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Forward-thinking companies are increasingly analyzing the sustainability of their operations to help ensure the continued profitability and growth of their businesses. These companies should take steps to understand the mandatory requirements for, and voluntary guidelines on, corporate sustainability disclosure.

***Practical Law Corporate & Securities***


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Corporate sustainability can be generally defined as the overall capacity of a company and its business to endure over the long term. Recently, the term has increasingly been used to describe a company's ability to continue to profitably conduct and grow its business under future operating conditions that are expected to differ from the past in fundamental ways due to, among other factors:

- An increasing demand for once abundant but increasingly scarce resources, such as water.
- A decreased ability of environmental systems to absorb, without significant disruption to those systems, the byproducts of certain business operations, such as carbon dioxide ($CO_2$).
- A more unpredictable climate marked by an increase in extreme weather events and weather patterns that depart from those that had been in place for most of the industrial era.

As part of sound strategic planning and risk management, and in response to investor and other stakeholder demand, forward-thinking companies are increasingly analyzing the sustainability of their operations. While corporate sustainability is a business-wide concern that implicates multiple areas of the law, it raises some disclosure-related considerations of primary interest to attorneys. This article:

- Discusses the concept of corporate sustainability, including its relationship to corporate social responsibility (CSR).
- Provides an overview of sustainability disclosure and reporting.
- Identifies trends causing sustainability to become a key strategic consideration for companies.
- Reviews certain mandatory disclosure requirements and selected voluntary disclosure guidelines concerning sustainability, and discusses considerations for companies making voluntary disclosure.

This article is an excerpt of a resource from our website. For the complete, online version, which includes additional information on corporate sustainability disclosure, search Corporate Sustainability and Disclosure.

## CORPORATE SUSTAINABILITY AND CSR

Corporate sustainability is often used to describe a company's ability to continue to conduct and grow its business in a future that is expected to present operating conditions that will materially differ from those of the past. The terms corporate sustainability and CSR are often used interchangeably. These terms encompass many of the same concerns, including those about how a company's operations impact:

- The environment.
- The availability of scarce natural resources.
- The health, social and economic welfare, and human rights of communities affected by the company's operations, including employees, customers and local residents.

CSR focuses on increasing a company's accountability for these types of impacts. Effective CSR programs seek to create a process within a company enabling it to monitor, assess and skillfully manage these impacts.

Search Expert Q&A on Trends in Corporate Social Responsibility for more on CSR.

While closely related to the concept of CSR, corporate sustainability can be understood as focused on a company's ability to carry on its operations over time, informed by a recognition that this depends, in part, on the continued existence of a functioning economic, social and environmental system as a backdrop to the company's operations. Therefore, sustainability is intimately related to a company's long-term strategic business plan. The degree to which a company is operating sustainably may also be of interest to company investors with long-term investment strategies, such as pension funds and endowments.

With this in mind, sustainability is often said to be concerned with a company's "triple bottom line," consisting of economic and financial, social and environmental results. A company seeking to operate sustainably should analyze its performance based on:

- The company's financial results.
- The interplay of the company's operations with social issues, including human health, human rights and the economic welfare of the communities with which the company interacts.
- The interplay of the company's operations with environmental systems on which those operations rely.

In defining sustainability, experts often cite the 1987 report by the Brundtland Commission defining sustainable development as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs" (*Our Common Future, Report of the Brundtland Commission, 1987, Oxford University Press*).

## DISCLOSURE AND REPORTING: OVERVIEW

Sustainability disclosure may refer to a company's publication of information on:

- Economic, social and environmental conditions impacted by, or impacting, company operations.
- Steps the company is taking to mitigate any adverse effects that its operations have on economic, social and environmental conditions or to adapt to changes in these conditions.
- Groups or individuals within the company responsible for monitoring the company's sustainability and developing long-term strategies (sustainability governance).

Certain sustainability-related disclosure may be required by mandatory disclosure regimes to which companies are subject. For example, Securities and Exchange Commission (SEC) reporting companies may be required to disclose in SEC periodic reports material information related to sustainability matters, such as current and potential effects on operations of climate change. Companies may also voluntarily disclose sustainability information, and this disclosure may follow a recognized disclosure framework.

Companies may make sustainability disclosure in various forms or combinations of forms, such as:

- In stand-alone sustainability reports, which may be:
  - made available on company websites or distributed physically; and
  - titled sustainability report, corporate social responsibility report or a variation.
- On company websites or in other electronic formats, such as an iPad app.
- In SEC periodic reports, if a company concludes certain sustainability information is material or otherwise desires to include it.
- In response to a questionnaire from an organization collecting sustainability data.

