ESG Professionals Network

Our Duties as ESG Professionals

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Keepers of the Green Gate: Our Duties as ESG Professionals

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As ESG professionals, we have five duties:

1. Self-educate
2. Collaborate
3. Avoid & report on greenwashing
4. Report on ESG risks & violations
5. Self-examine

The market for ESG professionals is hot. As companies, consulting firms, financial institutions, law firms, and government agencies race to build out their sustainability and ESG teams, qualified ESG professionals are in high demand.

This demand also is creating an opportunity for individuals with more traditional professional backgrounds, who may not have any substantive experience in ESG, to quickly "find" their ESG expertise. I recently Googled "becoming an ESG professional" out of curiosity. "How to move into an ESG-focused role with little to no ESG experience" was the fifth link.

This movement bothers me less than some may think. It is both normal and efficient for individuals to shift towards professions that they perceive to be in high demand, and arguably, spaces dedicated to sustainability should encourage those shifts to take place across many sectors of the global economy. However, the vastness of ESG can make the space particularly vulnerable to "competence greenwashing,"[1] where individuals may have some awareness of ESG, but lack the expertise needed to meaningfully participate in the implementation of complex ESG strategies.

This can be exacerbated by the fact that ESG is simultaneously incredibly broad and incredibly deep, but the markets, particularly in the U.S., have thus far been more focused on the breadth than the depth, so individuals can know a little about a lot and know more than most. But a shift is here and is moving quickly, and in order for ESG professionals, whether we have been in the space for years or are

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[1] Dr. Kim Schumacher, a Lecturer in Sustainable Finance and ESG at the Tokyo Institute of Technology and a Chartered Environmentalist, recently published a great article on the Responsible Investor website; see *'Competence Greenwashing' Could Be the Next Risk for the ESG Industry*.

newcomers, to be helpful and not harmful, we must hold ourselves accountable to standards informed by the central tenets of ESG.

As a governance attorney, I think about duties a lot – the duties companies owe their stakeholders, the duties boards and members of management owe their companies, the duties I owe my clients – and this article outlines what I believe should be the duties of ESG professionals for the benefit of the organizations for which they work and the communities in which those organizations do business.

1. **The duty to self-educate**. The first duty of the ESG professional has to be the duty to educate oneself. The various spaces of ESG are all moving quickly; not a day goes by that does not bring significant events and developments. Even those who have been in ESG spaces for years may find it challenging to keep up-to-date on a day-to-day basis, however, our profession requires that we do the work of staying informed. Our profession also requires that we be unequivocally clear about the scope of our own competencies.

   No one person can be, nor should any one person try to be, all things to ESG. As calls for greater levels of sophistication in ESG standard setting and reporting continue to proliferate in the U.S. while ESG-related regulations expand and come into full effect in non-U.S. jurisdictions, ESG professionals need to weigh the benefits of focusing on breadth versus depth in their respective areas.

   While some ESG professionals should retain a focus on breadth in order to support collaborative efforts in the profession, as discussed below, many others should focus on depth, honing their expertise in specific subcategories of ESG and ESG-related tasks. All should describe their areas of expertise accurately.

2. **The duty to collaborate**. ESG is impossibly broad. No single individual, and no single organization, should be expected to address the full scope of every topic that falls under its global umbrella. However, it is dangerous to think that just because ESG seems to be about everything, it is substantively about nothing. This is one reason why I have emphasized in my other articles and talks that ESG should not be viewed as a single strategy, but instead as a series of lenses used to challenge our ideas about value, values and the relationships between the two.

Given this, collaboration among ESG professionals with different competencies and areas of focus is vital.

True progress requires that those with expertise in sustainable finance, public policy, the environmental sciences, corporate governance and public disclosure, human rights, poverty and inequity, and community engagement and development – to name just a few – speak the same language and use that language to integrate more sustainable practices throughout the global economy. This requires intentional collaboration in addition to an eagerness to learn from each other.

3. **The duty to avoid and report on greenwashing**. If 2020 was the year ESG grew up, 2021 may be the year it finally starts to be truly defined.[2] Although many of the efforts to define ESG are in the "E," efforts to identify and measure the determinants of social outcomes are also underway. These

[2] The EU has used "sustainability" in titling most of its efforts to define ESG matters, including the EU Sustainable Finance Disclosure Regulation and the EU Taxonomy Regulation, which are designed to help businesses identify to what degree activities can be considered environmentally sustainable (while meeting certain "minimal social safeguards"), and become effective this year and early next year.

Additionally, the European Commission adopted a proposal for a "Corporate Sustainability Reporting Directive," in part to specifically address criticisms about the lack of reliable, comparable, and relevant ESG disclosures under the existing Non-Financial Reporting Directive. Other efforts include the measures released by the World Economic Forum, the endorsement of TCFD in a letter from the G7 summit, and the efforts of the International Federation of Accountants and IFRS Foundation to create an international Sustainability Standards Board and promulgate a single global set of standards on climate-change risk by mid-2022. In September 2020, the Carbon Disclosure Project, the Climate Disclosure Standard Board, the Global Reporting Initiative, the International Integrated Reporting Council and the Sustainability Accounting Board announced that they would collaborate on working together to harmonize sustainability standards.

