Sustainability Governance and Management

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§1 Introduction

Corporate social responsibility ("CSR") is like any other important management initiative and requires proactive leadership from the top of the organization. In fact, it is clear that the "tone at the top" is an important factor in the success or failure of any CSR initiative and the directors and officers of the corporation are uniquely positioned to act as internal champions of CSR and proactively communicate with everyone in the organization on a daily basis about the impact of new environmental and social products and services. The directors and officers must also commit to investing the time and effort necessary to explain the corporation's CSR initiatives to customers and other stakeholders and develop and implement metrics for tracking and reporting progress. While social responsibility certainly extends "beyond the law", directors and officers must be mindful of their fiduciary duties and understand how laws, regulations and standard contract provisions are rapidly evolving to incorporate environmental and social responsibility standards. Among the issues and activities that will need to be considered in establishing and maintaining effective governance and management processes for CSR implementation are the following:

- Understanding the drivers of enhanced board oversight of sustainability including investors' expectations as to the role and responsibilities of directors and changing societal beliefs regarding the political and social roles of corporations
- Understanding how CSR is changing the traditional fiduciary duties of directors and officers including the ascendance of the stakeholder-focused model and the introduction of alternative legal architectures for sustainability-oriented businesses
- Working with the board of directors to integrate environmental and social responsibility into the governance structure and the traditional roles and responsibilities of directors
- Assisting the board of directors on the design and implementation of an effective framework for board oversight of CSR and corporate sustainability
- Counseling the board of directors and senior management on the development and implementation of CSR commitments and instruments
- Incorporating reports on CSR initiatives into board meetings and understanding how to create effective environmental and social responsibility committees and integrate sustainability into the activities of other board committees
- Developing job responsibilities for the senior social responsibility officer and designing effective internal organizational structures and systems for managing CSR initiatives and programs and supporting CSR commitments and expectations such as preparation and distribution of sustainability reports and stakeholder engagement

- Implementing formal management systems relating to sustainability-related issues and topics based appropriate standards issued by the International Organization for Standardization (e.g., ISO 14001 (environment); ISO 26000 (social responsibility) and ISO 28000 (supply chain security))
- Reviewing and modifying job responsibilities and compensation arrangements of executive team members, particularly the chief executive officer, to incorporate CSR commitments and attainment of CSR-related performance goals
- Providing education and training to directors and executive team members on sustainability issues including the creation and management of stakeholder advisor groups and teams of external experts
- Assisting directors, executive team members and managers and employees within the internal sustainability group with key CSR-related activities such as transparency and disclosure and stakeholder engagement
- Identifying and counseling directors and officers on ethical issues that will arise as they discharge their duties and responsibilities with respect to CSR

§2 Board oversight of sustainability

CSR and sustainability governance starts at the top, with the board of directors, but while board members and senior executives generally understand the issues involved with CSR and the strategic value of implementing CSR strategies, studies have shown that board oversight of environmental and social issues is often deficient.[1] Many larger companies with publicly-traded securities have established committees of the board to exercise some level of oversight of CSR programs; however, the activities of these committees often do not extend to assessing the environmental and social impact of strategic business decisions and/or monitoring and providing recommendations on CSR trends and developments. Many CSR board committees spend most of their time on compliance activities in relation to existing laws and industry standards and fail to move beyond that level of involvement to brainstorming about stakeholder engagement.

Support for CSR programs by the board of directors is an important element of the requisite "tone at the top" for increasing the chances of success for CSR. Board members must understand that CSR programs are consistent with their traditional role and duty to effectively manage the legal, financial and reputational risks to the company that arise from the environmental and social impacts of the company's activities. Board members must insist that CSR be integrated into the company's strategic decision making and performance management and assessment systems, a priority which includes allocating sufficient resources to ensure that personnel are able to efficiently engage with the company's stakeholders. In addition, board members must push for creating and maintaining systems that provide them with information they need to understand and evaluate the company's CSR programs.

[1] For detailed discussion of board oversight of sustainability and establishing an effective board oversight framework, see "Board Oversight of Sustainability" in "Governance: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

A Global Impact publication suggested the following best practices with respect to formalizing the board's approach to sustainability governance[2]:

- Creating of a standing board committee devoted to sustainability-related issues with a portfolio that includes reviewing and monitoring the sustainable development, environmental, health and safety and community development policies and activities of the company on behalf of the board
- Integrating periodic review of the company's environmental, sustainability and safety policies and reports into the board's formal duties and responsibilities along with ensuring effective communication with stakeholders through transparent disclosures
- Including sustainability in the company's Corporate Code of Conduct, which endorsed annually by the board, and including sustainability in the company's corporate performance scorecard
- Including CSR initiatives in the company's long-term strategy and providing for regular and continuous monitoring of the performance of such initiatives
- Including sustainability in the formal job descriptions of the CEO and other members of the executive team, executive compensation policies and executive performance objectives
- Providing that the board's governance and nominating committee implement board diversity policies and measures and maintains oversight responsibility of diversity policy implementation; sustainability is included as a skill within the director skills matrix; and sustainability opportunities are included in director continuing education
- Ensuring that sustainability information is proactively provided to institutional and socially responsible investors and that information is provided to all stakeholders on how to contact the board directly
- Providing that the board's audit committee will monitor compliance with the Code of Conduct by ensuring all directors become thoroughly familiar with the Code and acknowledge their support and understanding of the Code
- Ensuring that all members of the board receive quarterly updates of the company's ethics and compliance program and sustainability-related initiatives
- Developing, implementing and enforcing polices relating to ethical conduct, anti-bribery and anti-corruption, environmental and sustainability, CSR, human rights, occupational health and safety, governmental relations and lobbying, and philanthropy and donations

§3 The crucial role of the CEO in CSR activities

Surveys, such as one completed by Boyden in 2017 among adults in the United Kingdom, repeatedly confirm that the public strongly believes that the CEO must play an active role in the CSR activities of his or her company and act as a spokesperson for those

[2] The Essential Role of the Corporate Secretary to Enhance Board Sustainability Oversight: A Best Practices Guide (United Nations Global Compact, September 2016).

activities.[3] Participation and engagement by employees throughout the organization is essential for effective human capital management and CSR implementation and the CEO is the only person in a position to communicate and demonstrate the values associated with CSR in a way that will integrate CSR into the corporate culture and the way that employees work on a day-to-day basis. It should be noted that CSR has become a significant driver of employee engagement, particularly among Millennials who are more willing to accept lower wages in exchange for working with a company committed to sustainability, and that the CEOs efforts to engage employees in this area will improve the company's ability to attract and retain talented workers. CEOs must also develop the soft skills necessary to communicate and engage with multiple stakeholders, each of which has different values and attitudes about how society should function and the role that the firm should play. CEOs must be able to engage in civil dialogue, approach the problems and challenges that are raised by stakeholders with an open mind and a focus on identifying and implementing innovative solutions and developing tools that will help measure and demonstrate the effectiveness and value of the company's CSR initiatives.

Selecting the CEO and other members of the executive team, and setting the right performance criteria and incentives with respect to pursuit and achievement of the company's sustainability commitments and targets, is a unique and important responsibility of the board of directors. At the very beginning, during the recruitment process, Global Compact LEAD calls on directors to include in their selection criteria that candidates have the ability to demonstrate solid understanding of the complex sustainability issues that affect the business environment; commit to operate in accordance with the highest social, environmental and ethical standards; and provide a track record of producing excellent financial results with due consideration for the interests and concerns of different stakeholders.[4]

Once candidates for CEO and the other spots on the executive team have been selected, incentives must be put in place in their compensation arrangements that reward long-term performance and that are aligned with the sustainability priorities and targets established by the board. Not only does this impact the decisions that the executive team make but it also sends a strong message to employees and external stakeholders about how sustainability is valued and taken seriously at the top of the organization. Global Compact LEAD suggested that two ways to incentivize good sustainability performance might be linking part of executive pay to stocks, bonds or escrow that are only released after 10 or 15 years and making a portion of the performance-based salary dependent on the realization of the short-term sustainability objectives of a company.[5]

[3] CEOs and the New CSR Priority (Boyden Executive Monitor, September 2017), https://www.boyden.com/media/ceos-and-the-new-csr-priority-2909935/index.html

[4] A New Agenda for the Board of Directors: Adoption and Oversight of Corporate Sustainability (Global Compact LEAD, 2012), 8.

[5] Id. While the discussion in this section focuses on compensation and sustainability incentives for the CEO and other senior executives, the board should also ensure that incentives and related performance indicators and measurement systems are in place for all employees with responsibilities that link to the sustainability performance of the company and such incentives are aligned with those that have been established for senior executives. Id. at 9.

When setting "sustainability objectives" for which performance will be measured and compensation determined, emphasis should be on the specific issues and priorities that are material to the company such as the chosen targets for carbon emissions, health and safety incidents, gender diversity or sales of certain categories of sustainable products.[6] Performance measurement with respect to sustainability indicators can be challenging given the lack of necessary data and the need for some level of discretion to be used when objective information is not easily available. When discretion is used, it is important for it to be verifiable and based on an independent process. Sustainability incentives must also be meaningful in the broader context of the executive's entire compensation package.[7]

The CEO needs to be "on board" with the board's role in overseeing responsibility and the various pressures that directors are likely to exert on the CEO and other members of the executive team to ensure that sustainability is a central concept in their activities. The trend among CEOs is clearly moving toward recognition of sustainability and, in fact, a 2010 survey of nearly 800 CEOs conducted by Accenture revealed that over 90% of the respondents "agreed" or "strong agreed" that sustainability issues should be fully embedded into the strategy and operations of a company as drivers of future success and added value and that directors should discuss and act on such issues.[8] Three quarters or more of the respondents also "agreed" or "strongly agreed" that companies should embed sustainability issues through their global supply chain, engage in industry collaborations and multi-stakeholder partnerships to address development goals and incorporate sustainability issues into discussions with financial analysts. It should be noted that the results reflected a significant increase in CEO agreement on each of the dimensions from similar surveys just a few years before.

