



Trends in Racial and Social Justice Disclosures

Amongst the US S&P 50

Updated March 2024



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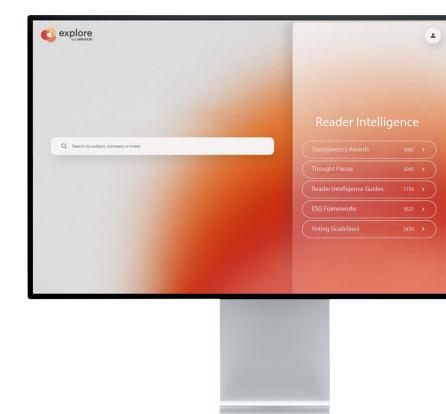
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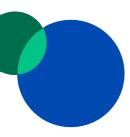
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Introduction

Today's consumers and employees are looking for corporations to reflect the diversity of the communities in which they live. And more investors are asking for details on what companies are doing to advance social justice in ways related to their business. At the same time, there is increased scrutiny regarding companies' diversity, equity, and inclusion (DEI) programs as recent legal and other challenges have emboldened anti-DEI groups.

In this piece we discuss trends on how racial and social justice movements have impacted corporate environmental, social, and governance (ESG) reporting practices amongst the <u>U.S. S&P 50</u>. In addition, we give suggestions for future reporting practices around these issues.

Background

While companies have been scrutinized for their environmental and social impacts since the Industrial Revolution and, more recently, the Civil Rights movements of the 1960's, that scrutiny has increased dramatically since 2020. Not only has the "perfect storm" of Black Lives Matter (BLM) protests, the #MeToo movement, the overturning of nearly 50 years of *Roe v. Wade*, and the COVID-19 pandemic intensified political divides in the U.S., but it has also spurred more investors, employees, customers, non-profits and communities to demand that companies address these hot button social issues.

Are companies that made bold supporting statements for racial justice in 2020 after George Floyd's death following up such statements with action? Are companies speaking out against anti-LGBTQIA+ and anti-reproductive rights laws in states in which they are headquartered?¹ Are companies helping their employees access inclusive healthcare practices even in states where abortion or transgender care are being banned?

Customers, employees, and other corporate stakeholders are all asking these questions.

Lily Zheng describes what she sees as a transition from corporate social responsibility (CSR) to corporate social justice this way:²

Now, consumers and employees are raising the bar. The killing of George Floyd by a white police officer in Minneapolis has driven one of the largest protest movements in recent memory, and the widespread reactions to the standard CSR playbook suggest that old best practices may no longer work.... Corporate Social Justice is a reframing of CSR that centers the focus on any initiative or program on the measurable, lived experiences of groups harmed and disadvantaged by society... [It] is a framework regulated by the trust between a company and its employees, customers, shareholders, and the broader community it touches, with the goal of explicitly doing good by all of them. Where CSR is often realized through a secondary or even vanity program tacked onto a company's main business, Corporate Social Justice requires deep integration with every aspect of the way a company functions... Consumers and other stakeholders want companies to see social good as a necessity, not just a marketing strategy. It's up to companies to respond to this new challenge.

More recently, anti-DEI activity has also intensified. After the U.S. Supreme Court's June 2023 ruling in Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, which held that colleges and universities cannot consider race in and of itself as a factor in admission decisions, there has been a flood of activity looking to extend aspects of the ruling to the private sector. For example, 13 Republican state attorneys general sent a letter to the CEOs of the 100 largest U.S. companies cautioning them on the legal consequences of using race as a factor in hiring and employment practices.³ It is unclear how this recent backlash by certain special interest groups will impact corporate reporting going forward. Early indications show an ongoing commitment to DEI despite the challenges.⁴

¹ Barak Harif, Tal and Marques, Felipe. (April 27, 2023). "Disney Versus DeSantis: A Timeline of the Florida Feud." Time Magazine.

² Zheng, Lily. (June 16, 2020). <u>"We're Entering the Age of Corporate Social Justice."</u> Harvard Business Review.

³ Grantham-Philips, Wyatte, Mulvihill, Geoff, and The Associated Press. (July 15, 2023). "Fortune 100 companies are getting swarmed by Republican AGs using the Supreme Court affirmative action as a lever into the workplace." Fortune.com.