Corporate sustainability is often used to describe a company's ability to continue to conduct and grow its business in a future that is expected to present operating conditions that will materially differ from those of the past.

Sustainability disclosure can refer to information on, for example:

- The bodies and individuals within the company responsible for monitoring the sustainability of operations.
- Company goals and policies on sustainability.
- The amount of waste the company generates and steps being taken to reduce waste.
- The company's water and energy consumption, its water and energy sources and steps being taken to increase efficiency.
- The quantity of the company's greenhouse gas (GHG) emissions and steps being taken to reduce emissions.
- Measures related to employees, such as employee turnover, the number of injuries or fatalities, and what the company is doing to improve.
- Certain industry-specific metrics and issues, such as the number of data security breaches involving customers' personal information (financial services company) or company processes to manage risks and opportunities associated with the rights of communities residing close to resource deposits (mining company).
- Standards that company suppliers are required to adhere to, relating to, for example, labor conditions or sourcing of natural resources.
- Whether company sustainability disclosure has been independently assured.

## GLOBAL TRENDS IMPLICATING SUSTAINABILITY

Certain global trends are elevating the importance of corporate sustainability. These include:

- **Population growth.** The continuing growth of the world's population coupled with the rising wealth and aging of that population is expected to create heightened demand for increasingly scarce natural resources. This raises a number of long-term strategic challenges for companies, including maintaining their level of access to formerly abundant resources, such as water, land, forest products and agricultural commodities.
- **Climate change.** Climate change raises a number of challenges for companies, including physical impacts on company facilities and supply chains and regulatory changes designed to mitigate the causes of climate change. It also presents opportunities for some companies, such as those in the renewable energy sector. For certain companies, there is concern about hydrocarbon assets and associated capital expenditures becoming "stranded" (the contested concept that these assets may never be profitably sold or used because of regulation designed to curb climate change or their use becoming noneconomical).
- **Globalization of the world's economy.** While globalization has created many business opportunities, increased global economic interdependence has made many companies' operations more complex and exposed them to a wider range of risks, including risks arising in geographical areas remote from primary operations.
- **Increased investor focus.** Institutional investors have been increasingly focused on the relationship between sustainability and long-term investment risk and shareholder value.
- **Increased stakeholder awareness.** Due partially to the rise of the internet and social media, stakeholders, such as customers and local communities, are increasingly aware of sustainability issues, such as perceived adverse working conditions or health impacts of products.

Search Corporate Sustainability and Disclosure for the complete, online version of this resource, which contains more detailed information on the global trends implicating sustainability, including population growth, climate change, globalization and stakeholder awareness.

## INCREASED INVESTOR FOCUS

Institutional investors are increasingly focused on links between the sustainability of a company's operations and the long-term risk and value of investing in the company. Investors are, accordingly, seeking more information about the sustainability of companies in which they invest. For example, institutional investors have:

- Formed sustainability initiatives.
- Submitted shareholder proposals.
- In rare cases, announced plans to divest from industry sectors thought to be unsustainable (such as fossil fuels).

### Investor Sustainability Initiatives

A number of prominent investor groups focus on sustainability. The Principles for Responsible Investment (PRI) Initiative is a UN-supported investor initiative. According to PRI's six principles, signatories seek to, among other things:

- Incorporate environmental, social and governance issues into their investment analysis and decision-making process.
- Seek appropriate disclosure by companies on environmental, social and governance issues, including by requesting reporting under standardized frameworks like the Global Reporting Initiative (GRI) Guidelines.

The PRI Initiative includes more than 1,250 signatories, including asset owners, investment managers and service providers.

A number of institutional investors also participate in the Ceres Coalition, a coalition of investors (including public pension funds from California, Connecticut and New York) and environmental, social and public interest groups, aimed at accelerating sustainable business strategies and promoting policy encouraging business accountability. According to Ceres' website, among other things, Ceres promotes dialogues between investors and companies intended to help companies better understand their environmental and social impacts, identify emerging risks and seize opportunities to improve sustainability performance and disclosure.

Ceres founded GRI, which publishes widely used sustainability reporting standards. Ceres also directs the Investor Network on Climate Risk (INCR), a network of investors committed to addressing risks and seizing opportunities resulting from climate change and other sustainability challenges. Ceres works with INCR to help members engage with companies through shareholder resolutions and dialogue aimed at boosting sustainability performance and disclosure.

