EVENT RECAP

Berkeley Corporate + Climate Summit

2024

Berkeley Law | Center for Law and Business

Introduction

A first-of-its-kind gathering, the two-day Berkeley Corporate + Climate Summit explored the role of corporate governance in combatting climate change. The summit featured leaders across business, government, academia, and nonprofits who advanced conversations with crosscutting themes on governance, climate data, regulatory developments, and long-term thinking to combat climate change. The following provides a summary of the key takeaways from the event. In addition, you may watch the full recording of the summit here.

Crosscutting themes across conversations at the summit may be summarized as follows:

i. The world is now warmer than it has ever been; climate change conversations should include how we can live under current realities in addition to urgent plans and action to keep the warming of global temperatures below two degrees Celsius.

ii. Data is crucial to combatting climate change. Measuring, benchmarking, and verification are useful tools for the market and investors to make the right decisions to channel capital to drive change at the needed scale.

iii. Regulatory proliferation is a blessing and a curse. While regulations are great for standardization and reducing fragmentation, focusing solely on compliance will stagger the needed change and growth.

iv. Litigation risk is real. Companies must be prepared to communicate materiality, gather data granularly, and scope their sustainability communications with greater scrutiny to mitigate litigation risks.

v. Brown assets are crucial for the green transition. Collaboration between green and brown industries to leverage strengths, share learnings, and maximize opportunities will ensure a resilient and sustainable transition.

vi. Strategy is great, but having the right governance around corporate strategy is critical to ensuring that corporations play an optimal role in combatting climate change.

Day 1

Keynote

Core investment beliefs must be underpinned by the following: being a long-term investor is a responsibility, not only an advantage; delivering long-term returns requires effective management of human, financial, and environmental capital; and risk is more multi faceted than volatility; it includes considerations that evolve over a long-term horizon, e.g., climate.

“Get your disclosure house, internal controls, and governance in order, then use climate data to inform strategic decisions and action by setting meaningful targets to drive progress toward reducing emissions.”

—Janine Guillot, Former CEO, Sustainability Accounting Standards Board

Climate's Role in ESG

From a governance perspective, climate considerations are integral considerations for businesses to thrive and guarantee their business model resilience. For example, Blue Triton cares about climate because continued access to water is integral to its business resilience. Governance is best approached using a dedicated sustainability committee comprising members from diverse functions to collaborate on how best to support climate initiatives.

"Data is going to be the game. I anticipate seeing more claims backed by hard data. These claims will come from both the anti and pro-ESG forces. The one area where those forces actually align is being against greenwashing. Accordingly, I suspect they will both deploy AI to sort the massive amounts of data necessary to bring and defend claims of climate-readiness as well as on green credentials."

—Tim Wilkins, Global Partner for Client Sustainability, Freshfields

Disclosures – Voluntary and Mandatory

Mandatory disclosures are not new; they simply enshrine information that has been demanded from time to time by investors in regulatory frameworks. However, watered-down disclosures like the SEC's climate rules are only a small subset of the types of disclosures that the market will expect since reports are crucial to ensuring that the market has the right information and signals to drive the needed change. Companies must take a global outlook on their disclosure programs and account for nuances in the different markets in which they operate regardless of their home jurisdictions.

"The market needs to have the right signals to ensure that investors get the right information to make the right decisions in the face of discontinuity and increasing climate risks."

—Ilmi Granoff, Senior Fellow, Sabin Center for Climate Change Law

Lunch with Spencer Glendon

The world is closer to 3°C of warming as opposed to keeping the warming of global temperature below 2°C. There is compelling data proving that some parts of the world are now too hot for human settlement, and the world is slowly moving outside the bands of civilization. Consequently, solutions must evolve from preventing climate change to determining how we can live with the new realities of warmer temperatures.

"Climate change is not just about warmer temperatures; it is about all kinds of instability because a stable climate is the foundation for building community, cultures, and customs—most of which are now at risk."

—Spencer Glendon, Founder, Probable Futures

Measurement, Benchmarking, Verification, & Assurances

Challenges and opportunities for data management and building sustainability capabilities for corporate climate action are peculiar to company circumstances. To navigate measuring and reporting, companies should determine what is material, identify the best technology, devise the right internal processes (for example, using the same teams for sustainability and annual or management reporting), emphasize data granularity and quality, and communicate sustainability data utility to inform strategy and actions throughout the organization.

