The Israel Securities Authority

Call for Proposals on Corporate Responsibility and ESG Risk Disclosures

July 2020

Executive Summary

In recent years, international investors, and especially institutional investors such as pension funds, insurance companies, and leading financial entities, are increasingly looking at corporate social responsibility, and no longer relying exclusively on yields in their investment decision-making.

Motives for incorporating corporate social responsibility (CSR) data in investing decisions may vary. For example, motivation may be based on a desire to promote an external cause (such as environmental sustainability) or on the belief that such investments should be preferred because CSR will increase yields in the long run. Investors may seek to enhance their public image and create positive publicity through such investments, and institutional investors may prefer such investments in order to align with their customers' preferences.

Mainly, investors prefer socially responsible investing (SRI) to avoid investments in industries considered unethical, or alternatively, to target firms that also strive to devise solutions to environmental and social concerns and to resolve corporate governance concerns.

In light of the growth in SRI and the growing interest expressed by investors, regulators have also taken interest in this field, with a view both to the institutional investors making the investments and the target firms.

In a considerable number of countries, especially firms in the EU, institutional investors are under increasing demand to provide information on their SRI policy as part of their reporting on their overall investment policy. Moreover, according to EU Directive 2014/95/EU on non-financial disclosures, large companies are required by law to address their policies on a range of environmental, social, and governance-related issues (ESG) in their reporting to investors.

ESG is a broad field that is not well defined, and may cover a series of issues. In the past year, against the backdrop of the global climate crisis, climate change risks and their resolution have captured a significant place in the disclosures of international public companies.

In the last two years, an internal ISA team studied the need for ESG disclosures, and whether such disclosure requirements would be best placed in securities laws. The team conducted a cross-country comparison of ESG legislation and also met with many participants in Israel's capital market.

Given the complexity of the issue, ISA staff believes that it is important to hear the public's preliminary opinion on the subject. Specifically, the public is invited to address issues including the need for ESG disclosures, whether disclosures should be mandatory or voluntary, whether disclosures should apply only to reporting companies according to the securities laws, and whether securities laws is the most appropriate framework for such disclosure requirements.

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Background

In recent years, international investors, and especially institutional investors such as pension funds (e.g., the Norwegian Government Pension Fund), insurance companies, and leading financial entities (e.g., UBS, Blackrock, Vanguard and Fidelity), are increasingly taking into account corporate social responsibility in their investment decision-making, and no longer rely exclusively on yield-based considerations.

For example, a Deutsche Bank study published in 2016 ("the Deutsche Bank Study") aggregating evidence from more than 2,200 studies on ESG investing[1] shows that a significant number of studies indicated that not only does social investment not have a negative impact on corporate financial performance, but ESG investment criteria have a beneficial impact on returns in the long run, and less than 10% of the studies indicate a negative association between ESG and corporate financial performance. The main reason for this, according to the Deutsche Bank Study, is that companies that conduct themselves in a transparent and environmentally, socially, and economically responsible manner are less likely to be targets of lawsuits and regulatory intervention, while companies with slack corporate governance and inadequate transparency are at risk of a long-term negative impact on returns on equity.[2]

Investments of the kind described above are known as Socially Responsible Investments (SRI). Beyond its outperformance potential, SRI-based policy may be based on various considerations,

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[1] The research was published by Deutsche Bank and the University of Hamburg (Deutsche Asset & Wealth Management Investment, Frankfurt am Main, Germany; School of Business Economics and Social Science, University of Hamburg, Hamburg, Germany) and was designed to study the association between responsible investments and share performance (ESG and financial performance: Aggregated evidence from more than 2000 empirical studies). Other studies in the area include: "Socially responsible investing: viable for value investors?" by Abramson and Chang, published in 2000, https://www.cfapubs.org/doi/full/10.2469/dig.v31.n2.879, and a study by Meir Statman, published in 2006 entitled "Socially responsible indexes: Composition, performance and tracking error"; https://www.researchgate.net/profile/Meir_Statman/publication/228741949_Socially_responsible_indexes_Composition_performance_and_tracking_errors/links/554e06db08ae93634ec6ff63/Socially-responsible-indexes-Composition-performance-and-tracking-errors.pdf.

