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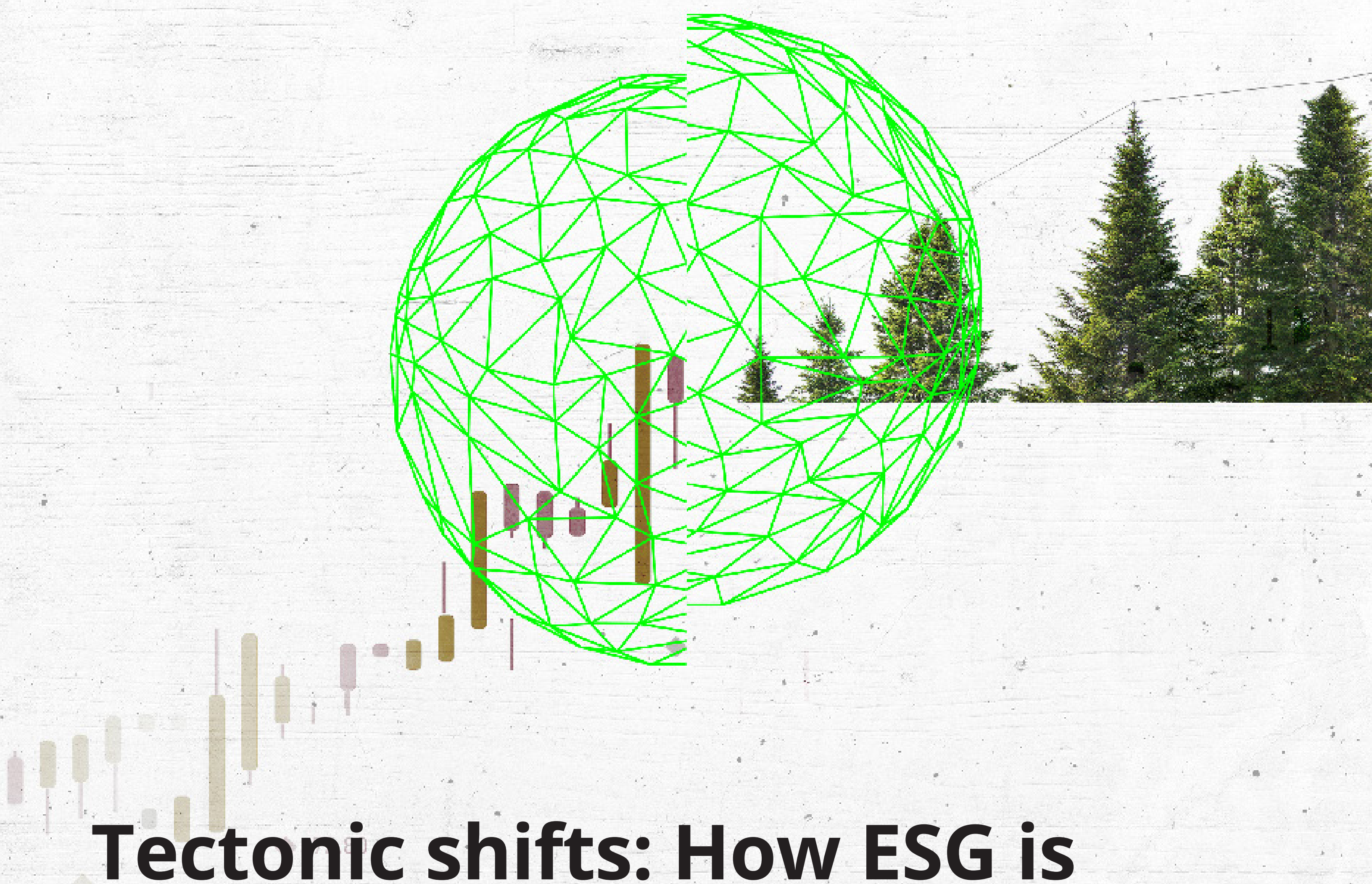

# Tectonic shifts: How ESG is changing business, moving markets, and driving regulation

Propelled by the planetary emergency and the drive for transparency, global sustainability reporting standards and ESG disclosure regulations are coming. Boards and C-suites should prepare now, and could find new opportunities to create value.

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# Foreword

THE BUSINESS LANDSCAPE today has been transformed by climate change, nature loss, renewed calls for racial equality, a demand for improvements to working conditions, COVID-19, and changing expectations of the role of corporations.

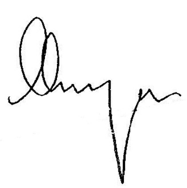
To continue to thrive, companies need to build their resilience and enhance their license to operate through greater commitment to sustainable value creation that embraces the wider demands of people and the planet. The companies that hold themselves accountable to their stakeholders by increasing transparency will be more viable—and valuable—in the long term.

Supported by Deloitte and other leading professional services organizations, the World Economic Forum's International Business Council has been working together to identify common ground on the environmental, social, and governance (ESG) themes and metrics that matter to enterprise value creation. The aim of the project is to improve the ways companies measure and demonstrate how they are integrating considerations relating to people, planet, and prosperity into the core of their business.

Now we're ready to take the next step and enhance our collaboration to achieve a foundational set of globally accepted sustainability performance standards, just as we have for financial performance. To achieve this, we need to complete a system change.

We need to adopt a common set of global sustainability standards and endorse them in capital markets. We also need to enhance the effectiveness and transparency of the mechanisms that boards use for oversight, control, and verification of sustainability information, including assurance. Both the World Economic Forum and Deloitte support this goal and the organizations that are working to achieve it, in particular the International Financial Reporting Standards Foundation and the International Organization of Securities Commissions.

The World Economic Forum and Deloitte urge business leaders to pause and consider how ESG transparency and mandatory reporting will impact them, and what they can do to contribute. The shifts taking place today are among the crucial challenges of our time as we work to transition to a sustainable, inclusive, and resilient business world tomorrow.



