

# ESG: What Is Corporate Governance?

By Laura A. Mitchell & Susan M. Corcoran

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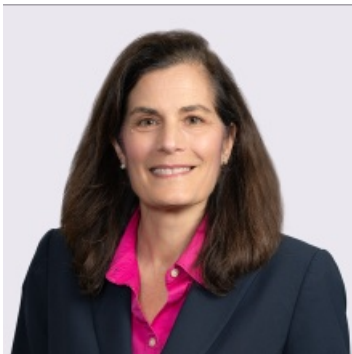
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## Details

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Jackson Lewis P.C. · ESG: What is Corporate Governance?

## Transcript

### Alitia Faccone:

Welcome to Jackson Lewis's podcast We get work™. Focused solely on workplace issues, it is our job to help employers develop proactive strategies, strong policies, and business oriented solutions to cultivate an engaged, stable and inclusive workforce. Our podcast identifies issues that influence and impact the workplace, and its continuing evolution and helps answer the question on every employer's mind, how will my business be impacted?

Despite acknowledging the necessity of integrating ESG policies, organizations face difficulty determining how their programs are governed. As a result, leaders may encounter challenges when implementing ESG strategies and monitoring and reporting in information responsibly. Striking a balance between integration, accountability and risk is essential. On this episode of We get work™, we conclude our ESG series by discussing how organizations can balance transparency, ethical business practices and integration while managing risk. Our host today are Laura Mitchell and Susan Corcoran, principals in the Denver and White Plains offices of Jackson Lewis. Laura leads the firm's ESG group and partners with her clients to evaluate, set, achieve, and monitor their organizational culture and human capital goals. She works with companies across all industries to realize this vision for her client's ongoing success. Susan is an experienced employment counselor and litigator, a corporate governance and internal investigations group member and co-editor of its blog. She provides legal advice to organizations and boards relating to risk and strategy. Laura and Susan, the question on everyone's mind today is how do we responsibly manage corporate governance and how does that impact my organization?

### Laura Mitchell:

Yep. It's a fantastic question, and I'm so happy to be here speaking Susan with you today so that we can finally talk about the G in ESG. It's exciting times. It feels like we've been focused certainly a lot on the E in ESG, and a lot of talk amongst our channels and our groups around the S and now finally a discussion about the big G,

the governance piece, which actually I think has more questions than anything else right now because there's not a lot of guidance or rules or directions around exactly how organizations should be governing their ESG programs, what they're required to report and collect. So I think there's a lot of room for discussion today, and I'm excited to have this chat with you.

**Susan Corcoran:**

And thank you, Laura, for having this conversation with me because I'm very excited about the topic of corporate governance and the G, the governance aspect. And I think one of the things we really have to do is just take a step back and talk about what exactly is governance. And it's going back to your point too. It's just such a broad topic these days, and it is a lot more than what people think. It's about managing an organization in a responsible way. It encompasses a lot of different activities that certainly we've all heard about, transparency, ethical business practices, good corporate citizenship, strong leadership, board oversight to assist in assessing different areas of risk within our organization. And certainly we've heard a lot about diversity initiatives to not only within an organization, but also enhance the number of the diverse candidates on a board.

**Laura Mitchell:**

I think about governance in this space kind of synonymous with accountability. It's what are we saying we're going to do as an organization and how are we going to hold ourselves accountable to ensure that we're doing that, but doing so in a way that is appropriate and it's meeting the criteria that we set, and it's consistent with our culture and our values as an organization, as well as being compliant with any of the regulations that we have around this space or laws depending on the area that we're talking about. So I think that accountability piece to me helps reign in what governance means in this space.

**Susan Corcoran:**

And that's an excellent word to use in this particular area, accountability, because it dovetails also into the boards and also to these days we've recently heard about corporate officers too, having the fiduciary duty for oversight. And that relates to the need to have accountability and oversight over different processes and procedures within the organization, and to ensure that you catch what we refer to as red flags within the organization. And what I refer to in plain English as is those hotspots, those things that you want to make sure you catch to minimize risk within the organization. But just to take a step back a second too, one of the things that when we talk about ESG too, is the whole notion of making sure that we recruit, retain, and attract the best candidates we can to an organization.