The CEO and other members of the executive team need to have right capabilities to drive exemplary environmental, social and governance performance.[9] Each member of the executive team should have the ability to think strategically about the issues, communicate clearly and persuasively, and possess sound business knowledge and judgment. As for entire team, it should have the following interdisciplinary and cross-functional competencies:

- The ability to develop trusting relationships with a variety of company constituents before an issue becomes a problem.
- A solid grounding in a wide range of environmental processes, procedures, and technologies; social issues; and governance requirements at the local, state, regional, federal, and international levels.

[6] Id. There is also the option of providing, as is the case in certain extractive industries and the pharmaceutical industry, of using "negative criteria" that is embedded in bonus rules that provide that no bonuses will be paid when incidents of a certain magnitude have occurred. Id. at 8-9.
[7] Id. at 9.
[8] A New Agenda for the Board of Directors: Adoption and Oversight of Corporate Sustainability (Global Compact LEAD, 2012), 5.
[9] Boards and Sustainability: Three Best Practices (Heidrick & Struggles, 2017), 4.

- A knowledge of financial operations that extends beyond budgeting to an understanding of how finance intersects with sustainability and the ability to make a business case for a new direction.
- Familiarity with technological and process advances and an understanding of the trends in sustainability and their influences on the company and the industry segment.

Specific questions for each member of the executive team regarding awareness of sustainability risks and opportunities in their functional area might include the following:

- Does the chief financial officer incorporate sustainability factors into financial analyses?
- Does the chief marketing officer understand the difference between greenwashing and demonstrable corporate commitment to environmental goals—and that greenwashing not only alienates consumers but also signals to investors that integrity may be a problem in other areas of the company's operations?
- Is the chief human resources officer able to sincerely incorporate the company's sustainability performance into the company's employer brand, or would employees and potential employees respond skeptically?
- Does the executive team as a whole see ESG as an issue of long-term competitiveness?

In Practice

CEO's Guide to Being an Effective Sustainability Leader

Since studies are clear that the attitudes, actions and skills of the CEO are essential to the success of CSR initiatives and ensuring that they are perceived positively among the various stakeholder groups of the company, the CEO must be prepared for his or her role and understand and cultivate the appropriate mindset. For sustainable entrepreneurs, enthusiastic passion for environmentally or socially responsible business activities comes naturally, and he or she will willingly jump into the fray and engage with stakeholders from the very beginning of the venture. However, in order for all this work to be effective, and sustainable and credible, the CEO needs to understand certain "best practices" that have been identified by consultants, scholars and CEOs themselves.

CEO Selection and Allocation of Founders' Duties

One of the first things to consider, and arguably the most important decision for the founders to make, is just who among the initial drivers of the company will assume the position of CEO. In many cases the choice is obvious, but what may seem to make sense in the early days of the company may not be what is necessary as the business model evolves and more and more stakeholder engagement, particularly with investors, becomes necessary. One thing that cannot be overemphasized is that good CSR-related skills are in addition to, not in lieu of, top-notch leadership and management competencies. It is not sufficient to be passionate about the "cause" if the CEO is not able to grasp basic principles of strategy, finance, sales, marketing and technology.

Another thing to consider is how the CSR-related energy and skills of the members of the founding team who are not the CEO can be leveraged while not muddying up the messaging from the CEO. The CEO needs to continuously communicate with the other members of the founding team, as well as senior managers brought in to assist with launching the venture, to understand their views on the mission of the enterprise and ensure that everyone is speaking in the same voice when interviewing prospective employees, talking to investors, engaging with strategic partners and going about their business in the communities in which the company is operating. Sometimes new companies will appoint one of the founders to serve as "chief sustainability officer". This is fine; however, the position should be designed to support execution of the CEO's vision and decisions regarding CSR rather than a way to separate those issues from the CEO's portfolio.

Whoever is selected as the CEO needs to carefully consider how his or her background will be presented to the company's various stakeholders during the engagement process. Stakeholders will seek out authenticity and practical experience when assessing the skills and trustworthiness of the CEO and the story line needs to be settled well in advance of what will quickly become a tumultuous schedule of meetings and other communications with stakeholders. The "best" scenario is a CEO who can describe how he or she came upon a particular environmental and/or social problem or opportunity and provide his or her experiences in identifying and developing solutions that can credibly form a foundation for a viable business. The CEO also needs to be able to demonstrate how his or her prior professional experiences and network align with the actions that will need to be taken in order for the company to fulfill its mission.

Public Relations

While a worthy cause is important for sustainable entrepreneurship, sustainability of the business itself depends on developing and maintaining a loyal customer basis that will buy the company's products and services and recommend them to others so that the company can survive and fulfill its stated mission. Surveys show that customers will pay a modest premium for sustainable products and services from brands that are trusted and known as being environmentally friendly and for their social value. As such, the CEO needs to understand and practice the tools of public relations in all of his or her interactions with internal and external stakeholders. A useful set of guidelines are the Page Principles, which have been developed by the Arthur W. Page Society to help communications professionals, including CEOs, to practice public relations effectively. Let's see how these seven principles, all of which were based on the premise that all stakeholders, not just shareholders, needed to be taken into account, might be used by a CEO in the context of executing CSR initiatives:

- *Tell the truth:* Trust begins with confidence that the CEO is telling the public the truth about what is happening with the company with honesty and good intentions. It is incumbent on the CEO to provide an ethically accurate picture of the company's character, values, ideals and actions in every dialogue with stakeholders, even when the news is not as good as the CEO would like.
- *Prove it with action:* CSR is often quickly dismissed as a "PR stunt" and such a hasty verdict is warranted in many cases when a company's CSR initiatives are "all talk and no action". The CEO needs to remember that the public perception of the company's CSR initiatives will be determined 90% by what it does and just 10% by what it says and this means that concrete CSR actions must be on the company's strategic agenda from the very beginning, rather than being deferred until there is more money and other resources available.
- *Listen to stakeholders:* Stakeholder engagement needs to be one of the most important priorities for the CEO and this means adding regular and personal dialogue with key stakeholders to the CEO already full plate of other activities. The need to listen to stakeholders and engage in inclusive dialogue is what makes being a CEO of a sustainable venture extremely challenging; however, the CEO needs to understand what each stakeholder group wants and needs from the company and keep top decisions makers and other employees informed about stakeholder reaction to the company's products, policies and practices.
- *Manage for tomorrow:* Corporate sustainability is based on a long-term perspective for the business and the CEO of a sustainable enterprise needs to be particularly tuned in to managing now only for the present moment but also for tomorrow and the future generations of employees and leaders of the company. It is the duty and obligation of the CEO to proactively identify and remediate practices that might undermine the company's goodwill with its stakeholders and to anticipate both challenges and opportunities relating to the environment and social issues that need to be addressed in the company's strategies.
- *Conduct public relations as if the whole enterprise depends on it:* There is no better way to prioritize

the importance of stakeholder engagement than to act as if the success and survival of the entire enterprise depends on it. While the CEO may naturally feel that the interests of investors should be prioritized when setting the company's strategy, no decision should be made without considering the impact on all of the company stakeholders, since without their support a strategy cannot succeed regardless of how well funded it might be. Public relations in this context is not just about marketing, it is a full-blown management and policymaking function designed to identify and consider the diverse views, values, experiences, expectations and aspirations of all stakeholders.

- *Realize an enterprise's true character is expressed by its people:* It is well-accepted that the CEO is expected to set the appropriate "tone at the top" and the CEO needs to recognize that every employee, active or retired, is involved with public relations and that their words and actions will shape the public's opinion of the company. The CEO should advocate and demand respect, diversity and inclusion in the workforce and support each employee's capability and desire to be an honest, knowledgeable ambassador to customers, friends, shareholders and public officials. To do this, the CEO must continuously engage with employees throughout the company on fundamental matters such as "mission" and "vision" so that employees understand how to act and how to explain the company's purpose for being to outsiders.
- *Remain calm, patient and good-humored:* Stakeholder engagement is not always pleasant and the CEO will often find that the demands and expectations of stakeholders are beyond what the company can reasonably promise or deliver. In those situations, the CEO must remain calm, patience and good-humored and focus on listening to the legitimate concerns of stakeholders and provide stakeholders with reliable information and reasoned analysis with respect to the decisions that are made, always being mindful of the impact of such decisions on all of the stakeholders.

Ethics and Social Responsibility

Ethics and social responsibility need to be important priorities for the CEO. He or she must have and express personal values that support ethical and socially responsible behavior by the company and its employees and must ensure that those values are integrated into the company's culture and communications with external stakeholders. The specific value set of an effective CSR-focused CEO should include the following:

- Business has an environmental and social responsibility beyond making a profit and management must identify and articulate the specific social responsibility that the company will seek to address.
- Although output quality and profitability is essential to the long-term success of the firm, being ethical and socially responsible is the most important thing a company can do and is essential to the company's long-term profitability and sustainability.
- Corporate planning and goal setting sessions should include discussions of ethics and social responsibility and decisions regarding operational tactics should never include bending or breaking the rules in order to achieve a profit.
- Ethical and socially responsible behavior should be tracked and measured and factored into assessments of the overall effectiveness of the company.
- Ethics, social responsibility and profitability can be compatible and ethics and responsibility are essential to remaining competitive in a global environment.
- Operational excellence is an important driver of how a company is perceived; however, engagement, purpose, integrity and ethical and socially responsible commercialization of products and services have become just as important, if not more important, in the eyes of the public and the way they assess a firm's reputation.
- A company's first priority should be employee morale and achieving and maintaining fluent communication between employees and management so that employees can comfortably share their ideas and opinions and there is a cooperative atmosphere that benefits group success.
- Taking the ethical and socially responsible approach is always good business even when the survival of the business appears to be at stake and there is a temptation to cut corners and cheat.
- Stockholders can, and must be made to, understand how ethical and socially responsible behavior will enhance the long-term value of the company and their ownership stake therein.

Operationalizing CSR

Actions speak louder than words and one of the actions that the CEO can take from the very beginning of the company's journey is establishing and maintaining CSR practices and policies that are compatible with the company's size and resources. Many sustainable entrepreneurs argue that they simply have too much to do during the early days of their firm—finishing the first product, hiring new employees, talking with investors to raise seed capital and trying to engage with strategic partners—to worry about implementing formal policies and procedures. They often say that there is no point since it is impossible to know how quickly the company will grow and whatever is agreed upon in the first few months will be obsolete by the end of the first year. While it is true that things are changing quickly during the launch stage, it can be the best time to begin laying the foundation for ethics and social responsibility throughout every aspect of the organization and its activities.

