


UT LAW | **CLE**


TEXAS Law
 The University of Texas at Austin
 School of Law

WTF DOES ESG REALLY MEAN FOR M&A?

CHAUNCEY M. LANE
 Holland & Knight LLP, Dallas, TX
Moderator

DIEGO E. GOMEZ-CORNEJO
 McDermott Will & Emery LLP, Dallas, TX
Panelist

JOHN JERICA HODGE
 Katten Muchin Rosenman LLP, Washington, DC
Panelist

ROBERT B. LITTLE
 Gibson, Dunn & Crutcher, Dallas, TX
Panelist

DAVID A. KATZ
 Wachtell, Lipton, Rosen & Katz, New York, NY
Panelist

1

UT LAW | **CLE**


TEXAS Law

ESG Trending Upward: KPMG 2023 ESG Due Diligence Study

- 53% of investors have cancelled a deal because of material findings in ESG due diligence.
- Most investors (74% of U.S. and 82% of EMA) are now including ESG in their M&A agenda, including 72% of financial investors and 76% of corporate investors in the U.S. compared to 94% and 77% of EMA investors respectively.
- Investors will be conducting ESG diligence more frequently in the future, with 48% of EMA and 27% of U.S. investors now saying they will do it frequently (on more than 80% of deals), up from 25% for EMA and 16% for the U.S. for the previous two years.
- 68% of EMA investors and 62% in the U.S. said they would pay a premium for a target that demonstrates a high level of ESG maturity that is in line with their ESG priorities.
- Business leaders identified M&A efficacy as the top area in which ESG is adding value to their businesses, with 41% reporting that ESG engagement adds major financial value.

2

What Does ESG Mean and Why Does It Matter to M&A?

- ESG is a set of standards that measure a business's impact on:
 - **the Environment** (e.g., climate, biodiversity and CO2 reduction); and
 - **Society** (e.g., human rights, workplace health and safety, and diversity and inclusion); with
 - **Governance** (e.g., risk management, executive compensation and compliance) as the connector.

3

What Does ESG Mean and Why Does It Matter to M&A?

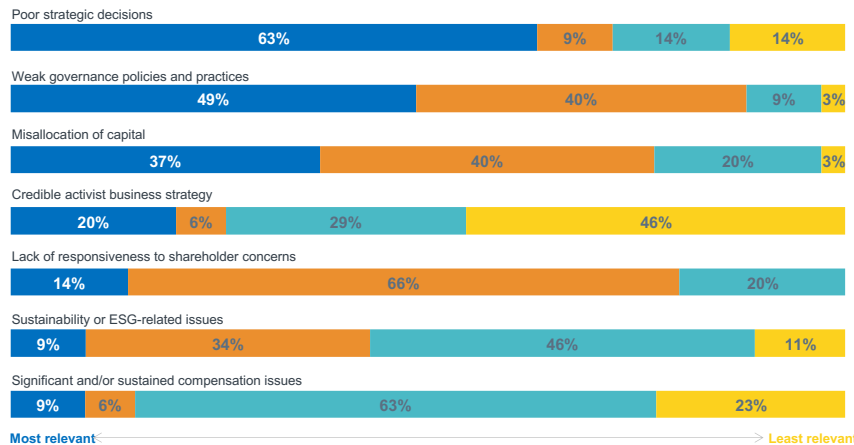
- Reputational risk to buyers
 - Customers
 - Employees
 - Investors
- Fiduciary obligations
- Investor focus on ESG issues
 - Institutional investors
 - Limited partners of private equity sponsors
 - Activist investors

4

Influencing Institutional Investor Support

"In addition to poor financial performance, what factors lead you to support activist initiatives?"

% of Institutional Investor Respondents



Source: Morrow Sodali.

Institutional investor support is frequently outcome-determinative in proxy contests. Activists are becoming more sophisticated in engaging with them.

5

5

ESG Activism

	Engine No. 1 teamed up with CalSTRS in a successful campaign against Exxon		Criticized Bayer for undervaluing the sustainability potential of its crop sciences division
	Criticized pork sourcing practices at McDonald's and Kohl's and later nominated two directors at each company		Called on Asbury Automotive to improve workforce diversity
	Criticized the lack of gender diversity on the board of Commvault; pushed to separate SSE's green and brown assets		Criticized TEGNA for lack of board diversity
	TCI launched "say-on-climate" campaign		Campaigned to oust CEO of Solvay following seawater pollution
	Called for the separation of Royal Dutch Shell; cited carbon footprint reductions in pushing Prudential to "break up" in 2020		Criticized Guess for failing to address sexual harassment allegations

- Activists have leveraged ESG as a wedge issue to rally the support of institutional investors around economic and governance theses; some are also raising ESG concerns as a stand-alone thesis, particularly where the issue is closely tied to strategy or operations, or is a crisis event that has materially impacted the company's reputation or performance.
- Growing recognition of ESG factors as independent drivers of long-term value has continued to drive institutional investor support for ESG activism, although support appears to have plateaued recently.
- ESG activism in the insurance sector has become political: lawmakers in red states are looking to limit the extent to which insurers can weigh ESG factors in their underwriting policies while lawmakers in blue states are looking to limit underwriting of fossil fuels.

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: WTF Does ESG Really Mean for M&A?

First appeared as part of the conference materials for the
19th Annual Mergers and Acquisitions Institute session
"WTF Does ESG Really Mean for M&A?"