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ESG Insights:

Silicon Valley's Largest Public Tech and Life Sciences Companies Expanded ESG Reporting in 2023

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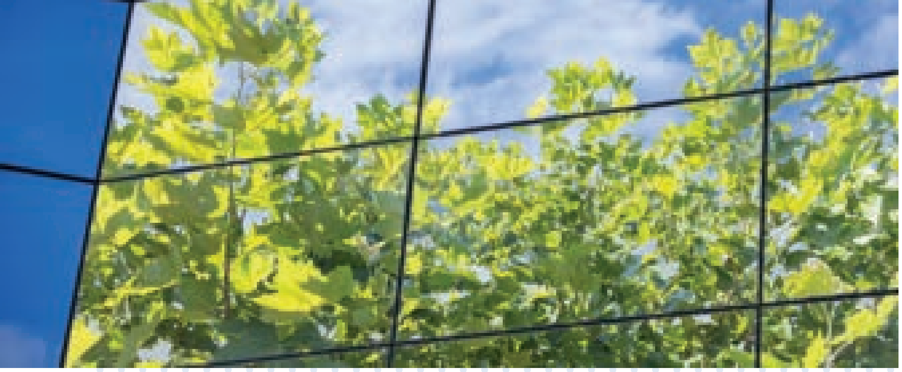


Amidst challenges and conflicting demands from a variety of stakeholders, technology and life sciences companies have increased their voluntary disclosure regarding environmental, social and governance (ESG) concerns. Despite growing anti-ESG sentiments, there has been continued progress in several important ESG disclosure areas, including greenhouse gas (GHG) emissions, and employee diversity, as demonstrated by their increasing comprehensiveness.

These are some of the findings in our latest report examining the voluntary ESG disclosures made by the companies in the 2023 Fenwick-Bloomberg Law SV 150 List (SV 150), comparing them to the disclosure practices of the SV 150 companies in 2022 (see last year's report).

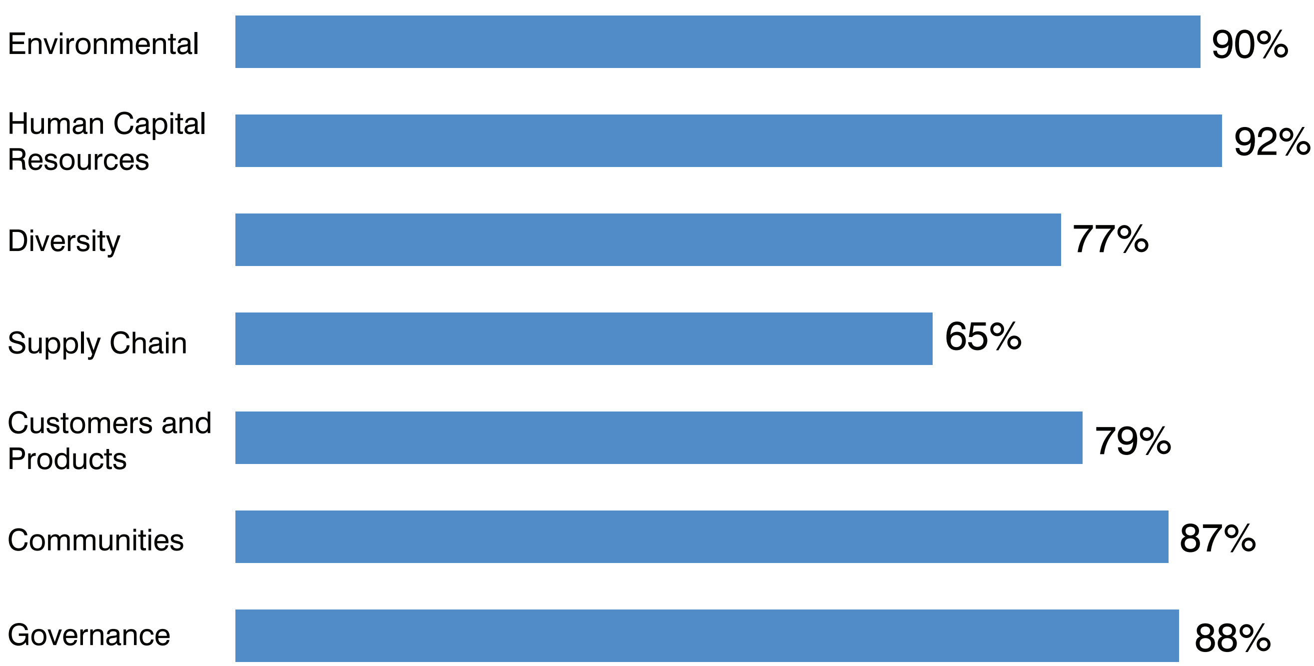
Our report looks at the SV 150 companies' substantive disclosures made in 2023 in their annual meeting proxy statements, standalone ESG or sustainability reports (or their equivalents, referred to as CSRs herein), and corporate websites, on a number of ESG topics that many stakeholders deem to be important.