At a minimum, the CEO should establish, in consultation with board members, other members of the senior management team and a representative group of employees from throughout the organization, a mission statement that explicitly incorporates ethical and socially responsible behavior and a concise code of ethics or conduct that can be used by everyone as guiding principles for their decisions and as an agenda for training and orienting new employees about the organizational culture. Environmental and social responsibility should also be explicitly woven into strategic planning and performance metrics and the CEO should make sure that the company's sustainability initiatives are tracked formally and reported on regularly to all of the company's stakeholders, even if the company is not yet ready to adopt one of the sophisticated reporting frameworks that have emerged and are now being regularly used by larger businesses. Performance relating to environmental and social responsibility should be formally incorporated into compensation arrangements for the CEO and other senior executives from the very beginning since research shows that CEOs who are compensated based only on economic factors are less motivated to push CSR initiatives. Finally, a compliance program to satisfy specific formal legal requirements should be established, not only for its own sake but as a good first step in implementing one or more of the voluntary certification standards that may be applicable to the business (e.g., ISO 9001 for quality management; ISO 14001 for environmental management; OHSAS 18001 for occupational health and safety and ISO 26000 for social responsibility).

Innovative Ways to Practice CSR

CEOs should look for new and innovative ways to conduct CSR, strategies and methods that are more in line with what businesses do best on a day-to-day basis. For example, rather than replicating the same menu of CSR initiatives that other companies are doing, the CEO should look for ways that their companies can specialize in areas that are consistent with their competitive advantages in the marketplace. Not every company can be like Ben & Jerry's and have a social mission at the core of their brand, but most businesses have a core competency they can deploy, such as the way that UPS has provided logistics support to help deliver emergency supplies. Aggressive collaboration with other companies, and with government policymakers, is another way that companies can have a great environmental and social impact. CEOs building and operating companies in the technology sectors, which require fewer employees than traditional businesses, can nonetheless make a valuable contribution to society by participating in effort to retrain displaced workers so they can be competitive in the new job market. Retraining programs can also help the CEO fill positions at his or her company, since many technology companies are still struggling to find qualified applicants for all of the activities they need in order to be successful. The bottom line is that CEOs should continuously think about how their companies can leverage their core competencies in innovative ways to have a positive impact on society and mitigate and reduce the potential negative effects of their business activities.

Engagement

Gone are the days that the CEO can simply hunker down and spend all of his or her time on internal issues and activities such as product development, manufacturing and human resources issues. It is clear that that a substantial slice of its earnings and opportunities are dependent on the relationships of the company, and its CEO in particular, with external stakeholders. Research confirms that while operational excellence, including returns to investors, remains an important driver of a firm's reputation among the general public, other factors have emerged as drivers of brand goodwill, and thus potential overall value, including engagement, purpose, integrity and the environmental and social impact of the company's products and services.

As such, stakeholder engagement has become a top priority for CEOs and he and she must understand how to do engagement efficiently and successfully. In the past, a CEO would delegate CSR to another person or group and the primary focus was often on philanthropy or modest collaborations with outside groups interested in environmental and social issues and problems. Now the CSR efforts of the company must be integrated into each of its core commercial activities, as well as its overall strategy and operational planning. Even the CEOs of the companies that have enjoyed the most financial success in recent years, such as Tim Cook of Apple, have only a limited amount of time to enjoy increases in revenues and earnings and the development of new products since they must now deal with intense and continuous criticism of the environmental and social impact of their operations and calls for operational changes thought by others to be necessary to achieve diversity and address income inequality.

A good general rule regarding engagement is to authentically communicate often with all of the company's key stakeholders and do so in a way that stakeholders can trust that their concerns and ideas are being heard and considered seriously. The CEO needs to understand that the company's agenda for CSR cannot be dictated by the company and must be mutually agreed upon by the company and each of its stakeholders since CSR has only limited value if it is not perceived by stakeholders as being responsive to their needs and expectations. That said, the CEO must prioritize his or her CSR activities, and the associated engagement, around the issues that are most important for the long-term success and sustainability of the company. For some companies, this may mean getting involved in developing new solutions for environmental problems, which means that the CEO will need to become engaged in industry-wide discussions and work with customers on ideas for new products and employees on how to help them develop the skills necessary to work with new technologies. Many companies have focused on diversity and ensuring that everyone has better opportunities for employment with the company and advancement to higher levels of the organization. Whatever the issue might be, the CEO needs to be clear about the purposes and goals of the company with respect to CSR, set the proper "tone at the top" and be able to explain to everyone involved with the company, inside and outside, why pursuit and attainment of those goals will be in the best interests of all of the stakeholders. This is particular true for employees since motivated and engaged employees will be more productive and loyal and help the company deliver better results for customers and shareholders.

While discussions of CSR engagement are typically focused on how companies can develop and maintain relationships with stakeholders beyond shareholders, investors still remain first among equals in the stakeholder universe and CEOs need to be particularly careful in how they engage with investors on CSR initiatives. For a long time, caution was needed because many investors were skeptical of their portfolio companies deviating too much from a focus on financial performance; however, the pendulum has swung dramatically among institutional investors that now expect CEOs to develop and lead appropriate CSR initiatives and establish CSR reporting mechanisms. CEOs are not expected to be experts on a particular environmental or social issue, but they do need to have a plan and be able to demonstrate to investors that they have invested adequate resources for the company to fulfill its public commitments on environmental and social topics. Another important role of the CEO in the eyes of investors is oversight of the company's organizational culture and human capital. The CEO should be able to explain to investors how much time and effort he or she spends in talking with employees from all levels of the organization and disseminating a strong message regarding the company's commitments to environmental and social goals. Investors also want evidence that the CEO is creating and maintaining a diverse group of senior managers and other key decision makers and is implementing compensation and performance measurement systems that give due weight to contributions to CSR. Finally, CEO should be prepared to share with large investors the results of the company's own assessment of its CSR initiatives and processes and the steps that the CEO is taking to make necessary improvements in the way in which the company conducts its business.

Personal Values and Risks

While most of what a CEO does with respect to CSR occurs in the public domain, there are very personal issues and risks that the CEO also needs to consider. First of all, there is no such thing as privacy for the CEO when a crisis occurs with respect to whether or not his or her company has failed to fulfill expectations with respect to ethics and social responsibility. The CEO's official actions will be scrutinized and more likely than not someone will pry into personal matters such as whether the CEO's lifestyle is inconsistent with concerns about income inequality. By the way, some studies have found that companies with materialistic CEOs have lower CSR performance scores. Second, high profile CEOs may be expected to take positions in social and political controversies, even getting involved is not directly related to a specific CSR initiative or goal of the company. Many CEOs, while comfortable with certain social issues, prefer not to become regular participants in the marketplace of opinions; however, it has been argued that CEOs are in a unique position to frame the dialogue on certain issues and that CEOs that take a position on a controversial issue can actually bring more new business to the company. Finally, while CEOs that champion CSR initiatives are generally praised for such work when things are going well, research shows that if a CEO has invested in CSR and the firm performs poorly, he or she is much more likely to be dismissed.

Note on Sources: The Arthur W. Page Society considers itself to be the world's leading professional association for senior public relations and corporate communications executives and educators who seek to enrich and strengthen their profession. Membership in the Society consists primarily of chief communications officers of Fortune 500 corporations and leading non-profit organizations and the CEOs of the world's foremost public relations agencies. The discussion of the principles relating to "public relations" is adapted from https://awpagesociety.com/site/the-page-principles

§4 Organizational structures for sustainability

The alignment of organizational design and sustainability begins with the development of a sustainability strategy and accompanying goals and priorities. In order for the sustainability strategy to be effective and successful, it must align with the structure, competencies and culture of the company. Strategies are based on an overall vision for the company and a set of commitments that serve as the foundation for strategies and tactics and bind all of the business units together to work toward a common purpose. Many options are available in terms of sustainability-related commitment topics such as climate change, waste reduction and management, resource consumption, education, human rights, community engagement and procurement (i.e., supply chain management). Commitments should be pursued through a combination of corporate policies, sustainability policies and employee initiatives.

The Corporate Responsibility Officers Association ("CROA") (www.croassociation.org) observed that successful firms had approached how they aligned their corporate sustainability and responsibility strategy and organization with the overall business strategy and organization based on their desired outcomes, and delineated the following three "archetypes" that represented different spectrums of alignment[10]:

[10] Corporate Responsibility Officers Association, Structuring and Staffing Corporate Responsibility: A Guidebook (2010), 11-12.

- The first order requirement, which the CROA argued had to be gotten right before companies could go any further, was "transparency", which involved a deliberate decision by the company, through its board and senior executives, to dedicate resources to improving the ability of stakeholders to hold the company accountable for its sustainability initiatives by making more information publicly available. This requires going beyond traditional basic compliance-based reporting to include the subjects covered in well-known reporting frameworks such as the Global Reporting Initiative. Adopting transparency means that companies will need to disseminate information regularly throughout the organization and incorporate sustainability reporting protocol data elements into existing IT systems and reports.
- Once the company has committed to transparency, the next step in many cases is making a direct connection between sustainability and corporate responsibility and the company's commercial interests. This is achieved by making certain sustainability issues that align with the interests of the company's stakeholders the centerpiece of the company's "brand promise" and corporate culture. Examples provided by the CROA included a beverage company that saw water as core to its business and decided to align its corporate responsibility programs around all aspects of water quality, availability, and sustainability; a financial services firm that decided to raise the financial acumen of its current and future customer base by investing in financial literacy programs; and a technology company that saw the advantages of wider availability of broadband and decided to invest in helping bring it to under-served communities.
- Some companies build on their foundation of transparency by declaring a "Big Hairy Audacious Goal" for the company as a whole. The CROA explained that these goals, most of which do not seem achievable when first announced, could serve a commercial objective or may be "just the right thing to do"; however, they are always tied into business strategy. Illustrations provided by the CROA included a government agency declaring that it will entirely eliminate the environmental impact of its operations; a pharmaceutical company dedicating itself to making a specific disease or class of diseases extinct in our lifetimes; and a consumer package goods company declaring that all of its packaging will have zero landfill contribution.