[2] For example, the Dieselgate affair erupted in September 2015, focusing the scandal over Volkswagen cheating pollution emissions tests. In response, the company's shares plunged sharply and the company's market value was cut significantly. In June 2018, a court ordered Volkswagen to pay the German regulator an unprecedented fine of EUR 1 billion.

including efforts to align investors' interests with broader ethical concerns. The criteria used in SRI are generally known as ESG criteria - environmental, social, and corporate governance considerations.

Environmental concerns includes issues such as greenhouse gas emissions, reducing pollutant emissions and transitioning to renewable energy sources, waste prevention and encouragement of recycling, and water consumption control needs. Social concerns include occupational diversity and gender equality, employee training, charitable contributions, and workplace safety. This document focuses on environmental and social investing disclosures, as corporate governance is subject to extensive reporting requirements defined in securities laws in Israel and worldwide.

Currently, the disclosures of companies in Israel and worldwide, whether made voluntary or under regulation, span a broad spectrum from qualitative descriptions of how ESG criteria are applied in corporate management, to quantitative data that facilitate a study of change over time and cross-firm comparisons.

In SRI, investors typically prefer to avoid investments in industries considered to be unethical, or alternatively, to invest in companies that also make efforts to address environmental and social aspects of corporate governance. Alongside the growing attention to SRI, criticism is also being voiced against SRI on several grounds.

Although several studies show that social investments produce better returns for investors, other studies failed to produce similar findings. It is therefore arguable that SRI undermines financial performance. Criticism has also claimed that the studies use unclear methodologies, and subjective information that precludes inter-firm comparisons of SRI, as a result of which these investments and ESG indexes are unreliable. From time to time it is also claimed that companies priding themselves on socially responsible management do not meet high standards of conduct, and are in fact highlighting certain aspects of their practices while glossing over other, more problematic aspects.

An additional question is whether a company's emphasis on ESG criteria is inconsistent with its purpose, as defined in Section 11 of the Companies Law 5759-1999. This section states that a company's objective is to operate according to business considerations in order to generate profit. Moreover, incorporating non-profit-related considerations in a company's overall operations may eventually lead to a departure from the statutory provisions to which companies are subject, as a result of which companies would serve interests that are not necessarily aligned with the company's interests but rather with outside political or other interests. The added disclosure requirements related to such business practices might also deter private companies from offering their securities to the public.

Disclosures by Large or Public Companies in Europe and the US

In the past decade, an increasing number of firms in Europe and the US, specifically major corporations, publish disclosures on their implementation of social and environmental values in their business operations. The format and location of these disclosures vary as no uniform standard exists. At the same time, in various countries, especially in the EU, institutional investors are under pressure to publish disclosures on their SRI policy as part of their investment policy reporting.

Regulation in the US

US securities law contains no disclosure requirement regarding ESG, and disclosure requirements are based on the materiality of the information.[3] It is conceivable that a specific ESG issue will be reflected in public companies' reports, if it meets the standard tests of materiality. Thus, for example, a company in the oil exploration sector that is subject to risks related to the transition to alternative energy sources will provide a disclosure of that risk.

Over time, in isolated cases, federal legislation determined disclosure regulations that correspond to ESG considerations, and they have generally been a target of strong criticism. For example, Section 1502 of the Dodd Frank Act[4] states that the Securities and Exchange Commission (SEC) will adopt rules concerning the use of "conflict minerals" sourced from specific countries. The adopted rules apply to companies reporting to the SEC that use minerals that come from Congo or neighboring countries in their manufacturing process, where such minerals have a tangible impact on the production of that product. Companies that fall into this category must file a report to the SEC on the use of minerals from conflict zones, and must perform due diligence on their supply chains of the minerals. Due diligence must meet the standards of a recognized country or international standards, such as guidelines for due diligence approved by the OECD.

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[3] https://www.sec.gov/rules/concept/2016/33-10064.pdf, p. 33. The principle of materiality – When there is a high probability that investors will believe that the information is critical for them to make an investment decision or to vote in shareholders meetings, the information should be included in the company's reports.

[4] The Dodd Frank Wall Street Reform and Consumer Protection Act.