Despite growing anti-ESG sentiments, there has been continued progress in several important ESG disclosure areas, including greenhouse gas (GHG) emissions, and employee diversity.

Key Takeaways

- The number of SV 150 companies disclosing ESG information, and the comprehensiveness of such disclosures increased in 2023.
- The most frequently disclosed topics, including environmental issues, human capital resources, diversity, supply chains, customers and products, community impact and governance, all saw increased rates of disclosure.
- A majority of companies disclosed their Scopes 1, 2 and 3 GHG emissions—an increase from last year's disclosure—although Scope 3 GHG emissions continued to be disclosed at a slightly lower percentage.
- Over three-quarters of the SV 150 reported on the gender and racial/ethnic makeup of their U.S. employees—a continued increase from last year's disclosure.
- Technology and life sciences companies contemplating whether to voluntarily disclose ESG information or expand their disclosure should consider these trends and the types of information disclosed, to better assess their preparedness for ESG disclosure and meeting investors' and other stakeholders' demands.

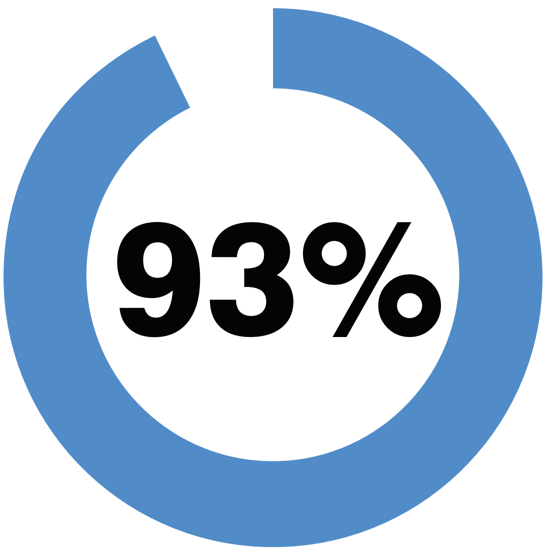
What Companies Disclosed About ESG



Overview

Generally, the number of companies providing voluntary ESG disclosures increased slightly in 2023, compared to 2022. Only 11 of the SV 150 companies provided no significant ESG disclosure. Public disclosure trends of the SV 150 during 2023 include:

93% of SV 150 companies provided ESG information



- Overall, approximately 93% of SV 150 companies provided ESG information, up slightly from 92% in 2022. However, companies shifted their preference for where their ESG information lived, with a decrease in the percentage of companies with substantive ESG disclosure in proxy statements, and an increase in companies providing comprehensive ESG disclosures in CSRs.
- Approximately 77% of SV 150 companies provided some level of significant ESG disclosure in their proxy statements, compared to 85% in 2022.
- Approximately 73% of SV 150 companies provided some level of ESG disclosure in CSRs, compared to 62% in 2022.
- Approximately 69% of the SV 150 companies reported using a third-party standard or framework to guide their disclosure, representing a significant increase from the approximately 51% of companies using the same in 2022.
- Approximately 63% of SV 150 companies disclosed Scopes 1 and 2 GHG emissions and 51% disclosed Scope 3 GHG emissions, compared to just 49% and 42% disclosing Scopes 1 and 2 and Scope 3 emissions, respectively, in 2022.
- Over three-quarters of SV 150 companies disclosed gender and racial/ethnic demographic information for their U.S. employees. This is a notable increase from the slim majority that disclosed in 2022 and a trend that is likely to continue into next year as additional SEC rulemaking is expected (as further discussed in "ESG Disclosure Quality—Human Capital Resources").

