# Key Takeaways from NYSE and Nasdaq on ESG

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Securities and Capital Markets

On July 2, 2021, the New York Stock Exchange ("NYSE") released its report on "Best Practices for Sustainability Reporting," a set of eight guidelines designed to assist listed companies in reporting on and engaging with stakeholders about company-specific, environmental, social, and governance ("ESG") issues. In 2020, the Nasdaq Stock Market LLC ("Nasdaq") provided its overview of approaches companies may consider to engage effectively with their stakeholders on ESG issues. Nasdaq also proposed changes to its listing rules, which are pending before the U.S. Securities and Exchange Commission ("SEC"), and which would advance social and governance goals through the implementation of diversity, equity, and inclusion requirements for a Nasdaq-listed company's board of directors.

Listed companies that currently report or that expect to report on their ESG performance should consider the NYSE and Nasdaq's guidance and actions, which are summarized in part below, when reporting on and engaging with stakeholders about their material ESG risks and opportunities.

## 1 Identification of Company-Specific ESG Issues and Stakeholders

- **Identifying the right approach for a company**. Companies should conduct assessments of company-specific and relevant ESG issues in order to anticipate changes in stakeholder interests, regulatory focus, and/or changing expectations around companies' handling of ESG issues. The NYSE report notes that ESG issues extend beyond climate change, and that companies should consider the full range of ESG issues that may be relevant to their operations and long-term strategies. For example, companies may face risks related to their waste management processes, management challenges related to human rights, data privacy and cybersecurity, and/or governance risks related to political lobbying or executive pay. The report notes the general correlation between companies that effectively identify and manage ESG risks and opportunities and such companies' relative resilience and improved financial performance vis-à-vis peers that do not.
- **Identifying stakeholders and evaluating the state of engagement**. Effective ESG risk management involves identifying and maintaining outreach with a variety of stakeholders. The NYSE and Nasdaq both encourage companies to consistently and effectively engage in outreach with stakeholders in order to develop and implement company-specific ESG strategies. Outreach is considered more "effective" when it incorporates the perspectives of a wide range of stakeholders, including investors, employees, customers, suppliers, regulators, civil society organizations, and any others

who, as noted in the NYSE report, "can reasonably be expected to be significantly affected by a reporting organization's activities, products or services."

## 2 ESG Materiality, Governance, and Risk Oversight

- **Assessing materiality**. The NYSE report encourages companies to assess materiality through a lens that focuses on ESG issues that may be relevant to a range of stakeholders and not simply investors. The report notes the potential benefit of tools such as a "materiality matrix," which a company may use to report and highlight how it is evaluating and prioritizing its most salient ESG issues while taking into consideration issues of importance to a range of stakeholders.
- **Establishing governance**. The NYSE report emphasizes that "[s]trong governance of ESG issues and ESG reporting is key to the efficacy of ESG programs and the credibility of ESG reporting." Companies are encouraged to implement governance practices that are appropriate to their ESG risk profiles, including robust processes to identify ESG risks and internal controls that measure, monitor, and internally verify ESG metrics that are reported and their relationship to companies' disclosure controls.
- **Integrating ESG into business strategy**. The NYSE report encourages companies to allocate across multiple divisions and senior management the responsibility of designing, implementing, and monitoring companies' ESG business strategies. Multidisciplinary sustainability teams could be created and tasked with monitoring and revising companies' approaches to company-specific ESG issues, which may range from diversity goals to compliance and anti-corruption risk management. These teams may also be tasked with reporting and responding to investors, ratings-agencies, and other stakeholder groups about companies' ESG risks, opportunities, and long-term business strategies.

## 3 Communication of Company-Specific ESG Issues: Reporting, Standards, Frameworks, and Ratings

- **Telling a company's story**. The NYSE and Nasdaq both encourage companies to effectively and accurately tell their ESG stories. To articulate ESG performance and/or engagement effectively, companies are encouraged to adopt a focused approach that describes core ESG issues, targets, measurements, and the monitoring of progress towards such targets. Nasdaq's guidance notes that this may warrant disclosing data (*e.g.*, current status, quantitative targets) paired with contextual narratives (*e.g.*, qualitative targets).
- **Reporting frameworks and standards**. The NYSE encourages companies to consider reporting frameworks and standards that are best suited for their particular ESG reporting and which allow them to provide high-quality reporting that is accurate, balanced, comparable, and contextualized. Companies may consider aligning their sustainability reporting with one or more ESG frameworks, a number of which are set forth in the NYSE's report and which may be best selected by discerning which framework(s) would yield the most meaningful disclosure for the specific company and its shareholders.

- **ESG research and ratings**. A number of third-party research firms collect ESG information on companies for the purpose of scoring ESG performance, which is used by many investors to inform their decision making. Different firms use different methodologies, and the NYSE report encourages companies to decide which third-party research firms are most relevant for their key stakeholders and allocate their efforts accordingly.

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