Blogs
July 14, 2021
Public Chatter

Taking Action as the "Materiality" Debate in the Sustainability Context Continues

Yesterday, my partner Kevin Feldis and I pushed out this **client update** as part of Perkins Coie's "**Summer Sustainability Series**" talking about materiality of ESG disclosures and the ongoing debate on this topic. Here's an excerpt analyzing steps you might want to consider taking now: As the theoretical debates over materiality, sustainability disclosures, and SEC rulemaking continue, what should public companies do? Many companies are hearing through investor engagement that their investors are interested in receiving additional information on sustainability topics. Other key stakeholders, including employees, customers, and local communities, are also calling for concrete ESG action. Companies are doing their own internal assessments and analyses of various sustainability-related issues. They are also setting corporate goals for metrics ranging from diversity, equity, and inclusion in the workforce and management to net-zero carbon emissions. For companies preparing investor-facing disclosures on these topics and responding to other stakeholders, consider these six steps: 1. Identify those ESG issues that are important to the company's long-term success, including through engagement with multiple categories of stakeholders. 2. Prioritize issues for focus. Where are the company's greatest risks and most promising opportunities to have a positive impact? 3. Engage with investors to understand their perspectives on the company and its business and industry. Are there key topics or metrics that investors are requesting that the company has not identified as priorities through its internal assessments? Smaller companies may not be able to schedule direct engagement with significant investors. These companies can take cues from public statements and policies disclosed by such investors, and from sustainability reporting standard setters like SASB and IIRC. 4. Determine whether any sustainability-related topics should be discussed or addressed in SEC filings. Areas for consideration include SEC disclosure topics such as risk factors, discussion of known trends and uncertainties in management's discussion and analysis of financial condition and results of operations, the business section (including the recently added topic within this section of human capital management), and board oversight of risk in the annual proxy statement.< 5. For disclosure topics and issues that the company decides do not rise to the level of materiality and therefore do not belong in an SEC filing, consider preparing a sustainability report or corporate webpage to increase transparency into the company's areas of focus, goals, and progress against those goals. 6. Carefully review and analyze all investor-facing disclosures for accuracy, completeness, and clarity—whether in SEC filings or in a separate sustainability report. While SEC filings may create greater risk of liability, companies should take care in any disclosures that could be relied upon by investors. One resource to consider is the **SEC's guidance on disclosure of key performance indicators**. Although that guidance is targeted at operating performance metrics, the same recommendations— including disclosure of a clear definition of the metric and how it is calculated, stating why the metric provides useful information to investors, explaining how management uses the metric in managing or monitoring the business, and maintaining consistency across periods (or clearly explaining how the metric has changed)— apply to sustainability metrics. Companies should also take care to provide appropriate cautionary statements compliant with the PSLRA with respect to any forward-looking statements regarding sustainability goals.

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