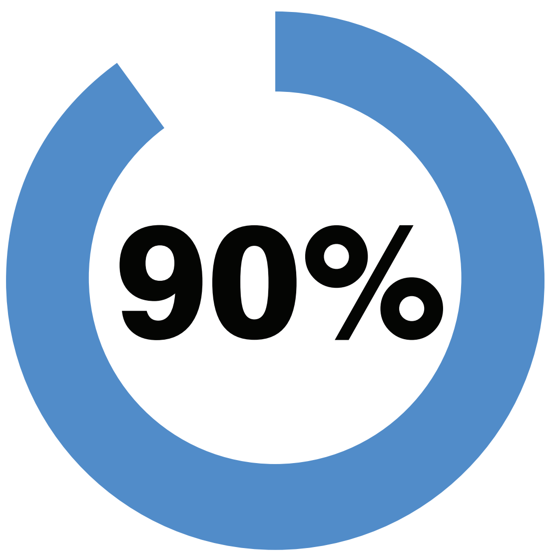
> Over three-quarters of SV 150 companies disclosed gender and racial/ethnic demographic information for their U.S. employees.

ESG Disclosure Quality

The larger companies in the SV 150 tended to provide the most detailed and extensive quantitative and qualitative ESG disclosure, typically in CSRs. Approximately 92% of the top 50 companies disclosed in CSRs, compared to 72% and 56% of the middle 50 and bottom 50 companies, respectively. While many companies disclosed on multiple platforms, they used CSRs to provide more granular details regarding their ESG programs and initiatives and to discuss goals and performance against stated objectives. Third-party disclosure standards and frameworks often guided these disclosures, with many CSRs containing indices showing how the information in the CSR aligned with one or more standards (see "Third-Party Frameworks and Standards" on page 9).

Below are some of the most common topics on which SV 150 companies reported.

90% of SV 150 companies provided environmental disclosures, up from 79% in 2022



ENVIRONMENTAL

Disclosures of environmental matters included both qualitative and quantitative discussions on a wide variety of issues. Approximately 90% of SV 150 companies provided environmental disclosures in 2023, compared to 79% in 2022. Qualitative disclosures often included descriptions of sustainability initiatives such as recycling programs, LEED building certifications, hybrid/remote work policies and other GHG emission reduction programs. Some companies also discussed how their products contributed to their customers' environmental sustainability efforts.

On the quantitative side, approximately 63% of SV 150 companies provided Scopes 1 and 2 GHG emissions data, and approximately 51% provided Scope 3 emissions data, increasing from 49% and 42%, respectively, in 2022. However, there was a significant discrepancy in the reporting rate between the larger and smaller companies in the SV 150, with approximately 96% of the top 50 companies disclosing Scopes 1 and 2 GHG emissions, compared to only 56% of the middle 50 and 42% of the bottom 50, respectively. This discrepancy was also (unsurprisingly) apparent in Scope 3 GHG emissions reporting, with 84% of the top 50 companies reporting, compared to just 40% and 28% of the middle 50 and bottom 50 companies, respectively.

Approximately 57% of companies disclosed energy usage (often in kilowatts or gigajoules) and at least a third of the companies disclosed gallons of water used, recycled or avoided in their operations.

Companies also provided quantitative metrics for energy consumption (electricity and gas), water usage and waste management, and disclosed specific goals and commitments to reduce their carbon footprint and/or increase their usage of renewable energy. For example, approximately 57% of companies disclosed energy usage (often in kilowatts or gigajoules) and at least a third of the companies disclosed gallons of water used, recycled or avoided in their operations. Some of these quantitative metrics were disclosed as part of their alignment with a third-party framework, which has also been typically utilized more often by the larger SV 150 companies.

