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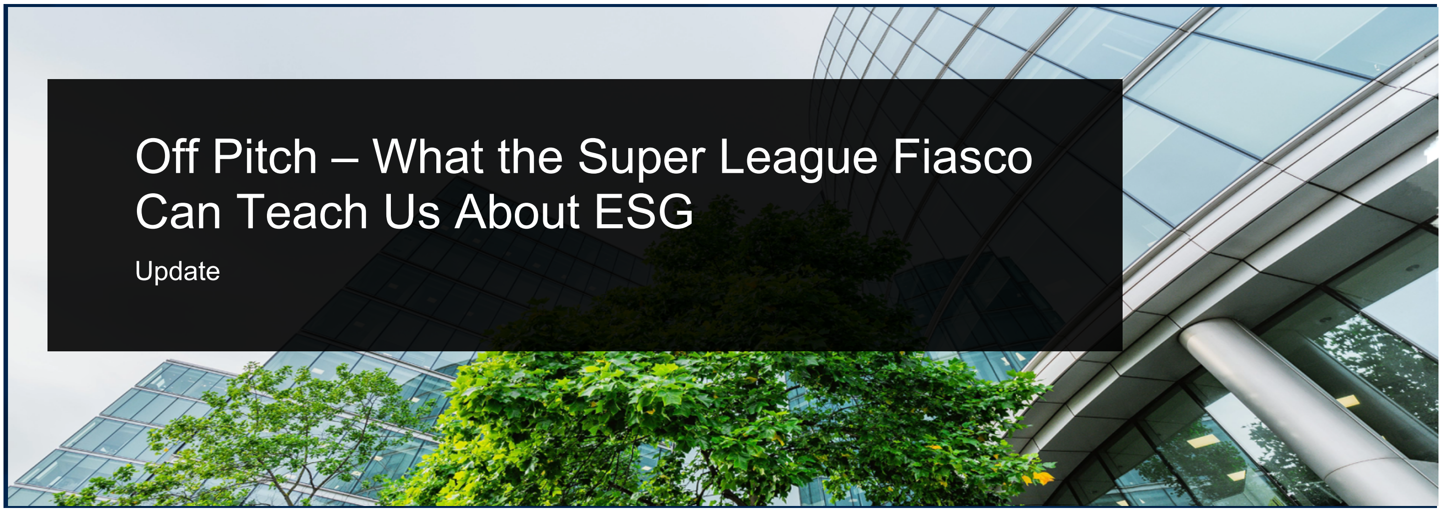

Off Pitch – What the Super League Fiasco Can Teach Us About ESG

Update

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When twelve of the highest profile football teams in Europe announced that they were forming a European Super League, they sent shockwaves through the world of European football and beyond. The fallout was swift and expansive, and within 48 hours of the initial announcement of the Super League's creation, it was all but shut down. The participating football clubs, however, are not the only ones who can learn from the Super League's enormous blunders. The involved organizations' actions before, during, and after the fiasco may serve as a lesson on the consequences of ignoring environmental, social, and governance ("ESG") concerns even when messaging that they are acting with good intentions.

The hurried rise and even more hurried demise of the Super League received plenty of in-depth news coverage, but (very) long story short: on Sunday, April 18, twelve elite football teams[1] announced a break with the Union of European Football Associations ("UEFA") to form the European Super League, which was financed by JP Morgan Chase and would offer mid-week matches between member teams in addition to the teams' regular league schedules. The member teams would reap significant compensation for participating. The twelve initial members (and perhaps others) would be permanent league members, with a handful of additional qualifying teams that would not have permanent membership. This is a stark departure from the traditional relegation process used in modern football and UEFA tournaments. Also, the Super League teams would play each other instead of participating in UEFA tournaments.

When news of the Super League was announced late Sunday night, the backlash was immediate and fierce. Fans, players, coaches, excluded teams, and, perhaps most importantly, UEFA felt betrayed – it appeared that no effort had been made to solicit, much less consider, input from anyone outside the Super League's leadership. By Tuesday, April 20, fewer than three days after

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its public debut, the Super League succumbed to the backlash, particularly potential sanctions from UEFA, and it appears to be almost entirely disbanded.[2]

Multi-front opposition successfully tanked the project, but even after the Super League was quashed, those involved may still face long-term consequences. For JP Morgan, as Bloomberg's Matt Levine discussed, those consequences featured getting downgraded from "adequate" to "non-compliant" by sustainability ratings agency Standard Ethics for failing to consider the interests of all stakeholders, including interests in the integrity of football itself. Standard Ethics says JP Morgan's participation in the Super League was "contrary to sustainability best practices, which are defined by the agency according to UN, OECD and European Union guidelines, and take into account the interests of the stakeholders," indicating that the downgrade was made largely on the social (e.g. employees/labor, community impact) and governance (e.g. identifying stakeholders, evaluating risk from the viewpoint of those stakeholders, and have a clear plan for managing such risks) prongs of ESG.

