



# Practical Guidance

## [Environmental, Social, and Governance \(ESG\) Resource Kit](#)

This resource kit collects Practical Guidance resources addressing Environmental, Social, and Governance (ESG) issues and Corporate Social Responsibility (CSR). The resource kit will be updated in [Practical Guidance](#) as new ESG/CSR content is published.

### **Capital Markets & Corporate Governance**

Three major corporate sustainability trends are driving business as of Fall 2020. First, the focus of sustainability action and activism has expanded to include environmental aspects beyond climate and a broader scope of social issues. Second, investor demands for robust ESG disclosures continue to rise, with no signs of slowing despite the reticence of U.S. regulators to mandate disclosure. Lastly, litigation challenging alleged misstatements or inconsistencies by companies in their voluntary sustainability communications is on the rise and diversifying. The corporate sustainability space is changing quickly, and it will be important for reporting companies and their counsel to not only respond to company-specific investor concerns, but also keep apprised of global trends in ESG issues important to the investment community.

<b>Practical Guidance Documents</b>	<b>Content Type</b>
<a href="#">Corporate Sustainability</a>	Practice Note
<a href="#">ESG, MeToo, and Black Lives Matter: Key Corporate Governance and Workplace Issues</a>	Practice Note
<a href="#">Clean and Renewable Energy Industry Guide for Capital Markets</a>	Practice Note
<a href="#">Market Trends 2020/21: Public Company Reporting and Corporate Governance</a>	Practice Note
<a href="#">Acting SEC Chair Lee's Speech on Additional Climate and ESG Initiatives</a>	Article
<a href="#">Market Trends 2019/20: Shareholder Proposals</a>	Practice Note
<a href="#">Market Trends 2019/20: Proxy Enhancements</a>	Practice Note
<a href="#">Board Engagement with Shareholders Policy Checklist</a>	Checklist
<a href="#">Memorandum to the Board of Directors on Board Diversity Initiatives</a>	Template
<a href="#">Shareholder Engagement Strategies for Environmental, Social, and Political Issues Board Memorandum</a>	Template

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<a href="#">Nasdaq to Advance Diversity for Listed Companies</a>	Article
<a href="#">Transitioning to 2021: Impact of Biden-Harris Administration on Financial Regulation</a>	Article

## **Commercial Transactions**

Companies are under heightened scrutiny to conduct their affairs in an ethical, legal, and responsible manner. ESG is a form of self-regulation premised upon the principle that companies have certain obligations and considerations that extend beyond the bottom-line objectives of its owners. Rather, businesses conduct and monitor their activities in a manner designed to ensure compliance with certain ethical standards and norms, which often involve social and environmental obligations and ethical labor practices. Such obligations are often not mandated by law but, rather, are often motivated by internal company standards and consumer and public expectations.

<b>Practical Guidance Documents</b>	<b>Content Type</b>
<a href="#">Corporate Social Responsibility and the Supply Chain</a>	Practice Note
<a href="#">Developing a Corporate Social Responsibility Supply Chain Compliance Program</a>	Practice Note
<a href="#">CBP Enforcement of the Forced Labor Import Prohibition</a>	Practice Note
<a href="#">Governance in Outsourcing</a>	Practice Note
<a href="#">Green Claims in Advertising</a>	Practice Note
<a href="#">Risk-Based Due Diligence of Third Parties in Commercial Transactions</a>	Practice Note
<a href="#">Third Parties in Supply Agreements: Minimizing Risk</a>	Practice Note
<a href="#">Environmental/Green Advertising Claims Checklist</a>	Checklist
<a href="#">Code of Conduct and Ethics and Whistleblowing Policy</a>	Template
<a href="#">Corporate Social Responsibility Representations and Warranties Clauses</a>	Template
<a href="#">Corporate Social Responsibility Representations Clauses</a>	Template
<a href="#">Risk Assessment Interview Questions (Environmental Issues)</a>	Template

## **Corporate and M&A**

Achieving sustainability through investment is driving more M&A activity, as companies look to demonstrate their commitment to ESG principles to stakeholders, and private investment funds act on ESG investment opportunities. Activist hedge funds and institutional investors are calling for corporate action on ESG issues. Corporate and M&A practitioners must be fluent in the risks and opportunities inherent in shareholder, consumer, and regulatory demands for sustainable corporate practices.