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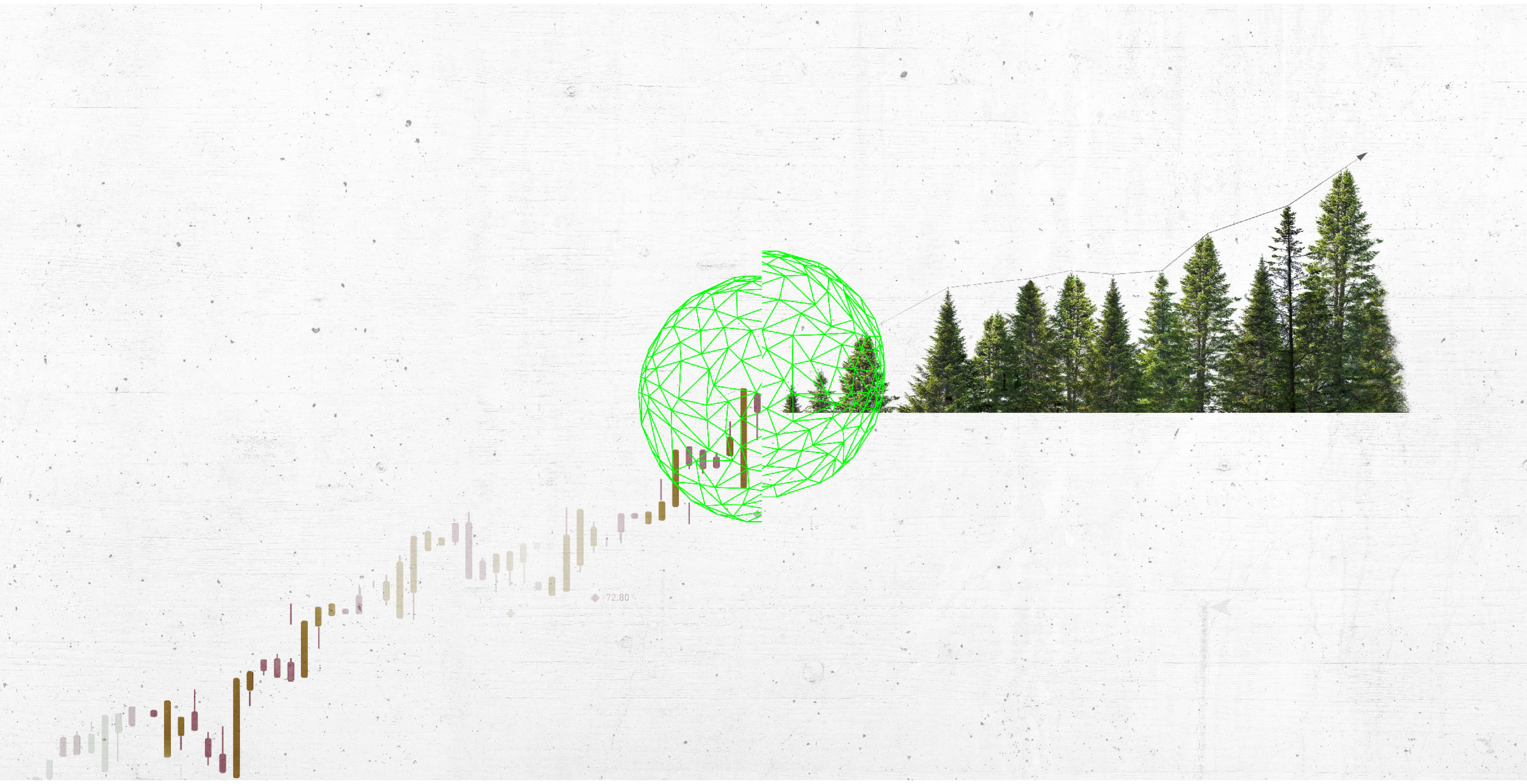
# Why there is no going back on ESG

ACROSS JURISDICTIONS, REGULATORS are finalizing new rules that will require companies to disclose information on their ESG footprint in their annual reports and mainstream regulatory filings. Unlike some regulatory changes, the introduction of ESG data into financial reports will likely make a lasting impact on how business gets done because these signals from regulators respond to a deeper truth about what matters to the world today.

Increasingly empowered consumers and more activism-oriented investors are pushing organizations to address ESG issues concretely and transparently. They are looking for organizations to put purpose at the core of their operations, caring for the issues that concern their employees, communities, industries, and the world at large. They are fueled by the transparency afforded to them in the digital age and they are increasingly putting their money where their values are.

Like the movement of the tectonic plates, these shifts in the operating environment for business have been slow but relentless. Boards and C-suites that can get ahead of ESG disclosure regulation can build a business that meaningfully integrates ESG into its strategic planning and is better poised to manage risks, while also delivering shareholder value and increasing their organizations' resiliency in a changed world.



# Companies today are in a global dialogue with stakeholders about what matters to them

THERE IS NOWHERE to hide in the digital age. In the past, companies created products for "consumers" who had little to no knowledge of how businesses were being operated and resources consumed in the development, use and, ultimately, disposal of those products. Today, people from around the globe, including employees, suppliers, business partners, members of the community, activists, and society at large, are equal participants—stakeholders—in a direct dialogue with your company about what they expect from your business.

Stakeholders value transparency because it enables them to make informed choices. A recent survey for the Edelman Trust Barometer, covering 28 countries and cutting across age groups, found that almost two-thirds of all respondents said, "CEOs should hold themselves accountable to the public and not just to the board of directors or stockholders."[1]

For the generations who have grown up with the information they need to support their calls for accountability and the channels to amplify them, their expectations are high. According to the Deloitte Global 2021 Millennial and Gen Z Survey, millennials continue to push for a world in which businesses and governments mirror that same commitment to driving positive change for society, putting people and planet ahead of profits.

Perhaps even more profoundly, the global flow of information and digital platforms have helped raise awareness of ecological and social crises around the world.[2] Climate strikes and other highly visible actions from groups such as Extinction Rebellion and the #MeToo campaign have captured global attention and galvanized opinions. This digitally enabled transparency has been reshaping the business landscape for some time and it has, in turn, caused another tectonic shift: changing societal expectations on how companies should be playing their part in addressing these issues.

