"Sustainability Reporting: Small & Mid-Cap Perspectives"

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Audio Archive

Investors are focused on sustainability efforts for companies of all sizes - but most of the commentary focuses on large-cap practices. How can small- and mid-cap companies marshal limited resources to collect & disclose E&S information?

Join these experts:

- **Maia Gez**, Partner, White & Case LLP
- **Lawrence Heim**, Director, Elm Sustainability Partners LLC
- **Katayun Jaffari**, Partner, Ballard Spahr LLP & Co-Chair of the ABA's "Governance & Sustainability" Subcommittee
- **Angie Snavely**, Director, Corporate Counsel, The Toro Company

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Liz Dunshee, *Editor, CorporateCounsel.net*: Hello. This is Liz Dunshee, Editor at the CorporateCounsel.net. Welcome to today's program, "Sustainability Reporting – Small and Mid-Cap Perspectives."

Let me introduce today's wonderful panel of experts. We have Maia Gez, a Partner at White & Case; Lawrence Heim, Director of Elm Sustainability Partners; Kathy Jaffari, a Partner at Ballard Spahr and also Co-Chair of the ABA's Governance & Sustainability Subcommittee; and Angie Snavely, Director & Corporate Counsel at The Toro Company.

Thank you all so much for doing this program. I've been very excited about it, and I'm looking forward to what you have to say. Angie is going to kick us off with some thoughts on what's becoming a somewhat controversial topic. Angie, how do you define "sustainability"?

Defining "Sustainability"

Angie Snavely, *Director and Corporate Counsel, The Toro Company*: Thanks, Liz. I'm happy to be here and talk with you all about this today. I'll share how we went about defining "sustainability" at Toro, to give you the in-house perspective of somebody who has gone through the process of formalizing an initiative around this topic.

Quite simply, from our perspective it's just to define the term in a way that's right for the company. You'll hear in our webcast today that "sustainability" is topic that covers a wide swath of different areas, such as environment, human capital management, government, governance, ethics, employee, consumer product safety, among others.

The best approach is to really focus the company on things that are material and impactful; and where you can make change in a deliberate and intentional way.

And that takes some internal analysis at your specific company, getting the right folks around the table to talk about it. And, really, then to break it down into the topics that are meaningful and which the company can organize around.

That's what we've done at Toro. We chose four different topic areas and we formalized teams around those topics; and that's where we're organizing our efforts and our focus.

So, again, it's one of those topics where you just really think about what's right for the company and that'll get you off and running; but it does take some time to really then drill down into those details of what that is.

Maia Gez, *Partner, White & Case*: Angie, this is Maia speaking. I just have a question for you. In going through the process, what we've seen is there are two approaches, which sometimes overlap but not always.

First, there is corporate social responsibility, which incorporates sustainable development into a company's business model. It is an opportunity for companies to develop good corporate citizenship, as consumers, employees and stakeholders hold corporations accountable for effecting social change and positively contributing to society with their business beliefs, practices and profits.

Second, there is the ESG long-term profitability focus of many investors. At its core, ESG refers to the risks and opportunities that could impact a company's ability to create value over the long term – and how the company is managing those risks and taking advantage of those opportunities to ensure its long-term economic stability.

At your company, did you lean towards one direction, with "corporate social responsibility," or the other, with "ESG"?

Snavely: Thank you for that question because one of the visuals that I've used shows "sustainability" as an overarching umbrella for those topics, so that it's clear that this is something that covers all of those aspects.

Part of the beginning of this was even doing education to make sure everyone appreciated that sustainability is more than environmental or "social responsibility" impacts. I didn't quite appreciate it at the time when we were going through those conversations, but in looking back I think that was time and education well spent, and just internally influencing people about the scope of the effort and what it's meant to cover.

Katayun Jaffari, *Partner, Ballard Spahr*: Angie, this is Kathy. This is really informative. Are you able to tell us the four different topics that you are focused around?

Snavely: Yes, I'm happy to. What we're doing is we have a sustainability committee, and now we've organized around four different "pillars": product, process, planning, people. And, again, it was really to create succinct and memorable categories for us to just drive focus in those specific areas.

Jaffari: That's fabulous. I love hearing those four pillars because I completely agree with you, Angie, in terms of the key to the definition. It is really all about the individual company, and the company taking into account its stakeholders.

Fortunately, with the Business Roundtable coming out in August with the statement that companies are committed to all stakeholders, this should be a little bit easier for companies to do, especially the small and mid-cap companies – the ablility to stress that idea of all stakeholders.

I think hearing your four pillars reminds me of how I used to – and still do – define "sustainability" for corporations. It is based on a definition that my co-chair at the ABA subcommittee taught me, which is really "the capacity to endure," and for corporations to look to the areas that affect or could affect their capacity to endure, which encompasses a lot of things, not just the environment as you highlighted.

For example, talking about people and why we're talking about human capital now; and how does human capital affect the actual individual company, whether it be the employees or even the customers.