From the Morning Walk

I was writing about the observation of a group of sustainability experts from the Corporate Responsibility Officers Association that the first step toward embedding sustainability and corporate responsibility into organizational strategy and corporate culture is a full-blown commitment to "transparency". Generally, transparency, which is executed through implementing reporting and communications processes for informing stakeholders about the nature and progress of a company's sustainability-related, falls a few feet down the road on the path to sustainability prescribed by pundits. You begin with goals and commitments, move on to planning and implementing operational changes and then you turn to figuring out how to track performance and report the results both internally and externally. All of this makes sense, but somehow the idea of putting transparency at the beginning seemed to make perfect sense and open opportunities for sustainable entrepreneurs to take bold steps with their ideas for having a meaningful impact on the environmental and social issues that they are most passionate about.

The first thing to consider is that the term "transparency" has been much more frequently used over the last few years according to survey done by those who track these sort of things. One can speculate as to why this is, but the main point is that transparency has come to be front and center on the societal stage. What's interesting for planning for sustainability is that the word transparency traces its lineage back to the medieval Latin term for "shining through". In the context of a sustainable startup, I think that means making a clear and public commitment to all of the stakeholders of the company to be clear about the goals of the business, open in communications with stakeholders, direct in setting goals and measuring progress and, most important, accountable for promises made and actions taken.

In practice, transparency begins for a sustainable entrepreneur by sitting down, either alone or with the other founders, and taking a hard look at what is driving the formation of the business. In other words, looking past dreams of fame and fortune to discover the true purpose of the mission--the goal that will fuel the passion to build a sustainable business. Once this fundamental introspection has been completed, transparency requires the "sunshine" of dialogue with, and scrutiny from, the prospective stakeholders of the company: potential investors, employees, customers, suppliers and community members. These discussions, popularly known as "engagement", need to happen in the earliest days of the business in order to establish trust and create commitments and performance metrics that are meaningful to the groups that are most important to the success of the venture.

Transparency seems easy and natural and every sustainable entrepreneur should expect that he or she will need to set up processes to report on progress toward the company's key strategic goals and sustainability issues. However, transparency requires bravery and a strong will because it means making very visible commitments at a very early stage in the venture and empowering stakeholders to be brutally honest in their critiques as the business unfolds. It also means adding a significant investment of time on stakeholder engagement to a plate that is already full with developing the initial product or service, raising seed capital and convincing others to bring their talents and experience to an untested company. There is no doubt that all this might lead to a quick and painful demise for the company or, at the very least, a dizzying set of decisions resolving the needs and expectations of all of the stakeholders. But, with persistence, the sustainable entrepreneur can use the tools of transparency as guide to build trust, demonstrate leadership and accountability, effectively design processes and systems, empower employees to innovate and create a competitive advantage. Knowing what needs to be reported to stakeholders focuses the sustainable entrepreneur on results and frees him or her to create culture in which employees are also focused and motivated and a brand that is comfortable and meaningful for external stakeholders.

By Alan S. Gutterman, Founding Director of the Sustainable Entrepreneurship Project (seproject.org), and published on the Project's blog, "Morning Walk", on March 26, 2018.

When designing the organizational structure for sustainability, several important principles and conditions need to be considered[11]:

- The sustainability initiative, and the accompany changes to the organizational structure, must have executive sponsorship and the CEO must be a visible proponent

[11] Adapted from H. Farr, Organizational Structure for Sustainability (July 14, 2011), http://abettercity.org/docs/events/BCBS%20Hayley%20Farr_28%20July%202011.pdf [accessed December 12, 2016] For further discussion of organizational structure, see "Organizational Design: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

of the sustainability vision for the company. Executive sponsorship accelerates engagement by employees and business units.

- The core responsibilities for implementing the sustainability programs should be vested in departments have close ties to stakeholders and the requisite decision-making powers with respect to issues related to the programs. Common choices include the corporate, legal or public affairs departments.
- The leader of the sustainability initiative should have a direct reporting relationship with both the CEO and the board of directors in order to send a signal to employees and other stakeholders about the important of the initiative and provide the initiative with access to the support and resources available from high-level executives and managers in other departments.
- An organizational structure should be selected that achieves the appropriate level of interaction with employees and creates value to the business. The optimal structure may change over time as the sustainability initiative gains tractions and become more embedded in the day-to-day operations and decisions.
- Clear procedures regarding decision rights should be established, recognizing the integration of sustainability programs and goals often challenge existing decision rights. It is important to identify the types of decisions that will need to be made, the parties that will be involved in making those decisions and the managers who will be entrusted with implementing the decisions.
- Sustainability performance must be integrated into day-to-day management activities and compensation programs and responsibilities, performance reviews and compensation models for all employees must be aligned with the company's sustainability objectives in order to encourage and reward contributions to innovation and creative problem solving.
- In order to achieve the requisite integration and employee buy-in, programs must be created to develop a basis awareness of the company's sustainability strategy, goals and priorities, educate employees about opportunities and support employee efforts.
- The internal structure should be aligned with the external structure that the company relies upon to engage with stakeholders since one of the most important aspects of a sustainability program is external accountability. External stakeholders need to know that their concerns and questions will be addressed and that begins with knowing how best to access the company.
- The sustainability strategy must include both transparent goals with metrics that can be evaluated by both internal and external stakeholders and provision for reporting on the results of the sustainability programs.

Companies that are relatively new to sustainability often begin with a fairly simple "stand-alone" structure based on treating the sustainability program as a separate function like finance, operations or marketing.[12] A high level executive, often given the title "chief sustainability officer" ("CSO") will oversee the function and reports directly to the

[12] The discussion in this paragraph and the following paragraphs regarding alternative organizational structures for sustainability is adapted from H. Farr, Organizational Structure for Sustainability (July 14, 2011), http://abettercity.org/docs/events/BCBS%20Hayley%20Farr_28%20July%202011.pdf [accessed December 12, 2016]

CEO from the same level in the organizational hierarchy as other C-level executives. The job of the CSO, who will be supported by various sustainability directors worked primarily inside the sustainability function, is to begin the difficult process of engaging the business units that are overseen by other C-level executives. Such a structure might have a vice president of sustainability reporting to the CSO and overseeing operations of the sustainability group and directors who report to the vice president and are charged with various sustainability-related activities such as communications, philanthropy, procurement strategy and environmental issues. The advantages of this type of structure is that it creates a group that is solely focused on and responsible for initiating and implementing sustainability-related activities and serves as a magnet for recruiting the specialized skills necessary for sustainable programs to be successful. The structure also provides clear control and coordination of the portfolio of sustainability-related activities and associated budgets. However, a stand-alone approach has several critical drawbacks: sustainability is not integrated into the rest of the organization; limited buy-in from employees because they are not accountable to the sustainability function; and funding challenges since the function is typically focused on reducing costs as opposed to business development.

Companies often attempt to address and resolve some of the key shortcomings of the stand-alone structure by designing an “integrated structure” that recognizes and promotes reporting relationships between the sustainability directors, still sitting primarily in the sustainability function, and the business units. Advantages of this approach include enablement of organization-wide integration and the creation of direct ties between the sustainability experts and the business units, thereby allowing the sustainability expertise to be available for supporting sustainability programs in the business units. The enhanced access for the sustainability directors also encourages and improves employee buy-in, although there is still no formal accountability and the actions of employees with respect to sustainability are largely determined by the priorities of the leaders of their specific business unit. In fact, the main problem with this structure is that responsibility and accountability remain disperse; however, the structure can be helpful for companies with sustainability goals that are primarily focused on reducing costs and efficiency.

Another more advanced and dynamic structure for sustainability is referred to as an “embedded structure” and actually transfers the sustainability directors out of the sustainability function and into each of the business units and functions themselves. The sustainability director reports both to the leader of the business unit or function and back to the CSO—a matrix structure that can cause issues with respect to authority. For example, the director of sustainability procurement strategy would have reporting responsibilities to the vice president of procurement and the directors of environmental sustainability and sustainability communications would be reporting to the vice presidents of operations and PR/communications, respectively. Advantages of the embedded structure include the ability to select and implement sustainability programs that drive business value and become part of the company’s core business and the opportunities to encourage significant buy-in from all employees. However, the embedded structure makes it more difficult for the CSO to coordinate sustainability activities across the organization and efforts may be duplicated. The CSO also has less management control and will have depend more on his or her soft skills of influence and encouragement in order to make a significant impact. An embedded structure is considered to be the most advanced of the basic structures for sustainability and generally makes sense for mature organizations that have a good basic understanding of sustainability already integrated into their business units and are looking for revenue-generating opportunities.

§5 --CSR structures and staffing among large companies

A study commissioned by the Corporate Responsibility Officers Association ("CROA") (www.croassociation.org) in 2010 included responses from 650 large, publicly traded companies on questions relating to corporate responsibility ("CR") processes, CSR structures and staffing, CSR budgeting; CEO and board engagement in CR; CR audiences and benefits; and future expectations for CR.[13] While conducting the study, the CROA defined CR as the multi-disciplinary practice of improving the behavior of corporations in society and emphasized that CR should be understood as encompassing all aspects of how companies behave as stewards of investment, as employers, and as members of communities, including corporate governance, employee relations, environmental impact, financial performance, human rights, philanthropy, social responsibility, and sustainability. Key insights from the study regarding the structuring and governing of the CR function and then-current CR practices among those companies included the following[14]:

- CR was a growing, and increasingly common practice among the firms, with 62% of the respondents reported having some form of "formal CR function" and 42% of the respondents reported that their CR function was overseen by a single designated senior executive (the senior executive went by a number of different titles, most often "corporate responsibility officer").
- One-third of the respondents that formalized CR set up a separate department for CR; however, where CR resided in the organization varied widely: corporate responsibility (32%); distributed (20%); Office of the CEO (14%); communications/government relations (12%); legal ((5%); marketing/PR (4%); operations (4%); other (3%); environment/health/safety (2%); philanthropy/foundation (2%); sustainability (1%); human resources (1%); and executive area (1%).
- 42% of the respondents had CR reporting directly to the CEO and thereafter the results varied widely as to reporting channels (i.e., legal lead (11%), communications lead (11%), CFO (5%), COO (4%)).
- As to the number of employees in the CR function, the range broke out as follows: 19% had one employee, 39% had two to four employees and 42% had five or more employees.