As we have described in prior alerts (here and here), California adopted a trio of legislation in 2023, SB 253, SB 261 and AB 1305, which will require many of the SV 150 companies to publicly disclose information regarding GHG emissions, climate-related financial risks or emissions claims, respectively. In addition, the SEC adopted final rules which, if they survive legal challenges, will mandate certain climate-related disclosure for public companies. For additional information on the SEC's final rules, see our client alert here. Companies could also be subject to non-U.S. reporting requirements such as the European Union's Corporate Sustainability Reporting Directive, regardless of whether they are U.S. or EU companies. Accordingly, it is likely that we will see an increase in climate-related disclosures among the smaller companies in the SV 150 as they build up their carbon accounting capacity and related disclosure controls and processes this year in preparation for these impending disclosure requirements.

SOCIAL

Social disclosure comprised the broadest range of topics, ranging from human capital resources (HCR) to supply chain management to community impact.

Human Capital Resources

Companies provided information most often on HCR, with approximately 92% of SV 150 companies providing some form of HCR disclosure in 2023, up from 84% in 2022. This disclosure often consisted of discussions regarding employee training and engagement, employee resource groups, workplace safety issues and employee turnover. Although much of this information was qualitative, in some instances companies provided quantitative metrics such as employee hiring and retention rates, annual total

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or average hours of employee training, average employee engagement scores, adjusted gender pay ratios and number of workplace accidents or injuries. Top 50 and middle 50 companies demonstrated similarly high levels of HCR reporting, with 96% and 98% of such companies reporting, respectively. In comparison, the bottom 50 companies had a lower reporting rate of 80%, primarily due to the overall lower rate of ESG reporting among this group. In this group, all of the 41 companies providing ESG disclosure also included HCR disclosure.

While much of this information was contained in CSRs, the SEC has indicated that it intends to propose new rules in 2024 that would likely require companies to disclose more HCR information, including quantitative data, in their SEC filings. Accordingly, it is likely that the amount of quantitative HCR disclosure in annual reports, proxy statements and/or other SEC filings will increase as companies set up their internal disclosure controls for such proposed rules.

Diversity

Over three-quarters of SV 150 companies provided quantitative information regarding diversity, including the demographic breakdown of their workforce by gender, race/ethnicity and role in 2023. Notably, 77% of companies provided employee gender demographic information (up from 63% in 2022) and 77% provided U.S. employee race/ethnicity information on at least an aggregated basis (up from 59% in 2022). However, only 66% of companies provided demographic information for specific racial/ethnic groups based on or similar to the information required on the U.S. Equal Employment Opportunity Commission's EEO-1 Component 1 report (EEO-1 report). The larger companies in the SV 150 were most likely to provide racial/ethnic demographic information for their U.S. employees, with 86% of top 50 companies disclosing, compared to 60% of middle 50 companies and 52% of bottom 50 companies.

In addition to these metrics, companies also provided qualitative information regarding efforts to increase diversity within their ranks and programs to support underrepresented communities. Disclosure of employee demographic information is likely to increase as a number of shareholders and other stakeholders continue to call upon companies to disclose information consistent with EEO-1 reports filed by many companies.

Supply Chain

Approximately 65% of SV 150 companies disclosed issues related to their supply chains in 2023, compared to just 51% in 2022. Such disclosure included qualitative information regarding supplier codes of conduct and supplier diversity and audits. Companies also discussed supply chain integrity and related initiatives, including participation in third-party organizations such as the Responsible Business Alliance. Where a company's business

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involved the sourcing of raw materials and minerals, it often noted adherence to responsible sourcing policies and compliance with regulations such as the SEC's Conflict Minerals Rules. The SV 150 companies also provided quantitative disclosures, including the amount or percentage spent with diverse suppliers, supplier questionnaire completions and number of supplier site audits and supplier trainings.