Gez: Yes. That's a really good point.

Lawrence Heim, *Managing Director, Elm Sustainability Partners*: This is Lawrence. I just wanted to make a couple of points to follow up.

First off, it is absolutely critical that when you do talk about sustainability and define it within a company that you use the correct audiences' terms when talking about it. We as sustainability professionals have, for too long, used our own language which doesn't necessarily resonate with everybody or within each organization.

So, in order to get the message across I think you need to use the language of the audience to whom you are trying to communicate – which brings us to the complexity of how you educate both yourself and others within the organization about this, as Angie was saying.

Before we connected to the conference call, we were talking about the overwhelming number of conferences and seminars on ESG and sustainability these days, and how that's really confusing the message.

We're getting information overload around sustainability and ESG; and I think that's contributing to problems in the communications.

Gez: Yes. That makes a lot of sense, Lawrence, to really understand and tailor your message for the audience, to focus on the purpose of the communication and on the priorities for your company.

Jaffari: Maia, just one more last comment to ease into the next topic – this is Kathy speaking – I just wanted to highlight also, the key with the definition is ultimately – I think in terms of speaking the language of the executives, if you are teaching or training your internal executive team, is really talking about bottom line, too.

When I think of what you're doing, Angie, with product, process, planning, people, how that ultimately also affects profits.

Gez: I 100% agree. That's a great summary point. Looking to what's important to your executives and what's important to your investors, I think it's a good first step to understanding how you're going to define sustainability at your company.

Sustainability Reporting Trends for Small & Mid-Caps

Gez: The next topic we'll cover is the current sustainability reporting practices for small and mid-cap companies. I've been helping some clients with this process, and we have also been tracking practices of mid-caps. For this survey information, I am grateful for the expertise of my colleague, Heather Cameron. All in all, we surveyed approximately 90 small and mid-cap companies, and of these companies, about 20 percent had some kind of sustainability disclosure on their website.

Now, this disclosure varies a lot based on the type of company, and one of the main criteria that we should think about is industry group. By far, it was most common for energy companies to have some form of sustainability reporting.

As Lawrence has pointed out in his book, much of this reporting started with the environment. And so it makes sense that energy companies are ahead in terms of sustainability reporting. There are some industries that haven't gotten as far yet. In our survey, life sciences companies in particular were an example of this – out of 24 life sciences companies we surveyed, only one had sustainability disclosure on its website. So, the degree and amount of sustainability reporting can really vary by company and by industry.

Another factor that is important here is looking at who the investors are. So, if institutional investors like Vanguard and Blackrock are each holding 10 percent of a company's shares, that's one indicative sign that there may be increased sustainability reporting by that company.

However, if you have a dual class company or a controlled company, those companies tend to not be reporting as much. It doesn't necessarily mean that internally these companies do not have sustainability processes in place, but in terms of their sustainability reporting and disclosures, they don't have an immediate need to get that information out to their investors.

We also saw that companies with higher market caps were more likely to publish sustainability reports. Out of 18 companies that we looked at that had market caps under $1 billion, only one had a sustainability report. As the market cap got closer to the $10 billion mark, the more likely the surveyed companies were likely to have a sustainability report. I think, over time, we're going to see a lot of change in the next year, two years, three years.

So that's the next subtopic that is really just a prediction; and I throw it out to all of you as well. Where do we see sustainability reporting practices heading for small and mid-cap companies in the future?

From my experience, even companies that I would not think of focusing on sustainability reporting -- for example, companies that are in controlled company situations or situations where their investors are not asking for this information -- even for these companies, there is more of a focus than ever on this issue. In these cases, the focus is at times due to other stakeholders, such as employees, who are increasingly asking questions. Another factor is market practice – companies are seeing what they see their peer companies are doing and increasingly focusing on sustainability as a result. Lastly, at some companies, the pressure is coming from questions raised by board members and senior executives who are increasingly exposed to sustainability reporting and sustainability issues in the press and at conferences.

I anticipate reporting to increase in the next year, two years, three years. I think if we do this survey again next year, we will see an increase in sustainability reporting. At the same time, I think there are a lot of steps to get there. And I throw it out to the group for some thoughts on predictions.

Jaffari: This is Kathy. I think you hit the nail on the head, Maia. I think we will be seeing more reporting because demands are coming from different stakeholders.

I also think as companies see the challenges that are coming up, with respect to what you would arguably say is covered by ESG/CSR/sustainability – like human capital management, depletion in resources, and other things like that, there's going to be a greater need from a risk and, hopefully, opportunities perspective to look at this area internally – and perhaps that may lend to more reporting as well.

Ultimately, it's really dependent upon the resources that the companies have internally, or being able to leverage some external resources, which I think we're going to talk about a little later, in terms of how the reporting can be made available.

Gez: Yes. And it's important to think of this as a journey; it's not a race. From a securities lawyer's standpoint, there is risk involved – liability risk involved, including when you put information on your website. A company needs to go through the steps to make sure the sustainability information is

accurate and complete, and that the processes, the nuts and bolts, behind the information is thorough and comprehensive.

