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Pickering Energy Partners

Navigating the Rapidly Evolving ESG Landscape: Impacts, Implications, and Strategic Considerations

The Webinar will begin shortly.

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Speakers

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Agenda

Introductions	Setting the Stage	Guiding Principles	Legal Perspectives	Questions
Meet our distinguished panelists	Views from Private Equity; challenges and opportunities	Key trends and strategic considerations	Regulatory trends from the SEC and other rulemaking agencies	Interactive Q&A Session

Setting the Stage

Private Equity Perspective

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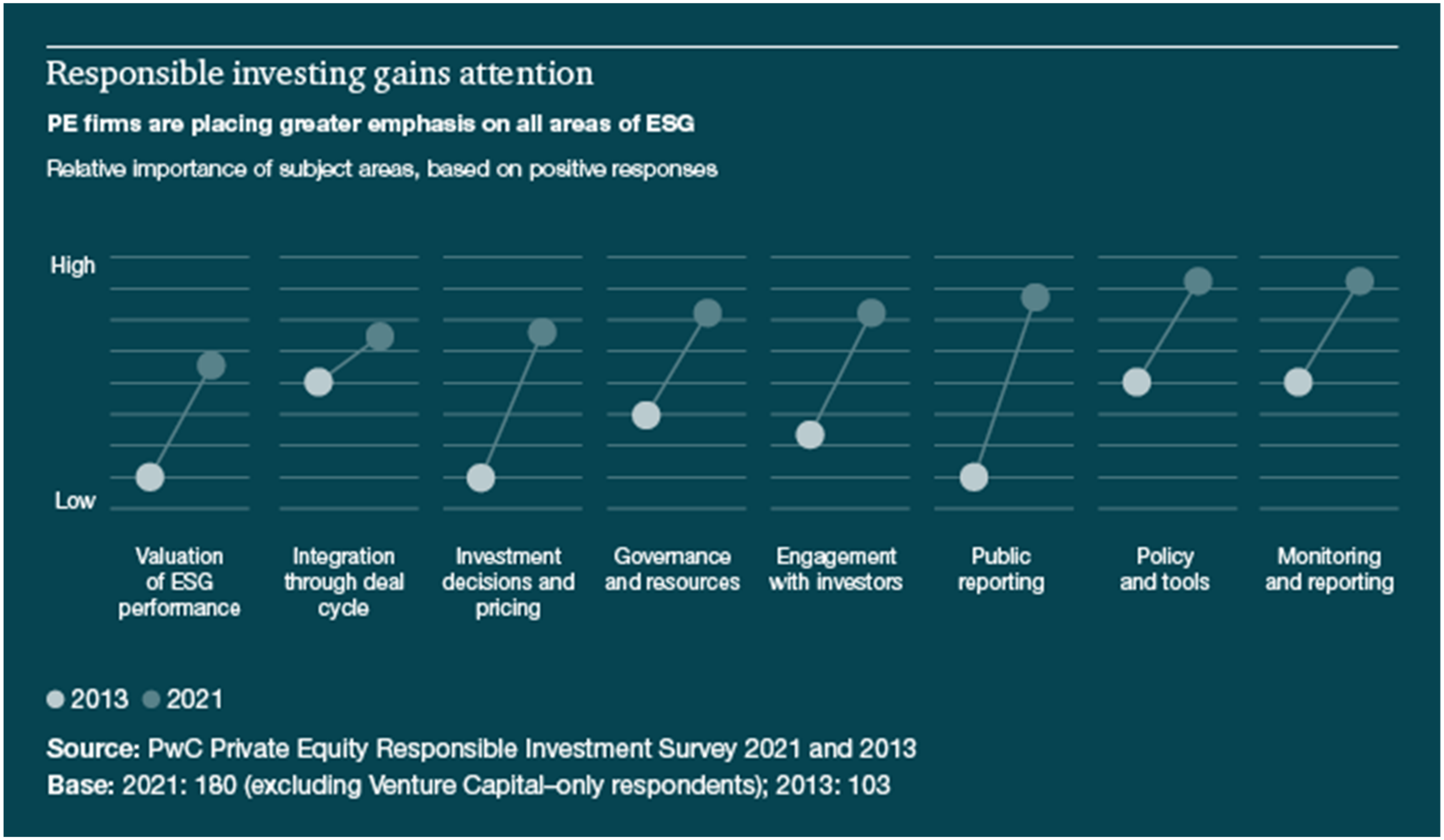
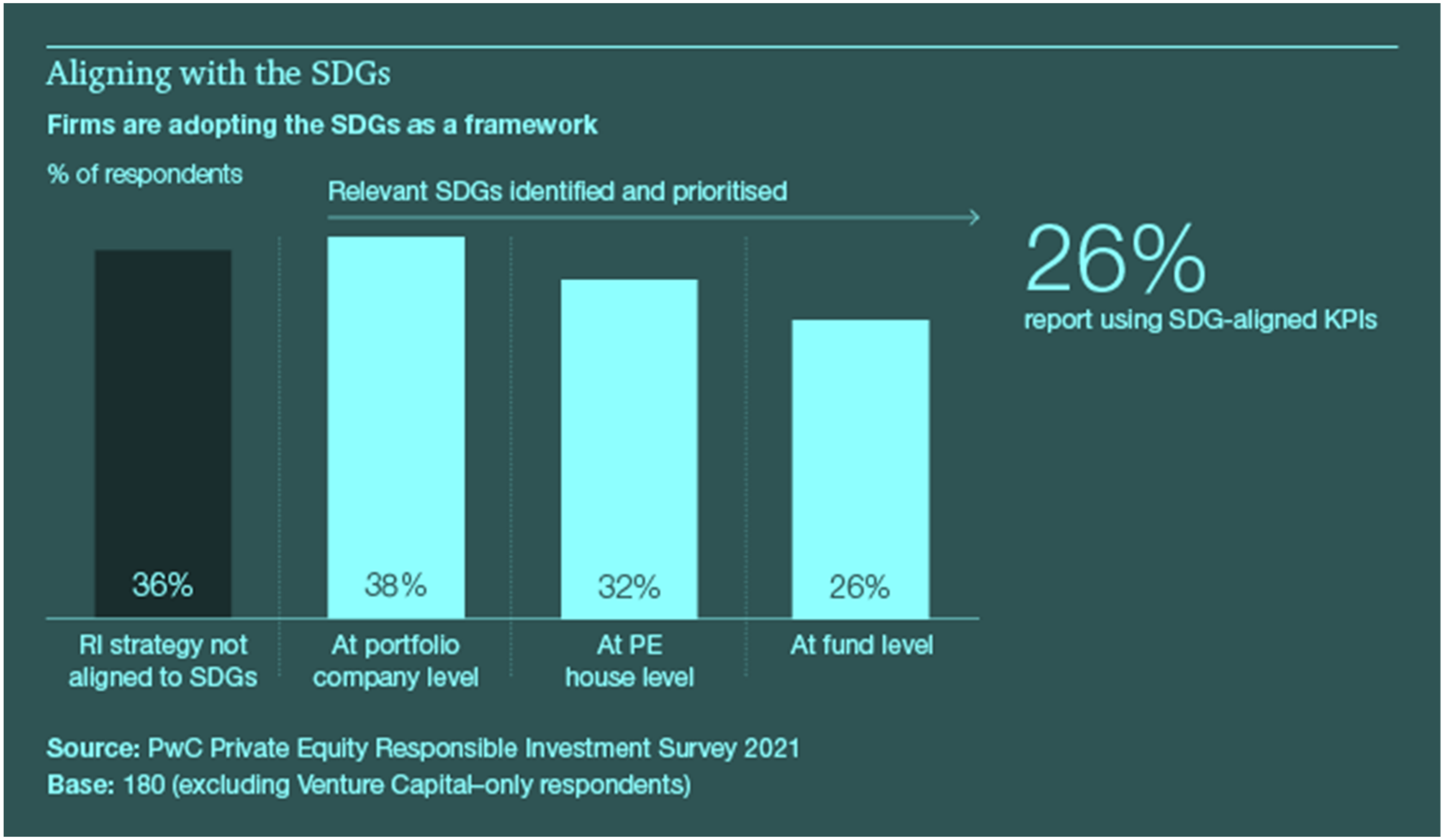
56%	66%	72%	56%
of respondents discuss ESG as part of executive board agenda more than once a year	rank value creation as one of their top three drivers of responsible investing or ESG activity	always screen target companies for ESG risks and opportunities at the pre-acquisition stage	have refused to enter general partner agreements or turned down investments on ESG grounds