The main criticism of the Law was that it effectively imposed a boycott on minerals from Africa, far beyond conflict zones, and as a result legitimate mining was also boycotted. Critics also noted the law had no proven impact in reducing the power of the militias that control mining in Congo. Finally, critics argued that the costs of supply chain due diligence are prohibitive, and it is not clear which companies are subject to the reporting requirement.

Nonetheless, despite the absence of ESG disclosure requirements in the US, over 75% of the major US firms whose shares are listed in S&P 500 voluntarily make ESG disclosures.[5]

In April 2016, the SEC published a document for public comments on additional disclosure requirements for public companies.[6] This concept document also noted that the SEC is examining ESG disclosure requirements and seeks public comment on the necessity of such disclosures and their scope.

The SEC received comments that opposed ESG disclosure requirements, on the grounds that the SEC lacks the authority to determine such disclosures, and that such disclosures will impose an unfair burden on firms and will entail the disclosure of information to their competitors. On the other hand, commenters noted that such disclosure requirements would facilitate the identification of the ESG risks to which companies are subject, and that extending disclosure requirements to include non-financial information will help investors study all the risks of their investment.

The SEC determined that disclosures on environmental or social issues should not be required of all companies, unless mandated by the Congress or if such information is material information.[7] Subsequent documents published by the SEC did not include reference to ESG disclosures and at present, there is no significance change in the SEC's policy on required disclosures.

[5] https://www.sustainability-reports.com/86-of-sp-500-index-companies-publish-sustainability-responsibility-reports-in-2018/

[6] https://www.sec.gov/rules/concept/2016/33-10064.pdf

[7] https://www.sec.gov/rules/concept/2016/33-10064.pdf, p. 205.

Regulation in Europe

Directive 2014/95/EU[8] - Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups ("the EU Directive" or NFRD)[9] defines rules of disclosure of non-financial information by large companies.[10] According to the provisions of the EU Directive, beginning from 2018, large companies that employ over 500 employees are required to incorporate non-financial information in their annual financial reports.[11] It should be stressed that this disclosure requirement applies to large companies in general and not specifically to companies reporting under securities law. The EU Directive also grants large companies considerable flexibility in selecting a reporting standard, which may be domestic, European, or international.

Under the EU Directive, companies must disclose their policy on environment protection, social responsibility and employee treatment, human rights, avoidance of involvement in corruption and bribery, diversity in the composition of its board of directors, and other issues, with the aim of assisting their investors, including their customers and managers, to review the business outcomes of each company through a perspective that is not essentially financially, with the intention that such companies adopt a responsible business approach to their operations. According to the EU Directive, companies must not only disclose how ESG issues might affect the company, but also how the company affects environmental or sustainability factors.

The European Commission undertook to examine the European Directive's guidelines in 2020 as part of its strategy to strengthen the foundations for sustainable investment. Accordingly, on February 20, 2020, the Commission published a public consultation paper on the review of the NFRD,[12] and on whether changes should be made in the EU Directive with regard to the following issues:

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[8] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN

[9] This Directive amends Directive EU/2013.34, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN

[10] The Directive came into force in December 2014, provides that member countries must adopt the provisions in their domestic laws by no later than 2016.

[11] The disclosure requirements for non-financial information apply to certain large companies with more than 500 employees, as the cost of obliging small and medium-sized enterprises to apply them could outweigh the benefits.

[12] https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

1. The quality and scope of non-financial information published in the financial statements. Currently, companies must report twice – once to explain how the ESG issues are likely to affect them and once again to describe how the company affects ESG issues;
2. Presentation of a joint reporting standard for all the companies reporting on ESG;
3. Implementation of the materiality principle which examines the relevance of a specific ESG factor for the company's financial performance;
4. Audits by an auditor of the non-financial information published in the financial statements (no such requirement currently exists);
5. Digitization of non-financial information. The European Commission is exploring whether the establishment of a unique access point for information is warranted (currently, companies registered in the EU publish their annual financial statements in XHTML);
6. The structure and location of non-financial information in the financial statements;
7. Potential expansion of the number of companies required to comply with the rules of the EU Directive by lowering the criteria for the number of employees or annual turnover (as previously stated, the EU currently applies to companies with more than 500 employees, although some EU member countries have reduced the minimum number of employees to 250);
8. Administrative burden, which represents the time and cost of preparing the ESG reports required by the EU Directive.

