigation:
    - Arguments: (1) the SEC lacks the authority to create and enforce the proposed rules; (2) the proposed rules involve “major questions” that mean that they require a specific Congressional mandate; (3) the proposed rules violate the First Amendment by unconstitutionally compelling corporate speech; and (4) the proposed rules are arbitrary and capricious under the Administrative Procedure Act.
- Where we will end up: We are likely to see years of developments and amendments. Companies should assess considerations for a fragmented (i.e. federal versus state, stakeholder versus stakeholder) approach.
- **What to expect next:**
  - Political / lobbying tensions
  - Market exposure to greenwashing
  - The full scope of physical climate change risk
  - Potential “spill over” effects/expectations for private companies
  - Environmental / energy justice claims
  - Business to business litigation and cost shifting
  - Potential for additional ESG topics to come into focus

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## Key ESG Issues for Renewables

- End of life considerations
- Extractive and water resource issues
- Supply/value chain considerations
- Corporate governance and compliance issues
- Greenwashing / social washing issues
- Capital considerations
- Energy security and community considerations

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Also available as part of the eCourse

[2023 Renewable Energy Law eConference](#)

First appeared as part of the conference materials for the  
18<sup>th</sup> Annual Renewable Energy Law Institute session

"Addressing the Evolving ESG Risk Landscape"