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Practical Guidance Documents	Content Type
<a href="#">Key ESG Disclosure Considerations for Public Companies</a>	Article
<a href="#">ESG, MeToo, and Black Lives Matter: Key Corporate Governance and Workplace Issues</a>	Practice Note
<a href="#">Climate Change Considerations in M&amp;A Transactions</a>	Practice Note
<a href="#">Environmental Due Diligence in M&amp;A Transactions</a>	Practice Note
<a href="#">ESG Board Committees, Part I: Five Considerations Before Adopting an ESG Board Committee</a>	Article
<a href="#">ESG Board Committees, Part II: Five Steps to Achieve an Effective ESG Board Committee</a>	Article
<a href="#">Market Trends 2019: #MeToo Representations</a>	Practice Note
<a href="#">ESG Enters M&amp;A Mainstream in a Year of Change</a>	Article
<a href="#">Sustainable Finance Disclosure Regulation (SFDR): What to Expect</a>	Article
<a href="#">Maintaining Corporate Impact through M&amp;A</a>	Article
<a href="#">The #MeToo Movement: The Critical Role of the Board in Preparing for, Responding to and Avoiding Sexual Misconduct Allegations</a>	Article
<a href="#">Preparing in Advance for Unsolicited Bids and Shareholder Activist Proposals Checklist</a>	Checklist
<a href="#">Responding to Unsolicited Bids and Shareholder Activist Proposals Checklist</a>	Checklist
<a href="#">Replacing the Board of Directors in a Proxy Contest Checklist</a>	Checklist
<a href="#">Shareholder Activist Engagement Board Memorandum</a>	Template
<a href="#">Weinstein/#MeToo Clause</a>	Clause

## **Employee Benefits & Executive Compensation**

For over 20 years, the Department of Labor (DOL) has been periodically releasing guidance on the use of ESG factors by ERISA fiduciaries in making decisions on retirement plan investments. While these interpretations have consistently maintained the principle that plan fiduciaries must make act solely in the interest of plan participants and beneficiaries, successive administrations have taken considerably different positions on identifying appropriate boundaries when it comes to ESG-aware investing. Most recently, this has culminated in the Biden administration announcing that it will be reviewing and addressing the Trump DOL final regulations, issued in November 2020, which represent the agency's most restrictive guidance to date on the use of nonpecuniary factors in investment decisions under ERISA.

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Practical Guidance Documents	Content Type
<a href="#">ERISA Fiduciary Duties</a>	Practice Note
<a href="#">Investment Committee Issues for Defined Contribution Plans</a>	Practice Note
<a href="#">Alternatives to Using Target Date Funds as QDIAs</a>	Practice Note
<a href="#">DOL's Final ERISA Proxy Voting Rule Largely Changed to Principles-Based Approach</a>	Article
<a href="#">Latest Volley in ESG Back and Forth: DOL Finalizes "Financial Factors" Rule</a>	Article
<a href="#">Trump Era DOL Rules: Will They Remain under a Biden Administration?</a>	Article

## Energy & Utilities

ESG rules and reporting are becoming more and more common within the energy industry. Investors are pressuring both traditional and renewable energy companies to disclose how climate change and environmental regulation will affect their future operations. While this reporting is not yet mandated by law, it is increasingly becoming an important set of disclosures when viewed by the marketplace.

Practical Guidance Documents	Content Type
<a href="#">Federal Environmental Regulations Affecting Oil and Gas Operations</a>	Practice Note
<a href="#">Penalties for Violations of Safety and Environmental Rules in Oil and Gas</a>	Practice Note
<a href="#">Protection of Birds in Oil and Gas Operations</a>	Practice Note
<a href="#">UNFCCC, the Kyoto Protocol, and the Paris Agreement</a>	Practice Note
<a href="#">Wetlands Protection State Law Survey</a>	Practice Note
<a href="#">Climate Regulation in International Jurisdictions</a>	Practice Note
<a href="#">Clean Fuels and Vehicle Emissions Standards State Law Survey</a>	Practice Note
<a href="#">Multi-Family Finance and Agency Green Building Incentives</a>	Practice Note
<a href="#">Onshore Wind Farms: Environmental Impact Mitigation (UK)</a>	Practice Note
<a href="#">Renewable and Clean Energy Tax Incentives State Law Survey</a>	Practice Note
<a href="#">Renewable Energy Regulations, Funding, and Incentives State Law Survey</a>	Practice Note