*PWC's Global Private Equity Responsible Investment Survey 2021


Responsible investing gains attention
PE firms are placing greater emphasis on all areas of ESG
Relative importance of subject areas, based on positive responses
High
Low
Valuation of ESG performance
Integration through deal cycle
Investment decisions and pricing
Governance and resources
Engagement with investors
Public reporting
Policy and tools
Monitoring and reporting
2013
2021
Source: PwC Private Equity Responsible Investment Survey 2021 and 2013
Base: 2021: 180 (excluding Venture Capital–only respondents); 2013: 103



RI: Responsible Investment

SDG: Sustainable Development Goals

PE: Private Equity

Guiding Principles

Regulatory Developments Clamoring For Additional Disclosures

- SEC's focus on greenwashing
- SEC's focus on climate- and human capital management related disclosures
- Nasdaq's diversity decree
- Impact and potential ripple effect of the Climate Corporate Accountability Act in California
- Implications of the EU's SFDR in the US

SEC: Securities Exchange Commission

NASDAQ: National Association of Securities Dealers Automated Quotations

SFDR: Sustainable Finance Disclosure Regulation

Compliance & Alignment With Frameworks Increasingly More Complex

- Evolution of the PRI
- Growing influence of TCFD
- Emergence of VRF
- Executive comp KPIs
- Uncorrelated nature of non-fundamental data

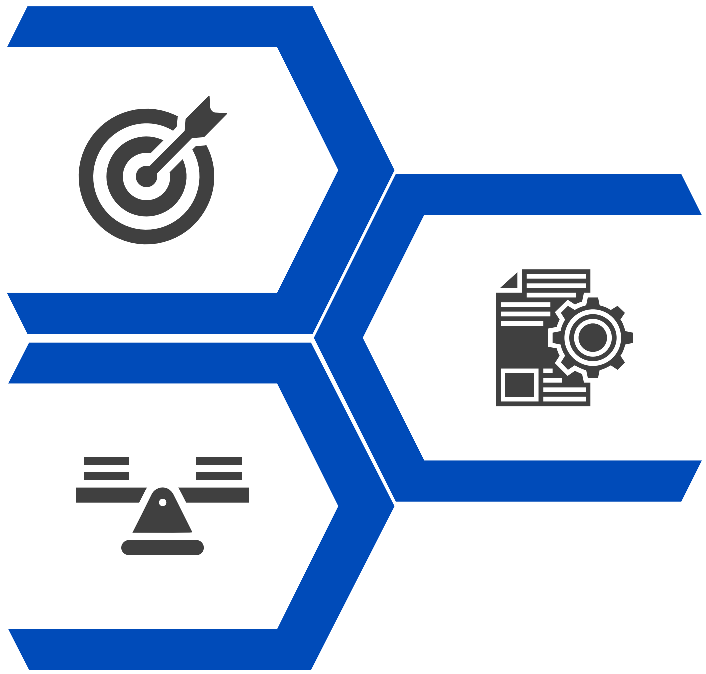
PRI: UN Principles for Responsible Investment

TCFD: Task Force on Climate-Related Financial Disclosures

VRF: Value Reporting Foundation

KPI: Key Performance Indicator

Strategic Considerations and Potential Implications of Target Setting



Implications of not attaining a target a company pledges to

The strategic balance between meeting global demand, showcasing improvement/ progress of emissions and participating in energy transition

Disclosures and narrative required when discussing/ disclosing E-related KPIs

Alignment Strategy Moving Forward Must Consider Certain Risks

Non-compliance ramifications (i.e., non-compliance of PRI if you cannot complete TCFD)

Better strategic options

What are investors seeking

Mitigating “noise” v. addressing the demands of stakeholders

PRI: UN Principles for Responsible Investment

TCFD: Task Force on Climate-Related Financial Disclosures

Legal Perspective

Regulatory Developments

A Brief Historical Overview

2019

SEC Proposes to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K

2020

Investor Advisory Committee recommends “that the commission begin in earnest an effort to update the reporting requirements of Issuers to include material, decision-useful, ESG factors.”

SEC adopts final rule modernizing Regulation S-K Items 101, 103 and 105

2021

Satyam Khanna Named Senior Policy Advisor for Climate and ESG

SEC creates the **Climate and ESG Task Force** in the Division of Enforcement

The Division of Examinations Review of ESG Investing Risk Alert

Commissioner Roisman addresses inevitable costs of a new disclosure regime: safe harbors for those who are “earnestly trying to provide this new information” and the notion of furnishing such disclosure, rather than filing it.