⁴ <u>https://corpgov.law.harvard.edu/2024/02/26/dei-in-an-era-of-unrest-a-few-truths-and-a-path-forward/</u>

Current U.S. Practices in Racial and Social Justice Disclosures

In direct response to bold statements of support many U.S. companies made after George Floyd's death, the non-profit shareholder advocacy organization As You Sow[®] launched its <u>Racial Justice Initiative and</u>. <u>Scorecards</u>. The initiative strives to "monitor corporate responses and follow up with companies to ensure that statements of support for racial justice are translated into concrete actions that truly promote equity, thereby helping them on the path to end corporate complicity in systemic racism." While their annual scorecard demonstrates that U.S. companies have a lot of room for improvement, As You Sow[®] has recognized PayPal, illumina[®], Microsoft, The Walt Disney Company, Altria, American Electric Power, Activision Blizzard, eBay, UnitedHealth Group, and BNY Mellon for their related policies, practices, and communications.

Over the last several years, many companies have developed DEI programs that include some of the elements below. Several were driven by shareholder proposals and broader stakeholder engagement.

- Some companies have adopted the "Rooney Rule"⁵ so that diverse candidates are included in searches for new board members and internal positions.
- Prompted by shareholder proposals and support from the NYC Comptroller, many companies put their latest EEO-1⁶ data online and include links to the data in their ESG reports.
- Companies like Apple have had shareholder proposals lead to civil rights and other related audits.
- A growing number of U.S. companies have created leadership positions focused on enterprise-wide diversity, equity, inclusion and belonging goals and initiatives.
- Many companies have set DEI-related goals and launched initiatives around recruitment (especially into leadership positions), pay equity, training, and compensation incentives.
- Many companies have focused their community engagement and philanthropic giving on addressing gender, racial and ethnic disparities in areas like financial inclusion, small business development, education (especially in science, technology, engineering and mathematics), food insecurity, environmental justice and a just transition to a clean economy, and access to healthcare.

⁵ The National Football League "Rooney Rule" requires teams to interview ethnic minority candidates for head coaching and other senior football operation jobs.

⁶ The U.S. Equal Employment Opportunity Commission requires mandatory annual data collection from all private sector employers with 100 or more employees and federal contractors with 50 or more employees meeting certain criteria. The workforce demographic data is broken down by job category, sex and race or ethnicity. It should be noted that EEO-1 data cover only U.S.-based locations and exclude not only international employees but also contractor and other types of contingent workers.

Company Examples

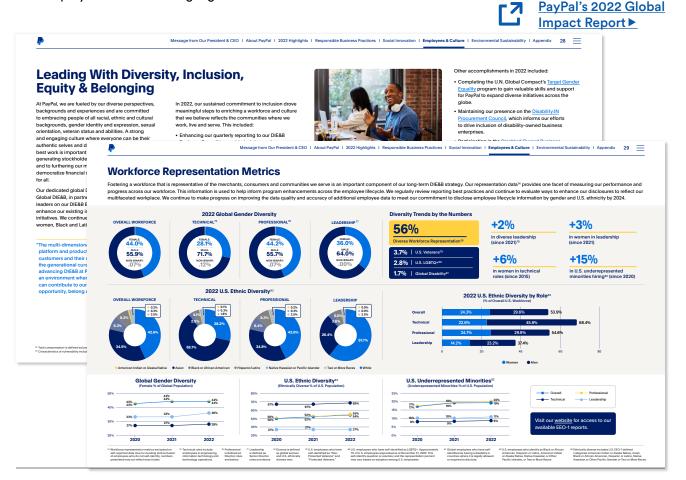
A number of best practices have emerged in U.S. ESG reports around racial and social justice disclosures. Labrador's benchmarking of 2021-2022 ESG reports from the S&P 50 found that:

- Nearly all included race, ethnicity and gender workforce diversity data.
 - o A small percentage also included data on sexual orientation, age and disability status.
- Nearly all provided access to their most recent EEO-1 data.
- Around half set social goals with a 2-5 year target and showed quantitative changes from baseline year-to-year.
- Around one-third discussed gender or racial inequality, while a little less discussed systemic racism.
- Around one-fifth published separate Social, Human Capital Management, or DEI reports.
- Less than one-fifth discussed pay equity.

Labrador will be actively benchmarking the upcoming 2023 reports to determine whether there is a noticeable change in DEI disclosure practices based on recent events.

PayPal's 2022 Global Impact Report

PayPal's Global Impact report includes comprehensive workforce diversity data, details on social innovation, and employee and culture highlights.



Microsoft's 2022 Global Diversity & Inclusion Report and 2022 Impact Summary Report

Microsoft has multiple reports that cover sustainability, corporate responsibility, and diversity and inclusion. They have in-depth information on company culture and how they are turning commitments into action.