**Stakeholders value transparency because it enables them to make informed choices.**

As consumers, people increasingly want to purchase products they view as sustainable across the entire value chain, including matters of equity and equality.[3] They also want to believe that their consumption habits won't negatively affect the environment and many of them are fearful of the overall impact of climate change. In April 2020, with the pandemic spreading, a study of citizens across 14 countries revealed that more than 70% of respondents agreed that in the long term, climate change is as serious a crisis as COVID-19.[4]

As employees, people are increasingly concerned with the ESG activities of their employers across all geographies.[5] Thirty percent of respondents in a 2021 Deloitte survey said they would consider switching jobs to work at a more sustainable company,[6] and a 2021 Gallup survey shows that seven in 10 US job seekers care at least somewhat about a potential employer's environmental record.[7] And this message is getting through to employers: In a 2019 survey of business leaders by the Environmental Defense Fund, 85% believed their employees would hold them more accountable for their impact on the environment, a 13-percentage-point increase from the prior year.[8]

**Modifying existing practices to better address environmental and social sustainability matters is simply good business.**

As these pressures build, an organization's ability to respond to critical environmental and societal expectations can ultimately affect its social license to operate. In some cases, if an organization's products, business practices, or brand becomes socially unacceptable to stakeholders, the business model itself could cease to be viable. Modifying existing practices to better address environmental and social sustainability matters is simply good business: It can help win customers, attract and retain talent, reduce costs and increase efficiency, and minimize risk and potential reputational damage. By providing an open exchange of information with the public, stakeholders can see that your business respects their views. This dialogue, in turn, transforms into a new form of market value. It becomes trust.

# ESG integration is an opportunity for companies to refine, protect, and create business value

SOCIETAL DEMANDS AND market dynamics may be prompting organizations to re-examine their offerings, but this effort is not about altruism or philanthropy. When a company starts looking at itself through the lens of ESG, it is called to clarify the key drivers of business value, accompanied by an equally thorough effort to measure and report on what matters now.[9]

Leaders who practice integrated thinking set ambitious targets, are prepared to be agile in the way they run their business, and are not afraid to be held accountable. They are also willing to rethink their business models to better respond to new realities or to take advantage of new opportunities, all of which can turn risk into competitive advantage.

## Authenticity builds trust, and trust is the bedrock of business value

As the world begins to decarbonize, for example, new market opportunities will arise for businesses to create products and solutions for a low-carbon world that uses less energy and natural resources, emits fewer greenhouse gases, and can help mitigate climate damage and regenerate natural systems.[10]

As organizations have started nurturing new value creation opportunities to address ESG issues, investors are likewise looking for data to help them identify companies that are managing these issues and seizing opportunities. Board members are now being expected to explain how their decisions reflect the interests of their stakeholders (including the environment) and the long-term sustainability of the organization. Setting commitments that are grounded in the organization's business strategy and authentic to its purpose demonstrates to stakeholders that the organization's leaders have integrated ESG into the way they think about the business. This authenticity builds trust, and trust is the bedrock of business value.

# A significant tectonic shift occurred when ESG started moving money

INVESTORS' USE OF ESG data has had a profound impact on the reporting landscape. As organizations have started nurturing new value creation opportunities to address ESG, the investment community has been quick to understand that companies with strong ESG programs can deliver better returns. Investors are now interested in much more of the public commitments and behaviors that directors are expressing to drive competitive advantage.

Shareholders today are interested in a lot more than just the balance sheet. They are also looking for data to help them identify companies that are integrating ESG topics into the core of their business. For this reason, ESG is now commonly included within investment analysis, decisions, and engagement activity.

The Global Sustainable Investment Alliance's latest investment review shows that global sustainable investment now tops US$35 trillion—up 15% in two years, and in total equating to 36% of all professionally managed assets.[11] In 2020, large funds with ESG criteria outperformed the broader market.

Investors are increasingly active and setting out their expectations. Climate Action 100+, a group of more than 600 investors representing more than half of all global assets under management,[12] focuses on engagement with companies that are critical to the net-zero emissions transition. More than 70 asset managers, including BlackRock and Vanguard, have also recently signed a pledge with the Net Zero Investors Initiative, which has been formed to help achieve net-zero greenhouse gas emissions by 2050.[13]

With ESG risks and opportunities driving more investor decisions, expectations are rising for companies across sectors to deliver more robust climate commitments and performance.[14] Investors need consistent and credible information regarding an organization's ESG efforts if they are to make well-informed investment decisions in sustainable and resilient businesses. To be able to distinguish between companies, and investment opportunities, investors need high-quality, comparable data, and this need is driving the call for global sustainability standards and the regulatory interest in mandatory ESG reporting. Governments and regulators are now stepping in to push further change, faster and with more consistency across the economy than the market alone could do.

# The tectonic shifts have set off a chain reaction of regulations

WITHOUT A SET of clear, universally agreed upon standards, reporting efforts are limited to those companies that aspire to the leading edge. The limited availability of comparable data makes it difficult for investors to assess performance and has led to accusations of greenwashing by activists. Within the past year, the "economic imperative" of the environmental crisis and societal fractures has started to hit home.

The ESG reporting landscape is now rapidly moving toward globally harmonized standards. In June 2021, the G7 Finance Ministers and Central Bank Governors clearly committed to addressing ESG challenges and moving quickly toward deeper, multilateral economic cooperation.[15] They endorsed the work to develop global standards that could form a global baseline of sustainability information. A G20 communique in July 2021 further reinforced the importance of these efforts.[16] Another sign of change came in the form of a report by the International Organization of Securities Commissions (IOSCO) that emphasized the crucial role the financial sector has to support the transition to a more sustainable future. The IOSCO reinforced the need for investors to have comparable ESG data, arguing that sustainability reporting standards could meet that need.[17]

Putting this into action, the International Financial Reporting Standards Foundation, with the endorsement of the G7, G20, and IOSCO, is preparing to establish an International Sustainability Standards Board to sit alongside the International Accounting Standards Board and develop these global standards that can form a global baseline of sustainability information.