[13] Corporate Responsibility Officers Association, Structuring and Staffing Corporate Responsibility: A Guidebook (2010).
[14] Id. at 7-9.

- While there was variation among the respondents as to which responsibilities should be included in CR the most common areas were sustainability and environment (82% of the respondents), philanthropy (64%), governance/risk/compliance (62%), human rights (52%) and employee relations (50%).
- 51% of the CEOs among the respondents had taken an active role in leading a specific CR initiative and 41% of the boards of the respondents had designated a director to provide oversight to CR-related initiatives; however, only 23% of the boards had actively initiated or driven a CR-related initiative during the previous 12 months.

The consulting firm PWC undertook a study of sustainability executives from 25 global companies recognized as leading on sustainability, including 18 companies from the US, three companies from Australia and one Canada-based company.[15] The companies were composed of members of the Sustainability Innovators Working Group and companies listed on the Dow Jones Sustainability Index as of September 2011. The study was conducted from March to May 2012 and included one hour discussions with the senior executive responsible for sustainability and a supplement, brief online survey. The most common title among the respondents was "sustainability", although some companies used other titles such as "corporate responsibility", "environment, health and safety" and "public affairs". Environmental programs/strategy was the most frequently mentioned responsibility associated with the position followed by social programs/strategy; community engagement; environment, health and safety ("EH&S"), and philanthropy.[16]

22 of the 25 respondents had formed a board committee focusing on sustainability, and other common forms of organizational engagement included executive sustainability advisory councils (18), mid-level employee sustainability councils (16), "green teams" (14) and external advisory councils (11). Executive sustainability advisory councils included members of the senior leadership team, including an executive sponsor, which reported to the CEO. Executive leadership is important for every sustainability initiative and formally establishing an advisory council consisting of executives is an important signal to the rest of the organization regarding the importance of the initiative. When an external advisory board was formed it generally provided influence and support to both the board committee and the executive sustainability council.[17]

The executive sponsor on the executive sustainability advisory council, who reported to the CEO, generally oversaw the activities of the chief sustainability officer ("CSO"), who

[15] A. Longsworth, H. Doran and J. Webber, "The Sustainability Executive: Profile and Progress" (PWC, September 2012). Nine of 23 respondents had a background in environment and other background areas included products/operations (4), legal (4), marketing and communications (3), public affairs (2), policy (1) and non-profit (1). The respondents included equal numbers of men and women. 17 of the 23 had a prior internal relationship with their companies before assuming their roles as sustainability executives and average tenure with the company was 13 years. Experience with the company was considered important to success given the need for an "insider's viewpoint" that was network-driven and dependent on an understanding of the organizational culture. Id. at 9.

[16] Id. at 10.

[17] Id. at 11-12.

in turn managed the company's core sustainability office. In other words, the CSO was usually one reporting level removed from the CEO, although a handful of companies provided for the CSO to report directly to the CEO. Direct reporting lines for the CSO among 23 respondents varied as follows: external affairs (i.e., public affairs, corporate relations and communications) (7); operations (4); strategy/innovation (4); legal (3); CEO (2); business support services (i.e., procurement, information technology, supply chain and risk management) (2); human resources (1) and finance (1).[18] Some respondents said they were satisfied with being part of operational function such as external affairs because of the access to support in crucial areas such as communications; however, others believed that the CSO should either be part of the strategic function or that the role of the central group should be reduced in favor of allocating more sustainability responsibilities and resources to the heads of the various functional groups.

Among the respondents, the median number of direct reports for the core sustainability office was three, usually managers for metrics and reporting, social programs and communications/public affairs/marketing; however, while the teams were generally small they had a critical impact on management and execution of the sustainability program. Internal support for day-to-day operation and reporting allows the CSO to remain focused on strategic considerations, providing that the managers in the office has the skills and personality to proactively implement activities falling under the remit. The sustainability office sometimes elicited help from specialists who could translate complex information and provide technical subject matters expertise to the CSO and other groups in other parts of the organization. In addition to the core sustainability office, important support for sustainability generally game from teams and groups involved with communications and branding.[19]

Cross-functional management teams were responsible for oversight of various "green teams", each of which received influence and support from the resources in the core sustainability office. Members of the cross-functional management team also received influence and support from the CSO who in turn received feedback from mid-level managers most involved with sustainability programs; however, there generally was not a direct reporting relationship between the CSO and the cross-functional management teams. Advocates of mid-level management teams and employee councils were seen as a good way to distribute ownership and facilitate understanding throughout the organization; however, some respondents cautioned that too much decentralization might cause problems with respect to continuity, coordination and aligning programs with the company's strategic priorities and stated public goals for sustainability.[20] Due to these concerns it is important for the CSO to facilitate regular meetings and communications among the leaders of the mid-level management teams in order to share best practices and make sure that everyone is aware of what is being done with respect to sustainability.

[18] Id. at 18.
[19] Id. at 11-13.
[20] Id. at 12.

Almost half of 18 respondents to questions about the schedule of reporting to senior leadership indicated that their companies had a quarterly reporting schedule (bi-annual reporting was the next most frequent response).[21] Respondents indicated that while formal reporting structures were useful in many ways, it was equally important for the leaders of the sustainability initiative to develop personal relationships and engage in networking to ensure that managers and employees throughout the organization understood the value of sustainability. One of the reasons many sustainability leaders are drawn from inside their companies after a significant number of years working with the company is that they have built relationships and understand how the business works, which means they know the pressures that other managers are facing and can be trusted by those managers to develop solutions that share risks and capitalize on opportunities.

§6 --Structures and staffing for environmental, health and safety

In 2012 the National Association for Environmental Management (www.naem.org) issued a report on the results of a survey of the organizational structure, staffing levels and responsibilities of the function that supported a company's environmental, health and safety ("EHS") and sustainability goals.[22] The survey consisted of online questionnaires to full time, "in house" corporate EHS and sustainability professionals and qualitative interviews with senior EHS and sustainability leaders across different industries. The results reflect the views of 199 senior leaders (i.e., managers, directors and vice presidents) working within combined EHS and sustainability functions at U.S.-based companies with revenues ranging from $250 million to $50 billion. Among the key findings described in the executive summary to the report were the following:

- Most of the respondents managed EHS through a single consolidated, centralized function. Two-thirds of respondents reported a governance structure that centralized authority and policies, and one-third also incorporated a centralized budget process.
- The function generally reported into one of several core areas: legal, operations, human resources or the C-Suite.
- While there were multiple approaches to organizing the EHS function, the most common department structure tended to be one that integrated EHS at the corporate and facility levels.
- Staff levels were driven largely by perceived EHS risk, industry and structure. Companies that identified as operating under a high degree of EHS risk (e.g., companies in the utilities, extractives and chemicals industries) tended to have larger staff sizes. Decentralized structures tended to require higher staff levels per total employees, as did small and mid-sized companies; however, companies with higher revenues reported fewer EHS staff per total employees.
- EHS budgets (normalized by total employees) were largely driven by employee needs such as salaries, benefits, expenses and travel. Because of this interdependence, the same factors that influence staff levels also influenced budgeting. In other words,

[21] Id. at 14.
[22] National Association for Environmental Management, EHS & Sustainability Staffing and Structure: Benchmark Report (November 2012).

high-risk companies, or those with decentralized EHS structures, tended to have more staff and therefore, larger budgets.

- EHS and sustainability professionals were highly credentialed, seasoned leaders with 79% of the respondents having worked in the field more than 15 years and strong backgrounds in science or engineering.
- The EHS function generally took the lead in regulatory compliance, auditing and information management and was primarily responsible for setting environmental goals, waste management, pollution prevention, regulatory tracking/compliance/disclosure and due diligence.[23] Data management and EHS management information systems were also key areas of responsibility, likely driven by the growth in external reporting of environmental metrics.
- EHS professionals also played a key role in sustainability and respondents indicated that the EHS function either led, or shared responsibility for, the majority of activities including establishing sustainability strategy and tracking and reporting the sustainability metrics.
- Most of respondents reported they were managing sustainability through a cross-functional team with members drawn from corporate communications, operations, legal sales and marketing and EHS. These teams were most often led by the EHS function or a combined EHS and sustainability function. When sustainability was assigned to a stand-alone department, EHS was most often in the lead, followed by stand-alone sustainability department.

§7 Sustainability leaders

The consulting firm PWC undertook a study of sustainability executives from 25 global companies recognized as leading on sustainability, including 18 companies from the US, three companies from Australia and one Canada-based company.[24] The companies were composed of members of the Sustainability Innovators Working Group and companies listed on the Dow Jones Sustainability Index as of September 2011. The study was conducted from March to May 2012 and included one hour discussions with the senior executive responsible for sustainability and a supplement, brief online survey. The goal of the study was to gather insights into the following questions:

- What does the role of the sustainability executive look like now and what will the future demand?

[23] Specific environmental management areas mentioned in the survey included EPA compliance, hazardous materials, waste disposal, spill prevention/control, permitting, air pollution, storm water, waste recycling, chemical management, carbon foot printing, site remediation and industrial emissions reductions.

[24] A. Longsworth, H. Doran and J. Webber, "The Sustainability Executive: Profile and Progress" (PWC, September 2012). Nine of 23 respondents had a background in environment and other background areas included products/operations (4), legal (4), marketing and communications (3), public affairs (2), policy (1) and non-profit (1). The respondents included equal numbers of men and women. 17 of the 23 had a prior internal relationship with their companies before assuming their roles as sustainability executives and average tenure with the company was 13 years. Experience with the company was considered important to success given the need for an "insider's viewpoint" that was network-driven and dependent on an understanding of the organizational culture. Id. at 9.

- How do sustainability executives characterize key factors that support and enable their success in large business enterprises?
- What challenges do senior sustainability executives see ahead?

