Chamber of Commerce Releases Best Practices for Voluntary Environmental, Social & Governance (ESG) Disclosure

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The U.S. Chamber of Commerce (Chamber), an organization representing the interests of over three million U.S. businesses, released a set of **ESG reporting best practices** intended to function as guidelines for producing voluntary standalone ESG reports. These best practices were developed as part of the Chamber's new initiative, the Project for Growth and Opportunity (Project GO), which is a multi-year program to advance and highlight business solutions and policy approaches that address socio-economic concerns. In addition to encouraging voluntary ESG disclosure, Project GO is focused on increasing corporate board diversity and expanding investment opportunities for average retail investors.

Key Takeaways

The Chamber, by releasing its best practice guide, makes clear that it believes further regulatory requirements mandating ESG disclosures are not warranted. The best practices guide effectively references the so-called "private ordering" by certain investors, employees, customers, non-governmental organizations and other constituencies that is now resulting in companies issuing standalone ESG reports. The Chamber believes that, because the private ordering process is still evolving, the best practices guide can help steer the development of a widely approved approach to voluntary ESG reporting, which many companies and investors have expressed interest in for various differing reasons.

A departure from a one-size-fits-all approach, the best practices guide asserts that **each company should have the discretion to determine which ESG factors and related metrics are relevant to it** without necessarily being tied to the various third-party frameworks and standards currently in existence. Finally, the best practices guide emphasizes that ESG reports need not be incorporated into filings with the Securities and Exchange Commission (SEC), nor should ESG information be required as part of an SEC filing if it is not "material".

Brief Background

In a **speech** announcing the development of Project GO, Chamber President Suzanne Clark noted that, in recent years, the number of companies choosing to publish annual ESG or similar reports has risen significantly. She stated that the Chamber encourages even more companies to create these types of voluntary reports in a way that is most useful to investors. Such voluntary reporting, she stressed, coupled with current SEC regulations on material information disclosure, is the correct approach to ESG reporting (rather than mandatory, one-size-fits-all disclosure regimes).

Clark also noted that one of the biggest disclosure challenges facing companies is dealing with the multitude of ESG frameworks and raters available. To help lead the development of a broadly supported approach to voluntary ESG reporting, the Chamber created its own reporting best practices guide.

What Is Included in the Best Practices Guide?

The best practices guide recommends that companies:

- **Focus on long-term ESG risks and opportunities** – ESG disclosure should focus on risks and opportunities that have "sufficient" potential to impact a company's long-term value creation (both

in terms of operational and financial performance). Disclosure should discuss the company's risk management approach and should not be a tool for advancing interests that do not relate to the company's long-term value.

- **Consider the intended audience(s) of the report** – Companies should tailor their disclosure to the intended recipients of the reports, both in terms of tone and content. Particular consideration should be given to what ESG information would be most helpful to a company's investors when making decisions related to investing or proxy voting decisions.
- **Work with the appropriate internal departments** – To ensure that all relevant information is collected and that diverse perspectives are heard, preparers of ESG reports should liaise with the appropriate internal teams (e.g., Investor Relations and the Corporate Secretary's office). Determinations of materiality should be the responsibility of the Legal Department, and in general, legal professionals should review all disclosures.
- **Clearly define any technical terms in plain English** – For those technical terms without a universally accepted definition, companies should provide clear definitions in plain English.
- **Choose ESG factors, metrics and reporting frameworks most suitable and relevant to the company** – Companies should be afforded flexibility in deciding which ESG factors and metrics are relevant to their specific stakeholders and should not be bound to the factors and metrics identified by third-party frameworks. Because the relevance of specific ESG factors differs both industry-by-industry and company-by-company, some disclosure variability is acceptable.
- **Explain why certain ESG topics or metrics were chosen** – In preparing ESG reports, companies should explain why the topics or metrics in the report were chosen, including why management thinks those topics or metrics are important to the company. Where possible, companies should provide baseline metrics or other points of reference to place into context the metrics in their reports.
- **Make ESG information easily accessible** – ESG disclosure should be easy for users to find, as is the case when posted on company ESG disclosure webpages. This information, however, does not need to be incorporated into SEC filings and should not be required SEC disclosure if it is not material under the Supreme Court's definition of materiality for federal securities law purposes. Market participants should consider whether it is feasible for the private sector to develop a central repository for companies to post their ESG reports on a voluntary basis.
- **Consider describing the review or audit process for the ESG information** – ESG reports voluntarily produced by companies should be subject to rigorous internal review and audit, and/or assessed by a third-party advisor. This is partly because it is possible that a material misstatement or omission could leave an issuer liable.

ESG Metrics and Data

The Chamber also notes in its best practices guide that, though not all ESG issues allow for quantitative reporting, meaningful quantitative disclosure could enhance the utility of ESG reports, given than qualitative information on its own can lead to ambiguity or miscommunication. All quantitative metrics, according to the guide, should be based on sound methodology and derived, where possible, from expert consensus.

Moreover, in a **release** describing the Chamber's work related to ESG, Thomas Quaadman, Executive Vice President of the Chamber's Center for Capital Markets Competitiveness, highlighted the climate risk disclosure model developed by the Edison Electric Institute and American Gas Association. This model, he explained, allows electric utility and gas companies to report on ESG matters in a "uniform, data-driven way," and is an example that the Chamber believes other industries should follow.

What's Next?

The Chamber plans to report on progress made regarding ESG disclosure, as well as the other Project GO initiatives moving forward, working alongside business and policymakers.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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