

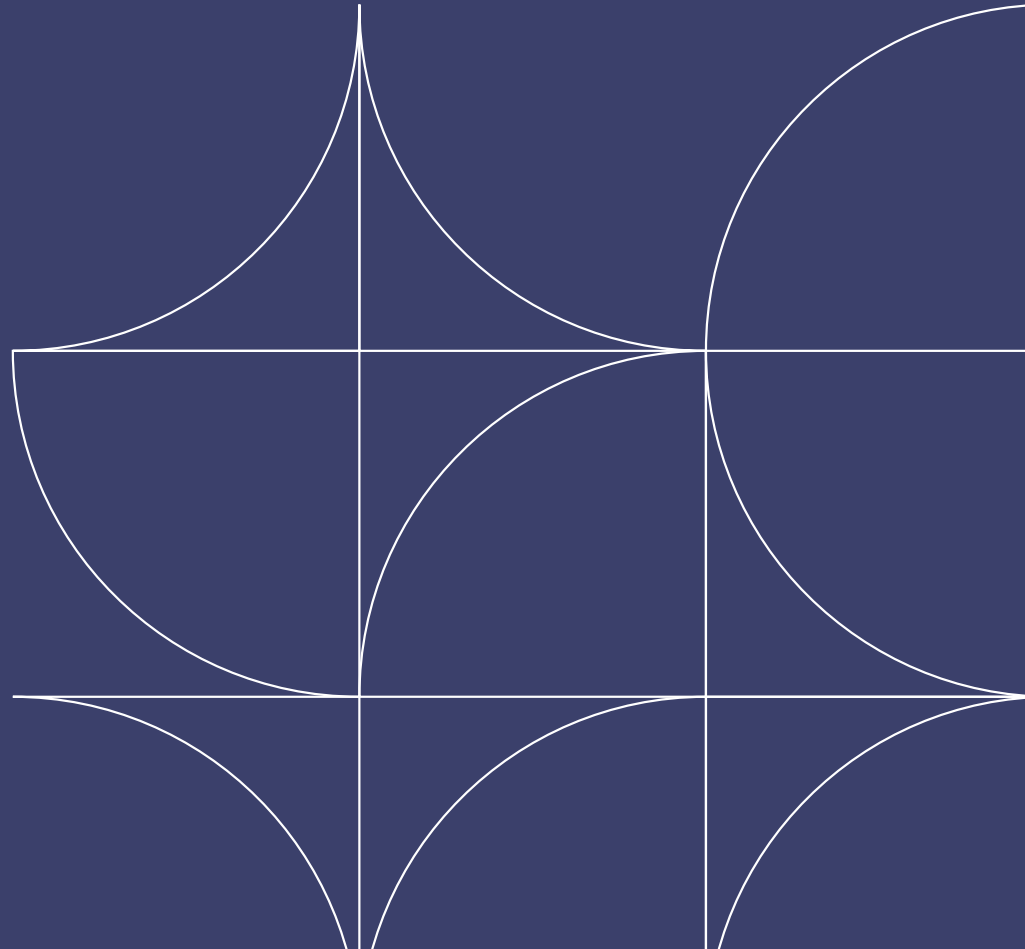


# Navigating the DEI and ESG Landscape: Balancing Opportunity and Risks

May 2, 2023

**Seyfarth Shaw LLP**

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# Speakers

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# Agenda



1

DEI and EEO  
Legal Framework



2

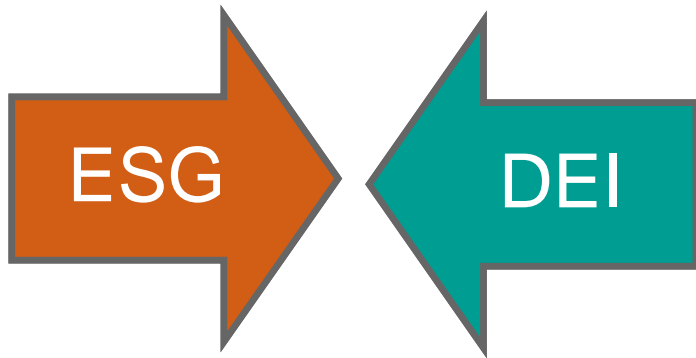
The ESG Framework



3

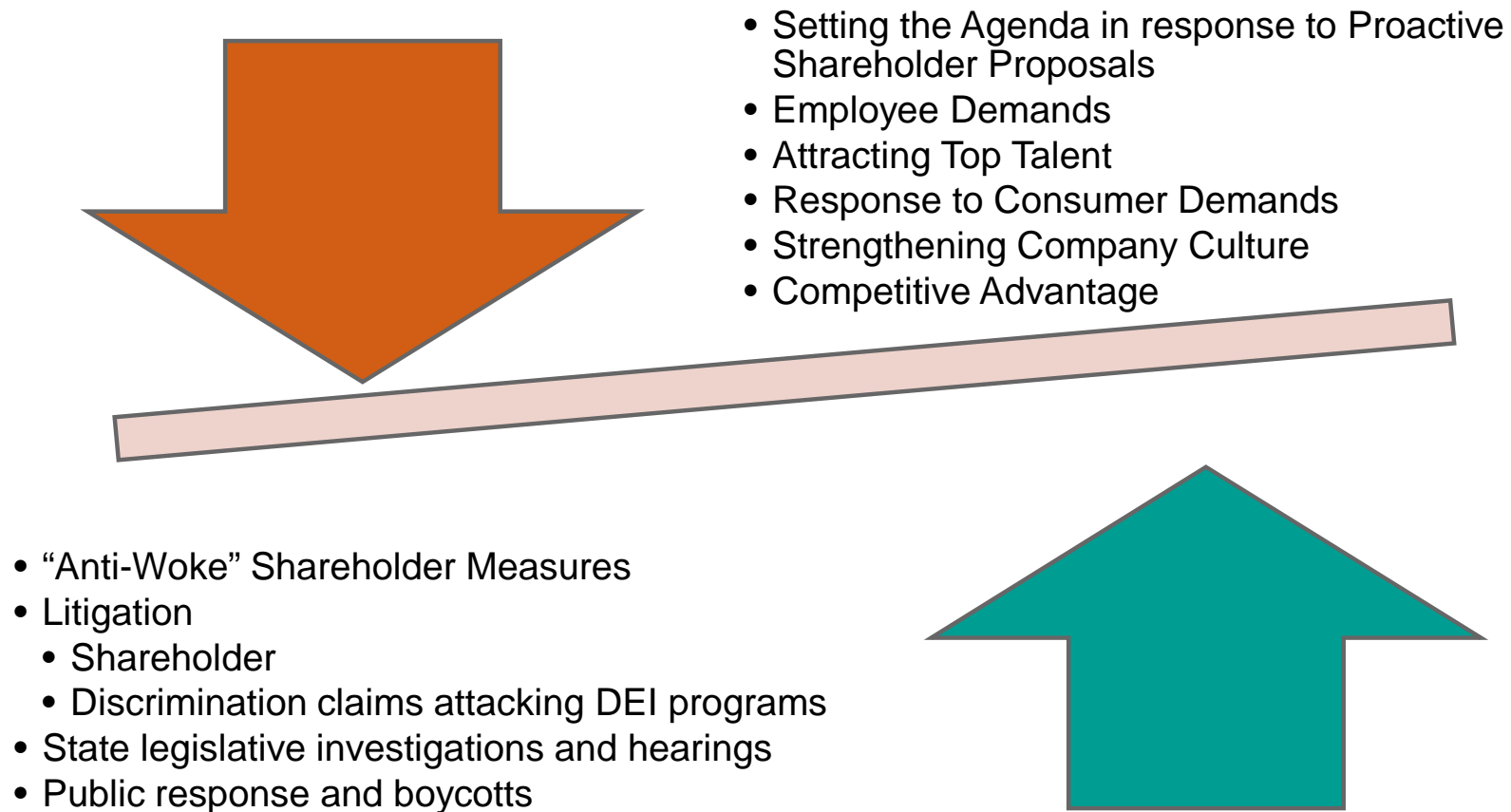
Human Capital  
Management

# Leveraging DEI Efforts to Support ESG Strategy

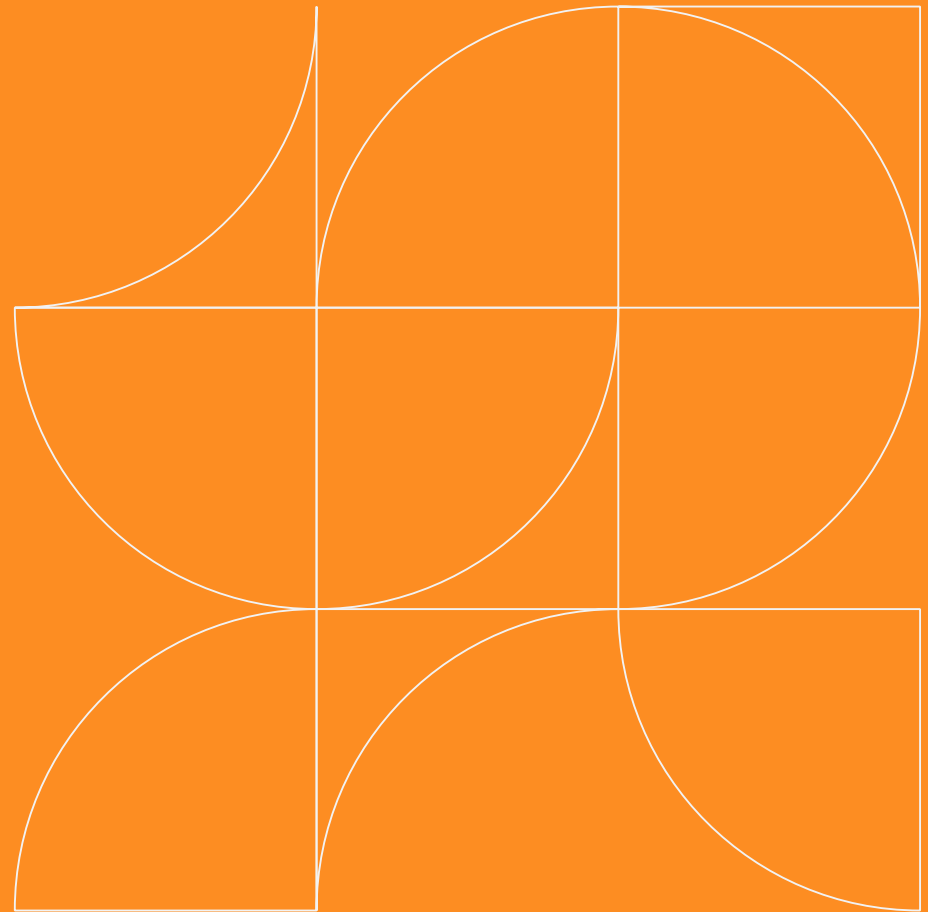


# Risks and Opportunities of Published DEI Strategies

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# ESG Framework



# ESG – Trying to Define it

## What it is. . . .

- Amorphous
- Enterprise-wide financial proposition
- A path to develop resiliency and profits
- Integrated with business strategy
- A way to tell potential hires, clients and the marketplace who you are
- Aligned with purpose, mission & values

&

## What it is not. . . .

- A single thing
- An area of law (yet)
- Climate, DE&I, pro bono, data privacy or any other single topic under the umbrella of ESG
- A check the box exercise
- A “do good” business



