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7 KEY TAKEAWAYS

ESG, Climate Change Science, and Uncertainty: What Should Your Strategy Be?

Kilpatrick Townsend Partner Todd Roessler recently spoke with other industry leaders **David Golden**, Former Senior Vice President, Chief Legal & Sustainability Officer, and Corporate Secretary of Eastman Chemical Company and **Carol Anne Clayson, Ph.D.**, Senior Scientist, Former Director, Ocean and Climate Change Institute, Woods Hole Oceanographic Institute at a webinar addressing "ESG, Climate Change Science, and Uncertainty: What Should Your Strategy Be?"

A day does not pass without another article on the Environmental, Social, and Governance ("ESG") trend accelerating around the world, and climate change is at the forefront of the ESG movement. Virtually every part of the complex, global economy is potentially impacted by some aspect of climate change. There is a myriad of disclosure frameworks, standard setting entities, and evaluation models. Shareholders, suppliers, customers, communities, employees, governments, and non-governmental organizations ("NGOs") must all be considered. It can be a challenge to know where to turn for counsel as companies assess risk and set ESG strategy using the best science to navigate uncertainty.

Key takeaways from the presentation, include:

1

Climate change knows no borders. Although we don't know precisely how, when and where, there should be no dispute the climate is changing. Temperatures are increasing, wet areas are becoming wetter, dry areas are becoming drier, storms are becoming more destructive, and sea level is rising.

2

Climate change is more than physical risks. The law is evolving as a result of climate change and the Environmental, Social, and Governance (ESG) trend, and companies will face new legal, regulatory and transitional risks ranging from:

- Identifying and assessing ESG risks, vulnerabilities and opportunities;
- Mandatory and voluntary ESG disclosures;
- New regulatory developments related to ESG and climate change;
- Increased enforcement, including potential criminal prosecution, related to ESG and climate change;
- New and evolving litigation risks;
- Reopeners for contaminated sites;
- Evolving sustainable finance programs, including green, blue, social and sustainability bonds.

Not only is there potential liability but other issues exist as well, including reputation risks, brand protection and shifting consumer preferences.

3

Emergence of a "New Regulator". Each level of government is not only taking an increasingly active role in addressing ESG and climate change, but a "new regulator" has emerged. Investors, shareholders, consumers and supply chains are driving companies to develop and evolve their ESG and climate change policies.

4

Disclosures and Understanding Risk. Before a company makes any disclosures, it needs to understand what risks climate change poses to its company. The disclosures should include quantitative information and metrics. The disclosures should also include any opportunities that climate change presents.

Risk must be understood in two parts: (i) the probability that an adverse event will occur; and (ii) the consequences of the adverse event. Existing risk management programs can be used, but they need to be adapted to include specific risks associated with climate change.

5

Clear, Defined Strategy. It's not just about disclosures. Investors and stakeholders want to see a company's plan to address climate change. Recognizing risk is one thing, having a clear strategy that can be implemented is another.

Plans and compliance programs must be based on risks and material issues. These will be different for each company. There is no "one-size fits all" plan to address ESG and climate change. What's important to your company?

There are uncertainties with climate change, but these uncertainties are bounded. When faced with uncertainty, stay close to the science and build protections into your plan. Companies should develop strategies that are adaptive, flexible and can be changed as more is learned about the nature and vulnerability to climate change.

6

It's Not a Sprint – It's a Marathon, and You Need to Start the Race. Inaction comes at a cost. The quicker more adaptable companies will be the companies that overcome these risks and thrive. The conversation needs to shift from the world is falling apart to what can my company do?

7

You are Not in This Alone. There are tools to assist companies in making ESG and climate change disclosures. A number of voluntary disclosure frameworks and standards have been developed to assist companies in making these disclosures. Look to industry groups and corporate sustainability experts to access information. Remember not all "experts" are equal. Companies will need to establish climate transition teams to meet their goals. It's not just up to the compliance or sustainability department. ESG and climate change should be integrated into your company and involve corporate leadership, directors, internal ESG/sustainability personnel, and outside experts. Find the best technical experts and best law firm that work together and collaborate.

With relationships and experience working with top technical experts, Kilpatrick's integrated, collaborative, and multidisciplinary team is well-positioned to assist clients to develop ESG strategies to reduce risk, ensure compliance, protect their reputation and brand, enhance resiliency, and achieve long-term profitability and value creation.

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