Views from the SEC

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SEC Chair Gensler Addresses Mandatory ESG Disclosures

- On July 28, 2021, SEC Chair Gary Gensler announces SEC's intentions to develop a climate-disclosure rule this year.
  - Over 550 unique comment letters submitted in response to Commissioner Allison Herren Lee's statement on climate disclosures; 75% supported mandatory climate disclosure rules
  - Considering whether climate disclosures should be filed as part of a company's Form 10-K
  - Aims to keep companies accountable to their target setting

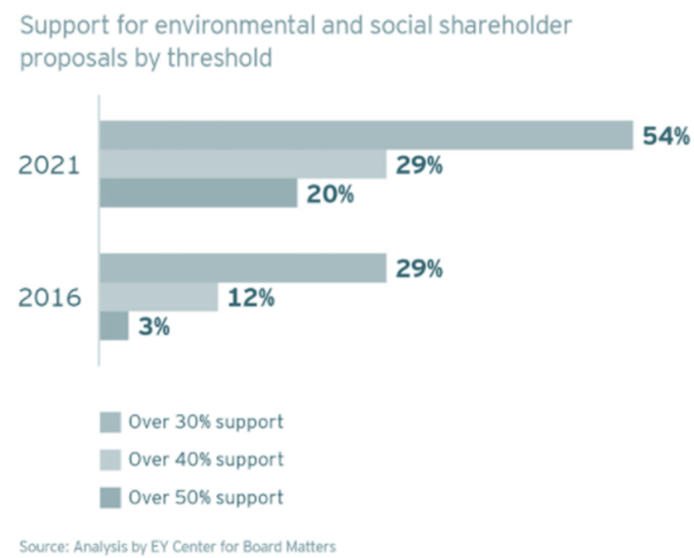
> "*Companies and investors alike would benefit from clear rules of the road. I believe the SEC should step in when there's this level of demand for information relevant to investors' decisions.*
>
> *Thus, I have asked SEC staff to develop a mandatory climate risk disclosure rule proposal for the Commission's consideration by the end of the year.*"

https://www.sec.gov/news/speech/gensler-pri-2021-07-28

ESG in Context in the Recent Proxy Season

98% General Electric shareholders approved a resolution asking the company to explain its plans to achieve net zero emissions in accordance with the Paris Agreement.

58% of shareholders at ConocoPhillips approved a measure requesting Scope 3 emissions reductions.



65% of shareholders at United Airlines voted in favor of a resolution seeking more information on how the company's corporate lobbying aligns with the goals of the Paris Agreement

Greenwashing

2016: Volkswagen’s “Clean Diesel” Campaign results in an FTC Complaint and billion dollar settlement

2021: Exxon Mobil’s motion to dismiss claims that Exxon Mobil misled Massachusetts investors in its marketing of Exon Mobil securities denied

2021: New York City Sues ExxonMobil, Shell, BP, and The American Petroleum Institute for Systematically and Intentionally Deceiving New Yorkers

“As companies continue to disclose more in sustainability reports, they should already be evaluating those disclosures in light of existing anti-fraud obligations.”

- John Coates, *Acting Director, Division of Corporation Finance*

Greenwashing

SEC Examinations, Recent Probe and Whistleblowers

- What started as an investigation into ESG-mislabeling in the PE space has broad implications for public disclosure considerations
- Sources told Bloomberg that SEC Examination Division sent letters to investment firms and advisors inquiring about ESG compliance programs, policies and procedures, as well as statements made by managers in their marketing materials or regulatory filings.
- SEC launched probe into Deustche Bank DWS following an expose by the former Chief Sustainability Officer alleged the firm was exaggerating its environmental credentials. The story, published by the WSJ, resulted in share prices dipping over 13%. A similar series of events led to a SH class action against Danimer Scientific.
  - "As chief sustainability officer, as a proponent of ESG, how could I not speak up on wrongdoing? Posturing with big statements on climate action and inclusion without the goods to back it up is really quite harmful as it prevents money and action from flowing to the right place." – Desiree Fixler, former executive

Public Comments on Climate Change Disclosures

- Across the board, participants are calling for a **broader** extension of any proposed rule to include not only climate-related disclosure, but ESG information at large. Similarly, a push for **international streamlining** is relatively consistent.

- Mixed review regarding a push for separate ESG disclosure form as opposed to integration into existing forms, and what potential liability would look like as either is phased in
  - Blackrock "recommends pairing any disclosure mandate with a **phased approach and a safe harbor** that, at a minimum, would cover any quantitative disclosures where methodologies are still emerging"

- There is a push for third-party assurances from the accounting space

- Principles for Responsible Investment recommends "a common and **mandatory** set of **sector-specific** key performance indicators and **forward-looking metrics** that build upon the TCFD Framework recommendations"

TCFD: Task Force on Climate-Related Financial Disclosures

Compliance and Alignment with Frameworks Increasingly More Complex

The “Alphabet Soup” of Frameworks

- In September 2020, five leading standard setters for voluntary ESG reporting (Global Reporting Initiative, or GRI; the Climate Disclosure Standards Board, or CDSB; the Sustainability Accounting Standards Board, or SASB; the International Integrated Reporting Council, or IIRC; and CDP (formerly, the Carbon Disclosure Project), issued a joint statement of intent committing to work together to create a comprehensive corporate reporting system.
- Separately, the International Business Council (IBC) of the World Economic Forum (WEF) and the Big Four Accounting Firms released its recommended set of “universal” ESG metrics and disclosures to measure stakeholder capitalism that they believe companies can report on regardless of their industry or region (the “Stakeholder Capitalism Metrics”).
- FTC “Green Guides” expected to be updated in 2022
- State Street has established its *own* ESG ranking system: the R-Factor.