# Definitions

**ESG**

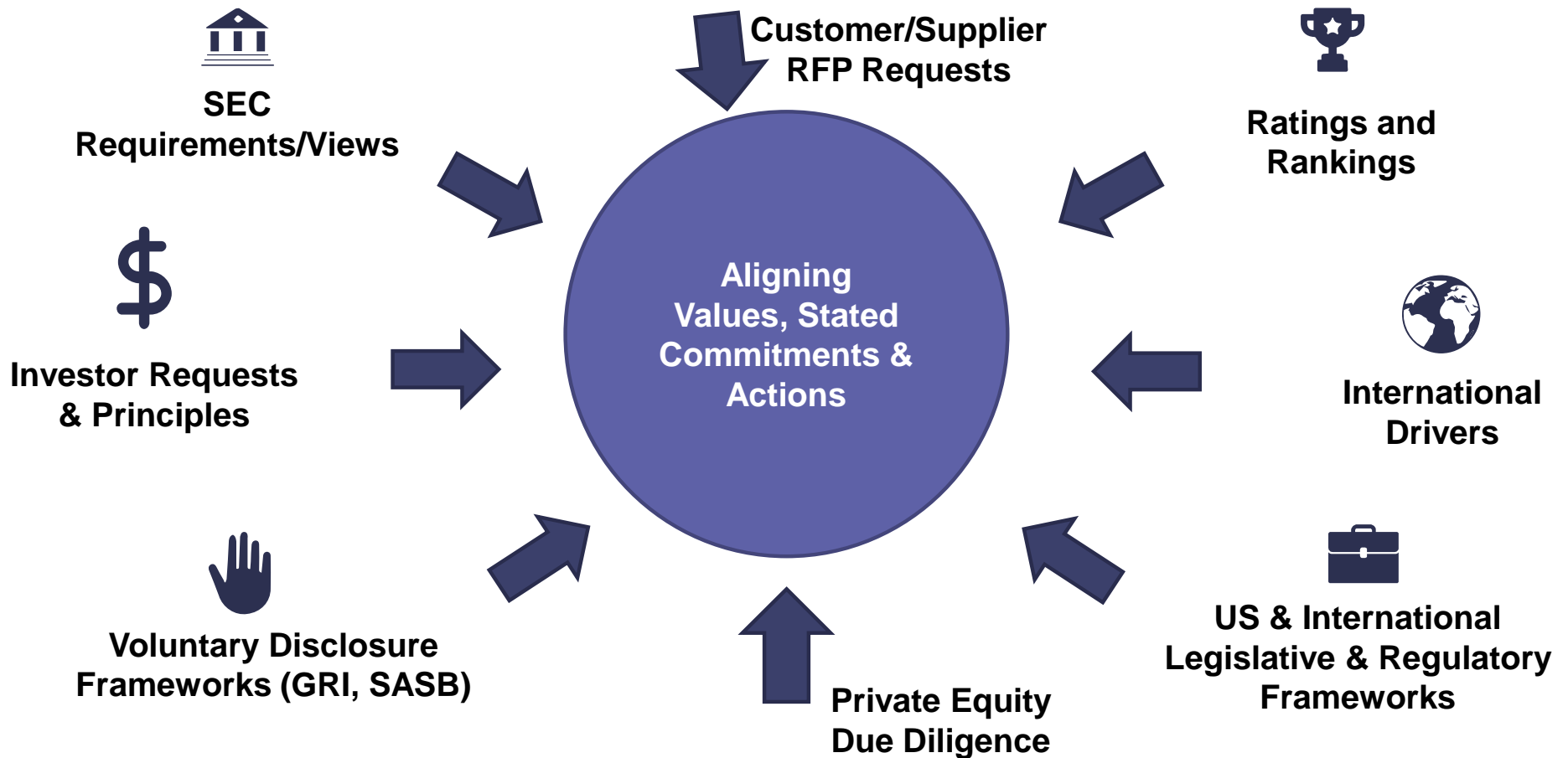
**&**

**Impact**

A framework for assessing an organization's practices and performance on relevant ESG issues against certain stakeholder-centric factors in furtherance of a sustainable and resilient business