You want to make sure there are controls in place over this information, and that it's well thought out before you prematurely put out information. That's why it's best to focus first internally on processes and information before rushing to publicly report, whether it be on the website or in an SEC filing.

Heim: This is Lawrence. I think you're exactly right; but that almost never happens. Because sustainability reporting is voluntary, what we see – and we see this almost every single time we go out to facilities when we do audits – when we look at their sustainability or ESG information and data generated at the facility level, which then rolls upward internally to the corporate level within the organization to report externally, we find gaps and errors across the board.

There are typically no controls on sustainability/ESG information because it's considered not that critical. It's not compliance-oriented. It's not directly legally mandated. There are certainly some liabilities; but that's the big thing that we frequently find – a complete lack of controls.

I can tell you all kinds of stories about some of the rather shocking and surprising things that we found that all come down to the fact that there were absolutely no checks and balances, or controls related to the data. So, when reporting you've got to make sure the data is good.

Gez: Yes, that's really key. Obviously, for 10-Ks and 10-Qs and information that's filed with the SEC, disclosure controls and procedures are in place.

At some companies, website disclosure forms a part of those controls. There are a number of litigations that show what can happen, and the bottom line is to remember that there is 10b-5 liability that can be attached to information that is put on the website.

So you're hitting the nail on the head that we really should be focused on making sure that the information is accurate and that the information that flows from the operations level up to the folks that are preparing the reporting, that there is good communication and that there are controls in places to make sure that that information is accurate.

Jaffari: Maia, this is Kathy. To add to that, I agree that it's important as you develop plans to do your own sustainability reporting, and also if you are already doing some form of reporting, that it goes through the right or the appropriate internal control disclosure processes that you have in place.

I will say, Lawrence, I'll challenge you a little bit. No question that there were hardly any controls in any of this previously. But what I am finding now is my clients are giving me a call, whether they are the CFOs because they're small and mid-cap and they don't have internal counsel, or the GCs if they're larger, saying somebody just dropped a report on my desk and it contains information that could have an effect on public disclosure information that's already out there.

So, I think they are starting to be sensitive to it. I think if those in the industry, like us, can remind people to continue that sensitivity, I think that's what's important.

Gez: Yes. And I echo that. I think just by seeing more of these reports on my desk and having – we'll talk more about it later who should be leading this charge internally – but having legal at least involved in some level, is important in making sure that the information and the documents are reviewed.

The Corp Fin Director, Bill Hinman, clearly stated that the SEC is looking and comparing information between your information filed with the SEC and your information on your website.

So, one of the basic things that we do when we get one of these on our desk is to make sure that, based on the 10-K that we reviewed, there's no information that is inconsistent with what is going in

your sustainability report.

All of that being said, there are a lot of ways to do this. It's a journey. Getting a website up there with some basic information about sustainability efforts that is proofed and accurate can be "less is more," especially in the beginning.

Heim: I wanted to follow up on that real quick, because you mentioned legal review. I think it's not just legal review that I think is critical. I think a technical review is necessary for the technical data being reported, the units of measure, the metrics.

Are the numbers, or the source of the numbers correct? Those are the kinds of things that when we audit we find a lack of controls. So, it's not just the legal language and the narrative and the text, but the numbers themselves.

And there's a role for internal audit as well as external auditors in doing that that I think must complement the legal reviews.

Gez: Absolutely. Exactly right.

Dunshee: Maia, this is Liz. Kathy, you can jump in on this, too. Do you think that the small and mid-cap companies should be following a formal reporting framework, or is it less formal than that?

Reporting Frameworks: Overview & "Materiality" Distinctions

Jaffari: This is Kathy. I can jump on this because I was going to talk a little bit about the feasibility of formal reporting framework. I think it's possible. It depends on the company's internal resources. There are a number of available frameworks, and what most of those frameworks can do is actually provide lists of questions, lists of standards that companies can review, try to answer and then report on them. Whatever framework is used, it's important to consider everything that we just said – everything that Lawrence just said – about making sure there's an internal audit on the actual numbers, making sure that there is a disclosure-type review based on the language that is used.

I would say of the frameworks there's a couple I wanted to talk about. And I'm going to approach this a little bit with the assumption that people do not have detailed knowledge of these frameworks; and for those of you who have significant knowledge of the frameworks, hopefully this will just be a reminder. CII also published a guide to the main reporting frameworks last month, which is helpful for anyone looking for more detail on these – and it's available on TheCorporateCounsel.net. I like that the Appendix to that report was also reviewed by each reporting organization to make sure that the descriptions are correct.

But a few of the frameworks that I wanted to touch on today were the GRI framework. I wanted to talk about CDP just a little bit. And then SASB and TCFD.

Gez: Many companies are not necessarily there yet. And looking at these frameworks can almost be daunting and overwhelming because they can be so detailed.