Increasingly, SV 150 companies may be required to implement due diligence procedures with respect to their supply chains to comply with domestic and international regulations. For example, in addition to the SEC's Conflict Minerals Rules, companies may be subject to the Uyghur Forced Labor Prevention Act (UFLPA), which prohibits U.S. companies from importing goods from the Xinjiang Uyghur Autonomous Region. The European Union (EU) is poised to adopt the Corporate Sustainability Due Diligence Directive in 2024, which could require certain non-EU companies doing business in the EU to mitigate sustainability risks (e.g., climate change and human rights) in their supply chain. As more SV 150 companies become subject to these regulations and adopt related compliance procedures and policies, we anticipate that companies will increase their disclosure of supply chain information.

In the case of life sciences companies, the disclosure focused on issues such as product safety, access to care and ethical marketing.

Customers and Products

In 2023, approximately 79% of the SV 150 companies disclosed information related to customers and products, compared to 64% in 2022. Many companies addressed their policies and practices regarding data security and privacy. Such disclosures noted, where applicable, how their products promoted or enhanced data security. In the case of life sciences companies, the disclosure focused on issues such as product safety, access to care and ethical marketing. This data was largely qualitative, but companies also provided quantitative metrics, such as the number of data breaches and privacy or cybersecurity trainings and monetary losses from cybersecurity breaches.

Communities

Approximately 87% of SV 150 companies discussed philanthropic activities such as corporate donations, employee donation corporate match programs, community-based programs and employee volunteer activities. In comparison, approximately 66% of SV 150 companies disclosed such information in 2022. To the extent that a company's product or service had a broader social impact, it emphasized the link between the product and/or service and the societal or community benefit.

GOVERNANCE

Approximately 88% of companies included governance disclosure separate from the disclosure required under applicable SEC proxy rules, compared to 83% in 2022. In addition to required proxy statement disclosures such as board structure, oversight and composition (including board diversity for Nasdaq-listed companies), companies discussed compliance programs, management oversight, stakeholder engagement, anti-bribery and anti-corruption programs and business ethics. Descriptions of and/or links to relevant policies, such as codes of conduct and corporate governance guidelines, were also provided in CSRs to demonstrate board or management oversight in these areas. Quantitative information included the number of ethics or compliance trainings, engagement meetings with investors and number or percentage of investors engaged.

Third-Party Frameworks and Standards

Third-party frameworks and standards can be valuable in guiding companies on what information to disclose based on industry and stakeholder interest. Approximately 69% of the companies in the SV 150 followed or were influenced by a third-party standard-setter in determining what information to disclose. The larger companies in the SV 150 were more likely to disclose to a standard or framework, with 88% of the top 50 companies citing the use of a standard or framework, compared to 62% of middle 50 companies and 56% of bottom 50 companies. Approximately 82% of companies using frameworks or standards relied on multiple ones, with 89%, 77% and 75% of the top 50, middle 50 and bottom 50 companies following such practice, respectively. The most prominent frameworks and standards included those

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- Global Reporting Initiative (GRI)
- Sustainability Accounting Standards Board (SASB)
- Task Force on Climate-related Financial Disclosure (TCFD)
- United Nations Sustainable Development Goals (UNSDG)

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of the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB), the Task Force on Climate-related Financial Disclosure (TCFD), and the United Nations Sustainable Development Goals (UNSDG).

SV 150 companies cited the SASB standards most often as the one to which they adhered, with 87% of the companies disclosing standards citing SASB, compared to 91% in 2022. The GRI standards were the second-most popular, with 59% of reporting companies favoring them, down from 63% in 2022. Finally, approximately 49% of companies that reported to a standard or framework indicated that they used the TCFD framework (up from 43% in 2022). One of the recommendations of the TCFD framework is the disclosure of GHG emissions data, and while voluntary, the TCFD's 2021 guidance encouraging Scope 3 emissions disclosure may have been meaningful. Of the 50 companies that were aligned with the TCFD framework, 41 disclosed Scope 3 emissions data—and this number may increase as the TCFD framework underpins various proposed and actual climate disclosure regulations.