The net effect of an activity on an organization's stakeholders, the well-being of individuals and families and within its value chain

# ESG is Everywhere – The Why



# Organizing ESG

Interconnectedness  
of the E, S, G with  
business strategy &  
impact



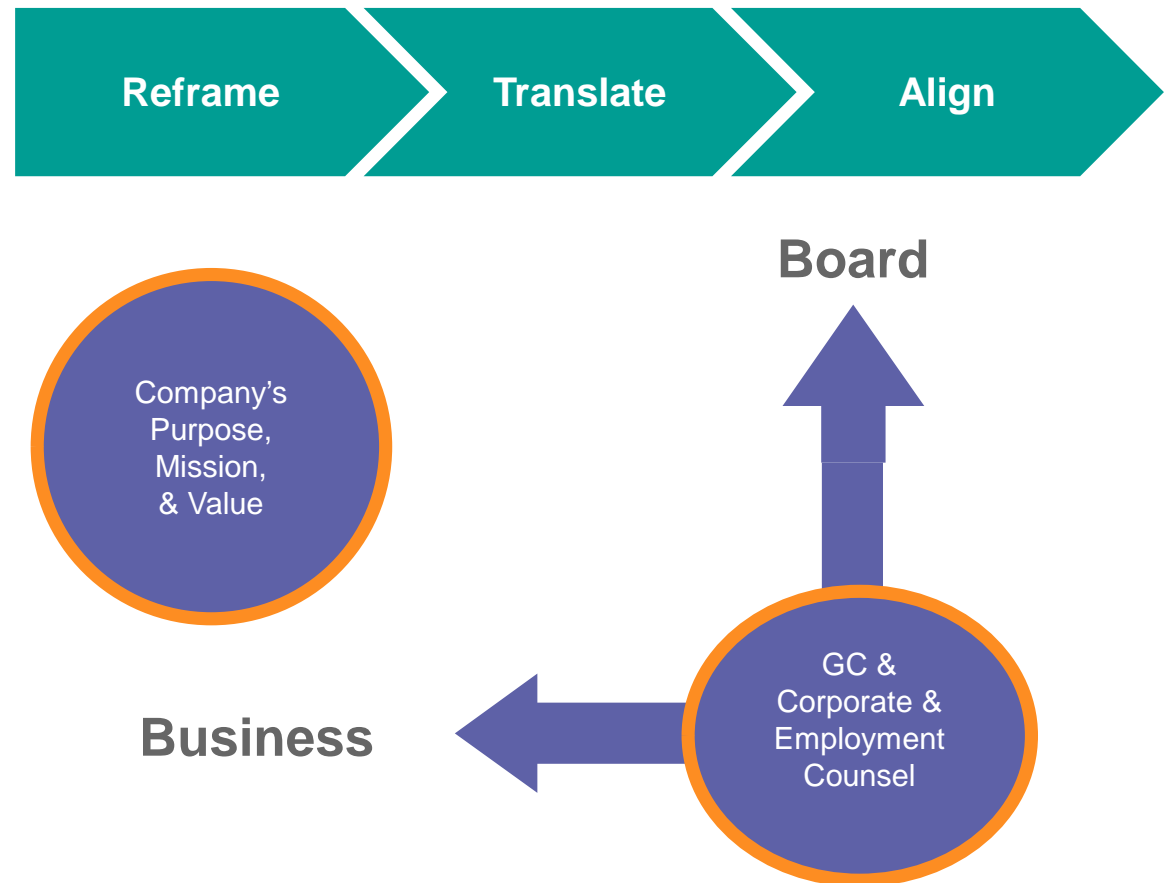
### Business Risks:

