



Navigating the “E” in ESG: Sustainability and Beyond

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Prepared for AHFA

*Heather M. Palmer, Partner and Global Co-
Leader of Sidley’s ESG Practice*

Agenda

- Key ESG Issues and Themes
- Voluntary ESG Disclosure
- SEC Update on ESG Disclosures
- Sustainability and ESG
- Activism and Litigation Risks
- Evolving Corporate Practices and ESG Integration

Key ESG Issues and Themes



Key ESG Issues

Environmental

- Climate change
- Greenhouse gas emissions
- Air and water pollution
- Energy consumption
- Water usage
- Waste and recycling
- Environmental justice



Social

- Workplace and product safety
- Employee diversity and inclusion, discrimination and fair pay
- Collective bargaining
- Human rights
- Conflict regions
- Charitable contributions and community programs
- Cybersecurity & Data Privacy
- Supply chain management

Governance

- Anti-bribery and corruption
- Compliance
- Corporate purpose and stakeholder interests
- Evaluation and effectiveness
- Board diversity
- Executive compensation
- Political contributions
- Lobbying
- Tax strategy

Environmental and Social Themes on the Rise

ESG Themes

- Renewed focus on corporate purpose
- Thesis that better E&S attentiveness and performance de-risks operations, makes business more sustainable, creates opportunities and improves financial performance overall
- Belief in specific E&S value theses (e.g., reduced emissions are necessary for a “social license to operate”; workforce diversity drives value and business resilience)
- Expectations that better corporate disclosures will increase market value and efficiency
- Recognition that E&S themes increase the attractiveness of a shareholder activism campaign, potentially making the campaign difficult to disregard for the company and other investors
- Higher E&S ratings can lead to increased liquidity (e.g., through index and fund inclusion) and lower cost of capital

Primary Players

Investors

Objective:

Incorporate ESG considerations and values into their investment process

Needs:

- Data
- Ratings
- Standards
- Indices
- Engagement



Investment, Engagement and Voting



Listed Companies

Objectives:

- Align ESG and financial sustainability
- Advance ESG, ERM and risk oversight
- Identify ESG risks and opportunities
- Make new ESG disclosures to inform ratings
- Rate and rank competitively
- Benchmark performance
- Achieve sustainable financial return

ESG Ecosystem – Selected Players

Research and Advocacy



Framework Developers



Standard Setters



Proxy Advisors



Investor & Business Coalitions



Many organizations play a role in helping companies to produce better ESG disclosures and investors to evaluate ESG performance