Regulators in individual jurisdictions are also moving. The European Union has been driving forward its work on sustainability reporting demanding more detailed disclosure across a wide range of sustainability matters from companies wishing to operate in or with the European Union.[18] In the United States, the Securities and Exchange Commission (SEC) chairman Gary Gensler has said he wants mandatory disclosure on climate risks, and he wants the agency to move with urgency on this new rule.[19]

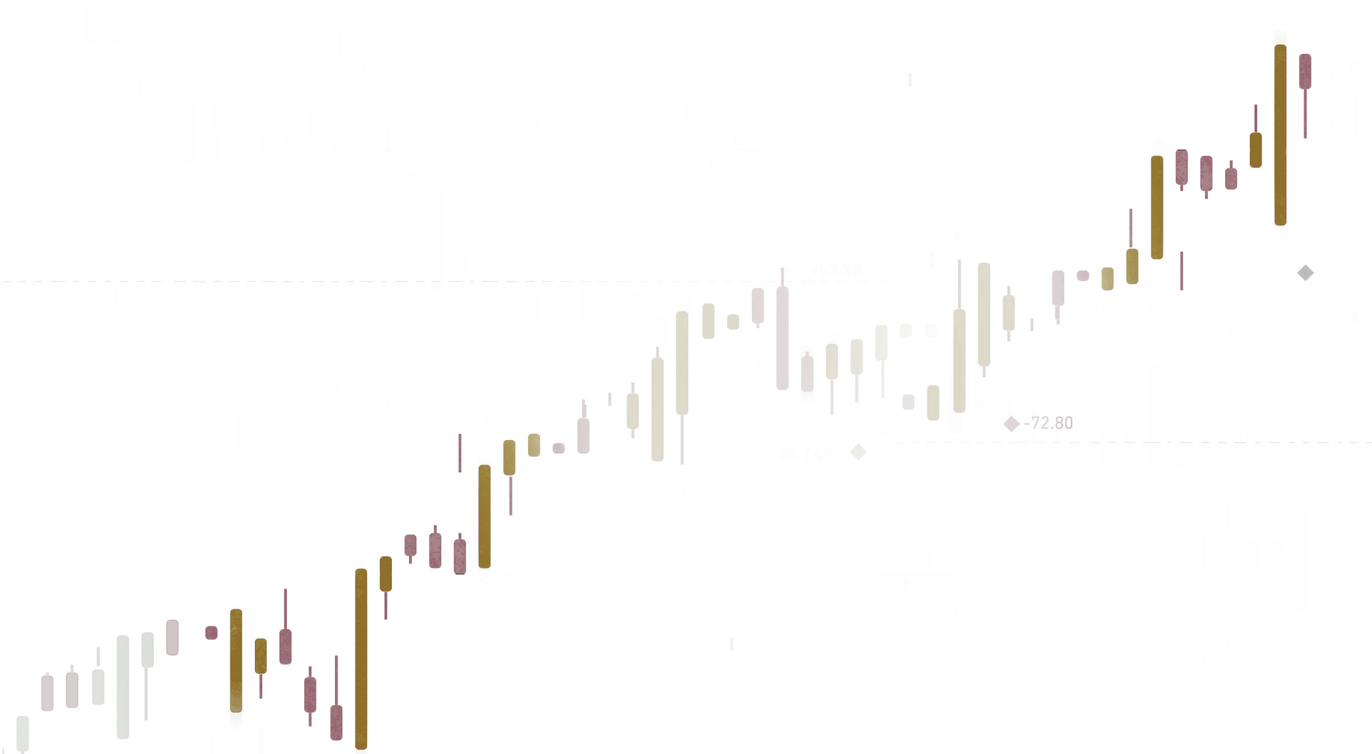
New proposals for carbon pricing schemes are also gaining traction. This could compound the impact of other climate change–related costs that are already arising through matters such as obsolete assets being written off, the increasing costs of insurance, and the mounting losses from flood or fire damage.

In addition to the efforts of global and major market regulatory bodies, there have also been a number of broad policy responses from individual governments. The emerging landscape of regulation across multiple jurisdictions is at risk of becoming increasingly fragmented, which is already a challenge given the complexity for global businesses and the overall pace of change. That's why even those who have been proactive in their reporting to date still need to be ready to deal with the new regulatory landscape and why business leaders need to engage with regulators and continue to drive global harmonization efforts.

# Adopting a purely compliance mentality is a high-risk strategy

THESE MONUMENTAL CHANGES to the business landscape represent more than a compliance obligation, though. They are also an opportunity for companies to make a fundamental choice: Approach emerging ESG regulations with perfunctory compliance in mind or recognize this as an enduring change to the social conditions, and purposefully adjust.

A purely compliance-focused mentality might appear to be the easier choice but may leave you falling behind your investors' expectations, your customers' needs, and your competitors' actions. Adapting to thrive in this business environment requires incorporating stakeholder feedback into your long-term business plans, recognizing the new risks that could emerge in an era of dynamic environmental and social change, and identifying new opportunities for value creation in a more sustainable future. Stepping up to be accountable now opens the door to the transformations that follow.