§8 --Responsibilities and activities of sustainability executives

The responsibilities and activities of the sustainability executives from the surveyed companies, and the average percentage of their time spent on each area, broke down as follows: core business and operations (19%); external engagement (21%); internal engagement (32%) and developing strategy (28%)[25]:

- Core business and operations activities were further broken down into working on operational improvements (5%), supporting product and service sustainability efforts (5%) and engaging suppliers/sourcing (9%).
- External engagement activities were further broken down into developing partnerships with external groups (12%) and reporting externally to stakeholders (9%).
- Internal engagement activities were further broken down into communicating and socializing the case for change (8%), supporting senior executives/C-suite management/board of directors (10%), engaging employees and the business units in the organization (8%) and measuring progress and reporting internally (6%).
- Strategic development activities were further broken down into identifying and analyzing sustainability issues (12%), developing sustainability strategy (9%) and developing the business case for sustainability (7%).

When asked about the future, respondents indicated they expected their responsibilities to broaden from strategy development to a range of exceptional challenges including more emphasis on working internally on operational improvements and working with stakeholders outside the company to develop partnerships.[26]

In its 2010 publication of recommendations on structuring and staffing corporate responsibility, the Corporate Responsibility Officers Association ("CROA") described the Corporate Responsibility Officer ("CRO") as being an ambassador, visionary and strategist reporting at the highest levels in the business and serving as steward/ champion across the entire CR landscape and charged with driving commitment to CR within the company and across the company's external stakeholders.[27] The CRO would report to the chairperson of the board and/or the CEO and would typically be expected to have the following duties and responsibilities in his or her job description[28]:

CRO Area	**Detail**

[25] Id. at 15.
[26] Id. at 16.
[27] Corporate Responsibility Officers Association, Structuring and Staffing Corporate Responsibility: A Guidebook (2010), 22-23.
[28] Id. at 22.

Strategy	Lead development of an overarching CR approach directly related to the company's long-term business plans
Thought Leadership	Broaden and raise the company's understanding of what civil society, customers, employees, investors and other stakeholders expect from it
Advocacy	Speak out on behalf of the company to enhance its reputation
Policies & Programs	Drive the development and execution of guiding principles and initiatives for the company's CR programs
Goals & Measurement	Develop appropriate targets and ways of assessing progress to drive and evaluate the company's performance on CR
Reporting	Determine how the company will internally and externally express progress toward accomplishing its CR goals and respond to society's increasing demand for greater transparency
Stakeholder Engagement	Build constructive alliances and coalitions with key constituency groups (customers, business, industry and investor groups, management, boards of directors, employees, local, national and international political, social, and environmental leaders, NGOs)
Risk Management	Identify risks and opportunities based on stakeholder expectations and design proactive mitigation and response strategies
Fiscal Oversight	Through the CR strategic and operational planning process, develop an understanding of the fiscal impact of the company's goals and priorities in this area

The CRO has a number of specific roles and related knowledge requirements. For example, with respect to the company's social sustainability activities the CRO will be expected to integrate social responsibility with the company's business strategy and operations. At the same time, the CRO may directly manage, facilitate or participate in the environmental compliance and leadership activities of the company, including identifying, assessing, responding and monitoring environmental risks and opportunities in the company. With respect to governance, the CRO will be involved in advising the board on its duties relating to oversight of sustainability, business practices and ethics, compliance and risk management, disclosure and transparency, stakeholder communications and monitoring and auditing sustainability initiatives.

The CRO's primary internal working relationships would be with the entire board, C-level executive leadership, the board committee(s) assigned responsibilities for CR and governance, and investor relations and governmental affairs. With regard to external working relationships, the CRO would be communicating regularly with community groups, NGOs, policy makers and major investors; media, financial and industry analysts; professional CR organizations; and peer counterparts.

As for the preferred qualifications for the CRO position, the CROA mentioned C-suite executive level experience; a sophisticated understanding of the global CR landscape and best practices; being the kind of individual who is sought out for his or her advice and perspective; experience working with and influencing senior company leadership (including the CEO and/or COO), chairperson of the board and board members) on projects that involve the development of new company-wide policies and programs; ability to work successfully with people of diverse functional and cultural backgrounds; demonstrated ability to anticipate trends and issues in business and society; excellent written and oral communications skills; ability to analyze and interpret data; and strong business financial acumen.

Not surprisingly, the required knowledge base and skill set for the CRO position is extremely broad and includes knowledge about economic, social and environmental sustainability, governance, stakeholder engagement and ethics, and skills with respect to strategy development and execution, performance and change management, communications, industry and business acumen and risk management.[29] Critical personality attributes for the CRO include being courageous, ethical, innovative, logical, perceptive, process focused and versatile.[30]

The CROA provided similar information on another important sustainability leadership post, a vice president of CR with responsibility for performing a senior operational role overseeing the development and implementation of CR strategy and managing a team of CR specialist experts. The vice president of CR would normally report to the CRO, assuming that position has been created, or to the CEO, the executive vice president or the head of the functional unit in which CR is housed, and the job description for the position would include the following[31]:

VP of CR Area	Detail
Strategy	Create and implement corporate citizenship strategy and policies
Thought Leadership	Provide expert guidance and approval across the business on CR issues
Advocacy	Create impactful internal and external

[29] Id. at 39-51.
[30] Id. at 40.
[31] Id. at 24.

	communications influencing and inspiring others to take action and ensuring broad-based support for CR
Policies & Programs	Lead key CR, sustainability, and citizenship programs to deliver their objectives
Reporting	Measure and report CR initiatives and activities
Stakeholder Engagement	Represent the company in public forums to improve stakeholder relations and corporate reputation
Risk Management	Identify risks and opportunities to the business based on stakeholder expectations and design proactive mitigation and response strategies
People & Fiscal Management	Managing the CR team and budget

Inside the company the vice president of CR would work closely with executive leadership, the committee(s) of the board to which CR duties and activities have been assigned, business line managers (i.e., supply chain, human resources and environmental affairs), investor relations and governmental affairs and his or her direct reports. Facing outward, the vice president of CSR would be working with community groups, NGOs and policy makers; media, financial and industry analysts; professional CR organizations and peer counterparts. The required knowledge base and skill set for this position is not quite as broad as for the CRO position; however, the vice president of CR must have knowledge of economic, social and environmental sustainability and ethics and have a keen understanding of business conditions in the company's industry and the tools necessary for effective strategy execution and performance and risk management.

Rounding Out the Sustainability Leadership Team

The CROA study discussed in the main text also included job descriptions and summaries of the preferred knowledge base, skills and attributes for each of five other key CR-related positions within the organizational hierarchy:

- **Director of CR Communications:** Responsible for developing and executing a comprehensive, cohesive communications strategy for both internal and external audiences and for the production of the annual CR report, and uses the communications strategy to connect and convey broader reputation and social issues to the commercial objectives of the business. Works closely with internal groups like public relations, human resources, government affairs, investor relations, and environmental health and safety as well as with external stakeholders like SRIs, NGOs, customers, etc.. The Director of CR Communications plans, develops, and leads the execution of a global CR communications plan, aligned with the company's sustainability goals. Candidates should have knowledge about stakeholder engagement and ethics and be skilled in change management, communications and risk management.
- **Director, Philanthropy:** This position is responsible for establishing, leading and managing, a non-profit charitable foundation which awards grants annually to a variety of organizations in communities where the company does business. Duties and responsibilities include overall strategic planning, revenue generation, financial management, organizational development, staff management and program operations. Candidates should have knowledge about social sustainability and ethics and be skilled in communications and strategy development and execution.

- **Director, CR Procurement Strategy:** This position is a specialist procurement role focused on CR and sustainability and includes developing and implementing procurement's strategy and policy on sustainability in relation to suppliers and their supply chains. Candidates should have knowledge about economic, social and environmental sustainability and ethics and be skilled in strategy execution, performance management and understanding the specific business elements of the industry in which the company operates.
- **Director of Environment, Health and Safety:** This position leads and directs the organization's environmental, health, safety and sustainability ("EHS&S") processes and has company-wide responsibility for all EHS&S related functions with accountability for operational, administrative, technical, and financial components. Contributes to the development and execution of functional business plans and EHS&S strategies and assesses operational risks that could affect EHS&S in order to advise senior leadership on constructive plans and mitigation strategies. Candidates should have knowledge about environmental sustainability, stakeholder engagement and ethics and be skilled in strategy development and execution and risk management.
- **Director, Sustainability:** This position is responsible for developing a comprehensive sustainability strategy across all dimensions of sustainability that can be delivered through the tools of the practitioner, including issue monitoring, stakeholder consultation, materiality, risk analysis, transparency and reporting.

Source: Corporate Responsibility Officers Association, Structuring and Staffing Corporate Responsibility: A Guidebook (2010), 28-29.

§9 --Key factors supporting and enabling success of sustainability executives

The holders of the sustainability leadership position surveyed by PWC provided insights into the key factors that support and enable their success in large business enterprises[32]:

- No matter where the sustainability leadership position reports, broad access to and a view across the entire business is critically important. Some of the leaders were indifferent to reporting lines as long as their position was endorsed and sponsored by key executives; however, others felt that the position would have the most impact by being seen as a strategic function. Wherever the position was located, internal support from the hosting function was important (e.g., support from the communications and branding teams when the position worked out of the external affairs group).
- The most frequently cited "essential tool" for success is a thorough understanding of how the business works. Understanding the business is crucial for achieving and maintaining credibility internally and for being able to continuously make the business case for sustainability. Respondents recommended that sustainability leaders be visible to investors so that investors know that the leader understands and is prepared to advance both the business and sustainability goals of the company.
- Data matters to the sustainability executive and is important as a support for strategy and a guide for execution. Data also ensures accountability and measures results; however, data can be distracting and it is important to know what really must be measured. The methods used to present data should be carefully considered and the presentation should be designed to change people's minds about the value of

[32] Id. at 18-29.