Guidelines and Principles of Disclosure under the EU Directive

As required by the EU Directive,[13] the European Commission published non-binding guidelines and principles on voluntary disclosure of non-financial information by large companies that are subject to the EU Directive. The guidelines are intended to instruct companies how to report non-financial information in their financial statements.[14]

A supplement to the guidelines dated September 2019[15] incorporates the recommendations of the Task Force on Climate Related Financial Disclosure ("**TCFD**") on climate-related disclosures in financial reports. The TCFD's main recommendation states that information on climate change

[13] Article 2 of the Directive refers to 'guidance on reporting' and sets out that 'the Commission shall prepare non-binding guidelines on methodology for reporting non-financial information.

[14] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0705(01)&from=EN

[15] http://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf

and its effects on the reporting company must be published in the annual financial filings[16] and be accessible to users.

According to these guidelines, the relevant companies must provide information on their dependency on ESG factors, report about commercial opportunities in the field, and include the risks of and effects on ESG factors and the main effects of ESG factors on their performance and state of business. Companies may consider providing relevant information on target setting and progress measurement of ESG matters. Likewise refer to the company's board diversity policy (background, age, gender, education, and professional background).

The European Securities and Markets Authority (ESMA)

The ESMA studied ESG issues both according to the EU Directive and the publications of the European Commission, and as an independent body. It also participated in a Technical Expert Group on Sustainable Finance (TEG), which focused on implementation and execution of the European Commission's strategy.

In 2009, the ESMA examined the impact of the EU Directive on European capital markets,[17] and made the following recommendations:

1. To remove the option given to companies to choose the location of the non-financial report by requiring that non-financial reporting should be included in the annual financial report (a requirement in line with TCFD guidelines);
2. To require companies' auditors or auditing accountants to conduct audits of the content of the ESG declarations and their consistency with the financial report.

In February 2020, the ESMA published its strategy on the subject of Sustainable Finance.[18] The ESMA's main priorities, which were emphasized in its strategy for 2020, include completion of the regulatory framework on the duty of transparency through a European disclosure regulation. The ESMA intends to work with the European Banking Authority (EBA) and with the European

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[16] The default location for the non-financial statement according to NFRD is the company's management report, although many Member States have taken up the option of allowing companies to publish their non-financial statement in a separate report. According to the TCFD, its recommended disclosures should be included in a company's mainstream "annual financial filings."

[17] https://www.esma.europa.eu/document/report-undue-short-term-pressure-corporations-financial-sector

[18] https://www.esma.europa.eu/press-news/esma-news/esma-sets-out-its-strategy-sustainable-finance

Insurance and Occupational Pensions (EIOPA) on new regulations based on the taxonomy published by the EU. The ESMA's objective is to produce a single law book of all the transparency obligations and improved due diligence procedures for financial market actors with respect to ESG.

Rating agencies and indexes

As part of its new strategy, the ESMA plans to impose increased ESG transparency requirements on credit rating agencies in Europe in their creditworthiness reports published to the public. The new regulations, which were scheduled to enter into force on April 30, 2020, impose extensive disclosure obligations on the managers of such indexes with regard to the ESG factors in the indexes they manage.[19]

However, a document published by the ESMA in 2019 states that credit rating companies are responsible for assessing the creditworthiness of companies or issuers, and not the ESG factors. This document also states that while ESG factors may be included as part of the credit ratings of companies and issuers, this information should not be construed as an expression of the rating agency's opinion on the ESG factors of those companies or issuers. In response to the corona pandemic, the ESMA published a No Action Letter to suspend implementation of the new regulations until further notice.[20]

UK Regulation

The UK considers itself to be an active leader in the field of ESG. The country's regulatory and financial entities act in conjunction with the local government and the EU to promote ESG matters through regulatory oversight.