- Brand / reputation
- Economic
- Compliance / regulatory
- Operational
- Supply chain
- Physical and transition climate risks
- Human capital
- Human rights

### Primary Legal Risks & Considerations:

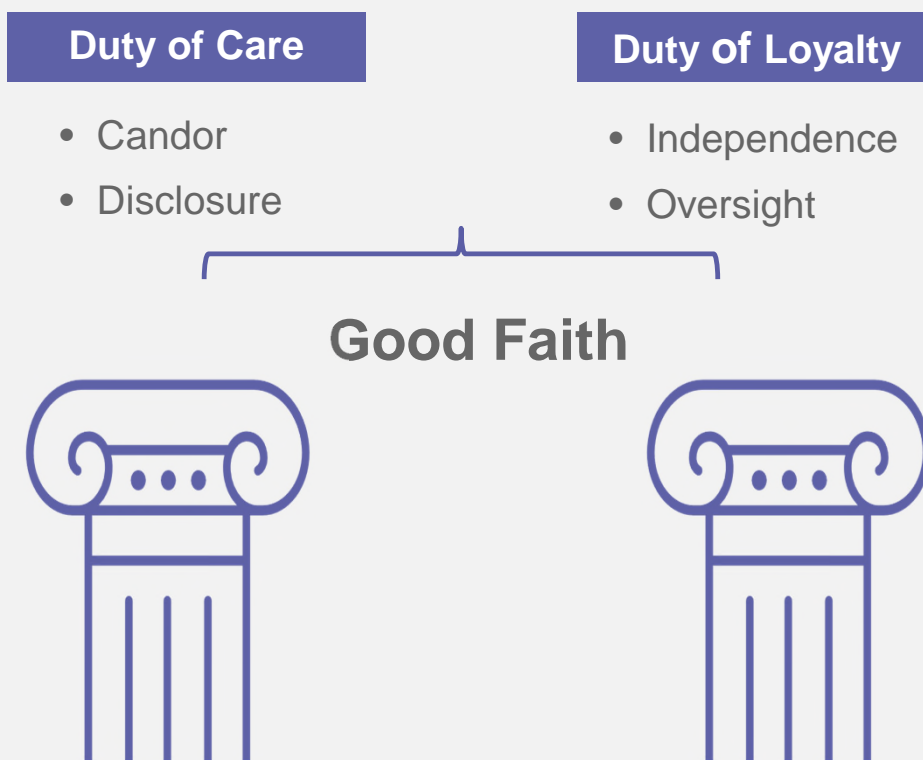
- US federal securities law exposure for materially misleading or false statements in any public report or statement &/or omissions
- US state corporate law breach of fiduciary duty by the board
- Eroding pro-defense strategies