sustainability and illustrate how sustainability can achieve the goals that are most important to a particular audience.
- The business case requires a strategic vision and narrative to inspire understanding, commitment, and action. The business case should include a story that goes with the vision and the data and a readily identifiable means for implementing the steps outlined in the case. Presentation of the business case is important and sustainability leaders must have the requisite communication and intercultural skills to effective translate the business case using the language of business and persuade the audience to take action on the sustainability agenda.
- Robust employee engagement is viewed as critical for realizing value from the sustainability strategy. Companies must engage their employees in the sustainability initiative to motivate and excite them so that they will invest their efforts in the activities necessary for sustainability to succeed. In turn, engaged employees can transform the organizational culture toward innovation and adopting fresh techniques and methods suited to achieving the sustainability agenda.
- Executives say sustainability "grants permission" for change and empowerment and thinking "outside the box" by viewing problems through a "sustainability lens". Among other things, sustainability opens new avenues for cross-functional cooperation, collaboration and information sharing.
- The sustainability executive looks ahead, scans the external environment and translates relevant issues for the business. Sustainability leaders must be able to identify opportunities and threats in the company's external and internal environments and provide input into how sustainability programs can address those issues in the company's overall strategy.
- The sustainability executive often thinks iconoclastically and finds success through orthogonal approaches. Many times the sustainability leader will take positions that are not popular with other leaders who are still clinging to traditional cultural values and strategic goals that are profit-centric. Sustainability leaders are change catalysts pushing the company in new directions and must be prepared to lose their jobs rather than continue to go along with the status quo.
- Sustainability practitioners share knowledge, which speeds the pace of change. The sustainability profession is characterized by an unusually high level of borrowing and sharing of professional best practices, techniques, approaches, and information. Sustainability leaders must develop access points to that knowledge and then be able to adapt them to the circumstances in the particular companies.
- Leading sustainability requires passion, patience, and a long-term perspective, and sustainability leaders need to be nimble (i.e., able to seize opportunity when it presents itself), passionate about their work and the company's goals, resilient (i.e., able to accept and rebound from failure and pushback), persistent (i.e., willing to repeat the same message ad nauseam), aware and able to anticipate future risks and strategic opportunities and patient (i.e., understanding that change takes time).

§10 --Challenges for sustainability leaders

The most commonly mentioned challenges mentioned by sustainability leaders were in the area of "continued integration", with specific questions about how they continued to build relationships with senior leadership, what it will take to fine-tune operation and how best to maintain the momentum and the spotlight on sustainability.[33] Of particular interest was how to use innovation to drive deeper integration into their product line and sustainability leaders were focused on minimizing life cycle impact on product and finding ways to use sustainability to differentiate the products and service offerings of their companies. Other challenges, in order of frequency of mention, included[34]:

- Leverage and engagement: How can we leverage successes to continue to push forward? How can we engage meaningfully with stakeholders, partners and industry peers? What will it take to engage employees in the post-green-team era?
- Strategy development, both foundational strategy and transformational/visionary strategy: How can we identify strategic priorities? What is the best way to reaffirm commitment to strategy and goals? How can we maintain the link between the sustainability and the corporate strategies? What will it take to mitigate non-traditional risk? How can we take actions now to position ourselves strategically long-term? How can we tackle transformative change?
- Choice, paring, and specialization: Are we tracking and reporting the right metrics? We can't do everything, so how do we prioritize our efforts? What adds value? How do we ensure meaningful results?
- Articulating the value: What will it take to overcome short-term perspectives of success for critical long-term programs? How can we motivate investment and access capital today? How can we demonstrate the value of new technologies to customers?
- Scaling the effort: How do we successfully integrate overseas acquisitions? How do we expand our teams across the world? How do we develop regionally specific strategies? How do we mitigate a global footprint?

Proudest Accomplishments of Sustainability Executives

The consulting firm PWC undertook a study of sustainability executives from 25 global companies recognized as leading on sustainability, including 18 companies from the US, three companies from Australia and one Canada-based company. The companies were composed of members of the Sustainability Innovators Working Group and companies listed on the Dow Jones Sustainability Index as of September 2011. The study was conducted from March to May 2012 and included one hour discussions with the senior executive responsible for sustainability and a supplement, brief online survey. The goal of the study was to gather insights into what the role of the sustainability executive looked like at the time of the survey and what it would look like in the future demand, how sustainability executives characterized the key factors that supported and enabled their success in large business enterprises and what challenges senior sustainability executives saw ahead. The respondents were also asked to identify their proudest accomplishments in the following areas:

Initiative-Specific Successes

- Achieved carbon neutrality, which enhanced credibility and signaled the company's commitment to

[33] Id. at 34.
[34] Id. at 34-35, 40.

this issue set
- Put into place the Environmental Excellence Tool to evaluate performance at sites around the globe
- Worked throughout the supply chain to launch a "sustainable seafood initiative" in the U.S.
- Developed standards for external manufacturers and built meaningful relationships along their supply chain
- Created a field model to scale out sustainability programs to subsidiaries globally
- Instituted "Design for the Environment" principles to foster innovation in products and packaging

Impactful Engagements

- Branded an engagement program to communicate internally and to show the value of sustainability to key drivers of success
- Engaged stakeholders to take an interest in packaging and encourage accountability
- Fostered innovative and close collaboration and partnerships with NGOs and educational institutions
- Branded a successful employee engagement program, "Healthy Future and Me"
- Engaged the supply chain to improve the nutritional value of the product and reduce the environmental impact

Strategic Milestones

- Created vivid narratives around the sustainability story so that it resonates around the company
- Witnessed acknowledgement from senior leadership that sustainability isn't an impediment to selling their product, but an imperative part of their sales
- Undertook the process of benchmarking greenhouse gas emissions, electricity, and waster usage; setting public facing goals; and publishing their first non-financial report
- Reoriented the company's goals from internally to externally focused in an attempt to better engage customers in their sustainability mission
- Guided an EH&S program as it transformed into a company-wide sustainability and corporate responsibility practice
- Successfully embedded corporate responsibility strategy into the business model and created an integral link between brand success and sustainability
- Set time-bounded sustainability targets which motivated people to work towards a common goal together
- Connected the pillars of the company by linking each to sustainability in a global capacity
- Shifted the entire vision and direction of the company through analysis and insight into the future

Source: A. Longsworth, H. Doran and J. Webber, "The Sustainability Executive: Profile and Progress" (PWC, September 2012), 31.

§11 Management systems

A management system refers to what an organization does to manage its structures, processes, activities and resources in order that its products or services meet the organization's objectives, such as satisfying the customer's quality requirements, complying with regulations and/or meeting environmental objectives.[35] Elements of a management system include policy, planning, implementation and operations, performance assessment, improvement and management review. By systemizing the way

[35] For further discussion of designing and implementing management systems, see "Management: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

it does things, an organization can increase efficiency and effectiveness, make sure that nothing important is left out of the process and ensure that everyone is clear about who is responsible for doing what, when, how, why and where. While all organizations should benefit from some form of management system, they are particularly important for larger organizations or ones with complicated processes. Management systems have been used for a number of years in sectors such as aerospace, automobiles, defense and health care.

Organizations implement management systems for a variety of reasons such as achieving business objectives, increasing understanding of current operations and the likely impact of change, communicating knowledge, demonstrating compliance with legal requirements and/or industry standards, establishing "best practice", ensuring consistency, setting priorities or changing behavior.[36] Organizations often have more than one management system to deal with different activities or assets and integrate several related operational areas. For example, a customer relationship management system ("CRM") might be launched to manage relationships with customers. A preventive maintenance management ("PMM") and financial management systems may be used to preserve the value of organizational assets and human resource management systems merge and integrate the principles of human resource management with information technology. Other management systems focus on managing all relevant areas of operation in relation to a specific aspect such as quality, environment, health and safety, information technology, data security, corporate social responsibility, risk management and business continuity.

Even though they may not realize it, all organizations have some sort of management system--"the way things get done"—in place. Elements of the system may be documented in the form of policies and checklists, but much of the system is based on unwritten rules and customs. The interest of organizational leaders in management systems is based not only on the desire to understand how things are currently done but also to find out how "things should be done" in order to improve organizational performance. Fortunately, reference can be made to management system standards, such as those promulgated by the International Organization for Standardization ("ISO") (www.iso.org), which are intended to provide all organizations with easy access to international "state-of-the-art" models that they can follow in implementing their own management systems. Management systems standards are concerned with processes, meaning the way that organizations go about carrying out their required work—they are not product and service standards, although processes certainly impact the quality of the organization's final products and services.

Many of the ISO standards are intended to be generic, which means that they can be applied to any organization, large or small, whatever its product or service; in any sector of activity; and whether it is a business enterprise, a public administration or a government department. The standards specify the requirements for a management system (e.g., objectives, policy, planning, implementation and operation, performance

[36] A. Fraser, Management Systems, http://www.thecqi.org/Knowledge-Hub/Knowledge-portal/Corporate-strategy/Management-systems/ [accessed September 3, 2016]

assessment, improvement and management review); however, the actual format of the system must be determined by the organization itself taking into account its specific goals and the environment in which it operates. ISO standards are available for management systems covering a broad range of topics including quality (ISO 9001), environment (ISO 14001), medical device quality (ISO 13485), medical devise risk (ISO 14971), information security (ISO 27001 and ISO 27002), business continuity (ISO 22301), supply chain security (ISO 28000), corporate risk (ISO 31000), food safety (ISO 22000) and management auditing (ISO 19011).[37]

Implementing any management system, regardless of the system's particular focus (e.g., quality, environment, risk etc.), is a challenging task. In many cases, reference can be made to published management systems standards available from ISO and others; however, there are certain key activities that should always be considered:

- Identifying and understanding the organizational context;
- Ensuring that senior management provides leadership in developing and implementing the system
- Developing a plan for the system that incorporates the risks and opportunities that could influence the performance of the system
- Ensuring that the organization is committed to support the system with the necessary internal and external resources
- Developing, planning, documenting, implementing and controlling the organizations' operational processes
- Planning in advance for monitoring, measuring, analyzing and evaluating the performance of the system

Organizations may, and often do, seek and obtain certification by independent outside parties that their management systems conform to the requirements of ISO standards. In lieu of certification, or in preparation for a certification audit, organizations should conduct formal self-assessments on a regular basis that cover quality management system requirements; management responsibility requirements; resource management requirements; product realization requirements (e.g., planning, determination of customer requirements, design and development, purchasing, production and service provision); and measurement, analysis and improvement requirements.[38]

§12 --Illustrative framework for a CSR/CG management system

An illustration of how a CSR-focused management system might be designed and implemented was provided by Castka et al., who described a CSR/Corporate Governance ("CSR/CG") management system that was intended to be compatible with

[37] For further discussion of designing and implementing quality and management systems based on ISO 9001 and ISO 14001, respectively, see "Management Systems: A Guide for Sustainable Entrepreneurs" in "Management: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).
[38] See http://cw.routledge.com/textbooks/eresources/9781856176842/Requirement_checklist.pdf

other management system standards, particularly ISO 9001 and ISO 14001.[39] Castka et al. encouraged organizations to extend their existing quality or environmental systems to include CG, CSR and other relevant systems into one business system. The elements of the management system suggested by Castka et al. was based on the premise that the organization would establish, document, implement and maintain a CSR/CG management system and continually improve its effectiveness by:

- Identifying the processes needed for a CSR/CG management system and their application throughout the organization;
- Determining the sequence and interaction of these processes;
- Determining criteria and methods needed to ensure that both the operation and control of these processes were effective;
- Ensuring the availability of resources and information necessary to support the operation and monitoring of these processes;
- Monitoring, measuring and analyzing those processes;
- Implementing the actions necessary to achieve planned results and continual improvement of these processes.