INCR has proposed a uniform global stock exchange listing standard that would mandate sustainability disclosure by exchange-listed companies. Ceres also submitted a September 2007 rulemaking petition to the SEC requesting it issue interpretive guidance on climate change disclosure in periodic reports. The petition was cited in the SEC's 2010 climate change release (see below *SEC Climate Change Release*).

In 2013, Ceres published a report, *The 21st Century Investor: Ceres Blueprint for Sustainable Investing*, guiding investors through ten steps to becoming "sustainable investors." Steps include, among others, establishing engagement strategies and proxy voting guidelines consistent with sustainable investment goals. The report states that taking material environmental, social and governance considerations into account as part of investment decision-making is consistent with an investment fiduciary's fiduciary duty, and that failure to consider these factors could constitute a breach of fiduciary duty. It further states that issues like climate change, population growth and resource scarcity can no longer be treated as "extraneous 'non-financial' matters."

### Shareholder Proposals

According to the Sustainable Investments Institute's (Si2's) *Mid-Year Review: Corporate Political Activity Proposals in the 2014 Proxy Season, August 2014* (Si2 Review), for the 2014 proxy season, investors had filed 454 shareholder proposals relating to environmental and social issues. This included a number of proposals requesting that companies report on sustainability generally or on a specific sustainability issue. According to the Si2 Review, shareholders submitted a proposal to 33 companies requesting the company produce a comprehensive sustainability report using a framework such as GRI or CDP (see below *CDP's Questionnaires*). Eleven of these proposals earned just under 30% average support (although none that ultimately went to a vote received majority support).

Another common shareholder proposal requests a company report on a specific sustainability issue, such as GHG emission reduction goals or water use. Companies may negotiate for the withdrawal of a proposal of this kind by agreeing to provide additional disclosure on the issue. The location, method and timing of the additional disclosure may be part of the negotiation between the company and the proponent shareholder, and may include the company agreeing to add disclosure to an SEC periodic report or in a stand-alone report or on the company website.

Ceres maintains a database of shareholder proposals submitted by its investor network participants on sustainability-related issues. Ceres also tracks the status of each proposal and voting record. Institutional Shareholder Services Inc. generally recommends that investors vote in favor of shareholder proposals requesting sustainability reporting unless the company either:

- Already discloses similar information through existing reports or policies, such as a comprehensive code of corporate conduct, a diversity report or an environment, health and safety report.
- Has committed to provide sustainability reports based on the GRI guidelines (see below *GRI Guidelines*) or a similar standard within a specified timeframe.

## MANDATORY SUSTAINABILITY DISCLOSURE

### SEC PERIODIC REPORTS AND OFFERING DOCUMENTS

Reporting companies may be required to make sustainability disclosure under certain circumstances as part of their SEC periodic reports. While the SEC's disclosure requirements may not have been originally designed with sustainability in mind, SEC guidance has highlighted instances in which disclosure about environmental conditions may be required because it is material to the company and falls under the subject matter of certain SEC line-item disclosure requirements, such as risk factors or the company's business description.

Reporting companies are required to file periodic reports, including annual reports on Form 10-K, quarterly reports on Form 10-Q and, when certain enumerated events occur, current reports on Form 8-K. The substance of the disclosure requirements of these forms is set out in the SEC's Regulation S-K. Securities transactions not exempt from registration must be registered with the SEC and made pursuant to a prospectus containing disclosure similar to that required in an annual report on Form 10-K.

Search Periodic Reporting and Disclosure Obligations for an overview of periodic reporting requirements.

When drafting SEC periodic reports or offering documents, companies are required to respond to SEC line-item disclosure requirements and also include other material information that is necessary to make the required disclosure not misleading (*Rule 408, Securities Act*; *Rule 12b-20, Exchange Act*).

Under case law and SEC guidance, information is material if a substantial likelihood exists that a reasonable investor would consider the information important in making an investment or voting decision. Put differently, a fact is material if it would alter the total mix of the information available to investors (see *Basic, Inc. v. Levinson, 485 U.S. 224 (1988)* and *TSC Indus. v. Northway, Inc., 426 U.S. 438 (1976)*). SEC staff guidance has cautioned companies against making materiality determinations based solely on quantitative thresholds.

