

ESG Initiatives

An Interview with Brad S. Karp, Chairman, and Dave Curran,
Chief Sustainability and Environmental, Social and Governance (ESG) Officer, Paul, Weiss, Rifkind, Wharton & Garrison

EDITORS' NOTE *Chairman of the firm since 2008, Brad Karp is one of the country's leading lawyers and corporate advisers. He has extensive experience successfully defending financial institutions and other companies in "bet the company" litigations and regulatory matters.*

Dave Curran has more than 30 years of experience in legal, technology, compliance, risk and ethics roles. He was previously Senior Vice President and Chief Business Officer at FiscalNote, a legal AI/technology company, and held senior business and legal leadership roles with Thomson Reuters, IntraLinks, Integrity Interactive, Havas, Vertis and Campbell Soup Company. He serves as co-chair of the New York State Bar Association's ESG Committee.

FIRM BRIEF *Paul, Weiss, Rifkind, Wharton & Garrison (paulweiss.com) is a firm of more than 1,000 lawyers with diverse backgrounds, personalities, ideas and interests who collaboratively provide innovative solutions to their clients' most critical and complex legal and business challenges. Paul, Weiss represents the world's largest public and privately held corporations and investors, as well as clients in need of pro bono assistance.*

Why did Paul, Weiss create a Sustainability & Environmental, Social and Governance (ESG) Advisory practice, one of the first at a major firm?

Brad: This initiative came about as a result of listening to our clients. A few years ago, business leaders began coming to us for advice as they faced ever-greater pressure to tackle social issues of importance to their customers, investors and other stakeholders, from diversity and employee safety to gun safety, reducing their carbon footprint, and other societal goals. Our clients wanted to know how they could navigate the legal, business and political ramifications of developing and implementing sustainability and ESG initiatives.

Last March, a week before we shut down our offices, we brought in Dave Curran, a widely-acclaimed leader in the Sustainability and ESG space with more than 30 years of experience in legal, compliance, risk and ethics roles, to help us launch a dedicated practice. We and many others wondered if the pandemic



Brad S. Karp



Dave Curran

would put ESG concerns on the back burner. In fact, just the opposite has happened; the series of societal upheavals accelerated the collision between ESG considerations and corporate governance and has driven extraordinary interest in our new practice.

Will you provide an overview of the practice?

Dave: The Sustainability and ESG group works in tandem with our other market-leading practices to counsel public companies, executives and boards on how to meet the entire breadth of their needs in the ESG ecosystem. At the highest level, we leverage our network of experts, influencers and thought leaders in systems, data, analytics, reporting, AI and other areas to provide up-to-date ESG information to our clients. We also assist clients in evaluating ESG liabilities and vulnerabilities in the M&A context and in ESG-related disclosure and reporting.

On a practical level, we collaborate with clients to identify, advance and pressure-test

initiatives that improve corporate culture, increase employee morale, strengthen customer loyalty and enhance stakeholder relations. We also help companies coordinate the fragmented ecosystem of ESG ratings, frameworks and regulation with their legal, compliance, public relations, audit and data/analytics functions.

What's driving client interest in ESG right now?

Brad: The past year was a perfect storm for our corporate clients. COVID-19 exacerbated many of the "S" issues, such as growing disparities in wealth, while the Black Lives Matter movement laid bare the continuing reality of racial injustice and inequity. The public demanded greater corporate accountability.

Our clients were worrying not only about how to keep their businesses afloat amid pandemic shutdowns, but also about the potential for instantaneous reputational and existential risks related to ESG concerns. With social media, everyone has a megaphone and a platform; a teenager on TikTok or Instagram can influence how the world views a given industry or brand, and during the past year, there were continual reminders of the punitive consequences resulting from ESG missteps.

On the positive side, so many of our clients have been moved to take action and to do good, both because it's the right thing to do and because a growing body of evidence shows that companies with well-managed, robust ESG programs are more profitable and more resilient.

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Dave, why did you decide to join Paul, Weiss to help establish this practice, and how do you define your role as Chief Sustainability and ESG Officer?

Dave: This was the perfect opportunity for me. At Paul, Weiss, I could harness my experience in helping complex organizations address emerging challenges and develop practical, commercial solutions, drawing upon the firm’s renowned talent and expertise for advising the world’s leading public and private companies. Brad, in particular, was persuasive. He recognized earlier than other law firm leaders that ESG advice needed to be linked with the legal ecosystem and that Paul, Weiss was the best firm to house such a practice. He saw that lawyers could provide more comprehensive solutions in the ESG arena than other types of professional services firms.