## Changing Role of Counsel

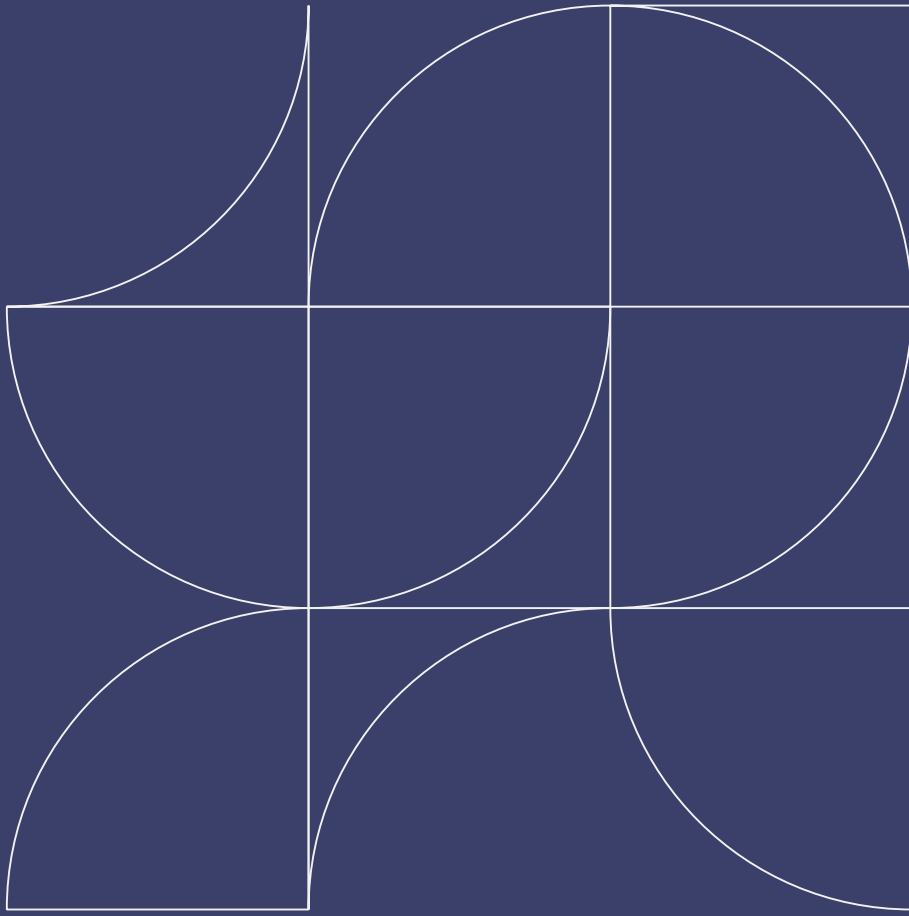


# US Fiduciary Duties and Governance of the E&S

- Role of the Board vs. role of management
- Board oversight (*Caremark* duties)
  - Design information and reporting system
  - Monitor the system
- Changing Landscape
  - Tested in courts
  - Possible extension to officers
  - Relationship to ESG



# Human Capital Management





## Social

- Human capital
- New SEC Disclosure requirements in 2020
- Second Annual Seyfarth HCM Report
- 2022 Report Insights
  - Board oversight references up
  - Safety still important
  - DEI continues to be important
  - Recruiting and retention focus
  - Benefits