The financial backers of the doomed league are not alone – the clubs planning on participating in the Super League are also catching flack for failing to fully consider their responsibilities to stakeholders. UEFA announced that all twelve teams will be punished for the threatened coup, though the degree of punishment will vary based on how and when the teams pulled out. At least one club executive resigned in the wake of the scandal, and involved executives are poised to lose their positions on Premier League working groups. The three teams that haven't withdrawn from the Super League, Real Madrid, Barcelona, and Juventus, will likely carry the heaviest consequences, though the players may bear the brunt of the punishment – UEFA, with support from FIFA, has threatened to bar Super League players from all domestic and international competition.

According to the member clubs, joining the Super League was the only way to "save football" from UEFA and impending financial demise. Concerns with UEFA and the financial viability of European football are legitimate.[3] But, at least in hindsight, the risks of starting the Super League under its proposed structure obviously outweigh the desired potential rewards.

Further, this posture focuses on just one subset of many stakeholders with a diverse range of concerns. Club leadership may be primarily focused on the risks involved in entanglement with UEFA and the overall financial situation of football clubs. However, players, coaches, and fans are stakeholders too, and their concerns may lie more with maintaining the integrity and competitive nature of football itself. Clearly, from an ESG perspective, clubs should have thought more about how to balance these competing interests and obtain stakeholder buy-in before launching the Super League.

The Super League *did* try to create a positive rhetoric around the announcement, calling the Super League's creation an effort to "save football." But the rhetoric played out as a nakedly financial argument, ignoring the values that stakeholders associated with the product. Put simply, the roll-out failed to reflect that the product is 'owned' not just by investors but also by stakeholders who, in this case, felt they had been tackled from behind, cleats-up. Small wonder that a red card sent the Super League off.

The lesson is that misdirected or overblown rhetoric can enhance offended stakeholders' sense of grievance and invite high scrutiny. It can permanently damage stakeholders' trust and buy-in, and in some cases it leads to litigation or government investigations.[4] If an organization makes grandiose ESG statements, such as "we're saving football," stakeholders will hold the organization to account for those promises, particularly in the event that football is not, in fact, saved – or that the plan to save football is at the expense of other stakeholder values. Properly identifying and taking into account the non-financial values of stakeholders is one of the hardest parts of ESG, yet it is increasingly important to get it right.

Rhetorical posturing, like greenwashing, risks not only unfulfilled promises but also heightened attention to an organization's shortcomings in other ESG areas, leading stakeholders to lose faith in the organization. For example, numerous companies made anti-racist statements and commitments last summer. Now, many of those companies are being asked to "prove it," with some activist shareholders pointing to wage gap and transparency issues as evidence that those companies are posturing for their own good without actually pursuing public good.

Organizations involved in the failed Super League now face similar criticisms. Leeds United striker Patrick Bamford caught social media attention when he wrote, in a series of tweets opposing the Super League, that "[i]t's amazing the amount of uproar that comes into the game when someone's pocket is being hurt. It's a shame it's not like this with everything that's going wrong in the game like racism." In a statement explaining its initial decision to join the Super League and subsequent reversal of that decision, Chelsea retrospectively acknowledged the risk that joining the Super League posed to its Owner's efforts "on fighting racism, antisemitism, homophobia and other discriminatory behaviours."

Cultural context surrounding corporate actions matters, because stakeholders may view those actions as value statements. If an organization wants to posture a corporate decision as being "good," whether for the environment or for football, it has to actually be good and be received as "good" by its stakeholders. Business organizations should carefully review the full range of values associated with their product and their brand, so that both their decisions and the roll-out for the decisions respect stakeholder interests.

To minimize the potential for a similar situation arising, organizations should consider focusing on both planning and messaging before taking action. Of course, not every ESG decision will benefit every stakeholder. But organizations should nevertheless work together with their advisers to identify who the stakeholders are, evaluate risk from the viewpoints of all those stakeholders, and have a clear plan for managing such risks in an appropriate and proportionate manner. As the Super League football clubs learned the hard way, failing to anticipate and plan for those risks can lead to extraordinarily unpleasant surprises.

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[1] Well, ten plus Arsenal and Tottenham Hotspur.

[2] Real Madrid president Florentino Perez insists that while JP Morgan and the participating teams are taking "a few weeks to reflect in light of the fury of certain people," the Super League is still alive, and that the clubs that withdrew from the league "effectively . . . cannot leave."

[3] Just like the Super League, UEFA has been criticized for prioritizing profit over football and creating a "self-perpetuating elite" of superclubs.

[4] Bracewell attorneys recently published an update on this topic, suggesting that a rise in ESG lawsuits resulting from incomplete or inaccurate disclosures, and the SEC's increased focus on ESG issues indicates that a new wave of securities litigation may be on the horizon.