Nasdaq Board Diversity Requirements

	Initial Board Matrix	One Diverse Director or Provide Explanation*	Two Diverse Directors or Provide Explanation*
Nasdaq Global Select or Global Markets	August 8, 2022 or the date the company files its 2022 proxy, whichever is later	August 7, 2023 (2 years)	August 6, 2025 (4 years)
Nasdaq Capital Market			August 6, 2026 (5 years)
Boards with 5 or fewer directors			N/A

Nasdaq Board Diversity Requirements

- All Nasdaq listed companies, except those that are exempt, are required to disclose board level diversity statistics using a specified format, titled “Board Diversity Matrix.”
- Companies are required to provide the Board Diversity Matrix information at least once per year. Updates may be provided if changes are made to the Board within the same year.
- The table should be completed using directors’ self-identified diversity characteristics. If a director self-identifies in the “Two or More Races or Ethnicities” category, the director must also self-identify in each individual category.
- A company may publish the information in advance of its next annual meeting of shareholders by using either of the following methods: (a) in any proxy statement or any information statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F); or (b) on the Company’s website. If the Company provides such disclosure on its website, then the Company must submit such disclosure concurrently with the filing made pursuant to (a) and submit a URL link to the disclosure through the Nasdaq Listing Center, within one business day after the posting.

Nasdaq Board Diversity Requirements

Board Disclosure Format

Board Diversity Matrix (As of [DATE])				
Total Number of Directors	#			
	Female	**Male**	**Non-Binary**	**Did Not Disclose Gender**
Part I: Gender Identity				
Directors	#	#	#	#
Part II: Demographic Background				
African American or Black	#	#	#	#
Alaskan Native or Native American	#	#	#	#
Asian	#	#	#	#
Hispanic or Latinx	#	#	#	#
Native Hawaiian or Pacific Islander	#	#	#	#
White	#	#	#	#
Two or More Races or Ethnicities	#	#	#	#
LGBTQ+	#			
Did Not Disclose Demographic Background	#			

Nasdaq Board Diversity Requirements

- This rule is *not* a mandate. If a company chooses to explain why it does not meet the diversity objectives, it can provide its explanation in its proxy statement, information statement for its annual shareholder meeting, or on the company's website.
- Smaller Reporting Companies can meet the diversity objective with two female directors, or with one female director and one director who is an underrepresented minority or LGBTQ+. Similarly, Foreign Issuers can meet the diversity objective with two female directors, or with one female director and one director who is an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the company's principal executive offices, or LGBTQ+.
- SPACs listed under Nasdaq Rule IM-5101-2 are not required to provide board diversity statistics or to have, or disclose that they do not have, any minimum number of diverse directors until after their business combination.

SEC's Focus: Climate Change Comment Letters

- The Commission has stated that a number of its disclosure rules may require disclosure related to climate change. For example and depending on the particular facts and circumstances, information related to climate change-related risks and opportunities may be required in disclosures related to a company's description of business, legal proceedings, risk factors, and management's discussion and analysis of financial condition and results of operations.
- Disclosure matters discussed in the 2010 Climate Change Guidance include the following:
  - the impact of pending or existing climate-change related legislation, regulations, and international accords;
  - the indirect consequences of regulation or business trends; and
  - the physical impacts of climate change.
- Issued September 22, 2021

SEC’s Focus: Climate Change Comment Letters

- “We note that you provided more expansive disclosure in your corporate social responsibility report (CSR report) than you provided in your SEC filings. Please advise us what consideration you gave to providing the same type of climate-related disclosure in your SEC filings as you provided in your CSR report.”
- “There have been significant developments in federal and state legislation and regulation and international accords regarding climate change that you have not discussed in your filing. Please revise your disclosure to identify material pending or existing climate change-related legislation, regulations, and international accords and describe any material effect on your business, financial condition, and results of operations.”
- “Disclose the material effects of transition risks related to climate change that may affect your business, financial condition, and results of operations, such as policy and regulatory changes that could impose operational and compliance burdens, market trends that may alter business opportunities, credit risks, or technological changes.”

Questions?

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THANK YOU