# Leadership's role in laying the foundation

TO STAY AHEAD of the regulatory curve on ESG reporting, there are a number of foundational steps that a board should take to integrate ESG thinking into how its organization evaluates risk, makes decisions, and identifies new opportunities:

- **Give ESG a permanent spot on the board agenda:** Does your board of directors understand relevant regulatory requirements? Does it have the data it needs to make strategic decisions with ESG in mind? Is there dedicated time on the agendas for robust discussion of how ESG is affecting the business? If not, you need to work out what is preventing this from happening: Is it resistance from certain board members? Is it a lack of information? Is it the feeling that this is not relevant to this business?
- **Engage your board to encourage support for ESG**: Does your board understand and visibly support this priority? Have you provided the board with compelling feedback and data to evidence the role ESG matters have on your enterprise value? Each board communication is an opportunity to build trust. Setting ESG commitments that are grounded in the organization's business strategy and authentic to its purpose demonstrates to stakeholders that the organization has integrated ESG into the way it thinks about the business.
- **Dedicate sufficient resources to integrating ESG into the business:** Have you evaluated what skills and resources you will need? How integrated is your approach today? Where are you on the journey? Do you have the resources in place to do it? If not, where are the weaknesses? Is this being led by the right part of the business? Is it clear how ESG contributes to your strategy and business model? Are you at risk of being accused of greenwashing?
- **Assess the impact of your strategy:** Do you know if your business strategy appropriately responds to the new business reality? Where are the areas of opportunity for you to have a stronger impact? If you don't yet know which sustainability topics are material to you, benchmarking your activities among peer companies, seeking investor and other stakeholder input, and learning from media discussions could all be ways to challenge your thinking and drive change.
- **Be clear about how you will measure success:** Have you defined what success looks like for your company in the new world? Is there a vision with clear targets and metrics to judge effectiveness? If not, it will be hard to maintain momentum.

For more guidance on how to prepare your organization for integrated ESG reporting, read *Living your purpose: A roadmap to integrated thinking and reporting*.

# Technical appendix

## Australia

### GOVERNANCE CODE

*Corporate governance principles and recommendations*: Principles: (1) Lay solid foundations for management and oversight. 2. Structure the board to be effective and add value. (3) Instill a culture of acting lawfully, ethically, and responsibly. (4) Safeguard the integrity of corporate reports. (5) Make timely and balanced disclosure. (6) Respect the rights of security holders. (7) Recognize and manage risk. (8) Remunerate fairly and responsibly. In particular, Recommendation 7.4 states that *"a listed entity should disclose whether it has any material exposure to environmental or social risks, and if it does, how it manages or intends to manage those risks."*

### SUSTAINABILITY REPORTING

Listed entities should disclose (in the annual report or on their website) whether the entity has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks. There are no assurance requirements, but if disclosure is made in the annual report, the local equivalent of ISA 720 would apply.

The Australian Prudential Regulation Authority (APRA) developed draft Prudential *Practice guide on climate change financial risks* in response to requests from industry for greater clarity on regulatory expectations and examples of better industry practice. The guidance covers APRA's view of sound practice in areas such as governance, risk management, scenario analysis, and disclosure for banking, insurance, and superannuation (pension funds, etc.) institutions in Australia. The final guidance is expected to be released by the end of 2021.

Federal laws, regulations, and the ASX Corporate Governance Code require or encourage: reporting climate-related financial information using the Taskforce on Climate-related Financial Disclosure (TCFD) recommendations; the approach to identifying, assessing, and mitigating risks associated with modern slavery in their operations and supply chains; and reporting Scope 1 and 2 GHG emissions. Disclosures can be made in the annual report or via the entity's website and/or to the appropriate regulator.

### FUTURE ACTIVITY

Australia's Council of Financial Regulators has indicated that one of its priorities for 2022 will be to "identify and strengthen the building blocks that will be needed to facilitate high-quality and comparable climate-related disclosures, including high-quality data and consistent scenarios."

## Canada

### GOVERNANCE CODE

The Canadian Securities Administrators' National Policy 58-201 *corporate governance guidelines* apply to all reporting issuers other than investment funds. These are nonmandatory guidelines addressing board composition, business conduct and ethics, nomination, and assessment and compensation of board members and senior executives. The guidelines are brief.

### SUSTAINABILITY REPORTING

Sustainability reporting is voluntary, and sustainability reports are usually made available on the reporting issuer's website. Some reporting issuers deposit their sustainability reports with Canada's electronic filing system SEDAR as "Other" information. There are no formal assurance requirements.

The Canadian Securities Administrators (CSA) has issued CSA staff notices to help reporting issuers meet their reporting requirements in this area, noting, for example, reporting issuers must disclose the material risks (including climate and other nonfinancial risks) affecting their business and, where practicable, the financial impacts of such risks.

In October 2021, the CSA issued *proposed National Instrument 51-107 Disclosure of Climate-related Matters* that would introduce mandatory disclosure requirements regarding climate-related matters for reporting issuers (other than investment funds).

### FUTURE ACTIVITY

Canada's Superintendent of Financial Institutions has indicated that climate risk disclosures will be expanded materially for federally regulated financial institutions and pension plans.

## China (Hong Kong)

### GOVERNANCE CODE

The Corporate Governance Code (Appendix 14 to the Stock Exchange of Hong Kong (SEHK) Listing Rules) sets out the principles of good corporate governance. It has two levels of guidance: provisions and recommended best practice—both of which are subject to a "comply or explain" approach. Directors are required to sign a corporate governance report explaining how they have complied with the Code, including any deviations from it.

The SEHK is reviewing the Code, with a view to enhancing the linkage between the different sections of the Code by:

a. Setting out the relationship between corporate governance and ESG matters in the introductory section in the Code

b. Including ESG risks (including climate-related risks) as an integral part of risk management under the Code.

Proposals also include revisions to filing rules to require publication of ESG reports at the same time as publication of annual reports. If this proposal is adopted, this will be effective for issuers' financial years commencing on or after January 1, 2022.

### SUSTAINABILITY REPORTING

To the extent necessary for an understanding of the development, performance, or position of the company's business, the business review (part of the main financial filing) must include a discussion on:

- The company's environmental policies and performance
- The company's compliance with the relevant laws and regulations that have a significant impact on the company
- An account of the company's key relationships with its employees, customers, and suppliers and others that have a significant impact on the company and on which the company's success depends.

There is no assurance requirement; the local equivalent of ISA 720 would apply.

The environmental, social, and governance (ESG) reporting guide (part of the HK Listing Rules) requires preparation of a sustainability report that includes a statement from the board providing a description of board oversight of ESG issues, ESG management approach, and how the board reviews progress made against ESG goals and targets. It also requires, on a "comply or explain" basis, disclosure of several environmental and social topics.

### FUTURE ACTIVITY

A Cross-Agency Strategic Plan under development would require climate-related disclosures aligned with TCFD recommendations for relevant sectors no later than 2025.