I think in the beginning of the journey for many small and mid-caps it's saying, "Ok, what can we glean from that and how do we start?" and really focusing first on what's important for your company.

The term "materiality" in the securities laws is a very fixed definition; but "materiality" is used more freely in the sustainability world. I like to say, "what is a priority to your company? What is important, what is key, not necessarily ‘material?'"

So you look at the priorities of the company, what's key for your business. And then thinking of that first; and then when you move to these frameworks and look at what they're asking for you can say,

"well, that's just really not important to our business at all. Why would we want to report on that if it's not key information that our stakeholders would be interested in?"

Jaffari: And, Maia, it's Kathy again. I'm really glad you raised the distinction. So for all of our listeners, it's just a reminder that the world "materiality," as Maia said, is used a lot and while I don't want to be judgmental about it, for those of us who are securities lawyers, the definition of materiality and what is filed in, for example, the SEC documents by small and mid-cap companies is different.

That definition, I would argue, is different than the definition in the sustainability or CSR world. And even within the different reporting frameworks, they have different definitions of "materiality" – based on whether the perspective is looking "inward" at company impact versus "outward" at the impact on society or the world. That perspective depends in part on the intended audience for the report – for example, investors versus other stakeholders.

I loved how you just described it, Maia, in terms of importance or priorities. Just a reminder though, it's nuanced because the SEC definition is "what a reasonable investor would likely consider material in making an investment decision." And I can make arguments today that in making investment decisions what was material a few years ago is very different than what's material today.

I spoke on a PLI panel at the time when we were having all of the tornados and the storms a couple of years ago, back-to-back, that created or caused business disruptions and interruptions. And as you look at what your sustainability priorities are, what's important to the business, that may actually, in time, fall in line with what is "material", even from an SEC disclosure perspective. So there are no easy answers here; but definitely opportunities to study, review and consider.

Heim: This is Lawrence. As a non-securities person and non-lawyer, as more of a technical person and one of the sustainability professionals who may have overstepped the bounds on materiality, I've beaten this drum about defining "materiality" for a long time.

I absolutely agree with what you're saying about the word "materiality." I think it has a very specific definition and there have been liberties taken with that word by the ESG and sustainability world, of which I am a part.

Part of that is because we sustainability professionals have tried for a long time to find a real hook. And so a lot of times we are overselling the relevance of what we do using what I call "garbage economics."

I've been very critical of some of the ways that we, as environmental and sustainability professionals, have gone about trying to divine and quantify the value of what we do. And a lot of it is garbage economics. "Materiality" is the latest thing for us to grab onto to try to make ourselves perhaps look a little more important than we really are.

And I know I sound very cynical about this; but you have to be careful about looking at how you define that word, what it means, and the approaches you use for defining the economic or the financial values associated with that before you make the determination about the financial impacts.

Yes, materiality also has to do with the eye of the beholder.

Jaffari: Yes. Correct. Lawrence, this is Kathy. I think I'd like to use that as really just the jumping point for our audience to remind them or share with them a little bit – and I'll try to do this fairly quickly on a couple of these metrics just so that you have the information going forward in the future as a reminder.

So first, I mentioned the GRI. And, by the way, I do agree with Maia; the frameworks can be daunting. So we're just sharing the information with you; and over time or within your timeframe you can decide

how you want to sift through them based on, as both Angie and Maia said earlier, what are the priorities for your specific company.

First is GRI, the Global Reporting Initiative; www.globalreporting.org, was established a long time ago. This is not new information – 1997 with guidelines coming out in 2000. But the standards were not launched until 2016 with a 2018 effective date.

They're actually laid out to try to help organizations prepare sustainability reports; and their disclosures are focused on ESG – so Environmental, Social and Governance, with a heavy emphasis on stakeholder engagement. And they do use an "outward looking" concept of "materiality." So, I won't repeat what we've already talked about there.

I will say, though, GRI has a global reach and so with respect to a small or mid-cap company that has international presence it's a good framework to at least consider. GRI also specifically contemplates different levels of compliance as companies begin to use the framework, so that can be helpful.

I also mentioned CDP. CDP is somewhat different. It was known as the Carbon Disclosure Project, www.cdp.net, which was launched in 2000. And it's actually not a list of standards, but a list of questions. It's really focused on a company's activity as it relates to climate change.

They're now getting into water security and forests, so they go beyond their original focus on carbon. I think it was Maia who might have mentioned earlier, the idea here is CDP is probably very useful to certain industries as opposed to others. Although I will say, as a law firm, we have gotten supply chain disclosure requirements having to do with how we handle our paper and our recycling programs, because there may be a link between that footprint and deforestation.

The other two that I just want to highlight are SASB and TCFD. I'm sure everybody has heard a lot about both of them. SASB is the Sustainability Accounting Standards Board, www.sasb.org. It was established in 2011, and it launched its standards in 2018. So, some of these, again, are very new.

