

BIHC

NETWORK

ELEVATING BLACK EXCELLENCE REGIONAL SUMMIT SERIES

A Showcase for Black Partners

Session 702

CORPORATE GOVERNANCE TRENDS



Adé Heyliger
Weil, Gotshal & Manges LLP



Tyree Jones
Reed Smith LLP



Cynthia Mazareas
WilmerHale



Rose Marie Glazer
AIG

EXECUTIVE SUMMARY



Corporate Governance Trends

MODERATOR:

Rose Marie Glazer, *Deputy General Counsel and Corporate Secretary, AIG*

PANELISTS:

- **Adé Heyliger**, *Partner, Weil, Gotshal & Manges LLP*
- **Tyree Jones**, *Partner, Reed Smith LLP*
- **Cynthia Mazareas**, *Partner, WilmerHale*

OVERVIEW

This panel of partners from major law firms offered different perspectives on corporate governance and environmental, social, governance (ESG), including the perspective of a labor and employment expert, an SEC regulation expert, and a life sciences expert.

The panelists see ESG as a top governance trend and see stakeholders exerting pressure on companies through litigation (shareholder derivative suits) and shareholder activism. They also see a series of government actions including a growing desire by the SEC for increased ESG disclosure and for reporting of various ESG metrics.

Companies are advised to prepare for an environment with increased ESG disclosures and with some form of metrics. Companies must also rethink the story they tell to investors and other stakeholders about value creation, the role of ESG, and the risks faced. In preparing for this future, companies are advised to take a holistic view, while remembering that the devil is in the details.

KEY TAKEAWAYS

ESG has become a strategic priority.

In focusing on corporate governance trends, Rose Marie Glazer said, “The most significant trend at the moment is ESG governance trends.” ESG has been referred to as purpose-led reporting. It is rooted in corporate social responsibility (CSR). Over the past decade, ESG has developed into a set of standards by which a company’s operations are measured by

BIG IDEAS

- The hottest topic in corporate governance right now is ESG (environment, social, governance).
- Stakeholders are pressuring companies to make ESG changes by bringing litigation and become activists.
- The Biden administration is increasing the emphasis on ESG as the SEC pushes for greater disclosure and considers some form of metrics.
- Companies must prepare for an environment with greater regulation and more disclosure. Companies are encouraged to think holistically and focus on the story they want to tell and are required to tell.

a variety of different stakeholders. The increased importance of ESG is being driven by stakeholders including shareholders, regulators, and legislators.

“ESG has gone from being a nice-to-have business objective around doing good business to a real strategic priority.”

— *Tyree Jones, Reed Smith LLP*

The components of ESG are:

- **E = Environmental.** This is the company’s performance as a steward of the environment, which involves issues related to climate change, water usage, and more.



ELEVATING BLACK EXCELLENCE

- **S = Social.** This focuses on how companies manage their relationships with their employees, suppliers, customers, and communities.
- **G = Governance.** This encompasses the company's leadership, executive pay, internal controls, audits, shareholder and employee rights, and more.

Stakeholders are attempting to influence companies' ESG behavior.

Among the strategies being pursued by stakeholders are litigation and shareholder activism.

- **Litigation.** At least 10 derivative actions have been filed in the past year regarding corporate DEI practices, challenging companies and their boards to adhere to their previous DEI pledges. These actions have targeted major corporations, such as Facebook, Oracle, and Alphabet, Google's parent company. While not yet successful for various reasons, these actions show that the threat of litigation is real.
- **Shareholder activism.** Large institutional investors like State Street and BlackRock are becoming increasingly vocal about corporate responsibility in DEI and human capital issues. Leading proxy advisory firms like ISS have also conveyed their intent to have ESG measures for the upcoming proxy season. The interest in ESG among institutional investors is not bluster. Investors plan to target boards that underperform on ESG measures compared to their peers and that demonstrate poor oversight of ESG issues. Likewise, they plan to vote against boards that don't adequately disclose their role in overseeing material ESG issues. Some institutional investors have threatened to vote down chairs and boards at the S&P 500 that fail to disclose their racial make-up or that don't include members from unrepresented communities.