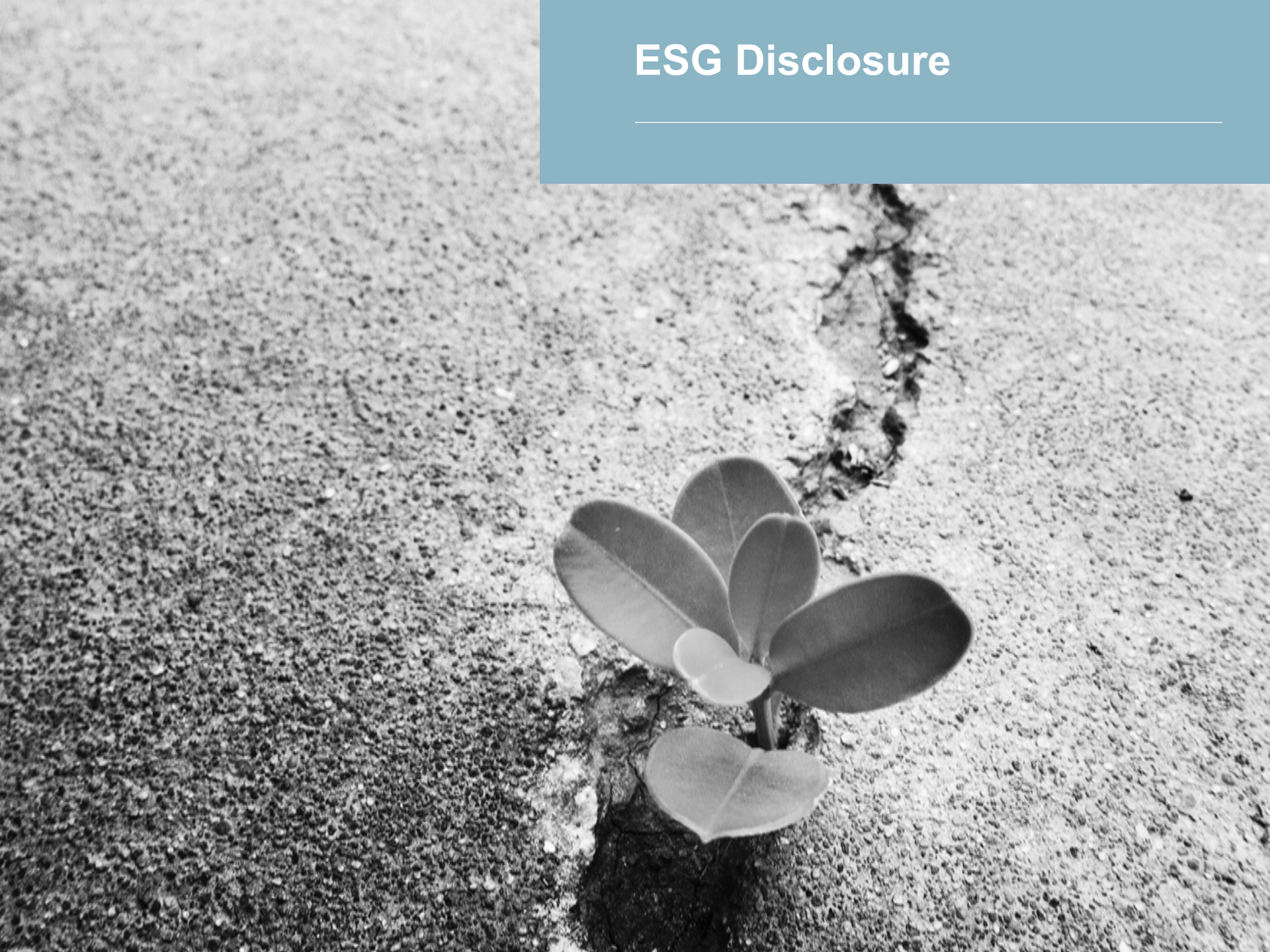
Data Collectors and Raters



Indices



ESG Disclosure



Voluntary ESG Disclosure



CDP – formerly Carbon Disclosure Project. Scores corporations on environmental risks and opportunities related to climate change, water security, and deforestation based on information obtained through annual questionnaires.



CDSB – Climate Disclosure Standards Board. Developed the CDSB Framework for Reporting Environmental and Climate Change Information (2015); seeks to standardize disclosure of environmental information in mainstream reports.



GRI – Global Reporting Initiative. Created international guidelines for sustainability reporting (2000); issued sustainability reporting standards (2016); corporations determine which GRI standards to apply to disclosures.



IIRC – International Integrated Reporting Council. Developed International Integrated Reporting Framework (IIRF) to support disclosure of material information on strategy, governance, and performance in a concise, comparable format.



SASB – Sustainability Accounting Standards Board. Developed voluntary ESG reporting framework (2018) with industry-specific sustainability accounting standards for 77 industries.



TCFD – Task Force on Climate-related Financial Disclosures (established by Financial Stability Board). Released framework (2017) to help corporations evaluate and disclose financial risks posed to their business by climate change.

Climate Change and ESG Disclosures

Current Disclosures

- SEC Division of Corporation Finance disclosure review staff is actively reviewing current disclosures – we expect corporate issuers may receive comments on these disclosures
 - 2010 SEC’s Guidance on Climate Disclosures related to non-financial disclosures
 - March 2021 FASB Statement outlining the intersection of ESG matters with financial accounting standards
- SEC Division of Enforcement staff is proactively attempting to identify ESG-related misconduct with a 22-person task force – we expect the SEC will bring enforcement actions against those companies whose public proclamations do not align with their practices, i.e., “greenwashing”