The SEC has provided guidance that may be helpful to companies as they consider whether information about sustainability topics may be or may become material.

Search Determining Materiality in Securities Offerings and Corporate Disclosure for more on the concept of materiality under federal securities law.

### SEC Climate Change Release

In 2010, the SEC issued an interpretive release providing reporting companies with guidance on how existing SEC disclosure requirements apply to disclosure about climate change (*SEC Release No. 33-9106 (Feb. 2, 2010)*). While the release focuses on climate change, companies may consider reading it by analogy with regard to other sustainability topics. To the extent those sustainability topics are material to the company, disclosure should be considered.

The release provides examples of ways climate change may have significant impacts on companies' businesses, including through:

- Impacts of existing and pending environmental regulation and legislation, for example:
  - capital expenditures and other costs associated with improving facilities to comply with GHG emissions limits; and
  - the cost of purchasing credits in a cap-and-trade system.
- Physical impacts, such as increasing storm intensity, rising sea levels, changes in the arability of land or availability of water or other natural resources, the effects of extreme temperatures on facilities or operations, or reduced demand for products due to warmer temperatures.
- Indirect consequences caused by company suppliers or customers experiencing direct impacts.
- New opportunities, such as increased demand for alternative energy sources and goods that result in lower GHG emissions, and opportunities to generate revenue by selling emission allowances.
- Reputational harm based on public perception of company GHG emissions.

The release mentions CDP and references the GRI framework's principles and indicators as something "organizations can use to measure and report their economic, environmental, and social performance, including issues involving climate change." It states that, although much of this type of reporting is voluntary, companies should be aware that some of the information reported also may be required disclosure under SEC requirements.

It also highlights existing SEC narrative disclosure items possibly requiring disclosure about climate change depending on a company's particular circumstances (noting consideration should also be given to whether disclosure is required under accounting standards, in particular Accounting Standards Codification Topic 450, *Contingencies* and Topic 275, *Risks and Uncertainties*). Disclosure requirements potentially implicating climate change include:

- The business description, including the requirement to discuss material effects that compliance with environmental regulation may have on the company's capital expenditures, earnings and competitive position (*Item 101(c)(1)(xii), Regulation S-K*). This item requires, among other things, disclosure of material estimated capital expenditures for environmental control facilities for the current and next fiscal year and future periods (if material).
- The discussion of legal proceedings, which includes a specific instruction regarding inclusion of environmental actions (*Item 103, Regulation S-K*).
- The risk factors (*Item 503(c), Regulation S-K*).
- The MD&A's (management's discussion and analysis of financial condition and results of operations) discussion of known trends, events, demands, commitments and uncertainties reasonably likely to have a material effect on financial condition or operating performance (*Item 303, Regulation S-K*). Decisions about this disclosure should involve consideration of financial, operational and other information the company knows, identification of known trends and uncertainties on this basis, and assessment of whether they will or are reasonably likely to have a material impact on liquidity, capital resources or results of operations.

According to the release, the most helpful MD&A disclosure about known trends and uncertainties focuses on material information and omits immaterial information (as its inclusion may obscure more important information). The release suggests, however, that the concept of materiality does not restrict the type of information companies must consider in identifying and analyzing known material trends and uncertainties, and that all relevant financial and non-financial information available should be considered. Companies should consider, the release suggests, whether they have sufficient disclosure controls and procedures to process this information.

Search Corporate Sustainability and Disclosure for the complete, online version of this resource, which provides selected examples of sustainability disclosure in SEC filings and examples of other selected disclosure requirements, including from industry-specific regulatory and consumer protection law.

## VOLUNTARY SUSTAINABILITY DISCLOSURE

Many reporting companies make sustainability disclosure beyond what may be required in SEC periodic reports or by other regulation. Companies may do this:

- In response to investor demand or shareholder proposals.
- To secure a market advantage for products or appeal to other stakeholders.
- To comply with foreign practice or requirements.
- To be recognized for high sustainability performance, including by earning a place in a "green" stock index.
- Based on a belief that the exercise of sustainability reporting may reveal to management previously unrecognized risks and opportunities.

Companies are increasingly making voluntary sustainability disclosure. According to a GRI report, the number of S&P 500 companies reporting on environmental, social and governance performance more than tripled from 2010 to 2013 (see *Global Reporting Initiative: Trends in External Assurance of Sustainability Reports, July 2014* (GRI Assurance Report)). Companies may craft their voluntary disclosure to be responsive to a recognized disclosure standard. Generally, these standards identify and define sustainability performance indicators that allow companies, investors and other stakeholders to benchmark sustainability performance against goals and compare sustainability performance over time and across companies.