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<a href="#">Solar Electricity Sales Regulation</a>	Practice Note
<a href="#">Solar Energy Technologies and Project Regulation</a>	Practice Note
<a href="#">Texas Power Crisis Caused by Poor Energy Policies</a>	Article
<a href="#">Climate-friendly projects warrant more flexible antitrust approach, say some EU agencies</a>	Article
<a href="#">Green implications of mergers should be assessed, national regulators tell EU</a>	Article
<a href="#">EU to seek US buy-in for joint push on clean energy, climate goals and carbon pricing</a>	Article
<a href="#">CLCPA is New York's Own Green New Deal: Goals for Emissions and Transformation of the Energy Sector</a>	Article
<a href="#">CLCPA is New York's Own Green New Deal: Goals for Feasibility and Impact on Industry, Households, and Individuals</a>	Article
<a href="#">CLCPA Is New York's Own Green New Deal: Implementation Goals and Current Energy and Carbon Emissions Profile</a>	Article

## **Finance**

In today's market, sustainability linked loans provide borrowers with incentives, such as lower interest rates, for hitting predefined green targets, such as decreasing greenhouse gas emissions. In fact, the Loan Syndication and Trading Association (LSTA) has released a framework to standardize such incentives and sustainability linked loan performance (the SLLP) targets. The borrower's targets include the use of renewable energy or achievement of set environmental, social, and governance rating.

<b>Practical Guidance Documents</b>	<b>Content Type</b>
<a href="#">Market Trends 2019/20: Sustainability Linked Loan Principles</a>	Practice Note
<a href="#">Sustainability-Linked Loans: Financing the Green Transition</a>	Practice Note
<a href="#">Power Purchase Agreements in Renewable Energy Projects</a>	Practice Note
<a href="#">Sustainability Linked Loans: Client Alert Digest</a>	Article

## **Labor & Employment**

Employers must stay aware of social and political movements across the country—such as Black Lives Matter, #MeToo, and political protests from both left- and right-wing organizations—that will affect how investors perceive them. When considering these issues, employers must address their policies concerning affirmative action; workplace affinity groups; handling employees' political and protest activity; corporate board and governance issues related to diversity and racial and social justice; and a wide variety of workplace discrimination, harassment, and retaliation issues.

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<b>Practical Guidance Documents</b>	<b>Content Type</b>
<a href="#"><u>ESG, MeToo, and Black Lives Matter: Key Corporate Governance and Workplace Issues</u></a>	Practice Note
<a href="#"><u>Workplace Diversity, LGBTQ, and Racial and Social Justice Resource Kit</u></a>	Practice Note
<a href="#"><u>Affirmative Action Programs and Diversity Initiatives: Key Considerations</u></a>	Practice Note
<a href="#"><u>Affirmative Action Plans: OFCCP Compliance</u></a>	Practice Note
<a href="#"><u>Affinity Groups in the Workplace: Managing the Legal Risks</u></a>	Practice Note
<a href="#"><u>Discrimination, Harassment, and Retaliation State Practice Notes Chart</u></a>	Chart
<a href="#"><u>Diversity and Inclusion (D&amp;I) Policy (with Acknowledgment)</u></a>	Template
<a href="#"><u>Affinity Group Policy</u></a>	Template
<a href="#"><u>Equal Employment Opportunity Policy (with Acknowledgment)</u></a>	Template
<a href="#"><u>Anti-harassment Policy (with Acknowledgment)</u></a>	Template
<a href="#"><u>Anti-retaliation Policy (with Acknowledgment)</u></a>	Template
<a href="#"><u>Disability Accommodations Policy (with Acknowledgment)</u></a>	Template
<a href="#"><u>Religious Accommodation Policy</u></a>	Template
<a href="#"><u>Workplace Discrimination and Harassment Guidance for Managers: Training Presentation</u></a>	Template
<a href="#"><u>Sexual and Other Workplace Harassment Guidance for Managers: Training Presentation</u></a>	Template
<a href="#"><u>Sexual and Other Workplace Harassment Guidance for Nonsupervisory Employees: Training Presentation</u></a>	Template
<a href="#"><u>Sexual Harassment Prevention Training State Law Survey</u></a>	Template