It applies to U.S. public companies, and it attempts to list industry-specific issues that are deemed – again using the word "material" – but focused "inwardly" on what's material to the company and investors. The SASB standards were actually developed by reaching out to investors based on certain industries and are based on accounting concepts.

SASB provides a detailed "materiality map" to identify what sustainability issues are likely to affect the financial condition or operating performance of companies within an industry, and they've provided 77 industry-specific standards to assist companies with disclosing useful information. Some of the standards are mandatory if you want to say you're reporting in accordance with the SASB standard – others are recommended or optional. SASB also encourages companies to use the standards as a guide even if they need to modify or omit some disclosure topics and/or associated metrics – but the change or omission and the rationale should be disclosed.

Finally, TCFD is the Taskforce on Climate Related Financial Disclosures that was created in late 2015 and launched in 2017 with some recommendations. These can be complied with using the other frameworks. The areas that are covered are governance, strategy, risk management and metrics and targets.

The key to that framework is really all-around financial statements and climate related impacts financially. It's the only one that strongly recommends scenario analysis testing of its resulting disclosures. With that I think I'll throw it over to you, Lawrence, to jump in on the "how" since I talked a little bit about the "what", and what investors are looking for in terms of the information.

How to Select & Start Using a Reporting Framework

Heim: Yes. Thanks for that. That introduction is absolutely critical. The basic question is "are there frameworks that subject matter experts or mid-caps can leverage?" I think the answer is "yes."

First off, if you are going to look to one, I would suggest you look to one of the major ones. There are a number out there that are minor reporting frameworks. I don't think they have a whole lot of credibility.

I would not look to something that is not relatively well-known. I know a couple out there that have been used, and they lack credibility because they're either brand new market entrants without much backing or they're simply unknown entities.

So, I would not suggest looking for anything that is not one of these four primary market leaders [GRI, CDP, TCDF, SASB]. There are industry-specific ones that may be valuable; but just take a hard look at that.

Jaffari: Lawrence, I think that's so important that you raised that, especially for the small and mid-cap companies because if you are venturing into this area you want to have that credibility behind you.

Heim: Absolutely. You don't want to start down a path that is meaningless, especially these days when we're taking another look at "green washing", or in these days that's now called "green wishing." We don't want anybody going down that road.

But these standards, these frameworks are indeed rather daunting. They have their own language that most folks don't understand. You don't have to eat the elephant in one bite, right? There's an opportunity here to begin a path towards becoming, if you will, fully conformant with a particular standard.

So maybe your first year of reporting, you say, "we're looking towards" – let's just take GRI – "but we weren't able to achieve full GRI conformance on our first year, so we followed these particular elements or components of the overall GRI standard." You would want to clearly explain your approach in your report. That helps you gain credibility, especially because it's factual and it makes a lot of sense.

And that allows you to begin to "eat the elephant" bite-by-bite. And when you look to what your investors are seeking, again, they want to see credibility. They want to see clarity. They want candor, to the extent that they can identify what is actually truthful and candid. And they want to see that you're using something that they are familiar with.

And that takes us back to the framework. If you use some framework that is lesser known, investors may not know exactly what it is or be familiar or comfortable with it, and so that might not drive them towards the direction that you're trying to get them to by reporting in the first place.

Gez: That's a really good point. Before launching into one of these frameworks, companies should focus and really engage with the stakeholders who are the recipients of the report, and attempt to assess what they're interested in, and think about their main goals for this reporting.

So, if your investors and the key investors that you want to communicate with are looking at SASB as opposed to GRI, then SASB should be more of your main focus as opposed to GRI.

It's important to try to be able to assess which framework would be most meaningful to the stakeholders that you're trying to get at. I think that's one aspect.

The other aspect is in what format and how. I think for the most part, this information appearing on websites has been received and reviewed by investors whether or not it was in a proxy statement or other SEC filing. In other words, many investors are paying attention and do not need an SEC filing to

receive this information; a website sustainability page can be sufficient to get the message to your investors.

So, the goal is to get that sustainability information across using the standards that your investors (or whoever you're trying to get the information to),are focused on, and to get that sustainability information in the right format and in the right location to make the most meaningful impact.

Heim: No matter what framework you select, brevity and conciseness are far more important than how pretty the report looks, how many photos of deer and meadows do you have, and long poetic prose.

I'll give you an example. There is a major European company last year who filed their financial report – they don't report to the SEC, they actually are under the French stock exchange. And they reported their annual financials in a 100-page document. Their CSR report was 300 pages long; and I think that's just fundamentally wrong.

Snavely: And, Lawrence, it goes back to the very beginning of this, too, where you've really got to look at that definition of "sustainability"; and the company has to really understand what's important to them as well to drive that disclosure.

Practically, from somebody who's not an expert in this and just learning in this as we go through the initiative – as you said, you're not going to be able to report on all of the components of GRI the first time out.

If you aim for perfection, it's going to take forever to get there. So just start. Put your goals out, your timeline. Look at what's important to you and know it's going to evolve over time. But just get started. "Start somewhere," is the perspective I have on this.