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[19] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2089&from=EN

[20] https://www.esma.europa.eu/press-news/esma-news/esma-issues-no-action-letter-new-esg-disclosure-requirements-under-benchmarks

Commencing in 2013, as a result of an amendment to the UK Companies Act,[21] public companies ("Quoted Companies"[22]) are required to include non-financial information in their financial reports on the following ESG-related matters:

1. The main trends and factors that potentially affect the company's future development, performance, and state of business.
2. Information on environmental matters (including the effect of the company's business on the environment), the company's employees, social, and community matters (including information on the company's policy on these issues and its effectiveness).
3. Information on people with whom the company is connected or has arrangements and who are vital to the company's business.

If the financial report does not include certain information set out above, the company must indicate which information is missing.

Commencing in April 2017, private and public companies in Britain that employ more than 250 employees must also publish various data on gender pay gaps[23], under the Gender Pay Gap Reporting Regulation.[24] It should be noted that following the outbreak of the COVID-19 pandemic, the Government Equalities Office and the Equality and Human Rights Commission suspended the enforcement of those regulations for the current reporting year (2019/20).[25]

We would add that in 2018, the Financial Conduct Authority (FCA) published the conclusions of its consultation paper on ESG disclosures. The conclusions state that TCFD recommendations should be the basis for the location of non-financial reporting, and that reporting should be consistent, of a high standard, and support comparability. The FCA's approach is that failure to maintain uniform standards will restrict the growth of the ESG economy, since such a situation prevents long-term thinking.

[21] UK Companies Act 2006, Article 417, Section (5).

[22] Quoted companies as defined in Section 385 of the Act are those whose equity share capital (a) has been included in the official list (as defined in section 103(1) of the Financial Services and Markets Act 2000) in accordance with the provision of Part 6 of the Financial Services and Markets Act 2000 (c. 8), or (b) is officially listed in an EEA State, or (c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.

[23] https://www.gov.uk/government/news/gender-pay-gap-reporting

[24] The Equality Act 2010 (Gender Pay Gap Information) Regulation 2017

[25] https://www.gov.uk/government/news/employers-do-not-have-to-report-gender-pay-gaps

The British Corporate Governance Code published in 2018[26] established the principles a board of directors must apply to promote its company's objective, values, and future success. The Code states that companies must report to their shareholders how they calculated the risks and opportunities for the business's future success, including opportunities and risks related to ESG. The Code states that companies must develop a policy and methods for manager remuneration based on long-term success in ESG matters. The Code also indicates the need for an organized plan for board appointments that includes social, gender, and ethnic diversity.

According to the London Stock Exchange (LSE) listing rules, all companies with a UK premium listing must report in their annual financial reporting how they applied the Code. Under the Code, companies will provide clear explanations when they choose not to comply with one of its provisions ("Comply or explain" requirement),[27] so that their shareholders can understand the reasons and judge whether they are satisfied with the company's approach.

In March 2020, the FCA published, for public comment, proposals to implement the disclosure policy recommended by the TCFD, a policy that relates to the frequency at which the company's managers and the board of directors are exposed to ESG-related information, how the information is analyzed, the effect of ESG factors on the company, and the location of the disclosures in the financial report.[28] According to the proposals, the law will require companies on the LSE's Premium List[29] to declare whether their reports conform to TCFD recommendations, report cases in which they did not follow the recommendations, and explain their reason for doing so. The relevant companies will also be required to report the cases in which they included ESG report in a document other than their annual financial report, the reason for the inclusion, and where these reports are available.

That law is expected to apply to 480 companies, including all the companies included in the FTSE 100 Index. The FCA announced that, for the time being, the new law would apply to companies that are issuers and not to regulated firms. However, the FCA does not plan to demand that all the

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[26] https://www.frc.org.uk/document-library/corporate-governance/2018/uk-corporate-governance-code-2018

[27] https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code

[28]https://www.fca.org.uk/news/press-releases/fca-announces-proposals-improve-climate-relateddisclosures-listed-companies

[29] Explanation –

Issuers with a Premium Listing are required to meet the UK's super-equivalent rules which are higher than the EU minimum requirements. A Premium Listing means the company is expected to meet the UK's highest standards of regulation and corporate governance.

companies implement the law, since it considers the imposition of additional regulation on small companies whose shares are not Premium Listed as a regulatory obstacle to their development.