“I think the takeaway for companies is that institutional investors want more engagement, want better disclosure, and want a demonstration of active oversight of ESG from the boardroom.”

— Cynthia Mazareas, WilmerHale

The government is getting more involved in ESG.

Government activity includes greater scrutiny of ESG by the SEC, possible congressional legislation, and state-level actions.

- **SEC.** Historically, climate change and diversity were areas where the SEC was hesitant to go in depth on rulemaking. When the SEC took steps, they were baby steps, and the SEC followed a principles-based approach where a company could decide what to disclose. Also, the SEC had no ESG-related metrics, making it impossible to compare one company to another.

However, under the Biden administration, this is changing. The SEC is becoming more vocal about its desire for disclosure of ESG measures and is growing impatient with the principles-based approach. It is possible the SEC will consider metrics in areas such as human capital and climate change.

“What we're predicting . . . is that the SEC intends to move rapidly toward a system that's going to have some form of comparable metrics among public companies . . . [SEC] commissioners are calling for quick, rapid action in this space. They're taking giant steps.”

— Adé Heyliger, Weil, Gotshal & Manges LLP

- **Congress.** Congress is considering legislation on diversity disclosures. House Democrats have been pushing diversity disclosure initiatives for years that would require companies to disclose the racial and ethnic make-up of their boards, as well as the status of C-suite executives. While previous bills never made it out of the House, a new version was recently reintroduced in the House along with a companion bill in the Senate. Now that Democrats control both branches of Congress and the White House, such bills may fare better than in the past.
- **State-level.** In October, California enacted legislation that requires publicly traded companies doing business in the state to have at least one board member from an underrepresented community. One of the panelists said to expect other states to follow California's example.



Companies need to prepare now for an environment with increased ESG disclosures and metrics.

In anticipation of continuing pressure from shareholders and regulators, the panelists suggested that companies do the following:

- **Assess risks.** As with all business risks, the company's board and management should identify potential risks and exposures related to increased ESG disclosure and metrics. Identifying risks allows companies to take action to mitigate these risks.
- **Revisit disclosures.** The panelists advised companies not to try to predict exactly what the SEC will do and what potential metrics might be. This is a waste of time. However, companies should take the opportunity to review their current ESG disclosures to avoid any materially misleading statement or omissions and to ensure consistency across all disclosures.

“My advice to companies that are making disclosures in the ESG space is that this is a good time to revisit the disclosures you have already made.”

— Cynthia Mazareas, WilmerHale

- **Focus on your story.** Companies must tell the story of how ESG risks—including climate change and diversity—will affect their company. Importantly, with the likelihood of increased disclosure on the horizon, companies can't just tell the story they want to tell; they must be prepared to tell the story they have to tell. Cherry-picking data to present a positive narrative may create good PR, but it opens up companies to legal risks. Fossil fuel companies may not want to discuss climate change, but the days where they can avoid it are over. Focus instead on long-term value creation and use ESG disclosures as an opportunity to tell the company's story and articulate its values.

The panelists agreed that in preparing for a future where increased stakeholder activism and ESG disclosure are likely, companies need to take a comprehensive, holistic approach.



BIOGRAPHIES



MODERATOR

Rose Marie Glazer

Deputy General Counsel and Corporate Secretary, AIG

Rose Marie E. Glazer joined AIG in March 2017 as Senior Vice President Corporate Secretary and Deputy General Counsel. She leads the corporate governance, securities, capital markets, and M&A legal teams as well as oversees AIG’s Sustainability Office. Before joining AIG, Rose Marie worked at Siemens for 14 years where she served in several executive positions including Senior Vice President and General Counsel – Americas, Interim General Counsel for Siemens Mexico and General Counsel of Siemens PLM Software. Previously, Rose Marie held in-house counsel positions at Telvista, Inc., Allied Riser Communications and American Airlines. She began her legal career as an attorney with the law firm Jones Day in Dallas. Rose Marie was awarded “Governance Professional of the Year (Large Cap)” at Corporate Secretary Magazine’s Corporate Governance Awards in 2020 and named one of the “Twenty Most Influential Hispanics in Technology” by Hispanic Engineer & Information Technology Magazine in 2017. In 2016 the National Diversity Council honored her as one of the “Top 50 Most Powerful Women in Technology”. Rose Marie earned her law degree, cum laude, from Southern Methodist University School of Law in Dallas, Texas. She also has a BBA in Accounting, summa cum laude, and a BA in Spanish, summa cum laude, from Southern Methodist University.