There's likely things that you can already talk about that you're doing, and don't be too bogged down into complying 100 percent with one specific standard. It can be a point to inform the process; but don't feel overwhelmed or burdened that you can't move forward because you're not ready. If you say you're reporting under a particular framework, you just also need to communicate how you're deviating from that framework.

Jaffari: Angie, this is Kathy. I completely agree. And hopefully, we're highlighting that the key is based on your internal resources. You may not internally have a dedicated person who can do this work, or even a partially dedicated person who can do this work.

So, the idea is really to start somewhere. Start where it makes sense for you to start, based on not only your stakeholders' requests, but what you can do internally. Angie, I'm sure as you're going through the reporting process, you're seeing that some of it is time-consuming.

Gez: I have this question to put out to the group and Angie in particular. I think there is a tension between putting out sustainability statements that are broader and might be not making a very direct point, and so not data driven.

On the other hand, you can have information that is very data-driven and providing how many electric cars does your company use, or what kind of environmentally friendly steps and what quantities you're using as opposed to saying, "oh, we aim to be environmentally friendly", a broad statement.

There is that balance and tension here as companies go about it, of making more concrete statements with data as opposed to information that is on a higher level and broader that can be made more generally.

Based on my experience, I think investors are looking for that information with data, that specific information; but I'm curious as to all your thoughts about that. I think it's another thought or step to

think about in the journey.

Snavely: This is Angie. I think that Lawrence was hitting it well before on the data part. The data needs to be credible, and that just takes time. Lawrence, you also recommended that companies communicate in the report about where they see themselves going, and that's a great approach too.

So, I don't disagree that the need for data-driven disclosure is there. I just think with resources, sometimes it's going to take a bit of time for some of that harder data to get pulled together and vetted, and so it is a credible data source.

But there are also other items – "low-hanging fruit" – that companies could be talking about to give more specific data to support some statements on the strategy and the philosophy of sustainability. It doesn't take going into all the plans and pulling all of your utility records and so on and so forth.

Gez: Yes. This is Maia. That makes a lot of sense with the low-hanging fruit. Clients that I speak to, there are many things that they're already doing internally that they're just not necessarily reporting on because it might just be in different departments or other parts of the company or locations and offices in the world.

And it's really about organizing and first understanding, "What steps have already been taken and what can we already report on without having to prepare more and gather more information?"

Snavely: That was an aspect that we just went through here, and what you said is right on, companies are finding themselves – the scores and the ratings that they have aren't actually reflective of the company. That's certainly true in our case. And it is a factor of being more intentional and deliberate and transparent in your initiative, and making sure you're bringing the right people to the table.

So if you don't have a dedicated department, for instance, how we're approaching this is by a committee, making sure it's cross-functional, cross-divisional, it has certain subject matter experts and people that are passionate about the topic.

And you're really covering the gamut so that you're getting a good inventory, for lack of a better word, of things that you're already doing so that that can help be a baseline disclosure point.

Heim: This is Lawrence. One of the things along these lines as well that I would caution against, though, with low-hanging fruit is make sure the low-hanging fruit are meaningful.

If you're a chemical manufacturing company and you're reporting on how much paper you recycle and your aluminum can recycling program within your offices, honestly, folks are sophisticated enough to see through that.

So, the low-hanging fruit are important; but you've still got to make sure that you don't go overboard and ignore meaningful aspects of what your business is about. Otherwise, you will be seen as not credible.

Gez: Yes. That's a good point.

Dunshee: This is Liz. I was just going to suggest, too, Angie – I think you've touched on it. But if you have any other tips for getting the sustainability reporting initiative off the ground, working with people internally and understanding what type of information investors and other stakeholders are looking for, I think that would be nice to discuss as well.

How to Get a Sustainability Reporting Initiative Off the Ground

Snavely: Yes, sure. I can give a few more tips for folks that are listening about how, if you feel like is needed at your company and doesn't currently exist, how you can go about starting to formalize and influence around this topic.

In particular, those of you that may have a governance corporate secretary or, frankly, even investor relations roles, this is front and center in our world and it has been for a couple of years now. So, the time is right certainly to start to influence for the education of your executive team and your board to start to talk about this topic in a more deliberate way.

As I mentioned, for us it just made sense. We don't have a department here focused on this, so we did formalize a sustainability committee. It's a small cross- functional divisional team to really vet all the things we just talked about from the definition to materiality, so the approach or how we're going to go about.

And then we've organized broader teams under each pillar to really focus the effort. Having a focus and then also developing goals and a timeline to, again, make sure it's clear that this is a process and not a race, and there's things that have to happen so that you can be authentic.

Authenticity is really important. The company message has to be authentic and not just convey that you're doing it because everybody else is. You want that report, whenever you come out with your disclosure, to really reflect who you are as a company, so it would be genuine and authentic. And you do get that when you use a cross-functional division approach.