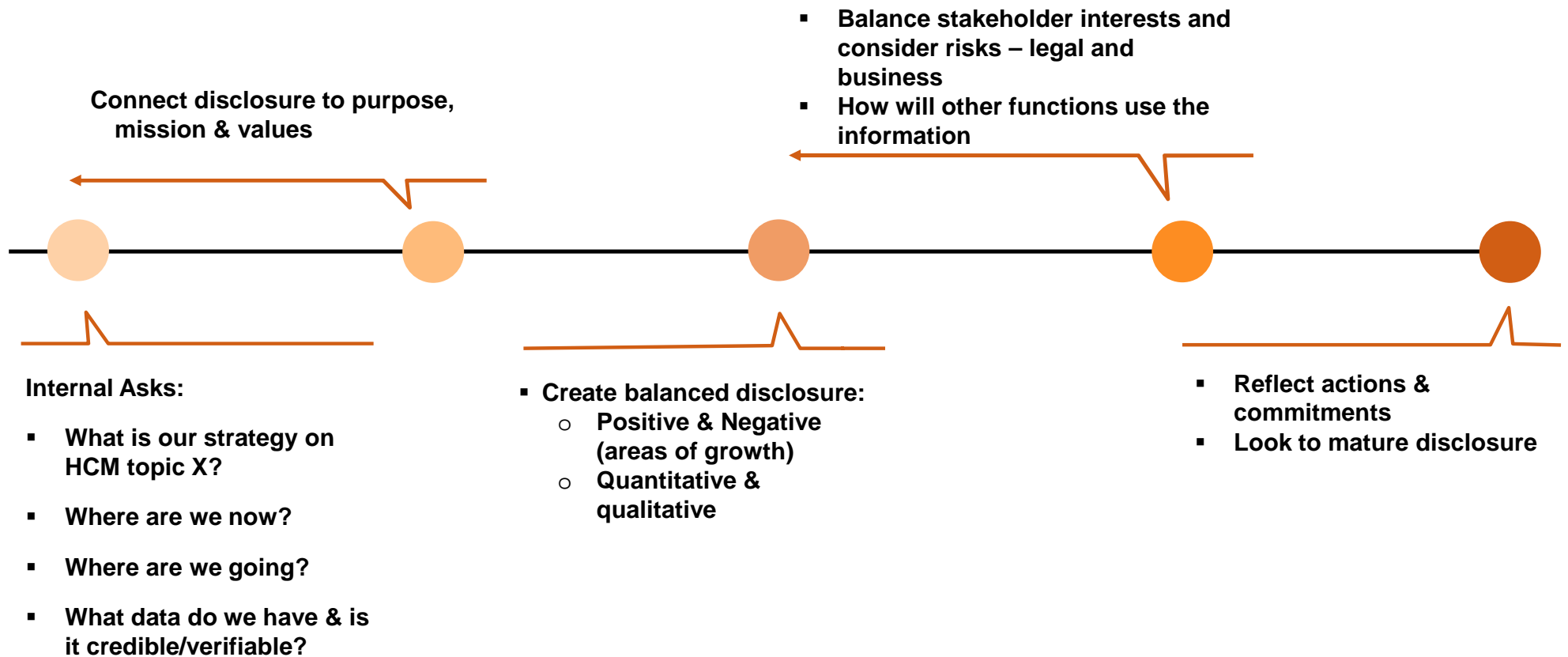


# Human Capital Management Industry At-A-Glance

	Agriculture & Food	Construction & Real Estate	Energy & Natural Resources (Incl Utilities)	Financial & Insurance	Healthcare & Pharma	Industrial & Manufacturing	Retail	Services	Technology & Telecom	Transportation
COVID-19	75%	60%	80%	60%	80%	75%	70%	60%	65%	55%
Culture	95%	70%	75%	55%	90%	75%	80%	100%	85%	55%
Demographics	70%	40%	65%	75%	80%	50%	30%	50%	60%	70%
Diversity and Inclusion	100%	85%	100%	95%	100%	95%	95%	95%	95%	85%
Employee Health and Safety	95%	80%	100%	65%	100%	75%	80%	85%	75%	85%
Initiatives	90%	95%	65%	80%	100%	90%	70%	90%	80%	75%
Pay Equity	30%	25%	25%	40%	50%	25%	25%	25%	40%	10%
Recruiting and Retention	60%	75%	90%	90%	95%	90%	65%	100%	75%	85%
Talent Development and Management	90%	85%	90%	90%	100%	90%	85%	100%	95%	95%
Did it mention the Board or a Board committee as having oversight of human capital?	65%	35%	60%	60%	40%	40%	40%	35%	40%	35%



