CEP Magazine - December 2022

Stuart L. Pardau (stuart@pardaulaw.com) is Associate Professor of Business Law, Professional Practice, at the Miami Herbert Business School at the University of Miami in Florida, USA.

ESG is here to stay

By Stuart L. Pardau

Historically, for businesses large and small, public or private, the profit motive and maximization of shareholder value have been the unrivaled drivers of capital allocation and corporate decision-making. The movement known as Environmental, Social, and Governance (ESG) seeks to establish goals and criteria—sometimes quite specific, often more aspirational—that is nothing less than the redefinition of "good business."

The phrase ESG was first coined in 2005, and builds on earlier notions of "Corporate Social Responsibility" (CSR), which posits that corporations—especially larger corporations—have broader societal responsibilities that extend to other stakeholders outside the traditional corporate governance model of shareholders, directors, and officers.[1] But ESG is all that and much more, with broader and more ambitious goals, including meaningful reductions in CO2 emissions and promoting diversity, equity, and inclusion (DEI), among other objectives.

ESG's basic premise is that businesses benefit in the long run from a healthy environment, happy, well-paid workers, and employers who integrate socially and environmentally responsible values into their decision-making processes. Major institutional investors, including behemoths such as BlackRock and Vanguard, have been vocal champions of ESG, holding management and boards of public companies increasingly accountable to burgeoning ESG standards. The Securities and Exchange Commission (SEC) has proposed enhanced disclosures around ESG.[2] And leading ratings agencies have adopted (and continue to develop) ESG ratings.[3] ESG ratings systems for private companies have also been developed.[4] Likewise, several large banks now incorporate ESG into some of their loan approval criteria,[5] for example, by restricting funding to fossil fuel companies[6] and gun manufacturers.[7]

But this is not to say ESG has complete adoption or even widespread acceptance. For example, Warren Buffet has been a vocal opponent of the imposition of ESG measures on public companies because they create vague standards and unnecessary bureaucracy and reporting burdens.[8] A number of state attorneys general have also expressed opposition to ESG, with some states introducing or passing legislation as counter-measures against firms, like BlackRock, that impose ESG criteria on the companies they invest in.[9] Given its still-heavy reliance on the fossil fuel industry, Texas is pushing back on ESG criteria it believe places a disproportionate burden on the state, with some other states similarly opposed to ESG.[10]