Notably, in September 2019,[30] the British government proposed establishing an explicit disclosure obligation on climate-associated risks for listed companies and large asset owners, which will enter into force from 2022.[31]

Task Force on Climate Related Financial Disclosures

In December 2015, the Financial Stability Board (FSB)[32] set up the TCFD, the Task Force on Climate-Related Financial Disclosures. The TCFD is a voluntary organization, whose objective is to develop a voluntary disclosure scheme for climate-related financial effects and risk management, and to promote the scheme's adoption by companies that will then be able of informing their investors and the public of the climate-related risks they face.

In June 2019, THE TCFD published a **non-binding** guide, setting out standards for climate-related reporting. The guide advises companies to include the following information in their reports:[33]

1. The frequency at which board committees and other committees in the company (e.g., audit committee, risk committee) receive information on climate-related matters;
2. How do climate-related issues affect the company, the company's strategy, and its financial planning?
3. Does the board or do the board committees consider climate-related issues when reviewing one or more of the following: the strategic plan, key action plans, risk management policy, annual budgets, and business plans?

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[30]https://www.fca.org.uk/news/press-releases/fca-announces-proposals-improve-climate-related-disclosures-listed-companies

[31]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813656/190701_BEIS_Green_Finance_Strategy_Accessible_PDF_FINAL.pdf

[32]This is a financial stability board, an international body that supervises and makes recommendations to the international financial system. This organization was established in 2009 at the London summit attended by several G20 countries. The board, which convenes in Basel, Switzerland, includes, among others, representatives of each of the 20 leading economies in the world.

[33]https://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf

4. Are climate-related considerations taken into account when setting the organization's performance targets, supervising implementation and its performance, supervising large capital expenditure, and making acquisitions and incurring expenses?

The TCFD recommends that if a company elects to implement the standards included in the guide, these disclosures and reports should be included in the annual financial report.

Disclosure by Institutional Investors and Investment Managers in Europe

In addition to its disclosure requirements of large or public companies, the European Commission published a paper for public comment that proposed to require institutional investors to inquire into their customers' preference on ESG issues, such as their preferences regarding the environmental and social effects of the companies in which they invest, and accordingly to consider their customers' preferences when matching customers to investment tracks. In this manner, institutional investors would integrate ESG matters into their procedures, as part of their obligations to act in their customers' interests.

In 2018, the EU published "The Strategic Plan for a Greener and Cleaner Economy."[34] Significantly, this action plan refers to investment companies' obligation to inquire into their customers' preferences in area ESG matters, so as to match portfolios to customers; the creation of a taxonomy in order to establish a common language for sustainable finance, and to require asset managers and investment consultants to incorporate ESG factors into their investment decision-making and consulting, and to report to their investors.

The EU passed a law relating to ESG disclosures, which determined guidelines for disclosures by asset managers and investment fund managers. Under the new guidelines, which will become effective in March 2021, asset managers must provide disclosures on their policy of integrating sustainability risks in the decision-making process, or alternatively provide a detailed and clear explanation of why they elect not to integrate these risks; ESG targets; achievement of the targets, and other matters.

[34] http://europa.eu/rapid/press-release_IP-18-1404_en.htm

The Situation in Israel

In Israel, disclosure requirements under securities laws require the publication of information that meets the test of materiality.[35] Disclosure requirements concerning matters such as company employees,[36] environmental risks to which the reporting company is exposed,[37] and company policy on charitable donations,[38] which are determined in the regulations promulgated under the Securities Law 5728-1968, are also based on the principle of materiality. It should be noted that the reporting companies are also subject to extensive disclosure requirements on matters of corporate governance, such as the composition of the board and its committees, transactions with interested parties, and senior officers' salaries. These disclosures are also based on disclosure requirements stated in regulations and are also based on the principle of materiality.

From time to time over the years, private legislation bills have sought to incorporate additional disclosure requirements in the securities laws in order to promote external interests that are not necessarily related to investment in the companies, but these bills were not been promoted. The broadest private bill was the Corporate Responsibility Bill (Reporting Duty) 5776-2016 ("the Bill").[39] According to the Bill, which was not promoted, government companies, municipal corporations, and large companies (including public companies that meet the definition of a large company)[40] will be required to file each year no later than March 31, a corporate responsibility

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[35] See for example Civil Appeal 5320/90 *A.Z. Baranovitch Properties and Rental Ltd. v. Securities Authority* P.D. 46(2); p. 837.

