

Spotlight On: ESG and Board Diversity

Date: 10/19/22

The unprecedented events of 2020, which have continued into 2021, including the COVID-19 pandemic, the racial justice movement, extreme climate-related conditions, the economic slowdown, and the political violence of January 2021, have significantly impacted the ways in which companies are addressing environmental, social, and governance (ESG) issues.

[Helene Banks](#), Cahill partner and chair of the firm's M&A and Corporate Advisory practices, has written and spoken on this topic extensively over the last year two years. Please see below for highlights.

- In October 2022, Helene authored "Are Your ESG Disclosures Vulnerable to Claims of 'Greenwashing'?" in *Corporate Secretary*, examining how companies can guard against claims their ESG disclosures constitute 'greenwashing' amid growing enforcement and litigation pressure. To read the article, please [click here](#).
- On August 17, Helene spoke on the "Beyond ESG with Climate Risk in M&A Strategy" webinar presented by S&P Global Sustainable1, examining the increased role climate risk is playing in M&A strategy. To view the video playback, [click here](#).
- In March 2022, Helene authored "Financings Hinge on Effective ESG Due Diligence" in *The Deal* discussing the evolving landscape of disclosure requirements and how investors and companies should be prepared for ESG diligence as part of the legal and business review of their financing transactions. To read the article, please [click here](#).
- Helene spoke on the Implementation of Environmental, Social and Governance (ESG) into Corporate Strategies at the inaugural PE Innovators in ESG Speak virtual conference presented by the editors of *Mergers & Acquisitions* on December 1, 2021. To watch the video playback, please [click here](#).
- In October 2021, Helene authored "Parsing Boeing Decision In Light Of ESG, Caremark Trends" in the *Law360*, examining the recent Boeing case and other successful challenges under *Caremark* and how ESG's focus on stakeholder capitalism may be a contributing factor in opening the door for greater scrutiny of board governance under the *Caremark* standard. To read the article, please [click here](#).
- In October 2021, Helene authored "Good Value: Incorporating ESG into M&A Due Diligence" in the *New York Law Journal*, exploring how thoughtful and appropriately scoped incorporation of ESG in M&A due diligence can do more than stave off scrutiny and scorn – it can enable an acquirer to harvest even greater value from its target. To read the article, please [click here](#).
- On October 7, Helene spoke on ESG as a Strategic Business Imperative during a webinar presented by Thomson Reuters. To view the program, [click here](#).
- In October 2021, Helene authored "ESG in Due Diligence Is Not Just Another Box to Check" in *The Deal* which provides a practical roadmap for incorporating ESG issues into M&A due diligence, consistent with the growing expectations of investors, customers, and other stakeholders. To read the article, please [click here](#).
- On June 23, Helene spoke on the "ESG in M&A Transactions" panel at The Deal Economy: Middle Market Seminar. To view the video playback, please [click here](#).
- Helene authored an article in the May/June 2021 issue of *NACD Directorship* exploring the rise of ESG matters and how they influence M&A transactions. To read the article, "When ESG Runs Into M&A," please [click here](#).
- On April 22, Helene spoke on the "Portfolios with a Purpose: ESG Investing" panel at the 8th Annual ACG NY Women of Leadership Summit. To view the program, please [click here](#).

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- Helene served as a panelist on the “Effectively Implementing ESG Strategies” panel at *Mergers & Acquisitions’ Most Influential Women in Mid-Market M&A Speak* event on February 24. To watch the video playback, please [click here](#).
 - In a January 2021 article for *NACD BoardTalk*, Helene provides boards guidance on how to protect their companies and constituents in light of the recent attack on the U.S. Capitol and the expectation of future political violence. To read “10 Actions for Boards in Response to Political Violence,” please [click here](#).
 - Helene spoke on the “Maintaining Credibility with an Increased Focus on Social Issues” panel during the Corporate Governance 2020: Balancing ESG, Sustainability and Growth conference, held by *The Deal* in November 2020. The focus of this panel’s discussion was how businesses are setting the standard, creating accountability and installing a regular cadence of updates and actions, particularly in regard to the social aspects of their ESG efforts. To watch the video playback, please [click here](#).
 - In a Q&A for *Practical Law*, “Addressing ESG Issues After the Events of 2020,” Helene explains how companies are incorporating ESG factors into their corporate strategies, policies, and operations in response to recent events, and provides guidance for companies seeking to enhance their ESG programs. To read the article, please [click here](#).
 - In a previous Q&A in *Practical Law’s The Journal - Transactions & Business*, Helene explained “The Fundamentals of ESG” and its impact on companies, and provides guidance on effectively incorporating ESG factors into corporate strategies and operations. To read this article, please [click here](#).
 - Helene also wrote an article for *Practical Law* entitled “Board Diversity: Steering the Ship Under the Watchful Eyes of Shareholders, Lawmakers, and Regulators.” The article discusses the pressures to improve diversity on boards from a variety of sources, including shareholders, proxy advisory services, legislators and regulators. To read this article, please [click here](#).
 - Helene wrote firm memos outlining the [recent](#) actions by NASDAQ requesting the Securities and Exchange Commission (SEC) approve a rule change that would require its listed companies to publicly disclose the diversity composition of their directors and to have at least two directors that self-identify as diverse, including one female, within a specified number of years after listing. Failure to meet the requirement would not result in delisting but would require public explanation. The [original](#) rule request, the first for a national stock exchange, elicited over 200 comment letters.

Attorney

- Helene R. Banks