And so we're trying to deal with that aspect of the organization. And then we're also trying to deal with the accountability piece where we're trying to make sure that we have the right processes in place to ensure that we're catching these red flags. We're monitoring our different types of programs with respect to our whistleblower programs, our sexual harassment programs, and so forth. So as people raise concerns, we're understanding what those concerns are, addressing those concerns. So this way we have an organization that is truly one that people feel comfortable

working at and really want to work for.

**Laura Mitchell:**

Yeah, I think that that's a fantastic topic to talk about because when we think about a lot of our ESG programs or our topics, they're siloed in different areas of the organization where governance does not have that oversight piece. When we think about diversity or when we think about pay equity analysis, those types of things aren't typically part of the audit committee or part of other part of the governance of an organization. But more and more that is where we're seeing this risk arise. And certainly with the SEC and the proposed human capital reporting, that's going to be more of an area where we see this traditional obligation and oversight, at least for publicly traded companies.

But private companies as well are getting the same type of scrutiny from investors, share shareholders, employees, the public. But I think it's really important for organizations to kind of take a step back before the course gets out of the barn too much so to speak, in these areas and make sure that they have that right structure and oversight and governance to these different types of programs. And that's really what we wanted to talk about today is these hotbeds or these red flags of potential risk in these areas that are now falling under this ESG umbrella where previously or traditionally, they may not have been captured up into this formal governance piece of an organization.

**Susan Corcoran:**

And what we are hearing a lot of too, from a lot of our clients and other human resources professionals, certainly different people from around the country, is that they're having to gather a lot more data these days based upon requests that they're getting from senior management to C-suite, and also too from the boards, because the boards want more information about what's going on and not that they want to micromanage. We all know that boards are not supposed to manage in organization, but what they're, again, going back to the studio of oversight, they are supposed to be providing strategy and reviewing risk with respect to an organization. And so there's a lot more pressure on everybody given that we don't have specific rules that we need to follow in gathering this information and trying to figure out how can we put these best processes in place? How can we determine, is our whistleblower program an effective one? Knock on wood, we haven't heard a complaint in six months. Does that mean that everyone's happy as can be within our organization?

**Laura Mitchell:**

Yeah. I think that the push for transparency is necessarily driving then this push for more accountability because the more that organizations are being held to talk about what's going on within the organization, or more importantly, choosing to, with the advent of the corporate responsibility reports and now these ESG reports where we're talking about all of the good things that we're doing as an organization and our values and what's going on within our employee population. If you're going to be transparent, you have to expect folks to kind of push at that and to peel back the layers and look under the hood to see, well, what's really driving that? And is it

true and does it hold up when you pressure test it? So the fact that boards are saying, “Okay, if we’re going to say this, we need to understand the data behind it.

We need to understand how we’re arriving at this conclusion, the calculations behind it.” I mean, we see that in the pay space a lot when folks are making public disclosures or around their pay gap. There’s a lot of conversations behind the scene about how did we arrive at that number? Is this the way that it’s typically calculated or standardized within the industry? Because folks want to make sure that if questions are asked, then they stand up to that scrutiny. So I do think transparency and accountability go hand in hand, and I think you’re absolutely right that data is driving a lot of it. And I think that for public companies, what they’re putting in their required reportings, whether it be the 10-K filings, that’s also always been subject to scrutiny.

But now even more so. If we say that we don’t have any complaints, the question comes up, well, what are your procedures to actually capture and report on those complaints? Are they actually adequate to capture concerns that you have for your employee population? So it really is, I think, a holistic approach that’s being driven by this shift within our nation towards transparency in everything for organizations.

**Susan Corcoran:**

And you bring up some interesting points because your area of practice with respect to pay equity and pay equity audits, to me, it’s something that is very straightforward. That’s data. And now with respect to everything else, with respect to what we’re talking about with the ESG, there’s a lot of things that we have to figure out what the matrices are going to be, how are we going to measure our success in some of these areas? And then also too, when we talk about gathering data and how do we figure out are these processes working?