Potential New Disclosures

- SEC leadership has made numerous statements in support of new prescriptive ESG and climate change disclosures to provide investors with more consistency, comparability and reliability
- We expect the SEC to propose new ESG and climate disclosure requirements before the end of 2021
 - Spring 2021 Reg. Flex Agenda includes proposals for disclosure relating to climate risk, human capital and corporate board diversity
 - However, the SEC can only adopt final rules after an adequate period for public notice and comment, as well as transition periods – this will take time
- SEC is exploring the appropriateness of a third-party standard setter

Climate Change and ESG Disclosures, cont'd

Potential New Disclosures

- SEC received more than 400 unique comment letters on recent request for input
- SEC will look to the existing third-party frameworks and standard setters, such as SASB and TCFD as these are commonly used in the United States and industry-focused
- Climate disclosure requirements may address:
 - Governance, strategy, and risk management related to climate risk
 - Specific metrics, such as greenhouse gas emissions
 - Requirements for companies that have made forward-looking climate commitments, or that have significant operations in jurisdictions with national requirements to achieve specific, climate-related targets
- Human capital disclosure requirements may address specific metrics on:
 - Workforce demographics including diversity
 - Additional workforce metrics – e.g., part time vs. full time workers, workforce expenses, workforce turnover
 - Health and safety
 - Skills and development training
 - Compensation and benefits

What Else to Expect from the Biden Administration

Climate change, environmental justice and ESG issues are focus of Biden administration's "all of government" approach

- Federal Reserve incorporating climate-related financial risks into its supervisory framework
- Department of the Treasury implementing a coordinated climate policy strategy, established a Climate Hub and appointed Treasury's first Climate Counselor
- CFTC established Climate Risk Unit
- FTC reviewing "greenwashing" complaints
- EPA revising, re-issuing and accelerating rules regulating GHG emissions
- Department of the Interior limiting oil and gas activities on federal lands and waters
- FERC considering environmental justice and climate change impacts as part of National Environmental Policy Act (NEPA) review
- Department of Justice focusing on environmental justice in enforcement actions

Sustainability and ESG



The Circular Economy

Circular Supply Chain

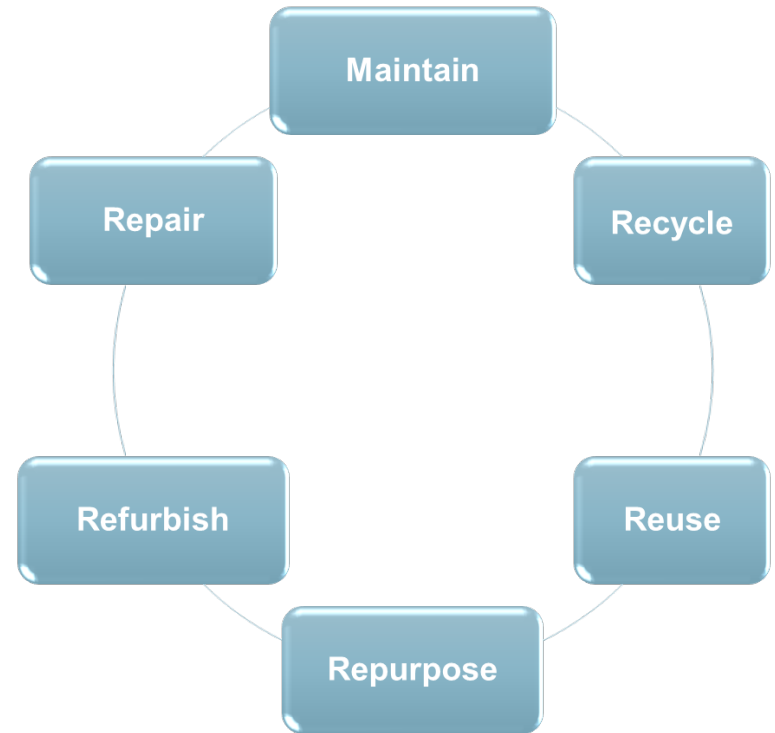
- Alternative to linear system of production

Product Life Extension

- Aims to conserve natural resources by designing products to be used again and again

Recovery and Recycling

- Recycles recovered materials back into new resources



Greening of Supply Chains

Implementing a sustainable development plan aimed at achieving improved environmental, health, and safety performance by:



Increasing efficiencies in the use of energy, water or other natural resources or raw materials



Reducing the environmental and societal impact of business operations upon local communities and the global biosphere



Expanding economic and quality of life enhancing opportunities that result from the company's business activities

Sustainability Strategies

Ethical Sourcing

- Sourcing materials which are sustainable, and consider human, animal, and environmental wellness.