Since our launch, we have been given extraordinary freedom to design a truly modern and holistic practice that, in its essence, links the non-legal advisory sides to the legal aspects of ESG. We recently brought in a data scientist and a program manager. Within the practice, my role is to represent the client’s view in the room, and to bring together great lawyering and legal practice with the multifaceted business practices that ESG touches upon. I also have another, internal-facing role helping Paul, Weiss establish and measure its own ESG initiatives.

What is the role of lawyers in developing ESG frameworks, and how is the Paul, Weiss Sustainability and ESG Advisory Practice helping clients to develop integrated ESG strategies?

Brad: Lawyers play an important role across a range of ESG matters. With each passing month, ESG frameworks and disclosure regimes are being codified, becoming more like legal and compliance frameworks – what Dave has called “super laws.” Given the Biden Administration’s focus on the wealth gap and on racial and environmental justice, we expect certain ESG frameworks to take on the force of law.

Our lawyers focus on compliance and regulatory issues every day and devise practical solutions to complex problems for sophisticated companies. It’s the essence of what we do. In the ESG area, we leverage the full range of our skills to navigate the often murky interplay between legal guardrails and business opportunities. We know how to spot emerging legal and reputational risks and orchestrate various

functions across a business or across geographies, whether executing a deal or handling a complex investigation.

There are also reputational and business risks to consider. Inevitably, if handled poorly, ESG initiatives can be disastrous. A few years ago, a company could perhaps get away with a misstep, but that is no longer true. We have decades of experience guiding the world’s leading companies safely through their most significant crises, often to emerge stronger.

What is the first thing you do with clients interested in establishing an ESG initiative and what do companies need to consider to develop an ESG strategy?

Dave: Our first priority in every engagement is listening. We work to understand what each stakeholder group cares about most so that they develop an ESG initiative that they can get behind, that is measurable, that is achievable, and that is a net positive for their business. We look at a given client’s public statements about societal goals to see if and how an initiative aligns with past disclosures. We help clients identify those goals and then help them with the planning and execution.

Companies establishing an ESG strategy should consider what issues make the most sense to engage on – what fits organically with their culture and business strategy. A pharmaceutical company may commit, for example, to providing better access to life-saving medicine at affordable prices; a bank may promise to increase availability of capital to underserved communities; a tech company may pledge to meet a “carbon neutral” timeline.

Paul, Weiss places a major emphasis on thought leadership in its ESG work. Will you highlight the firm’s commitment and investment in providing research and knowledge on ESG?

Brad: There is a tremendous hunger for timely, practical information about ESG issues across a spectrum of corporate and legal professionals. Our thought leadership is designed to fill the ESG information void and engage in conversation with a broad range of business professionals, across multiple corporate functions. Our thought leadership, which is available on our website, has attracted tens of thousands of new visitors to our site, including not just in-house lawyers, but heads of compliance, C-suite executives, investment managers and others. Many have become new clients.

Hundreds of these visitors have subsequently joined us in our live ESG-focused events. In the all-virtual world in which we’ve been living, these virtual events have taken off. Before COVID-19, we might have had 50 or 60 people attend an ESG event. Nearly 1,000 people attended our post-election program on the incoming Biden Administration which focused a great deal on potential ESG regulation. We recently ran a program in partnership with the NYU Stern Center for Sustainable Business where roughly 300 professionals and academics participated, including board directors and C-suite executives, and heads of risk, compliance and sustainability.

A big draw at these events is Dave, who is renowned in the ESG space. Dave previously worked at companies focused on securing data and proactively mitigating risks, so he has enhanced credibility and has gained the confidence of executive teams globally. Dave’s “off the record” roundtable formats are especially conducive to open conversations and the exploration of real-world solutions to real-world challenges. This is how I first met Dave and, needless to say, I was supremely impressed.

How does ESG differ from traditional corporate governance and what additional advice do companies and boards need in the ESG arena?

Dave: Traditional corporate governance refers to a narrow set of rules and laws governing how companies are directed and controlled and the board’s duties to shareholders. “ESG” is a fluid, ever-evolving set of environmental, social and governance benchmarks used to evaluate investment and company impacts beyond traditional financial measures. Though it also has the word “governance” in it, the “G” in ESG is holistic and situational; depending on the company, it might include a mandate to diversify the board, to restrict political lobbying, or to address long-term risks to its business, such as climate change.

As more companies make public disclosures around ESG-related initiatives, traditional securities and governance advice are no longer sufficient to safeguard boards. They need timely and practical advice on how to navigate the often arcane and subjective ESG ratings landscape and how to avoid liabilities via rigorous quantitative analysis and sophisticated advocacy. In the context of business transactions, corporations need to think about the additional ESG due diligence lens beyond the traditional scope of data rooms. That’s yet another area where we at Paul, Weiss come in. ●