# Disclosure Roadmap



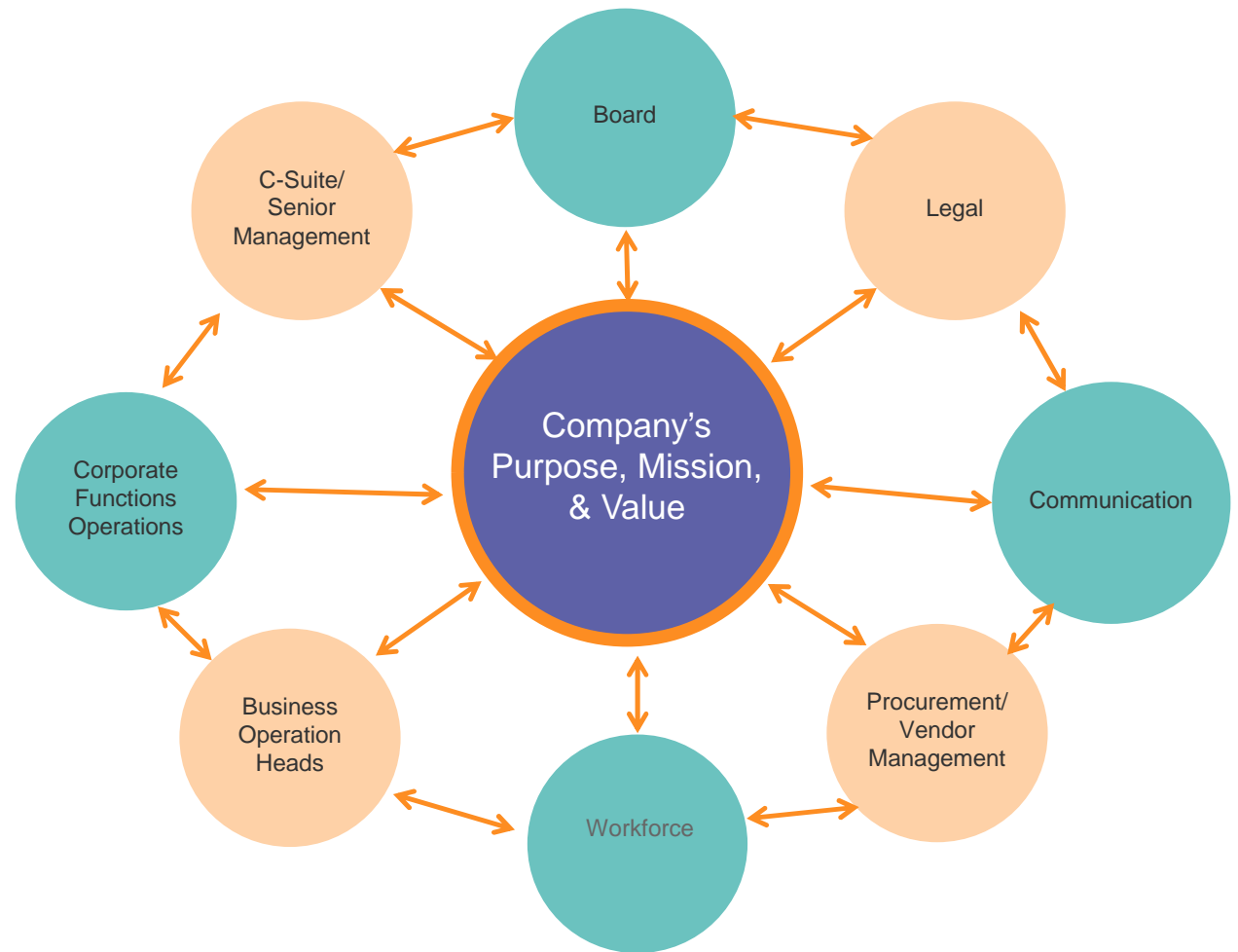
# Tying it Together

**REFRAME**

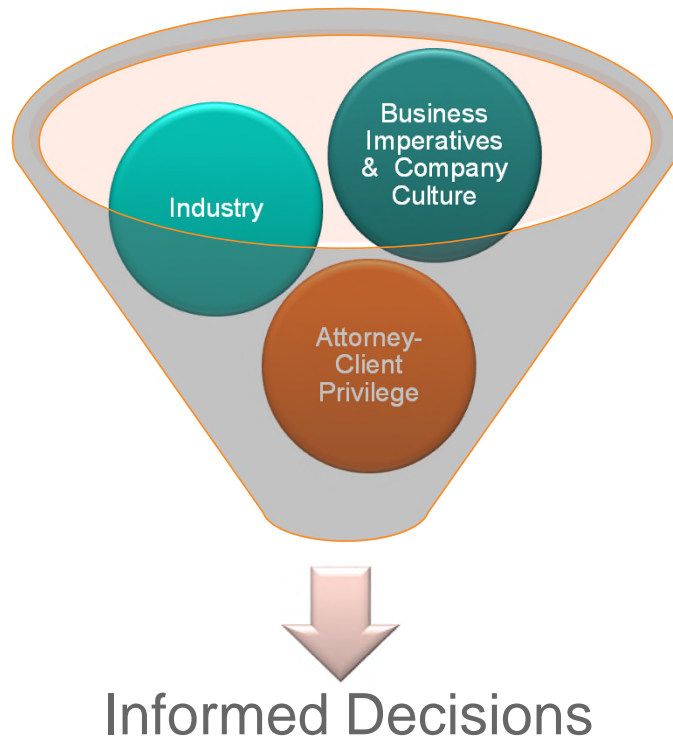
**TRANSLATE**

**ALIGN**

## Breaking Down Organizational Siloes



# What Does Transparency Look Like?



What To Share?

With Whom Will You Share It?

How Will You Describe Efforts?

Attorney Client Privilege

# Best Practices for DEI Related ESG Strategy

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- Know Your Why
- Create a Reasonable Oversight Process
- Create a Cross Functional Team
- Deploy Training
- Consider How Much to Disclose
- Consider Legal Defensibility
- Consider Language Usage
- Consider Privilege Waiver Issues
- Ensure Accuracy
  - statements are credible and verifiable
- Ensure Consistency

**thank  
you**

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