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GUEST COLUMN: Emerging Risk: Corporate Social Responsibility and ESG

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Corporate Social Responsibility (CSR) and Environmental, Social, and Governance (ESG) are increasingly important considerations even for private-owned companies and not-for-profit organizations. These concepts can carry potential risks organizations should be aware of when preparing to implement a public-facing policy.

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Why are companies creating ESG policies?

Organizations are keenly aware that implementing ESG policies can help enhance their reputation, which can attract customers and investors who are increasingly conscious of the social and environmental impact of the business they support.

By prioritizing social responsibility, companies can build stronger relationships with customers and employees which can lead to improved brand loyalty and reduced employee turnover. Companies see ESG policies to demonstrate a commitment to making a positive impact on the world, which can help build trust with customers, employees, and other stakeholders.

Additionally, publicly traded companies feel growing pressure from investors and other stakeholders to be more transparent about the efforts they are making toward ESG initiatives.

However, increased transparency comes with some risks, particularly in the directors and officers (D&O) space. Whether your business chooses to create an ESG policy or not, it is important to recognize the associated risks.

What risks are associated with ESG?

ESG is essentially a formal policy that details the accountability being placed on an organization *and its directors and officers* to make progress on environmental, social, and governance-related initiatives. Through this lens, it is easy to see how ESG can open doors for D&O risk.

Today, large publicly traded companies are most likely to experience ESG risk because of increasing demand for ESG disclosures. Though ESG litigation has not become commonplace yet, the D&O landscape is continuing to evolve. Claimants could argue in the legal arena that organizations are not living up to their ESG promises, and your organization (and therefore your directors and officers) could be held accountable for falling short. Be prepared to mitigate these risks.

A clear ESG strategy is important to develop, monitor its progress and consider consulting with your insurance and risk management advisor on the associated risks.

Although ESG risks are most at play with large publicly traded companies, privately held companies and not-for-profit organizations would be well-served to examine their own policies (or the decision of whether to create an ESG policy) and prepare for the possibility that companies other than public may be required to disclose their progress on these policies in the future. Planning today for tomorrow's risks can put organizations at an advantage in the marketplace.

Please reach out to Jeanne Flanagan, M3's director of management liability, or your M3 account executive to discuss the risks and requirements your company may face based on your approach to an ESG policy.

Other Articles in this Issue