## **Private Equity & Investment Management**

The need for meaningful ESG practices, policies, and disclosures is increasing in the private funds space. This is due both to disclosure requirements by regulators (whether in the U.S. or abroad) and increasing demand by investors. ESG disclosures and investment practices are no longer just the right thing to do from an ethical perspective; they now support stronger fundraising and materially contribute to economic returns.

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Practical Guidance Documents	Content Type
<a href="#">Private Equity Fund Launch Considerations</a>	Practice Note
<a href="#">ESG Goes Mainstream: How "Return First" PE Funds Can Factor ESG Considerations into Their Investment and Portfolio Management Strategies</a>	Article
<a href="#">Expected ESG and Climate Regulation Impacting Private Equity under the Biden Administration</a>	Article
<a href="#">ESG and Investment Managers: SEC Recommendations</a>	Article
<a href="#">Impact Investing and Social Impact Funds: Structuring Considerations</a>	Article
<a href="#">SEC Risk Alert Provides Insight into Examinations Related to ESG Investing</a>	Article

## **Real Estate**

The market is seeing a heightened focus on the impact of real estate investments on surrounding communities and the environment. Companies in the real estate sector with traditionally high carbon footprints are incorporating ESG practices into their development strategies to keep ahead of regulatory changes and stay competitive in the market. ESG is no longer a nice-to-have; it is now key to achieving business objectives in real estate, from meeting emissions targets to attracting desirable, socially and eco-conscious buyers and tenants. More and more, ESG performance directly impacts financial performance, as stakeholders demand meaningful steps toward sustainability, social responsibility, and transparency.

Practical Guidance Documents	Content Type
<a href="#">Green Buildings, LEED Version 4, and the AIA Sustainable Projects Exhibit</a>	Practice Note
<a href="#">Green Leasing</a>	Practice Note
<a href="#">Energy Real Estate Resource Kit</a>	Practice Note
<a href="#">Solar Energy Project Development</a>	Practice Note
<a href="#">REITs as a Financing Source for Renewable Energy Projects</a>	Practice Note
<a href="#">Wind Energy Leases and Related Agreements</a>	Practice Note
<a href="#">Environmental Impact Review in Real Estate Transactions</a>	Practice Note
<a href="#">Wetlands Regulations: Considerations for Project Developers</a>	Practice Note
<a href="#">California Environmental Quality Act Compliance</a>	Practice Note
<a href="#">Understanding the Requirements of the Climate Mobilization Act</a>	Article

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<a href="#"><i>Green Is the Color of Money: The NYC Climate Mobilization Act</i></a>	Article
<a href="#"><i>Green Lease Drafting Checklist</i></a>	Checklist
<a href="#"><i>Post-COVID-19 Environmental Compliance Checklist</i></a>	Checklist

**Tax**

Legislatures can pass environmental taxes to impact individual and business behaviors or practices that are harmful to the environment, perhaps simultaneously gaining revenue from such activities. Other tax practice is to reward environmentally friendly behaviors, perhaps by offering tax credits or other incentives to such behaviors. Following are Practical Guidance (Tax) titles primarily addressing the environmental aspects of ESG:

<b>Practical Guidance Documents</b>	<b>Content Type</b>
<a href="#"><i>Energy Tax Credits and Incentives</i></a>	Practice Note
<a href="#"><i>Federal Fuel Excise Taxes</i></a>	Practice Note
<a href="#"><i>Oil and Gas Tax: Fracking Developments and Incentives State Law Survey</i></a>	Practice Note
<a href="#"><i>Renewable and Clean Energy Tax Incentives State Law Survey</i></a>	Practice Note
<a href="#"><i>Solar Investment Tax Credit (I.R.C. § 48)</i></a>	Practice Note
<a href="#"><i>Tax, Environmental, and Property Condition Forms State Law Survey</i></a>	Practice Note