Green Materials

- Extending management system implementation to ensure greater accountability of supplier performance on health, environment, safety, resource, and consumption.

Reverse Logistics

- Repurposing products through recycling and reusing.

Efficient Transportation

- Reducing the greenhouse gas footprint of transportation by using alternative fuels and establishing local supplier and manufacturer relationships.

Sustainability Strategies, cont'd

Common Environmental Standards

- Applying common environmental standards and programs across parent company and suppliers.

Management Systems

- Extending implementation to ensure greater accountability of supplier performance on health, environment, safety, resource, and consumption.

Specific Performance Goals

- Adopting specific performance goals and metrics to evaluate the performance of specific suppliers over time.

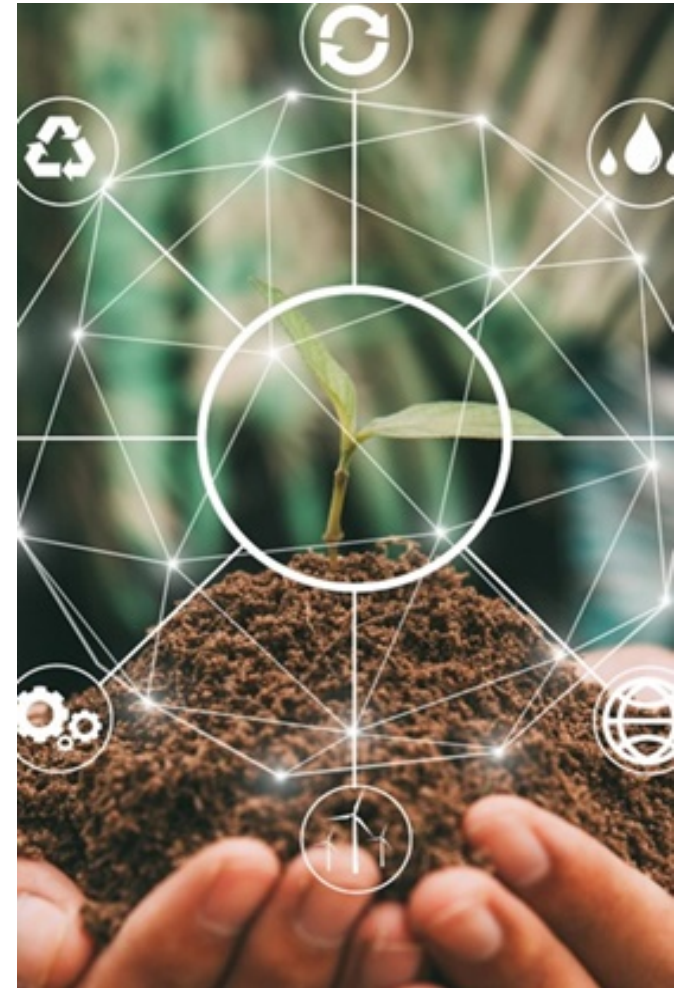
Business Redesign

- Examining opportunities for business process redesign, materials substitution, or product design.

Sustainability Trends

Right to Repair

- Movement to reduce the environmental footprint of goods by making them repairable
- Intended to allow consumers and businesses to repair and modify their own consumer products and equipment
 - Accommodate repair in the design (e.g., furniture designed in a way as to make repair possible)
 - Make information available (i.e., manuals, schematics)
 - Make parts and tools available to third parties, including individuals



Sustainability Trends, cont'd

Eco-Design Strategies

- Design for material recovery (i.e., recycling)
- Design for component recovery (i.e., reuse and remanufacturing)
- Design for reliability
- Design for maintainability
- Design for end-of-life
- Paperless manufacturing environment