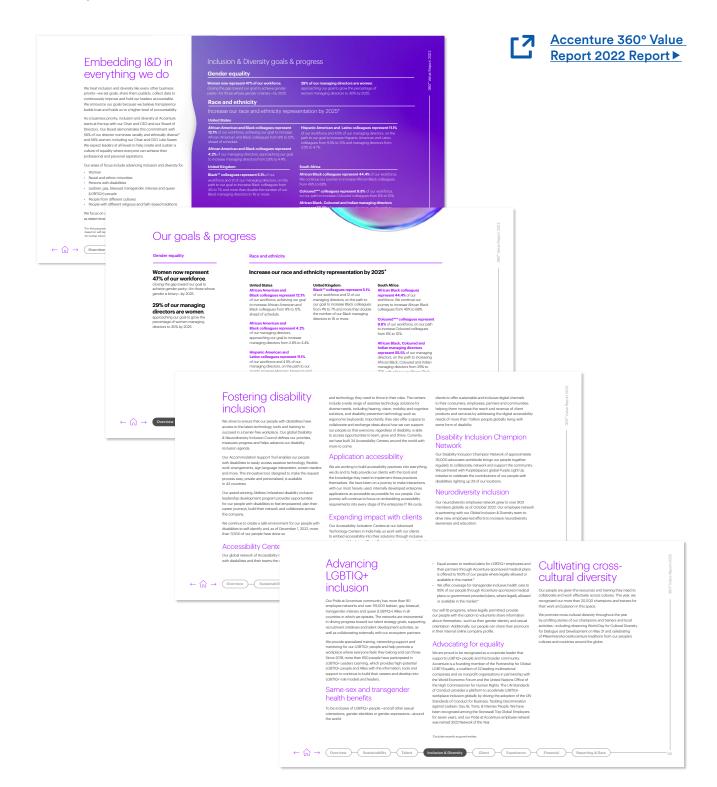
Boeing Company 2022 Sustainability Report

Boeing shares in-depth diversity information, including veteran, disability, and LGBTQ+ diversity data.



Accenture 360° Value Report 2022

Accenture provides detail that helps readers understand their diversity, equity and inclusion goals, practices and progress.



Looking Ahead

Companies should monitor the ripple effects of the U.S. Supreme Court's ruling, the letter from certain Republic state attorneys general, and other challenges on corporate DEI programs and disclosures. At a minimum, we suggest companies disclose the "why" of their DEI and social justice initiatives and explain how they tie back to their core business value and value creation. In addition, a company's DEI efforts and disclosures should be thoroughly vetted by legal counsel, including any previously announced DEI goals around recruitment, to mitigate any unnecessary legal risk.

To date, however, the anti-DEI backlash being experienced in the U.S. has not slowed down advances in ESG corporate reporting regulations or voluntary frameworks development and alignment. The <u>United</u> <u>Nations Sustainable Development Goals (UN SDGs)</u>, the <u>UN Global Compact</u>, the <u>UN Guiding Principles on</u> <u>Business and Human Rights</u>, the <u>Global Reporting Initiative (GRI) Standards</u>, the <u>Just Capital Rankings and</u> <u>Scorecard</u>, and <u>the Workforce Disclosure Initiative (WDI)</u>, among others, require different levels of DEI, human rights and social justice commitments and/or disclosures from companies. While the newly released <u>International Sustainability Standards Board (ISSB) Standards</u> (which now subsume the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and the existing Sustainability Accounting Standards Board (SASB) industry standards) focus only on financially material sustainability disclosures, depending on a company's industry and value chain relationships, racial and social justice issues may need to be disclosed.

Possibly the biggest set of changes coming, however, may be the newly released <u>European Sustainability</u> <u>Reporting Standards (ESRS)</u> under the <u>European Union's Corporate Sustainability Reporting Directive</u> (<u>CSRD</u>). Not only do the ESRS require disclosures related to a company's own workforce, workers in its value chain, affected communities, and consumers and end users of its products or services, but also compliance with the EU's <u>Corporate Sustainability Due Diligence Directive (CSDDD</u>). We suggest that U.S. companies start thinking now about if and how CSRD may apply to their business and corporate ESG reporting.

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Citations

Barak Harif, Tal and Marques, Felipe. (April 27, 2023). <u>"Disney Versus DeSantis: A Timeline of the Florida Feud."</u> *Time Magazine*.

Emmerich, Adam O., Silk, David M., and Niles, Sabastian V. (July 21, 2021). <u>"Using ESG Tools to Help Combat Racial Inequity."</u> *Harvard Law School Forum on Corporate Governance*.

Grantham-Philips, Wyatte, Mulvihill, Geoff, and The Associated Press. (July 15, 2023). <u>"Fortune 100 companies are getting swarmed by Republican AGs using the Supreme Court affirmative action as a lever into the workplace.</u>" *Fortune.com.*

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