Also, having other voices at the table provides that level of credibility so that you are focusing on things – Lawrence, to your point – things that matter and are important and not just throwing out disclosure that really isn't all that relevant for the industry that you're in.

And then really working through the channels, communicating and influencing at an enterprise level, to ensure that it's supported and that folks understand the importance of it. And that just helps you then continue the momentum going forward.

But we always keep our team grounded by emphasizing the importance of the steps in this process. So we keep getting steps done and we'll keep moving it forward. But it's not going to happen overnight.

Jaffari: Angie, this is Kathy. I just wanted to highlight something you touched on regarding the board and really educating management and the board.

I actually think one of the key components of sustainability reporting initiative is really having the board on-board. And I know this is not easy. I may be saying something that folks would say, "Well, that's not going to happen because our board is not going to focus on it."

But I think for the small and mid-cap companies to really get the credit that is deserved if they are taking this on, if they choose to take it on, you really want the board to be on-board; and education of the board is, I believe, very important.

Snavely: Yes, that's important. It's also likely your board members are either executives in other companies or they're on another board. So, they're hearing about it. If you're not talking about it with them, they're hearing about it likely through other channels. And it's something that, while we're mid-cap, it is something that's well-recognized as something that is important and deserves attention.

Jaffari: And, Angie, don't you think – I feel that based on the attention that it deserves, and it needs, that's where the level of governance comes in. That's why I would go so far as saying it's imperative that the board understands it and is involved in it.

Of course, that is dependent upon the organization what that involvement means and looks like. But I do think it's an imperative, because if we're ultimately talking about the shareholders and all stakeholders, that's where some accountability can be. But also, that's where the tone at the top can come from, and that's where the support can come to management.

Snavely: I would say right now, certainly presenting the topic to a board or relevant committee is important and should happen, and giving them an idea where you're going with your efforts.

But I think you nailed it with the tone at the top. And I think there, it's having executive, CEO, general counsel, other executive support. That support is instrumental and critical for the effort.

Heim: This is Lawrence. It's interesting you bring this topic up because, not only is it critical but earlier today, *IR Magazine* published an article about a recent PwC survey of 700 board members.

The results of that survey where the board members are now suffering from diversity and ESG fatigue. They feel that they're being hounded far too much about diversity matters and ESG matters.

And to me what that says is these are board members who are not educated on what the issues are, why they are important and why investors are asking about them. You can go to *IR Magazine* – I don't have the website in front of me – you can see the results of this survey.

Dunshee: Yes, and we have that underlying survey available in our "Corporate Governance Surveys" Practice Area of TheCorporateCounsel.net and we'll be blogging about it sometime soon.

Jaffari: Lawrence, you're absolutely right. And the results of that survey have been – not that one particular – but there are numerous surveys and information out there that there is board fatigue; but I'm so glad you highlighted that the fatigue may stem from the type of education the board is getting.

It's the education. Maybe not the lack thereof, but maybe the incorrect type of education around this topic. And maybe that goes – I've had the opportunity to review your wonderful book, *Killing Sustainability*; so maybe it goes towards how we're using the word, although I do love that word.

Gez: Yes. I think it comes down to being very company and board specific. You can have boards that need to be educated about why this is important for that particular company. If it's not a controlled company situation, they may be looking at whether that particular company's investors and institutional investors are focused on it.

Or you can have, in the first year after an IPO and a company is controlled, and that board is not focused on it; and if it's raised to that company and after discussing why this may be important, then they can determine that at this time it's not where they need to be putting their efforts, it's just a slower journey for that company at that time.

So, it is very company and board-specific – who are your investors at a particular time as opposed to all companies, this is important at the same level for all companies.

Snavely: This is Angie. I think it also comes down to just being honest with yourselves as a company and laying out goals, internal goals over a period of years and having a high-level timeline. I think that helps just guard our support as well.

Gez: Yes. And that could also be a timeline related to where you are in your public company journey. For example, right now you may be a controlled company, and you can be focused on improving your processes internally and assessing your sustainability priorities; but you don't necessarily need to come out with a comprehensive sustainability report if you don't have the resources right now, and if your investors and other stakeholders are not looking for that information. In this journey, you can think about "What are your goals over the long term, and after three years or so, once your controlling

shareholder might sell down, when your investor base changes, what steps should be taken now to be prepared for the sustainability disclosures we may want to make in the future? "

There is also variation here board by board. I think it's the responsibility of management and the corporate secretary's office to take a leading role in sharing with the board what "sustainability" means and why it's important.

Once the board has that discussion, it can determine what exactly to focus on, identify particular sustainability topics that are priorities and talk further about those, as well as focus on that in the company's sustainability reporting.

Also, think about how that affects the disclosure in the proxy statement on board oversight of sustainability. I would also add that Glass Lewis is looking to see identification of board members who are responsible for sustainability and ESG issues. I think that is increasing, so companies should think about which board committee and which directors are going to be your ambassadors, the ones who are the experts on this topic.