## Europe: EU level

### GOVERNANCE CODE

There is no EU-level corporate governance code, although corporate governance topics and requirements are addressed in several EU directives and regulations applicable in all EU member states. Some member states have supplemented these requirements locally.

A corporate governance statement is required by the EU Accounting Directive. Listed companies are required to include the corporate governance statement in the management report providing, for example, the corporate governance code that has been applied (on a comply or explain basis), a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process, and the composition and operation of the administrative, management, and supervisory bodies and their committees. Another EU directive requires disclosure of directors' remuneration.

### SUSTAINABILITY REPORTING

The Non-financial Reporting Directive (2015) "NFRD" requires nonfinancial disclosures including information about: ESG matters; respect of human rights; and anticorruption and bribery matters for some very large entities. This information can be provided in a separate report or in the management report (with some member states requiring disclosure in the management report). Nonbinding guidelines for climate-related disclosures have been in place since 2017, building on the TCFD recommendations.

There is no assurance requirement for NFRD disclosures at the EU level. Member states (e.g., Germany) require audit-level assurance if the disclosures are included in the management report; France, Italy, and Spain require external independent assurance of the nonfinancial statement; most of the others require none.

From 2021, the Sustainability Finance Disclosures Directive (SFDR) requires entities in the financial services sector to report on the integration of sustainability risks and consideration of adverse sustainability impacts in business processes; and to provide sustainability-related information with respect to the financial products and services they offer to their clients. In addition, from January 2023 (referencing the 2022 reporting period) an adverse sustainability impacts statement is required whenever the investment manager considers principal risks of investment decisions on sustainability factors.

The EU Green Taxonomy Regulation is a classification system that establishes a list of environmentally sustainable economic activities. It requires companies to disclose the proportion of environmentally sustainable economic activities in their business, investments, or lending activities (including financial key performance indicators). It will be applicable from January 1, 2022 to companies that publish a nonfinancial statement under the NFRD, for two out of the six EU environmental objectives (climate mitigation and climate adaptation objectives). Further delegated acts defining sustainable activities for the four objectives other than climate adaptation and mitigation (sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems) are expected to be published in 2022 and applicable from January 1, 2023.

### FUTURE ACTIVITY

*Proposed* Corporate Sustainability Reporting Directive (CSRD). A significant revision of existing EU reporting legislation, which will replace the Non-Financial Reporting Directive and amend the Accounting Directive, the Audit Directive, and the related Audit Regulation, capturing a much wider scope of companies. The directive is expected to be applicable in 2023. External assurance will be required (limited at first, with a medium-term aim of reasonable assurance) on the information provided under the CSRD.

The CSRD has extensive extraterritorial reach, given that it will apply to (1)all companies exceeding two out of three criteria: €40 million turnover, €20 million total balance sheet, more than 250 employees; (2) EU-domiciled subsidiaries of global groups; (3) as well as EU-listed SMEs (less than 250 employees). It will require reporting in accordance with EU sustainability reporting standards, to be developed by the European Financial Reporting Advisory Group.

The European Commission is expected to publish *corporate governance proposals* in 2022, which, based on prior European Commission consultations, may include new requirements including:

- A duty for corporate directors to incorporate mandatory sustainability criteria into their decision-making
- New due diligence rules to identify, address, and remedy aspects of an entity's value chain that could or do infringe on human rights, the environment, and good governance

## Europe: France

### GOVERNANCE CODE

The EU requirement for a corporate governance statement applies in France to companies listed on a regulated market. This statement includes detailed disclosures about governance structure, composition, and activities of the administrative, management, and supervisory bodies and their committees, and remuneration of the directors (which is subject to shareholders' approval—called "Say on Pay"). Depending on the governance structure of the entity, this statement may or may not be included in the management report.

There is no mandatory corporate governance code. However, there are two governance codes that companies are expected to comply with (on a "comply or explain" basis). Listed companies shall disclose whether they apply:

- The AFEP-MEDEF Corporate Governance Code, a reference for large, listed companies (this code has been adopted by most of the SBF 120 companies) or
- The MiddleNext Corporate Governance Code, an alternative reference for small- and midcap listed companies.

Both codes also include recommendations regarding sustainability.

Auditors perform "specific verifications" required by laws and regulations on the management report (covering the fair presentation and the consistency with the financial statements of the information given in the management report) and the corporate governance report. In particular, the auditors attest the inclusion of the governance disclosures required by French Law and the accuracy and fair presentation of the information relating to the remunerations and benefits received by, or awarded to, the directors.

The 2019 Pacte Law states that social and environmental issues shall be considered in a company's business model (mandatory for all companies). A company can also, on a voluntary basis, determine its purpose (i.e., *raison d'être*) and can also qualify themselves as an *entreprise à mission* (both via changes to the by-laws). In doing so, in addition to a purpose, a company must define the related objectives, relevant policies, and a decision-making framework. It must also establish appropriate governance. The implementation of these changes and compliance with the company's commitments is assessed by an independent expert (auditor or other external assurance provider).

### SUSTAINABILITY REPORTING

France has required sustainability reporting to be included in the management report since 2001. The NFRD was transposed into French law in 2017 as the Déclaration de Performance Extra Financière (DPEF), with France opting for full consistency with the requirements of the NFRD. The disclosures are an integral part of the management report. Publicly traded companies, banks and credit providers, asset managers, and institutional investors (PIEs meeting specific thresholds) must disclose:

- Their business model
- Their nonfinancial risks including both physical risks and "transition" risks caused by climate change on their activities and assets
- Their related policies and due diligences process to prevent and mitigate the identified risks
- Results of these policies including relevant KPIs

The French requirements go beyond the scope of the NFRD, requiring disclosure of additional issues and risks such as tax evasion, diversity, circular economy, healthy and sustainable food and diet, and animal welfare when relevant.

Auditors attest to the inclusion of the DPEF in the management report. In addition, for companies exceeding certain size criteria, an externally accredited assurance provider (which can be the statutory auditor) provides a form of limited assurance on it.