Adé Heyliger

Partner, Weil, Gotshal & Manges LLP

Adé Heyliger is a partner in Weil’s Public Company Advisory Group and is based in Washington, D.C. He regularly advises public companies, corporate boards and foreign private issuers on a broad range of Securities & Exchange Commission (SEC) disclosure and regulatory matters, securities regulation, corporate governance and compliance issues. His diverse practice encompasses counseling companies on corporate and securities law compliance in mergers and acquisitions, private equity investments, capital markets transactions and bankruptcy/ restructuring matters. Mr. Heyliger also advises public companies on matters relating to shareholder activism, including proxy contests, shareholder engagement and shareholder proposals, and provides day-to-day counsel on a variety of corporate governance, disclosure and regulatory issues. Prior to joining Weil, Mr. Heyliger served for five years in the SEC’s Division of Corporation Finance. Mr. Heyliger is recognized as a “Leading Lawyer” for Shareholder Activism: Advice to Boards and is recommended for Corporate Governance by Legal 500 US. He is also recognized by Who’s Who Legal for M&A and Corporate Governance. He is a frequent speaker and author on SEC disclosure requirements, securities regulation and corporate governance matters and developments. Mr. Heyliger holds a J.D., cum laude, from Harvard Law School, a M.B.A. in Finance from The Wharton School, University of Pennsylvania, and a B.S. in Finance, cum laude, from University of Maryland.

Adé Heyliger
Weil, Gotshal & Manges LLP
ade.heylinger@weil.com



ELEVATING BLACK EXCELLENCE

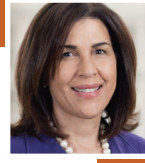


Tyree Jones
Partner, Reed Smith LLP

Tyree Jones is chair of Reed Smith’s global Labor and Employment Group and a member of the firm’s Executive Committee. He is a trial lawyer with more than 30 years of experience litigating complex commercial disputes involving anti-discrimination laws pertaining to the employment, housing, consumer finance, and information management sectors. In addition to litigating wage and hour collective actions, conducting workplace audits for Fair Labor Standards Act (FLSA) compliance and pay equity analyses. He also conducts sensitive investigations of alleged corporate malfeasance, harassment and discrimination claims and advises Board members and C-suite executives accordingly. Tyree leverages his litigation, counseling and board service experience to advise clients on matters involving human capital and ESG issues, DE&I strategies, effective talent management and the enterprise risks associated therewith. He is Reed Smith’s former Global Director of Diversity & Inclusion. He has served as the Board Chair of the San Francisco Suicide Prevention Society, Wiley Manuel Law Foundation and currently serves on the Board of Directors for Georgetown University as a member of its Audit Committee and as Chair of its Law Center Affairs Committee.

Tyree Jones
Reed Smith LLP

TPJones@reedsmith.com



Cynthia Mazareas
Partner, WilmerHale

Cynthia Mazareas is a corporate partner and a member of WilmerHale’s Life Sciences and Corporate Governance and Disclosure practice groups. She brings more than 25 years of experience and a passion for medical and scientific innovation to her role as a trusted adviser to companies in the life sciences industry. She provides ongoing, strategic business counsel to boards, management teams and in-house counsel, representing high-growth private and public companies in corporate matters, complex business transactions, including public offerings and venture capital financings, and corporate governance, SEC, stock exchange and Sarbanes-Oxley compliance. Ms. Mazareas is an author and frequent speaker on corporate transactions, governance and other matters relating to life sciences and biotechnology companies. She is also a member of the Society of Corporate Secretaries & Governance Professionals and serves on the advisory committee of the Eastern New England Chapter. Ms. Mazareas is named in *Best Lawyers in America* for biotechnology and life sciences, has been named a Life Sciences Star by *LMG Life Sciences* and was recommended by *The Legal 500 United States* for capital markets: equity offerings – advice to issuers.

Cynthia Mazareas
WilmerHale

Cynthia.Mazareas@wilmerhale.com