Jaffari: Can I ask a quick question on that? What are you all seeing with respect to – and it could be a tip for the small and mid-cap companies – where sustainability is sitting at the board level? Or where it could sit, whether that's the governance committee, a separate committee?

If it is a separate committee, what do you call that separate committee, since governance is the "G" in "ESG" and may be wrapped up with sustainability? Any quick thoughts on that?

Snavely: Well, the natural fit for Toro was in our governance committee because we were already looking at governance ratings across the board.

Gez: I think to some extent it depends on investor focus. We did survey committees and we see an increasing trend of nominating committees taking on that role, especially if it's an investor focus.

I would hesitate with small – at least in my small and mid-cap clients suggesting they form a whole new board committee. I think there are advantages to handling through one of the existing committees or thinking of particular directors who will take on this role or expertise for the board.

Jaffari: Agreed, Maia. I think that's excellent advice. Thanks.

Heim: I would go a step further at the more tactical level beyond the board. Within the actual organization, within management, where should this sit? I'm open to ideas there, but I will make this one comment, and this might generate some negative comments, which is fine.

But my experience is that when you have an ESG function that is under the umbrella of marketing and communications, that tends to mean that the ESG function is the weakest that perhaps it could be.

And the reason why is because that means that the emphasis is on reporting only, not on implementation, not on operationalizing what you're doing. It's more about, if you will, window-dressing.

So, if I have one comment to make to the audience about where they might organizationally look at putting ESG, if you want to put it under legal, I think that's absolutely fine. Some kind of governance structure, that's fine.

But if you're putting it in marketing and communications, people are now starting to see that even that alone is sending a message about the perceived importance, or lack thereof, of the ESG function.

So, I would highly recommend finding another home for it.

Jaffari: Lawrence, I agree with you. I think it needs to be part of – whether it's operationally, whether it's an audit area, whether it reports directly to a business function or the business functions, or, of course, legal, when it comes in line with the concepts of disclosure. So, I would not challenge that. I agree.

Gez: I agree, too. I think also we need to be thinking when you have a sustainability report, it covers many different topics. So, I think Angie spoke to this as well, it is really about involving the right people.

For example, if you think about a management-level sustainability committee you have human capital topics. And there you will need HR taking the lead on those topics. You have environment, supply chain –there you're going to need involvement from operations within business-units. So you're going to need a cross-functional team involved in at least drafting initial drafts or contributing and reviewing to provide the information, because we're talking about a report that can cover many different topics.

Dunshee: Thank you for bringing that up, Lawrence, and for everybody adding their perspective. Those were really all good points. That's also a good segue to talk about how outside advisors can be involved, whether they should be involved, and exactly what they can do in assisting with a company's sustainability reporting. Lawrence, do you want to briefly touch on that?

How Outside Advisors Can Help With Sustainability Reporting

Heim: Yes. I think that there is a question of resources within especially small and mid-caps. I run into this all the time because it's not a legally mandated disclosure. Many, many companies, again, specifically small and mid-caps, are choosing not to spend a whole lot of resources on this.

And that's probably not the right thing to do. It's very valuable to bring in external resources – legal experts, clearly, on the disclosure side. You need technical experts to understand the data, metrics, units of measure, a and the data reporting and aggregation frameworks.

These are all multi-disciplinary elements that have to go into this. Again, it's more than just reporting. And even if you're just starting down this road, just utilizing your internal resources probably is not going to provide you a satisfactory end result.

It's really important to bring in a range of external resources. And I know I'm sitting here telling people to spend money on stuff they really don't want to spend money on.

Dunshee: What exactly can an outside advisor help with in getting this off the ground?

Heim: Well, again, it's understanding the frameworks, the reporting frameworks; helping companies with the various frameworks and, whether or not they're credible, whether or not they may resonate with the particular audience.

Helping to ensure that the multi-disciplinary team internally is part of the process. And, again, the data, the numbers, where might there be good data? Where might there not be data yet that needs to be developed? What level of effort may be needed to develop and vet that data?

Jaffari: This is Kathy. I think there's a couple of other things, Liz, that also can be done. For example, the training piece of it. There's a variety of ways that you can get reasonably priced training, in terms of whether it's training of the board or training of the management.

It's what Angie started off in talking about when she talked about the definition of "sustainability" and making sure that a particular company understands it in general and understands what both the investors and other stakeholders are really looking for. Outside help can include actually an analysis – a reasonably priced analysis of how those frameworks can work with a particular company.

I know we've helped clients previously in terms of – small and mid-cap as well – in terms of looking at the frameworks and helping them distill the frameworks, just as we were talking today in terms of how to make it as applicable as possible to the company because many of us have worked within those frameworks.

Dunshee: Thanks, Kathy. I think we'll end on that note since we're just slightly over, unless anyone has anything else to add as a parting talking point. All right. Well, thank you so much to all of our panelists for participating today. We packed a lot of information into this hour! And thanks also to everyone who joined us to listen.

The audio archive for this program will be available shortly, and we'll post a transcript of the program in a few weeks. Have a great day.