The 2017 Law on Duty of Care 'Devoir de Vigilance' requires French Companies with more than 5,000 employees in France and companies with international headquarters with more than 10,000 employees in France to prepare and publish a "duty of care" plan as part of their annual report. The objective of such a plan is to prevent human right violations, and environmental and corruption risks with respect to their own activities, but also those of their subsidiaries, subcontractors, and suppliers in France and abroad. In the event of the absence of a plan, or an inadequate or faulty plan, the company can be subject to legal pursuits.

## Europe: Germany

### GOVERNANCE CODE

The German Corporate Governance Code presents essential statutory regulations for the management and supervision of German listed companies and contains, in the form of recommendations and suggestions, internationally and nationally acknowledged standards for good and responsible corporate governance.

### ACT ON CORPORATE DUE DILIGENCE IN SUPPLY CHAINS

The act, published in July 2021, makes it the legal responsibility of German companies to respect human rights in global supply chains.

## Europe: Netherlands

### GOVERNANCE CODE

The Netherlands' Corporate Governance Code 2016 is an example of a code developed in an EU member state. It focuses on management and control, responsibility and influence, and supervision and accountability. It applies to all companies listed on a regulated market and to large companies listed on a multilateral trading facility (over-the-counter markets, etc.).

## India

### GOVERNANCE CODE

Chapter IV of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements LODR) Regulations 2015 (as amended) contains the Indian corporate governance code, and was last revised in 2018 and 2019 as a result of the 2017 report of the Kotak Committee established by the SEBI.

The regulation requires listed entities to prepare a comprehensive corporate governance report explaining the listed entity's philosophy (that is, what general principles it aims to achieve), its code of governance, and corporate governance measures undertaken by it under the LODR Regulations.

### SUSTAINABILITY REPORTING

The SEBI introduced new ESG reporting requirements in May 2021. In-scope listed entities must submit a business responsibility and sustainability report (BRSR), on a voluntary basis for the 2021–22 financial year and on a mandatory basis thereafter. The BRSR is intended to bring greater transparency and facilitate identification of ESG-related risks and opportunities. Listed entities already prepare and disclose sustainability reports using internationally accepted reporting frameworks, including the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB), TCFD, and/or Integrated Reporting. The 2021 rules are intended to be interoperable with these reporting frameworks enabling cross-comparison.

## Japan

### GOVERNANCE CODE

The Japan Corporate Governance Code (2021) states that "Companies should take appropriate measures to address sustainability issues, including social and environmental matters." In addition, companies listed on the TSE Prime Market (one of the new market segments of Tokyo Stock Exchange (TSE) effective April 4, 2022) should "collect and analyse the necessary data on the impact of climate change-related risks and earning opportunities on their business activities and profits and enhance the quality and quantity of disclosure based on the TCFD recommendations" or an equivalent framework.

### SUSTAINABILITY REPORTING

The Japan Corporate Governance Code (2021) requires companies listed on the TSE Prime Market to make disclosures based on the TCFD recommendations or an equivalent framework. For companies other than those listed on the TSE, no single ESG Reporting Framework is prescribed, although companies are required to disclose their initiatives on sustainability.

In 2020, the Japanese Exchange Group (JPX) issued the *Practical Handbook for ESG disclosure*, which, in addition to the Japanese Ministry of Economy, Trade and Industry's *Guidance for Collaborative Value Creation*, makes reference to the GRI, SASB, TCFD, and the International Integrated Reporting Council (IIRC) framework as the main reporting frameworks.

Basic Guidelines on Climate Transition Finance (2021) seek to strengthen the position of climate transition finance as a means of financing transitions, especially in hard-to-abate sectors. These nonmandatory guidelines are based on the ICMA Green Bond Principles (2018).

In 2019, Financial Services Agency (FSA) published Principles Regarding the Disclosure of Narrative Information in order to encourage corporate initiatives toward the enhancement of corporate disclosure.

### FUTURE ACTIVITY

In August 2021, the FSA established the Working Group on Corporate Disclosure to explore enhancements to corporate disclosures in the annual securities report of listed companies, including mandatory ESG disclosure.

## New Zealand

### CORPORATE GOVERNANCE CODE

The New Zealand Exchange Listing Rules require all listed issuers to report on a "comply or explain" basis against the 2017 Corporate Governance Code (the Code), which aims to promote good corporate governance, recognizing that boards are in place to protect the interests of shareholders and to provide long-term value.

The Code requires a "nonfinancial disclosure," including ESG factors and practices as well as explanation of how operational or nonfinancial targets are measured. Disclosure should be informative, include forward-looking assessments, and align with key strategies and metrics monitored by the board. Internationally recognized reporting frameworks are encouraged to increase the comparability of information.

### SUSTAINABILITY REPORTING

In December 2020, the NZX published the *NZX ESG guidance* to accompany the Code. The guidance note helps issuers to understand the benefits of ESG reporting, provides information about global frameworks, and supports the effective communication of ESG opportunities and risks to investors and other stakeholders.

The New Zealand government has proposed amendments to the Financial Markets Conduct Act that would require all publicly listed companies and large insurers, banks, nonbank deposit takers, and investment managers to prepare an annual climate statement that discloses information about the effects of climate change on their business or any fund they manage using reporting standards based on the TCFD recommendations, and to have the report independently assured.

## South Africa

### GOVERNANCE CODE

The King IV Code (2017) requires the governing body of an institutional investor to ensure that responsible investment is practiced by the organization to promote the good governance and the creation of value by the companies in which it invests.

### SUSTAINABILITY REPORTING

There are no mandatory ESG disclosures, although JSE Listing Rules require mineral companies to provide a summary of environment management and funding, together with a description of key environmental issues in the main financial filing.

JSE Listing Rules require listed entities to provide a brief description of key environment issues as part of prelisting/listing requirements. In addition, entities are required to provide a summary of environment management and funding.

### FUTURE ACTIVITY

The South Africa Treasury issued a Working Draft of a proposed Green Finance Taxonomy that would be an official classification or catalogue that defines a minimum set of assets, projects, and sectors that are eligible to be defined as "green" in line with international best practice and national priorities.