Starting in 2024, the TCFD has disbanded, with the International Sustainability Standards Board (ISSB), an independent, standard-setting body, picking up the torch in terms of monitoring progress on companies' climate-related disclosures and developing related disclosure standards. ISSB standards are built on top of the TCFD framework's recommendations, so companies' ISSB disclosures will automatically satisfy the TCFD recommendations. With this movement, larger investors like BlackRock have started to mention the ISSB disclosure standards in their stewardship guidelines, with the acknowledgment that some transition time is needed for companies to disclose under these new standards.

Assurance

As we have noted in prior guidance, some companies seek to have third-party verification or assurance of their ESG data. Such assurance may be limited (i.e., it may express that the assurance provider is not aware of any modifications that should be made to satisfy the criteria to which the company is reporting) or reasonable (i.e., it expresses an opinion regarding whether the ESG information meets the criteria in all material respects). Limited

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assurance is a lower standard of assurance than reasonable assurance. Several of the ESG disclosure regulations noted above will require companies to provide third-party assurance of at least some of their ESG information. In some cases, the regulation determines the assurance level based on the company's size. In other cases, it may require companies to transition from receiving limited assurance to reasonable assurance over a period of time.

Despite the prospect of legal mandates, relatively few SV 150 companies sought third-party assurance. In 2023, approximately 30% of companies disclosed that they received such assurance, and in virtually all cases, it was provided at a limited level. Companies most often received assurance for their GHG emissions and other environmental data, but in a few instances they also received assurance for human capital resources metrics, such as employee demographics. The larger companies in the SV 150 most often sought assurance with approximately 62% of the top 50 providing evidence of third-party assurance, compared to just 24% in the middle 50 and 4% in the bottom 50. Given the suite of impending ESG regulations that actually or potentially require independent assurance, as well as the increasing scrutiny of ESG disclosures for "greenwashing" and related liability, it is likely that more companies will seek independent assurance, and companies already reporting some independent assurance of ESG data may seek it for additional metrics.

Disclosure Trends: Top 50 Companies

The top 50 companies include companies with revenue of approximately $2.8 billion or more and market capitalizations averaging $127.9 billion (based on values at the time of announcement of the most recent SV 150 index list). Overall, the top 50 companies exhibited the most widespread and robust ESG disclosure practices, with approximately 88%, 92% and 80% of such companies reporting ESG information in their proxy statements, CSRs and websites, respectively. Compared to the other companies in the SV 150, the top 50 companies generally have greater resources that can be devoted to developing the necessary controls and infrastructure to provide more comprehensive ESG reporting.

The decline in the percentage of companies disclosing ESG information in their proxy statements from 96% in 2022 to 88% in 2023 may be attributed to more companies opting to significantly reduce or eliminate their proxy statement disclosures, and instead referencing to their fuller disclosure in CSRs or on their websites. Only one company in the top 50 provided no significant ESG disclosure on any platform.

The top 50 companies were also more likely to align their disclosure with third-party standards or frameworks such as the GRI or SASB standards. The number of top 50 companies disclosing to a standard or framework held steady from 2022 at 88%.

Disclosure Trends: Middle 50 Companies

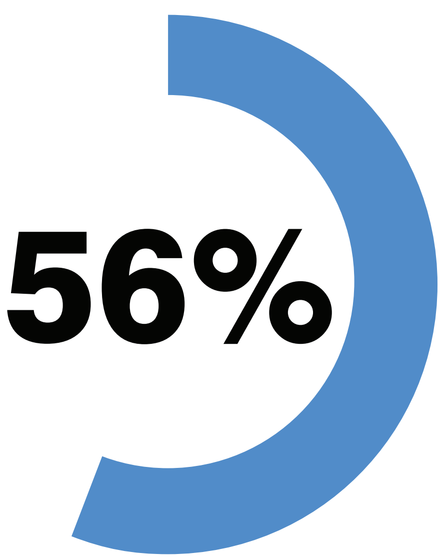
Middle 50 companies include those with revenue of at least approximately $857 million but less than approximately $2.8 billion, and market capitalizations averaging $7.2 billion (based on values at the time of announcement of the most recent SV 150 index list). Approximately 72% of middle 50 companies provided disclosure in CSRs, representing a significant increase from the 57% of middle 50 companies using CSRs in 2022.