Sustainability Trends, cont'd

Clean Energy

- Use of renewable power for electricity needs
- Replacement of legacy machines with energy efficient technologies
- Lower carbon footprint for transportation by sourcing from local suppliers
- Investment in energy-saving solutions
- Home deliveries with low to zero emissions
 - Ikea pledged zero-emissions deliveries by the year 2025



Sustainability Trends, cont'd

Company Policies

- Setting goals for performance excellence and achieving higher performance levels than is required by EHS laws and regulations
- Developing and implementing sustainability policies
- Setting performance goals and key performance indicators
- Communicating sustainability program developments within the company
- Measuring and reporting sustainability performance to internal and external stakeholders



ESG Risks and Evolving Corporate Practices



Activism and Litigation Risks

- Shareholder activism
- Shareholder derivative litigation
 - Breach of fiduciary duty (duty of care/duty of loyalty)
- Federal securities law claims
 - Material misstatements and omissions in securities offering documents
 - Violation of anti-fraud provisions
- SEC enforcement actions
- FTC claims for “greenwashing”
- Claims brought by U.S. State Attorneys General

Evolving Corporate Practices

- Determine how to incorporate ESG into the long-term strategy of the business, including who has responsibility for ESG decision-making
- Evaluate ESG risks from an ERM perspective
- Consider mandated and voluntary ESG-related disclosures
- Understand and revisit existing compliance function and internal controls in place around ESG disclosure
- Actively engage with key shareholders and stakeholders (employees, customers, suppliers, communities)
- Consider whether the Board has appropriate ESG oversight structure

ESG Integration



HEATHER M. PALMER Co-Leader of Sidley's Global ESG Practice



PARTNER Houston

+1 713 495 4525 (o)

hpalmer@sidley.com

SELECT EXPERIENCE

- **Major Global Airline** in its efforts to reduce its GHG emissions by 100% by 2050, including representing the company in making investments in emerging technologies that combat climate change
- **A Fortune 100 company** on creation of a reporting and governance framework for ESG matters and on the setting of ESG goals and metrics, including assisting with the preparation of its corporate social responsibility report in alignment with the Sustainability Accounting Standards Board (SASB) and the Task Force for Climate-related Financial Disclosures (TCFD)
- **A Fortune 500 company** and leader in property and casualty reinsurance and insurance and investments in middle market businesses on its inaugural ESG report and related metrics and disclosures
- **A subsidiary of a Fortune Global 10 automobile manufacturer** in connection with the procurement of 100% renewable power for its network of electric vehicle charging stations throughout the U.S., including strategic advice on setting goals for net-zero carbon emissions, third-party verification of renewable power sources and negotiating power purchase agreements with renewable energy providers
- **Invitation Homes** in its \$3.5 billion sustainability-linked senior unsecured credit facility and the first U.S. REIT syndicated credit facility to both link an ESG score to a pricing grid and to name a sustainable agent and coordinator

Heather leads the Environmental group's work in Environmental, Social and Governance (ESG) matters. She is also a co-leader of the firm's global ESG practice. Heather's practice focuses on environmental law, counseling clients on regulatory requirements, assisting them in the evaluation and negotiation of corporate and real estate transactions, supporting them in the development of environmental management systems (EMS), and advising them on ESG issues and environmental disclosure requirements.

Heather plays a strategic role in advising clients on a broad range of ESG issues and related risks, including the disclosure of climate change risks in SEC filings, the review of shareholder proposals relating to ESG topics, the development of corporate ESG programs and goals, the establishment of greenhouse gas (GHG) emissions reduction targets, the preparation of sustainability and corporate social responsibility (CSR) reports, and the sustainable sourcing of products and raw materials.

She has been recognized in numerous publications, including Chambers Crisis & Risk Management for Global-wide Environmental, Social & Governance Risk, Chambers USA for Texas Environment, The Legal 500 United States, and Best Lawyers for Environmental Law. She was awarded the "Lawyer of the Year" distinction in the 2021 edition of The Best Lawyers in America for her work in Environmental Law. She was also named to the 2021 National Association of Corporate Directors (NACD) Directorship 100 in recognition of her significant impact on boardroom practices and performance.

Heather holds a J.D. from Vanderbilt School of Law and a bachelor's degree in History and International Studies, cum laude, from Rhodes College.

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