## KEY CONSIDERATIONS FOR VOLUNTARY DISCLOSERS

A company making voluntary sustainability disclosure should consider:

- Its process for ensuring the accuracy of disclosure.
- Implementing methods to prevent inconsistencies with other company disclosure.
- Internal approaches for preparing disclosure, including the parties involved and the chosen reporting framework(s).

### Process for Ensuring Accuracy

Sustainability disclosure included in a company's SEC filings, along with other information disclosed in SEC filings, must be subject to a company's disclosure controls and procedures (see *Rules 13a-15(e) and 15d-15(e), Exchange Act*). Generally, reporting company disclosure controls and procedures are designed to ensure that information required to be disclosed by the company in its periodic reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

By contrast, purely voluntary sustainability disclosure not included in SEC filings may not be covered by the company's disclosure controls and procedures. Companies should, therefore, ensure they have an appropriate internal framework for collecting, summarizing and reviewing voluntarily disclosed sustainability information.

As an additional step for ensuring accuracy and credibility of voluntary sustainability disclosure, some companies obtain external assurance of their sustainability reports or certain data. External assurance may be provided by a specialized consultant, a certified public accounting firm or an engineering firm.

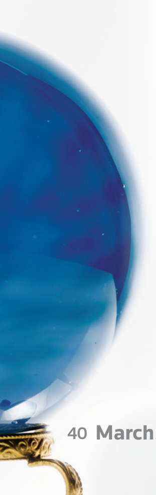
Assurance standards used include, among others, The AccountAbility AA1000 Assurance Standard (AA 1000AS) and Section 101 of the AICPA's Attestation Standards (AT101). According to the GRI Assurance Report, obtaining external assurance is a growing practice among US companies publishing GRI sustainability disclosure. KPMG states that external assurance on sustainability reporting is becoming "standard practice" globally among large companies (see *KPMG Survey of Corporate Responsibility Reporting 2013*, available at *kpmg.com*).

### Preventing Disclosure Inconsistencies

Companies should have a process in place to ensure voluntary sustainability disclosure is consistent with other company communications, particularly SEC periodic reports. Companies should bear in mind that readers of voluntary sustainability disclosure may include, among others, the SEC Division of Corporation Finance staff responsible for reviewing company periodic reports. In light of this, a company should ensure voluntary sustainability disclosure:

- Is consistent with periodic report disclosure.
- Does not beg the question of whether information included in voluntary disclosure but omitted from periodic reports is, in fact, material under the federal securities law definition. Concern may be raised by the fact that certain voluntary disclosure frameworks themselves use the term "material," although those frameworks define the term differently than federal securities law.

For example, a company that discusses in voluntary disclosure plans to improve facilities to reduce $CO_2$ emissions, reposition



According to a GRI report, the number of S&P 500 companies reporting on environmental, social and governance performance more than tripled from 2010 to 2013.

itself to take advantage of climate change opportunities, or achieve major fuel savings through new routing software, should ensure this disclosure works together with periodic report disclosure. This concern was highlighted in a Ceres report suggesting SEC staff review companies' voluntary climate change disclosure against their periodic reports (see *Ceres: Cool Response: The SEC & Corporate Climate Change Reporting, February 2014*).

### Internal Organization

Companies have varied approaches to collecting, preparing and reviewing voluntary sustainability disclosure, and there is no one correct approach. Depending on a company's size and other circumstances, the following parties may be involved:

- **Sustainability department or officer.** At many companies, the department, interdepartmental team or individual officer responsible for implementing the overall sustainability strategy is also responsible for coordinating the process of gathering information for and drafting voluntary disclosure. To gather the necessary data, that party typically must correspond with each of the company's relevant business units or geographical areas. Business units or areas may designate a particular person or team as responsible for this correspondence.
- **External consultants.** A company may work with an external consultant to plan and execute its sustainability strategy. These outside consultants may also assist in the data gathering and voluntary disclosure process.
- **Legal department.** The company's legal department may be responsible for reviewing voluntary sustainability disclosure. Employees in the legal department responsible for preparation of the company's SEC periodic reports may be responsible for reviewing voluntary disclosure against periodic reports to, among other things, ensure no disclosure inconsistency concerns are raised or, to the extent that voluntary disclosure is material, consider it for SEC reporting purposes.
- **Investor relations (IR) department.** The company's IR department may also have responsibility for reviewing voluntary sustainability disclosure. The IR department's active involvement may be particularly useful if voluntary sustainability disclosure is being made to address investor demand or in response to a shareholder proposal.
- **Senior management or board members.** At some companies, a member of senior management or a committee of the board of directors may have responsibility for overseeing the company's sustainability strategy, including by reviewing voluntary sustainability disclosure.
- **Other company personnel.** A company should consider whether other employees should be involved. For example, the company may want to have its disclosure committee or representatives of its finance or accounting department review voluntary sustainability disclosure to, among other things, ensure no disclosure inconsistency concerns are raised.