The use of proxy statements for ESG disclosure fell from 85% in 2022 to 76% in 2023. Similar to the top 50 companies, one may speculate that the drop in usage of proxy statements in 2023 is tied to the increased use of CSRs, with companies opting to provide their most robust disclosure on that platform. Similar to the top 50 companies, only one company in the middle 50 companies lacked any significant ESG disclosure.

Approximately 62% of the middle 50 companies reported to one or more third-party standards or frameworks, with the SASB standards cited most often (54%), followed by the GRI standards (34%). This represented a marked increase from the 36% of middle 50 companies disclosing to standards or frameworks in 2022.

Disclosure Trends: Bottom 50 Companies

56% of the bottom 50 companies provided disclosure in CSRs, an increase from 36% in 2022.

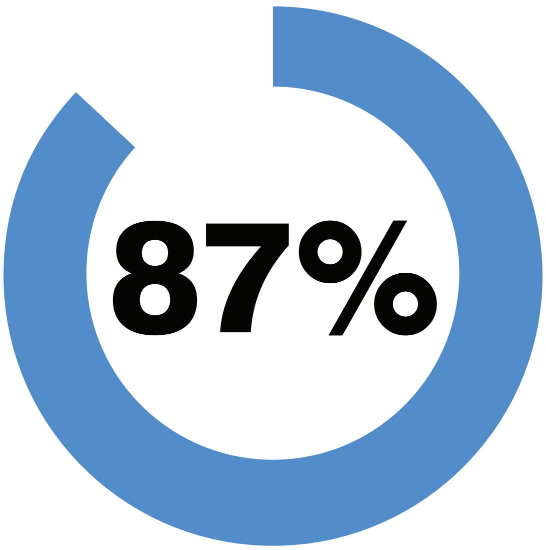


The bottom 50 companies include companies with revenue of at least approximately $267 million but less than $653 million, and market capitalizations averaging $2.3 billion (based on values at the time of announcement of the most recent SV 150 index list). 2023 saw a substantial increase in the use of CSRs for ESG disclosure among smaller SV 150 companies. Approximately 56% of the bottom 50 companies provided disclosure in CSRs, representing an increase from the 36% of companies using CSRs in 2022. As with the other groups in the SV 150, the bottom 50 also decreased their proxy statement disclosure, with approximately 66% of such companies providing proxy statement disclosure, down from 74% in 2022. Additionally, nine companies provided no ESG disclosure, compared to seven in 2022.

More bottom 50 companies disclosed to a standard or framework in 2023. Approximately 56% of bottom 50 companies relied on them for guidance, up from the 30% of bottom 50 companies in 2022, with SASB being cited most often (46%), followed by UNSDG (32%). It stands to reason that the bottom 50 companies, which are generally younger and have less revenue than the larger companies in the SV 150, have fewer resources to devote toward providing more substantial ESG disclosure.

ESG Board Oversight

87% of SV 150 companies disclosed board or committee oversight of ESG.



Most SV 150 companies (87%) disclosed board or committee oversight of ESG, which surpassed the 76% of SV 150 companies disclosing this information in 2022. In particular, 88% of the companies providing such disclosure stated that the nominating and corporate governance committee (or its equivalent) had primary responsibility for ESG oversight, slightly higher than the 85% of companies reporting the same in 2022. Just 11% of disclosing companies expressed that the full board provided oversight, while the same percentage of companies reported that the audit committee (or its equivalent) oversaw ESG.

Approximately 9% of companies reported that multiple committees oversaw ESG, followed by 8% of companies that attributed oversight to the compensation committee or its equivalent. In some cases, even where a company indicated that the nominating and corporate governance committee had primary responsibility for ESG, it also noted that other board committees oversaw aspects of ESG that were in their purview (e.g., the compensation committee overseeing the use of ESG metrics in executive compensation plans). We expect that this approach may increase, particularly as the scope of, and responsibilities relating to, ESG topics continue to expand, and one committee alone may not have enough bandwidth.