"It is crucial to understand priorities and integrate sustainability across the organization. Focus on action—invest in clean technology, reduce and mitigate emissions, drive performance, and report progress with confidence and transparency."

—Vrushali Gaud, Global Director, NetZero Operations and Clean Energy Hub, Google

Brown Assets Transition

Transitioning from a corporate standpoint entails investing in the needed infrastructure and programs to ensure that assets are not stranded, for example, investing in solutions to seamlessly cater to customer needs post-transition, tracing emissions, and accurate disclosures. Companies must embed transition opportunities into their core business strategy to maximize government incentives such as the Inflation Reduction Act to keep transition costs low and accelerate innovation. Start with your unique strengths to see where you can leverage your resources to drive the most change.

"Transition is really about timing, being prepared and looking ahead to see what people are going to do. It is important to look out for signals such as policies in states where you operate, economic signals that will accelerate or slow the intended transition and staying prepared for the outcome of the market signals."

—Tyson Smith, Managing Counsel – Strategy, & Policy, PG&E

Politicization of Climate Change

Companies are at a challenging time where they face pushbacks for overstating or understating their climate focus. Investor risk appetites and time horizons differ. Investors in pension plans are concerned about long-term considerations and asset resilience, and as a result, they are only changing communications and not strategy on climate. Disclosure regulations, e.g., the EU regulations, are also keeping companies focused regardless of the backlash and politicization of climate change in the United States.

"Litigation risk is real, state AGs are very focused on climate disclosures and programs, and the plaintiffs' bar is scrutinizing reports. Companies should invest in their disclosure infrastructure, drill down on making sure disclosures are accurate and properly scoped, develop the right controls and processes around reports, ensure scrutiny into both financial reports and voluntary reports, and benchmark reports against peers."

—Christin Hill, Partner, Morrison Foerster

Day 2

Keynote

A just transition requires public and private efforts. It is important to address every critical issue related to the just transition: community acceptance, pathways into jobs needed for the just transition, project viability, political will, and litigation risks.

"There is a serious industry and human cost to not getting the energy transition right. Public-private collaboration, early community engagement, a truly place-based approach to economic planning, and emphasis on materiality are crucial to increase speed and reduce cost and litigation risks."

—Kate Gordon, Former Senior Advisor to Energy Secretary Jennifer Granholm at U.S. Department of Energy (DOE); Member, Secretary of Energy Advisory Board

Climate Governance and Corporate Reform

Companies that focus solely on compliance are looking at just a third of the full picture of what is required to drive change. Companies should also focus on shifting governance, data management, and utilizing innovative legal tools (for example, the Delaware Public Benefit Corporation) to allow the needed protection for boards to drive meaningful and resilient change.

"Corporate forms are governance tools that provide the needed scaffolding for boards. Although not necessary for every company, they are useful sweet pills in M&As and for disclosure in private markets, they require stakeholder consideration, and they may be a great tool for companies in dirty industries to leverage the business judgment rule protection to make significant investments for transitioning their assets and operations."

—Susan Mac Cormac, Partner, Morrison Foerster

Lunch Fireside Chat with Kristin Casper

Policies that are not aligned with the best available science, new investments in fossil fuel companies, agribusiness impact on biodiversity, and financial institutions that fund destructive business practices are climate risk hotspots and areas where we can expect increased litigation in the coming years.

"There is a close connection between the environment and human rights. People have rights to a clean and safe environment, the government has a duty to protect human rights, and businesses have independent legal responsibilities to respect human rights."

—Kristin Casper, General Counsel, Greenpeace

Lawyers Changing the Corporation from Within

Lawyers should not only follow but also lead in guiding clients and internal teams for alignment on evolving risks, trends, and regulatory developments. Lawyers are uniquely positioned to support corporate climate transitions and decarbonization plans through goal setting, procuring the needed subject-matter expertise, and evolving and updating processes and policies to reflect regulatory developments.

"We are now in a climate emergency, and attorneys need to use their legal powers for good beyond typical tasks like risk identification and mitigation. If there was ever a time for attorneys to push back on sustainability initiatives because of novelty or lack of familiarity, that time has come and passed. Attorneys should be closely collaborating with stakeholders within their organizations to help move sustainability initiatives forward. Focusing just on compliance and doing the bare minimum is not enough to drive the needed change."

—Ryan Hart, Senior Corporate Counsel - Sustainability, Salesforce


Coffee Break

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