A threshold question for companies preparing voluntary sustainability disclosure for the first time is the choice of a reporting framework. In considering which framework(s) to use, key considerations for a company may include:

- **Fit with the company's important sustainability issues.** Which sustainability issues are most important to a particular company depends on the company's industry, region and other circumstances. Once a company has identified its most important sustainability considerations, it may analyze which reporting framework(s) allow it to report most effectively on those issues.
- **Investor/stakeholder preference.** A company that has engaged in a dialogue with its large investors or other stakeholders on the type of information they want the company to disclose may consider this preference in choosing a framework. Put differently, a company may consider who is the primary audience of its voluntary sustainability reporting.
- **Comparability with competitors.** A company might consider under which framework(s) its competitors report.
- **Feasibility and value.** A company may consider the ease with which it can obtain the data necessary to report under a given framework and the costs associated with data collection. In addition to cost, a company may also consider the internal value it may generate by using sustainability data in management decisions.

Another consideration for companies is formulating a workable reporting cycle. Companies may consider:

- Deadlines imposed by a disclosure framework itself. For example, questionnaire-based frameworks may have firm annual deadlines.
- Availability of resources for review of voluntary sustainability disclosure. The timetable for voluntary sustainability disclosure may need to take into account:
  - availability of staff from the legal and other relevant departments given the company's SEC periodic reporting timetable; and
  - schedules of senior executives and board members.

## SELECTED VOLUNTARY DISCLOSURE AND REPORTING FRAMEWORKS

Selected voluntary sustainability disclosure frameworks include:

- GRI's Sustainability Reporting Guidelines (GRI guidelines).
- CDP's questionnaires.
- The Sustainability Accounting Standards Board's (SASB's) sustainability accounting standards.

### GRI Guidelines

One of the most widely used voluntary sustainability disclosure frameworks is GRI's Sustainability Reporting Framework, which includes GRI's Sustainability Reporting Guidelines. Its most recent iteration, the G4 Sustainability Reporting Guidelines (G4 guidelines) became available in May 2013 (GRI is recognizing reports prepared using the previous iteration, G3, through the end of 2015). The following discussion generally describes the G4 guidelines.

According to the GRI Assurance Report, more than 5,000 organizations use the GRI guidelines to guide their sustainability reporting. That report states that according to GRI's

SASB prepares industry-specific standards that identify sustainability topics which, based on evidence gathered in SASB's standard-setting process, are likely to constitute material information to companies operating in a particular industry.

Sustainability Disclosure Database, the number of US-based organizations reporting under the GRI guidelines more than doubled (to 266) over the five years before that report.

The GRI guidelines can be used to prepare sustainability disclosure for publication in various formats, including stand-alone reports or on company websites. A company can state that its report is "in accordance" with the GRI guidelines if the report fulfills certain requirements. Companies can choose between two "in accordance" standards, Core or Comprehensive (the latter requires more extensive disclosure).

Both standards require a company to identify and describe its "Material Aspects," which are the company's significant economic, environmental and social impacts and impacts that substantively influence stakeholder assessment and decisions. Since the GRI guidelines use the term material, a company may consider including footnotes or other explanatory disclosure on the meaning of the term for purposes of the GRI guidelines, as distinguished from the federal securities law definition. Some companies use the term sustainability materiality or CSR materiality.

