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BUILDING AN EFFECTIVE ESG PROGRAM

With new ESG reporting requirements on the horizon, corporations will be faced with the task of developing an appropriately tailored and effective ESG program to collect, verify, and report the necessary information to satisfy applicable obligations under the new regulations. In this article the authors draw on information presented at the 39th Annual International FCPA Conference session titled “Creating a Best-In-Class ESG Compliance Program: Engaging with Stakeholders and Leveraging Cross Functional Teams to Identify Key Risk Factors and Ensure Compliance.” Citing polling responses at the conference, they discuss ways to leverage existing compliance functions to develop a systematic approach to ESG program development and implementation.

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ESG PROGRAM DEVELOPMENT IN CONTEXT: THE NEED FOR CLARITY

Building an effective environmental, social, and governance (“ESG”) program starts with understanding what that term means. Like the parable of the blind men with the elephant, where each one touches a different part of the beast and comes away with a completely different vision of what it is, the term “ESG” tends to mean different things to different people, depending on what part of the beast they are touching. A chief executive officer responding to direction from the board of directors may look at it differently than a compliance officer responsible for putting programs in place to help ensure the company follows all applicable laws, rules, and regulations, or a communications director tasked with designing the corporate sustainability report and

engaging with stakeholders. Other groups of employees at the department level, who might be responsible for developing relevant metrics, tracking key performance indicators, and collecting, verifying, or interpreting essential data for ESG reporting may have a different view. Likewise, a stakeholder or investor assessing corporate risks and opportunities, or a customer deciding what to buy, or an entry-level employee keen to work for a company focused on sustainability can have a different level of engagement with ESG and a different understanding of what it means. So, too, can governmental organizations be responsible for reviewing and enforcing ESG-related disclosures and regulations.

In this context, implementing an effective ESG program requires clarity in the program’s purpose and the way it is conveyed, not only to those responsible for

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