CADWALADER

Study Finds Companies Increasingly Disclosing ESG Information Voluntarily

May 2, 2023

By Sara Bussiere
Special Counsel | Global Litigation

By Timbre Shriver
Associate | Global Litigation

A **recent academic study** covering the period 2010-2021 has found that many companies in the S&P500 currently are providing disclosure on ESG issues, and in the absence of mandated disclosure rules, do so on a voluntary basis. During the time period studied, the percentage of firms releasing voluntary ESG disclosure reports jumped from 35% to 86%. The Study's authors found that "despite the rapid growth in the percentage of reporting firms, growth in the length of these reports was modest," with "significant variation across sectors." They also concluded that "firms with more negative ESG-related incidents and those with shorter 10-K filings are more likely to publish an ESG report, suggesting that these firms do so in response to negative attention and these disclosures serve to augment what is disclosed in regulatory filings."

The Study drew a potential link between the issuance of guidance by the Sustainability Accounting Standards Board and the amount of ESG-related information disclosed. According to the Study's authors, "we find statistically and economically meaningful evidence that firms increased their disclosure of material ESG information after the release of SASB standards, with the proportion of material information increasing by an average of 11.0% after the standards. These findings are among the first to suggest that well-defined voluntary standards and guidance can help improve ESG disclosures and should be of interest to investors and regulators." The **SASB** is a non-profit organization that develops and disseminates standards for the disclosure of sustainability issues material to the financial performance of companies across 77 industries.

“These results provide evidence that standards, even voluntary ones, can serve as powerful guidance when a large sample of firms chooses voluntary disclosure in the absence of regulation. The analysis also suggests that disclosure leaders (i.e., [Industry Working Group (IWG)] firms) can learn while doing, while other firms may be equally quick to respond once standards are known,” the Study’s authors **stated in a post** about their study on the Harvard Law School Forum on Corporate Governance.

Taking the Temperature: As we have previously discussed, ESG disclosures have become a hotly contested political issue in the U.S. In response to the SEC's proposed climate disclosure rule, certain Republican members of Congress, led by the Chair of the House Financial Services Committee, Patrick McHenry, and Oversight and Investigations Subcommittee Chair Bill Huizenga, established a nine-person Republican ESG Working Group to “combat the threat to our capital markets posed by those on the far-left pushing environmental, social, and governance (ESG) proposals.” On the other side of the aisle, the Congressional Sustainable Investment Caucus, a Democrat-led initiative, was formed to “bring together Members of Congress with experts to better understand sustainable investing and inform policy making that provides investor protections and transparency of information to market participants.”

In the meantime, attempts to enact federal legislation covering ESG disclosures have not advanced. For instance, the Corporate Governance Improvement and Investor Protection Act (H.R. 1187) was passed by the U.S. House of Representatives in June 2021 but stalled in the Senate after being referred to the Committee on Banking, Housing and Urban Affairs. The bill would have required publicly traded companies to periodically disclose information related to, among other things, ESG performance metrics. It would also have established a Sustainable Finance Advisory Committee to recommend policies to the SEC that facilitate the flow of capital toward environmentally sustainable investments.

As we have reported, European initiatives relating to sustainable reporting continue to move forward, including via the European Sustainability Reporting Standards. Even in the U.S., notwithstanding the partisan nature of the political discussion around ESG, most large companies are preparing to comply with the SEC’s proposed climate disclosure rule even though it is not final, although many business leaders have expressed concern over having the resources required to do so.