The GRI guidelines are composed of Reporting Principles and Standard Disclosures, an Implementation Manual and industry-specific Sector Supplements. The Reporting Principles and Standard Disclosures include:

- **Reporting principles.** These are general principles, including that a company preparing a sustainability report should identify its stakeholders and explain how it has responded to reasonable stakeholder expectations. A report should cover the company's Material Aspects, and should present the company's performance in the greater context of how it contributes to improvement or deterioration of economic, environmental and social conditions. A report should be balanced, prepared consistently and accurate. Companies should report on a regular schedule.
- **General standard disclosures.** These lay out specific disclosures, divided into seven parts:
  - strategy and analysis, including a statement from senior management on sustainability priorities;
  - organizational profile, including an overview of company business operations and participation in environmental initiatives;
  - identified Material Aspects and boundaries (identification of where, inside or outside the company, impacts occur), requiring the company to detail the process it undertook to define its Material Aspects and boundaries and entities covered by the report;
  - stakeholder engagement, in which the company must describe which stakeholders it has engaged with, how it selected them and other details;
  - report profile, stating the reporting period, the "in accordance" option selected and whether the report has been externally assured;
  - governance, requiring a description of the company's governance and compensation structure and the role of its highest governance body in risk management and sustainability reporting; and
  - ethics and integrity, requiring a description of the company's values, principles, standards and norms and internal reporting mechanisms.
- **Specific standard disclosures.** A company explains how the economic, environmental and social impacts of each of its Material Aspects are managed (referred to as the DMA, or disclosures on management approach). Companies must describe why each aspect is material and how management evaluates and manages them. Material Aspects are divided into economic, environmental and social categories. Examples of environmental Material Aspects include:
  - water, requiring, among other things, a description of the volume of company water use, water sources significantly affected and the volume of recycled water reused by the company; and
  - emissions, requiring, among other things, a description of the company's gross direct and indirect GHG emissions and the amount of reductions achieved.

An example of a social Material Aspect is occupational health and safety, requiring, among other things, disclosure of injury and occupational disease rates and work-related fatalities by region and gender, and whether labor agreements cover health and safety. A company also provides indicators, which are comparable information on economic, environmental and social impacts of its business that are material.

GRI's Sector Supplements identify disclosures about industry-specific issues and performance indicators. For example, the food processing Sector Supplement requests information about animal welfare performance indicators, such as company policies and practices on the use of antibiotics and hormones.

The Implementation Manual includes additional guidance on a number of topics, such as a detailed discussion of the concept of materiality for purposes of the GRI guidelines and the process a company should conduct to define its Material Aspects.

The GRI guidelines do not require reports to be externally assured, although GRI recommends it. Companies may incorporate by reference to disclosure in other documents. Reports prepared "in accordance" must contain the GRI content index (essentially a cross-reference sheet that identifies where to find each disclosure item).

### CDP's Questionnaires

CDP is a nonprofit organization that works on behalf of 767 institutional investors to solicit and gather information about sustainability performance from companies through the use of structured questionnaires. It makes that information available in various ways to those institutional investors and, in some cases, the public.

CDP was previously known as the Carbon Disclosure Project, and changed its name when its focus expanded to include a broader range of sustainability topics, including water management and deforestation. According to its 2015 climate questionnaires, CDP works with GRI to ensure that the CDP questionnaires and the GRI indicators are "closely aligned and complementary." Some companies produce a sustainability report and also respond to one or more CDP questionnaires.

CDP collects information from companies annually by requesting that they complete CDP's questionnaires via CDP's online system. According to CDP's 2015 climate change information request, CDP climate change requests are being sent in February 2015 with responses due by June 30, 2015. Companies can choose to make a public or private response to CDP questionnaires (generally, private responses are available to a smaller universe of readers).

The questionnaire includes 15 questions of general applicability, and specific questions applicable to companies operating in particular industries (including electric utilities and oil and gas). Questions of general applicability request information about:

- **Climate change governance and strategy.** These questions ask what body in a company has ultimate responsibility for considering climate change issues, incentives for performance in this area, integration of climate change concerns in business strategy and company engagement with policymakers or funding of research organizations relative to climate change.
- **Reduction targets.** These questions ask about company emissions reduction targets or initiatives.
- **Regulatory, physical and other risks and opportunities.** These questions ask whether a company has identified risks and opportunities related to climate change, and the nature of those risks and opportunities (for example, whether they relate to physical climate parameters or regulation change).
- **GHG emissions.** These questions ask a company to disclose its emissions, the methodology used to collect data and other information, including its participation in emissions-trading schemes.

CDP has a methodology for scoring company responses. Generally, CDP scores companies on both the quality of their disclosure and the quality of their performance (the latter rewarding companies taking actions contributing to climate change mitigation, adaptation and transparency).

