

“The Evolving ESG Landscape: Practical Advice for Boards and Companies Today”

February 22, 2023

2:00pm to 5:00pm

Clayton Hall, University of Delaware

Agenda

Time	Topics
Session 1	
2:00pm	A. Introductions / Overview
2:10pm	B. State of Play <ol style="list-style-type: none">1. General overview2. SEC history and current rulemaking
2:25pm	C. Board Involvement / Oversight <ol style="list-style-type: none">1. Integrating ESG into business strategy and operations<ul style="list-style-type: none">• How does ESG fit in the organization’s business?• How does the Board oversee the running of the business in the ESG space?2. Board’s responsibilities<ul style="list-style-type: none">• Fiduciary duties / Caremark / Boeing• Board versus management responsibilities (McDonald’s)3. Board response to social and political issues4. Board composition<ul style="list-style-type: none">• Expertise / training / disclosure5. Where should / does ESG reside on the Board?<ul style="list-style-type: none">• Board as a whole• Board committees<ul style="list-style-type: none">○ In one committee or split among committees based on subject matter (e.g., nominating and governance, public affairs, ESG, risk and/or audit committees)6. Compensation committee responsibilities<ul style="list-style-type: none">• ESG metrics in compensation plans
3:25pm	Break
Session 2	
3:40pm	<ol style="list-style-type: none">7. Audit committee responsibilities<ul style="list-style-type: none">• Importance of reliable data• Audit committee role8. Responding to ESG activism
4:10pm	D. Scenarios <ol style="list-style-type: none">1. Human capital management2. Climate-related targets
4:50pm	E. Conclusion / Take-Aways

Scenarios

Background:

- You are the regular outside governance counsel for Blackacre Corporation (“Blackacre”), a diversified tech company in the software space that is listed on NYSE.
- Your primary contact at Blackacre is Alice, Blackacre’s general counsel.

Scenario 1—Human Capital Management:

- Following publicly reported allegations of workplace harassment and racial discrimination involving several of Blackacre’s senior executives, shareholders have filed shareholder proposals requesting Blackacre conduct an independent racial and civil rights audit and provide public disclosures regarding Blackacre’s progress against relevant metrics and targets.
- There are also rumors that certain shareholders may be considering filing a derivative action against members of the board (the “Board”) and senior management for failing to implement and monitor proper reporting processes that could have identified the alleged instances of executive misconduct.
- How should the Board respond to the shareholder proposals? What should the Board consider with respect to public disclosures? What can the Board do to prepare for potential litigation?

Scenario 2—Climate-Related Targets:

- The head of investor relations at Blackacre is contacted by a shareholder, who says that if Blackacre doesn’t adopt a net zero emissions goal, he’ll nominate a director at the next annual meeting. The IR head calls Alice, who calls you. How do you advise Alice and what questions do you need to ask her?
- After your call, Alice and the head of IR loop in the head of sustainability, who says he wants to announce the net zero target right away and include a commitment to get approval from the Science Based Targets initiative. Alice isn’t sure if that’s a good idea and so calls you back. What do you say? What are some steps for Blackacre to take before the press release goes out?
- Alice decides to slow things down and discusses the issue with the CEO. The CEO is aligned with making the commitments, but she asks Alice whether she should take the net zero goal to the Board for approval. Alice calls you to confer. What do you recommend and why?
- The CEO decides to seek approval of the goal and related commitments from the Board. Alice wants you to join the Board meeting and help explain how the Board should think about whether to approve the net zero goal. What do you tell them?