[36] Section 22 of the First Schedule to the Securities Regulations (Prospectus Details, Structure, and Form) 5729-1969.

[37] Section 28 of the First Schedule to the Securities Regulations (Prospectus Details, Structure, and Form) 5729-1969. The ISA also sponsored an additional amendment to this clause as part of a project to improve financial reporting, http://www.isa.gov.il/%D7%97%D7%A7%D7%99%D7%A7%D7%94%20%D7%95%D7%90%D7%9B%D7%99%D7%A4%D7%94/Legislation/Proposed%20Legislation/2233/Documents/Simplifying_Reports.pdf?fireglass_rsn=true#fireglass_params|&tabid=a5aced7c2220b24f&application_server_address=fg-gw-jer.isa.gov.il&popup=true&is_right_side_popup=false&start_with_session_counter=1&anti_bot_permission=6544206691-65fd1798bacd24162a3cf60208a5159a4ca62cdd

[38] Section 10(b)(6) of the Securities Regulations (Periodic and Immediate Reports) 5730-1970.

[39] Bill No. 3276/20/p Corporate Responsibility Bill (Reporting Obligation) 5776-2016.

[40] "Large company" – A company in which all the following obtain: (1) The company has more than 250 employees; (2) The company's annual turnover is in excess of NIS 15 million; (3) The salary of the highest-earning employee is more than thirty times the salary of the lowest-earning employee.

report for the previous financial year, in the format included in the Second Schedule to the Bill,[41] to the "commissioner" (who will be appointed by the Minister of Justice to be responsible for the execution of the Law) and to the ISA.

Concerning disclosures by institutional investors, in December 2017, the Capital Market Authority's demand entered into force,[42] requiring **institutional investors to declare, as part of its investment policy, whether responsible investment factors were taken into consideration when determining said policy.** If the answer to the question above is affirmative, institutional investors are required to furnish details of those factors.

Call for Public Comments

In view of global developments and investors' growing interest in social responsibility, the ISA is seeking the public's comments on this subject, and specifically, the public's responses to the following questions:

1. Is there a need for disclosure on ESG matters, and if so, on which matters specifically?
2. If ESG disclosures are warranted, what is the appropriate format for the disclosure?
3. If ESG disclosures are warranted, should the disclosure be voluntary or compulsory (by law)?
4. If ESG disclosures are warranted, where should the disclosure be located (e.g., the company's website, the MAGNA system in which companies' reports are concentrated, or a designated website for ESG disclosures)?
5. Do listed companies specifically warrant ESG disclosure requirements?
6. Should ESG disclosure requirements be imposed on all listed companies?

[41] The disclosure proposed to be included in the corporate governance report included, for example, questions on investments in human resources and human capital, prevention of sexual harassment, access, contribution to the community, occupational diversity, and whether the organization has a program to promote disadvantaged groups of Israeli society, and issues regarding environmental policy, the company's energy sources, water consumption, and use of recyclable or recycled materials. According to the Bill, a public company that is not a "large" company is required to file a corporate responsibility report once every two years.

[42] Institutional Entities Circular 2017-9-24, declaration of the investment policy expected in institutional entities, Capital Market, Insurance and Savings Authority: http://mof.gov.il/hon/documents/%D7%94%D7%A1%D7%93%D7%A8%D7%94-%D7%95%D7%97%D7%A7%D7%99%D7%A7%D7%94/mosdiym/memos/h_2017-9-24.pdf

7. What are the costs and resources entailed in the preparation of ESG disclosures?
8. Do ESG disclosures potentially cause damage to the listed companies and the Israeli economy?
9. Is the present time, against the background of the COVID-19 pandemic, appropriate for addressing this issue?
10. Do current disclosure requirements limit mutual funds with ESG-oriented investment policies from making investments in the local stock exchange?
11. Is it necessary to incentivize listed companies to include ESG disclosures by offering tax incentives and/or subsidizing the costs of ESG rating reports?

We invite the public to send its opinion and comments on the contents of this document, and on other issues related to ESG disclosure requirements, no later than September 17, 2020.

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