CDP maintains an online database of questionnaire responses. It maintains its Climate Disclosure Leadership Index (companies receiving high disclosure scores) and Climate Performance Leadership Index (companies receiving high performance scores and meeting other conditions). In separate programs, CDP collects data on water management and deforestation.

### SASB's Sustainability Accounting Standards

SASB is a nonprofit organization that develops and disseminates sustainability accounting standards specifically designed to be used by reporting companies to disclose material sustainability information in their SEC filings. SASB prepares industry-specific standards that identify sustainability topics which, based on evidence gathered in SASB's standard-setting process, are likely to constitute material information to companies operating in a particular industry. Notably, SASB follows the federal securities law definition of materiality for purposes of its standards.

However, SASB does not have any regulatory authority under federal securities law to mandate required disclosure. Instead, companies may voluntarily choose to refer to its standards as part of their process of determining what information is material to their businesses and how best to measure and communicate that information.

SASB standards are organized into a number of industry sectors, themselves subdivided into segments. For example, within SASB's Healthcare category, it provides separate standards for, among other segments, biotechnology, pharmaceuticals and medical equipment and supplies. Each set of standards is divided into two parts:

- **Disclosure guidance.** This identifies sustainability topics likely to be material to a company in that industry. For example, for the pharmaceuticals industry, the sustainability topics include:
  - access to medicines;
  - safety of clinical trial participants; and
  - corruption and bribery.
- **Accounting standards.** This provides standardized accounting metrics measuring company performance on each industry-level topic. Use of the metrics is intended to ensure that reporting is standardized and, therefore, comparable. For example, the metric relating to energy efficiency is total annual energy consumed in gigajoules and the percentage of this that was renewable energy.

## SEC COMMISSIONER STATEMENT REGARDING SASB

In March 2014 remarks, SEC Commissioner Daniel Gallagher criticized SASB as being an "outside party attempting to prescribe disclosure standards" for reporting companies. Commissioner Gallagher made this remark in the context of stating that the SEC should not delegate its responsibility to define reporting company disclosure parameters.

SASB responded in an April 2014 letter stating, among other things, that its standards are intended to assist companies in identifying factors material to short- and long-term sustainability and avoid disclosure of immaterial information.

SASB's standards are created through a three-step process, including internal research by SASB, solicitation of feedback from an industry working group composed of companies, market participants and public interest intermediaries, and public comment on draft standards. Former SEC Chairs Elisse Walter and Mary Schapiro serve on SASB's board. A current SEC commissioner has made a statement critical of SASB (see *Box, SEC Commissioner Statement Regarding SASB*).

Search Corporate Sustainability and Disclosure for the complete, online version of this resource, which includes information on The International Integrated Reporting Council's framework for integrated reporting.

### STOCK EXCHANGE INITIATIVES AND INDEXES

NASDAQ OMX and NYSE Euronext have joined the Sustainable Stock Exchanges Initiative, a platform for global stock exchanges to partner to enhance corporate transparency on environmental, social and corporate governance issues and encourage responsible long-term approaches to investment. They participate in the Sustainability Working Group of the World Federation of Exchanges (WFE). Notably, neither have yet proposed or adopted sustainability listing standards.

In March 2014, INCR proposed a uniform minimum global stock exchange listing standard that global stock exchanges could implement. The proposed standard would mandate disclosure in three areas:

- **Materiality assessment.** Companies should discuss their process for determining the sustainability factors material to their business in an annual filing.
- **Specific disclosure.** Companies should disclose information (including policies and procedures and quantitative data) on ten sustainability topics, including governance and ethical oversight, environmental impact, climate change and human rights (a company could explain if any required topic is inapplicable).
- **Sustainability disclosure index.** Companies should include a hyperlink to a sustainability disclosure index (similar to GRI's content index).

Some foreign stock exchanges encourage or require sustainability reporting. For example, according to a Policy Statement on Sustainability Reporting available on its website, the Singapore Exchange encourages listed companies to report on their sustainability policies, and references frameworks such as the GRI guidelines. In addition, in September 2014, the European Parliament and Council adopted Directive 2014/95/EU that, when implemented by member states, will require certain large companies to make disclosure about environmental, social and employee matters, respect for human rights, and anti-corruption and bribery matters.

Institutional investors interested in investment strategies based on sustainability can choose from several sustainability indexes which track companies globally based on sustainability factors. Examples include the NASDAQ OMX Green Economy Global Benchmark Index and The Dow Jones Sustainability Indices.

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