ESG Disclosures Becoming Mandatory

While ESG reporting has generally been voluntary thus far, companies are increasingly facing proposed and adopted regulations that would mandate both qualitative and quantitative ESG disclosure. This comes at a time when there’s also increasing scrutiny around “greenwashing” (i.e., the practice of providing misleading or false information about ESG data and performance, often in the environmental context), as well as “greenhushing” (i.e., hiding or downplaying progress on environmental and other ESG initiatives to avoid criticism) efforts by companies who do not wish to become a target for the anti-ESG activists.

> Companies are increasingly facing proposed and adopted regulations that would mandate both qualitative and quantitative ESG disclosure.

Companies may also see a proposed SEC rule requiring more prescriptive and quantitative human capital management disclosure this year.

In the United States, the SEC's final climate disclosure rules and California's trio of recently adopted climate-related laws have increased the pressure for companies to start measuring and reporting on emissions-related data and climate-related risks, and to substantiate climate-related claims—all of which may increase the peer benchmarking data that companies see as they prepare for upcoming disclosures. Companies may also see a proposed SEC rule requiring more prescriptive and quantitative human capital management disclosure this year, which may result in more robust human capital CSR disclosure.

Companies, particularly those in the top 50, are multinational and, therefore, may be impacted by more strenuous (but somewhat "interoperable") ESG disclosure regulations in the EU and other parts of the world. While some of these laws may not impact the SV 150 companies directly (for example, if the company has a small presence abroad and doesn't meet the required threshold), the move of subject companies towards meeting these strenuous requirements may also nudge peer and smaller companies that are not subject to these regulations to modify their disclosure practices to meet investors' adjusted expectations.

Conclusion

Although ESG reporting has not been mandated, most companies have opted to provide some level of disclosure in response to stakeholder demands and in anticipation of actual and likely mandates from the SEC and other regulators. The number of SV 150 companies voluntarily disclosing ESG information and the comprehensiveness of such disclosure, have increased in the last couple of years, a trend that is likely to continue.

Technology and life sciences companies contemplating whether to voluntarily disclose ESG information or expand their disclosure should consider these trends and the types of information disclosed by SV 150 companies. Doing so may help such companies to better assess their preparedness for mandatory ESG disclosure regulations, as well as meet the demands of investors and other stakeholders.

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Background and Methodology

For our research we looked at the public disclosures, primarily CSRs, websites and the most recent proxy statements, of the SV 150's 2023 constituent companies. These companies ranged from Apple, with $388 billion in revenue for 2022, to C3.ai, with $267 million in revenue for 2022. As we noted in Corporate Governance Practices and Trends in Silicon Valley and at Large Companies Nationwide, SV 150 companies are generally smaller, younger, and have less revenue than the large public companies of the Standard & Poor's 100 Index (S&P 100), although some of the larger SV 150 companies are also represented in the S&P 100 and S&P 500. Because of the wide range in sizes of companies in the SV 150, we have grouped them into subcategories of top 50, middle 50 and bottom 50 companies by revenue.

A company was regarded to have ESG disclosure if it specifically referenced "ESG," "sustainability," "corporate social responsibility" or another similar term and addressed ESG risks and opportunities as a unified concept.

Furthermore, when deciding whether a company was considered to have provided ESG disclosure, we only counted significant disclosures of ESG information and disregarded disclosures that just briefly mentioned ESG or just cross-referenced to more substantive ESG disclosure that was contained in another source. For example, proxy statements that only disclosed that the company had published or intended to publish a CSR were not regarded as having provided ESG disclosure.

In addition, where a company only provided corporate governance-related disclosure in its proxy statement to comply with the SEC's proxy rules (e.g., it did not have a separate ESG or sustainability section), we did not consider it to be ESG voluntary disclosure for purpose of this report.

GHG Emissions

Based on definitions provided by the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard.

Scope 1 Emissions – Direct emissions from owned or controlled sources.

Scope 2 Emissions – Indirect emissions from the generation of purchased energy.

Scope 3 Emissions - Indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including upstream and downstream emissions.

Greenhouse gas (GHG) - One or more of the following gases considered to contribute to global warming under the UNFCCC/Kyoto Protocol: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride.

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