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The recently published 2021 Guide to Deal-Making by Middle Market Growth, an official publication of the Association for Corporate Growth (ACG), highlights several important trends of which to be mindful in the coming year. One trend gaining global traction is how important environmental, social and governance (ESG) considerations have become in M&A transactions. According to a recent survey by ACG, 50% of private equity investors believe that companies focused on ESG metrics have performed better over time and, as such, are working to incorporate ESG policies and specific ESG due diligence as a standard business practice.

There is a rising tide of regulatory reform in the EU and US. Although a relatively new approach in the United States, the EU has required disclosure on corporate social responsibility since 2018. Major stock exchanges are also considering mandatory ESG disclosures involving human rights. The SEC investor advisory committee is considering updating public company reporting to include material ESG factors. Delaware, the home jurisdiction to most US public companies, has NOT yet mandated that corporate boards of directors consider broader stakeholder interests, including ESG factors. However, a board's duty of oversight over the corporation suggests that ESG issues should not be overlooked.

Toxic waste, climate change, carbon footprints, sexual harassment, hiring practices, discrimination, executive pay, tax audits, data privacy and community involvement are all issues that fall under ESG. Creating or continuing to provide a stable, safe and respectful environment for employees to work while being a good community member is becoming increasingly important to the labor force, especially millennials.

Traditional transaction due diligence inherently covers many of these issues, but not all. It will be interesting to see to what extent private equity firms implement or augment ESG specific policies in the coming years and whether the current political climate will accelerate this timetable.

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