In June 2021, nearly 500 investors managing over $41 trillion in assets released a statement urging world governments to establish mandatory climate-related financial reporting; the statement was released ahead of the G7 Summit and COP26 to encourage further participation and collaboration. In the U.S., the SEC has been signaling all year that companies can expect the Commission to use current rules to review companies' ESG disclosures and practices and to promulgate new ESG rules in the not too distant future. In April 2021, the Commission's Division of Examinations released a risk alert and review of ESG investing, indicating that the staff had "observed some instances of potentially misleading statements regarding ESG investing processes and representations regarding the adherence to global ESG frameworks." While the staff did not use the term "greenwashing," the implication was clear.

efforts to define and measure ESG initiatives, strategies and outcomes are integral to shrinking the space in which organizations may freely engage in greenwashing, however, taken alone, they cannot eliminate greenwashing, nor can they help organizations prioritize among the good.

For greenwashing in all its forms to be eliminated, and for organizations to be able to prioritize among ESG goals in the most effective and meaningful manner, ESG professionals must hold their organizations accountable.

As ESG professionals we must remember that greenwashing is dangerous not only because it may mislead key stakeholders and create inefficiencies in the market, but also because it creates very real risks for the organization and can be used to discredit the central tenets of ESG. Greenwashing is often defined as providing misleading or incomplete information in an effort to create the perception that a company or its products, operations or policies are environmentally sustainable or otherwise ESG-friendly.

I would define it more broadly. I would add to the definition any ESG efforts that do not directly relate to an organization’s risks, operations or strategies or that do not otherwise result in a material improvement to the environmental sustainability or social welfare of the communities in which the organization does business. Why this broader definition?

In my experience, any expression of corporate values that is not backed up by a commitment of corporate value amounts to little more than virtue signaling and should be included in the definition of greenwashing for the purposes of ESG professionals’ duties to their organizations and the communities in which they do business.

As ESG professionals we must be brave enough to actively avoid engaging in greenwashing and call it out internally if we do see it occurring in our organizations. This requires that we do more than demand that ESG efforts and disclosures be more meaningful than colorful marketing campaigns, we also must see that ESG efforts are integrated into our organizations and reflected in the organizations’ operational and strategic plans and audit and internal control processes.

4. **<u>The duty to report on ESG risks and violations</u>**. Back in 2014 and 2015, statements made by the then-Chair of the SEC, Mary Jo White, and the then-Deputy Attorney General Sally Quillian Yates memorialized the U.S. federal

law concept of holding key individuals accountable for corporate wrongdoings.[3] This concept of “gatekeeper liability” has its root in the public policy behind the Sarbanes-Oxley Act, however, the legal concept has grown, evolved and shifted since then to become a cornerstone of how legal, audit and compliance professionals and certain members of management examine their responsibilities for corporate conduct.

I would argue that ESG professionals should be guided by a similar concept, that we are, in fact, also gatekeepers. In establishing ourselves as those that guide our organizations with respect to ESG matters, we also should assume the duty to spot and prevent potential ESG-related misconduct. This includes identifying material ESG risks,[4] as well as identifying the ways in which our organizations are falling short of their ESG responsibilities and commitments. Given that ESG is, as I admit, impossibly broad, this responsibility should be tied to our areas of competency – yet another reason for us to clearly articulate the scope of our expertise.

5. **<u>The duty to self-examine</u>**. Finally, ESG has to begin and end with the individual. Given the vastness of the questions ESG asks – questions about our values, purpose and future – ESG professionals as individuals absolutely must practice what we preach. In our quest to promote sustainability, are we willing to embrace the sacrifices we as individuals will be required to make? For every 100 articles and thought pieces championing methods for creating a more sustainable world, there are a very few that state this harder truth: We need to sacrifice to create a more sustainable world.

   We also must be brave enough to consider the ways in which our quest for a more sustainable world and how we define the concept of sustainability may be informed by our own privileges. For us to fully embrace the “S” in ESG as individuals, we must be willing to continually reassess our own views on

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[3] Then-Chair of the SEC Mary Jo White made a speech entitled *A Few Things Directors Should Know About the SEC* in 2014, and then-Deputy Attorney General Sally Quillian Yates issued a memo to the Department of Justice attorneys entitled *Individual Accountability for Corporate Wrongdoing* in 2015. While the U.S. Department of Justice has since stepped back from aspects of the “Yates Memo,” the concept of “gatekeeper liability” remains a key principle for compliance professionals.

[4] In other articles, I discuss the concept of “sacred cows” in the context of corporate cultures. “Sacred cows” are people, products, practices or principles that an organization will go to any lengths to protect. ESG professionals, if we are going to be gatekeepers of effective ESG practices, must also commit to calling out the material risks created by sacred cows.

what it means to create a more sustainable world for all. Ultimately, the biggest challenge of ESG lies not in the “E” or the “S” or the “G” but in all of them together, and to be effective ESG professionals, we must consider both the sustainability and the equity of our own actions and efforts.