How can we improve these processes and so forth, there’s a lot more uncertainty as to what the outcome might be. How do we address some of these red flags? How do we make sure we capture these uncertainties? So that’s what’s fun about these areas, and that’s why it’s important for organizations to understand the so many different laws that are impacting this different area of follow, what the SEC is doing in other particular laws, as well as train management, train the board, and constantly go through a periodic review of all of these different processes and policies and how that is managed.

**Laura Mitchell:**

And I had to chuckle, I think you might be the only person that I’ve ever heard that says pay is straightforward. And I just love it. I’m so glad that you take that perspective on it. That was fabulous. So let’s pivot just a little bit, we can talk about overarching concerns and where the potential risk can arise, but what are we seeing organizations do to try to wrap their arms around this? If you are standing up an ESG program, or are you looking to ensure that your governance procedures are robust enough to capture all of these things? What are some of the points that organizations should be thinking about as we’re seeing a focus on increased governance in this space?

**Susan Corcoran:**

Well, the problem is there's no one size fits all. So it's a great question, but there's no easy answer because there's different things that organizations are doing based upon what industry they're in. And then also too, what they may have done last year or the year before in terms of focus, they may be focusing a little bit different now, you are particularly too since we're no longer in a period that was marked by COVID. So in terms of what's going to be happening going forward, there's so much going on right now in terms of people and organizations where they are with respect to their ESG plan and disclosures. Again, people are complying strictly with certain rules and then people are doing more. And always the question is when people are doing more is are they disclosing accurately? Because certainly what we are seeing is the SEC, particularly for publicly traded organizations, are taking a little bit more closer look at what organizations are disclosing.

**Laura Mitchell:**

And I think though that you would agree with me, not to put words in your mouth, but the good corporate hygiene principles of governance still apply even in this new murky space of ESG. Right? And when I think of those, a couple that come to mind are making sure that you avoid internal potential conflicts of interest. You don't want in a reporting kind of chain, the decision maker to be the one who has oversight and reviewing to ensure that the process is being followed. Or with respect to an audit committee who's taking control of looking at financial matters. There's still some really good governance hygiene practices that apply in this space as well, wouldn't you say?

**Susan Corcoran:**

And absolutely, and we've seen some really great statistics also in this area in terms of board diversity over the past couple of years too. There's been an increase in numbers in terms of getting board seats as well as there's been an increase in females as well, getting on board seats. And there are certain underrepresented groups where there hasn't been as much progress, but still there has been some progress. So all around there's been a tremendous push. And there's a lot of organizations out there too that are assisting boards and organizations with good governance practices as well as our organization.

**Laura Mitchell:**

Yeah. And I think as we wrap up today, what would be the one piece of advice that you would give organizations as they're trying to wrap their arms around governance in this space?

**Susan Corcoran:**

I really think it's taking a step back and prioritizing and taking a look at what your corporate values are. And in terms of, from our perspective too, we want to make sure that our goal is always to try to figure out how we can best minimize risk with respect to ESG in terms of this governance area. And so to take a step back and figure out where do I begin? How do I identify what are some of the areas in which we may have risk? And where do I begin to get some further information to

evaluate how I, when I say I, the organization can best minimize that risk? And education is always an important first step towards minimizing risk.

**Laura Mitchell:**

And I think for me, it's a combination of don't be afraid to ask questions. And with the adage that just because we've always done it this way doesn't mean that's the way we have to do it going forward. And I think especially in this space, because it is ever-changing and evolving, it's good to look for alternatives and to be creative while keeping your eye on the ball of, ultimately, we're looking for good accountability, but there's not a one size fits all approach. And what works for one organization may not work for another, but I think would behoove organizations to ask those questions and think outside the box with respect to good governance strategies that fit the kind of ESG programs that they're putting into place.

**Susan Corcoran:**

That's terrific, Laura. That's what this is all about. It's not a one size fits all. It's going to depend upon a lot of different factors.

**Laura Mitchell:**

Yeah, absolutely. Well, Susan, thank you so much. This has been a great conversation, as they always are. I really appreciate your time and your expertise and insight in this topic. So thank you.

**Susan Corcoran:**

Thank you.

**Alitia Faccone:**

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