The Green Finance Taxonomy is a deliverable under the Treasury's technical paper "Financing a sustainable economy" (2020), a comprehensive review of the effects of climate change on all sectors of the South Africa financial system and provides recommendations for action, including adopting environmental and sustainability risk management frameworks, the use of science-based methodologies, and incorporating the recommendations of the TCFD in the corporate disclosure system.

## United Kingdom

### GOVERNANCE CODE

The UK Corporate Governance Code applies to publicly listed entities, and includes a requirement to have a workforce engagement mechanism in place and a report on this mechanism; it also requires companies to provide a description in the annual report of how the interests of the company's key stakeholders, other than shareholders, and the matters set out in section 172 of the Companies Act 2006 have been considered in board discussions and decision-making.

The UK Listing Rules require companies with a premium listing (whether incorporated in the United Kingdom or elsewhere) to make a statement in their annual financial report about how they have applied the principles in the UK Corporate Governance Code and a statement of compliance with the Code

The Wates Principles (applicable to large private companies and other companies not required to report under the Listing Rules) includes a principle around stakeholder relationships and engagement: "Directors should foster effective stakeholder relationships aligned to the company's purpose. The board is responsible for overseeing meaningful engagement with stakeholders, including the workforce, and having regard to their views when taking decisions."

### DIRECTORS' DUTIES

Companies in the United Kingdom must consider the environment, suppliers and creditors, social and ethical matters, and the long-term interests of the company in making decisions under the Companies Act (2006), S.172:

A director of a company must act in the way he/she considers, in good faith, would be most likely to promote the success of the company for the benefit of its members, and in doing so have regard (among other matters) to:

- The likely consequences of any decision in the long term
- The interests of the company's employees
- The need to foster the company's business relationships with suppliers, customers, and others
- The impact of the company's operations on the community and the environment.

Directors must include in the strategic report (part of the mainstream filing) a “section 172(1) statement” describing how the directors have had regard to their obligations described above.

## SUSTAINABILITY REPORTING

UK Listing Rules require listed companies to make disclosures consistent with the TCFD Recommendations. Various requirements under the Companies Act 2006 require disclosure of other ESG-related matters, including Scope 1 and 2 emissions.

Listed companies must disclose in their annual report:

A. Information about:

- Environmental matters (including the impact of the company or group’s business on the environment)
- The company or group’s employees
- Social, community, and human rights issues.

B. Where appropriate, analysis using key performance indicators other than financial ones, including information relating to environmental matters and employee matters.

C. Scope 1 and 2 carbon emissions and certain Scope 3 emissions and energy consumed, and any energy efficiency actions taken

D. A description of principal risks and uncertainties, which would likely include broader ESG matters.

E. Certain listed companies with more than 500 employees must also provide information about anticorruption and antibribery matters.

New for annual periods commencing on or after January 1, 2021

A statement in the annual financial report setting out:

- Whether the entity has made TCFD-consistent disclosures in their annual financial report, and where in the report they can be found.
- Where they have included some, or all, of their disclosures in a document other than their annual financial report, and an explanation of why, and where the disclosures can be found.
- If the entity has not made these disclosures, an explanation of why and a description of any steps they are taking or plan to take to be able to make consistent disclosures in the future—including relevant timeframes for being able to make those disclosures.

## FUTURE ACTIVITY

The UK government has adopted a Roadmap towards mandatory climate-related disclosures that will broaden the scope of mandatory TCFD-based reporting across the UK financial markets by 2025.

The UK Government has issued proposals that would bring more large private companies and others on nonregulated markets within the scope of existing mandatory ESG disclosures.

## United States

### GOVERNANCE CODE

There is no formal corporate governance code, although the US Securities and Exchange Commission's Regulation S-K requires information about topics typically addressed in such codes. In particular: Form 10-K, Part III, and Item 10, under which registrants are required to furnish the information required by Items 101 (information material to understanding developments in the business, human capital resources, environmental, and other regulatory compliance matters), 103 (environmental proceedings), 105 (material risk factors), 401 (directors and officers), 406 (ethics), and 407(c)(3), (d)(4), and (d)(5) (corporate governance) of Regulation S-K.

In addition, US Foreign Private Issuers, whose securities are listed on a national securities exchange and file in the US on Form 20-F, must "provide a concise summary of any significant ways in which its corporate governance practices differ from those followed by domestic companies under the listing standards of that exchange" (Item 16G).

Stock exchange listing requirements, for example, those of the New York Stock Exchange and NASDAQ, are another source of corporate governance reporting requirements.

### SUSTAINABILITY REPORTING

Disclosure is made via the 10-K/20-F/40-F documents or in annual proxy statements as required by regulation.

SEC Interpretive Guidance on Disclosures Related to Climate Change (2010) (the 2010 Guidance) provides guidance to registrants regarding existing requirements as they apply to climate change matters; in particular:

- Impact of in-force or pending legislation and regulation, including US climate change regulations
- The business effects of international accords and treaties related to climate change
- Indirect consequences of regulation or business trends—the actual and potential indirect consequences of regulations or business trends related to climate change (e.g., reduced demand for greenhouse gas–producing products, increased demand for energy from alternative sources).
- Physical impacts of climate change—e.g., vulnerabilities to severe weather or climate-related events, including material risks of, or consequences from, such events.

In September 2021, the SEC Division of Corporation Finance released a Sample Letter to Companies Regarding Climate Change Disclosures, which contains sample comments that the division might issue to companies regarding their climate-related disclosure or the absence of such disclosure.

### FUTURE ACTIVITY

The U.S. SEC has announced that it intends to update its disclosure rules relating to (1) climate risk, (2) human capital, including workforce diversity and corporate board diversity, and (3) cybersecurity risk. It is consulting on potential rulemaking that would be broader than the 2010 Guidance and impose additional reporting requirements.

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## Acknowledgments

The authors would like to thank **Tracy Gordon**, **Neil Stevenson**, **Colin Fleming**, **Elizabeth Payes**, and **Derek Pankratz** for their contributions to this article.

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