The key elements of Castka et al.'s SR/CG management system, which are described in the following paragraphs, included defining the organization's CSR/CG policy; identifying the expectations of stakeholders; strategic planning and establishment of CSR/CG objectives, targets and indicators; establishing and discharging the responsibilities of the board of directors and senior management; disclosure and reporting; monitoring, measuring and analyzing the processes included in the system; and managing change and ensuring continual improvement.

One of the first steps to be taken was for the board of directors and senior management to define the CSR/CG policy of the organization and ensure that it[40]:

- Was appropriate to the nature, scale and business impacts of its activities, products or services;
- Specified organizational ethics policies pertaining to bribery and corruption;
- Included a commitment to comply with relevant national and other laws that are applicable, and with other requirements to which the organization subscribes;
- Included a commitment to conform to all requirements of the management system;
- Included a commitment to continual improvement and prevention of social and environmental impacts of the organization;
- Was effectively documented, implemented, maintained, communicated and accessible in an appropriate way to all stakeholders and the general public.

[39] P. Castka, C. Bamber and J. Sharp, Implementing Effective Corporate Social Responsibility and Corporate Governance: A Framework (British Standards Institution and the High Performance Organization Ltd., 2005).
[40] Id. at 7.

When developing and implementing the management system, it is important for the organization to identify and understand the needs of its customers, in this context the "stakeholders" of the organization. As such, the organization must ensure that there is a process to ensure meaningful inclusion of its stakeholders, which includes identifying its stakeholders, describing the organization's relationship with each individual group, demonstrating inclusive engagement of stakeholders on issues of significant concern to them, and demonstrating that an appropriate approach has been used to enable stakeholders to express their views and opinions.[41]

Once stakeholder identification and engagement has been launched, stakeholder expectations should be evaluated in light of the aspects of the "Triple Bottom Line" (i.e., economic, environmental and social). Part of this process should be an evaluation of the social and environmental impacts of the activities, products and services that the organization can control and influence. Records of that evaluation should be maintained and should include, but not necessarily be restricted to financial health, corporate governance and business ethics, workplace health and safety, human rights issues, individual supply chains and the overall supply web, business partners and communications. The organization should also identify the business risks to the organization, including regulatory risks, risks identified through stakeholder involvement, damage to the reputation of the organization, risks that can affect the market position of the organization and product/service failure. Once the risks have been identified, the organization should assess the likelihood and consequences of the identified risks; transform these risks into CSR/CG objectives, targets and indicators; establish control mechanisms to control these risks; and maintain records of their risk management policy. The CSR/CG objectives, targets and indicators should be documented and reviewed at determined intervals, consistent with compliance of the legal obligations of the organization and consistent with the organization's CSR/CG policy. The steps described above, which define the organization's strategic planning process, should be performed or effectively monitored by the board of directors.[42]

The organization's strategic plan with respect to CSR/CG objectives and targets needs to be implemented through an appropriate management system and related processes that is supported by adequate resources.[43] The organization should manage and improve the processes of its CSR/CG system in order to run the business profitably and ethically and determine, provide and optimize resources to manage and continually improve the CSR/CG system; the relationship of the organization with the stakeholders; the infrastructure, work environment and staff relations of the organization; and the supply web and partnerships of the organization. Board and management responsibilities with respect to managing the organization's CSR/CG system should include:

[41] Id. at 11.
[42] Id. at 13-14.
[43] Id. at 7-10 and 15.

- The board/management should ensure that roles, responsibilities and authorities are defined, documented and communicated within the organization to facilitate an effective CSR/CG management system.
- The board/management should appoint a member or members of the board/management with adequate influence or status within the organization who, irrespective of other responsibilities, would ensure that processes needed for the CSR/CG management system were established, implemented and maintained; report to the board/management on the performance of the CSR/CG management system for review and any need for improvement; and ensure the promotion of awareness of stakeholder expectations throughout the organization.
- The organization should allow non-management personnel to choose a representative from their own group to facilitate effective communication with the board/management on matters related to the CSR/CG management system.
- The organization should establish and maintain compliance with legal and other regulatory requirements relevant to its activities, products or services.
- The board/management should ensure that appropriate communication processes are established with all of the organization’s stakeholders and that communication takes place between the various employee levels and functions of the organization regarding the effectiveness of the CSR/CG management system; receiving, documenting and responding to relevant communication from external interested parties is ensured; the organization considers processes for external communication on its significant economic, social and environmental impacts and records its decision; the organization establishes and maintains procedures to communicate regularly to all interested parties data and other information regarding performance, including, but not limited to, the results of board/management reviews and monitoring activities.
- The organization should identify training needs of all personnel who are involved in managing, auditing, improving and controlling elements of the CSR/CG management system, and ensure that they receive appropriate training and continually develop their competence.
- The organization should identify and ensure compliance with all rules and regulations of the jurisdiction in question and with relevant international norms pertaining to CG, CSR, environmental and consumer law, fair labor standards, human rights, health and safety protection and similar, as required by law or agreed upon through effective stakeholder engagement.

An important and unique characteristic of a CSR/CG management system is the need to focus on disclosure and reporting activities. As such, the organization must ensure that timely and accurate disclosure is made on all matters relevant to stakeholders including, without limitation, the financial and operating results of the organization; organization objectives; major share ownership and voting rights; members of the board and key executives, and their remuneration; material foreseeable risk factors; material issues regarding employees and other stakeholders; governance structures and policies; and the status of legal and regulatory compliance relevant to operations. In addition, the organization should commit to preparation and dissemination of a social and ethical report at determined intervals. The information disclosed in these reports must be prepared in accordance with high quality reporting procedures or as agreed with stakeholders receiving this information and the reports should clearly explain how the performance of the organization relates to its CSR/CG objectives, targets and indicators; provide a comparison of these over time and across organizations; credibly address issues of concern to stakeholders; include information about the performance of the organization measured against its CSR/CG objectives, targets and indicators; describe responsibilities and activities of an audit committee; and present a balanced and reasonable contribution of the organization to sustainable development.[44]

As with any management system, it is the responsibility of the organization, through the leadership of its board of directors, to plan, monitor, measure, analyze and continually improve its CSR/CG management system. Among other things, this means establishing methods for measuring stakeholder satisfaction and development; financial health; access to capital; operational efficiency; environmental performance; intellectual capital; brand value and reputation; potential for innovation; risk profile; performance of the board; improvement of organizational systems; and compliance with legal and regulatory requirements of the organization. The measurement process should be overseen by an internal audit committee and audit function and the organization should demonstrate the credibility of its CSR/CG management system through third-party verification and/or external audit including verification of the organization's annual reports.[45]

The board of directors and senior management must review the CSR/CG management system at intervals that it determines, to ensure its adequacy, suitability, and continuing effectiveness. In order for the review process to be meaningful, the directors and senior managers must have access to the results of audits and results from an audit committee; feedback from stakeholders; data on the performance of the CSR/CG management system; the status of preventive and corrective actions; and follow-up from previous board/management reviews. The board/management review for the CSR/CG management system can be incorporated into other reviews such as board meetings, quality management reviews or similar reviews. Based on these reviews, the board of directors and senior management should be able to make recommendations for improvement, including changes to policy, objectives and other elements of the CSR/CG management system. In addition, the organization should investigate, address and respond to the concerns of it stakeholders and to any non-conformances in the CSR/CG management system (i.e., take actions to eliminate the causes of nonconformance of the CSR/CG management system and/or prevent their re-occurrence). The overriding goal should be to establish effective ways to continually improve its CSR/CG management system and develop an organizational culture that is responsive to continual change and the pursuit to responsible corporate behavior.[46]

§13 --ISO 26000

[44] Id. at 6-8.
[45] Id. at 15-18.
[46] Id. at 19-20.

Organizations interested in improving their practices with respect to social responsibility, including engagement with their stakeholders, may refer to ISO 26000. ISO 26000 defines "social responsibility" as the responsibility of an organization for the impacts of its decisions and activities (i.e., products, services and processes) on society and the environment through transparent and ethical behavior that contributes to sustainable development, including the health and welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behavior, and is integrated throughout the organization and practiced in its relationships, which includes all of the organization's activities within its sphere of influence (i.e., relationships through which the organization has the ability to affect the decisions or activities of others).

It is important to remember that although ISO 26000 draws on principles included in management systems developed by the ISO, it is not itself a management system standard and does not contain requirements. Instead, ISO 26000 sets out certain core principles and explains the core subjects and associated issues relating to social responsibility including organizational governance, human rights, labor practices, the environment, fair operating practices, consumer issues and community involvement and development. For each core subject, information is provided on its scope, including key issues; its relationship to social responsibility; related principles and considerations; and related actions and expectations. For example, with respect to labor practices, one of the core subjects, organizations are reminded to integrate consideration of the following issues into their policies, organizational culture, strategies and operations: employment and employment relationships; conditions of work and social protection; social dialogue; health and safety at work; and human development and training in the workplace.[47]

The seven principles of ISO 26000 are intended to establish the underlying framework for socially responsible decision making and link each user of ISO 26000 to a global community of those who share the following principles:

- ***Accountability:*** Accountability is the state of being answerable for decisions and activities to the organization's governing bodies, legal authorities and, more broadly, its stakeholders (i.e., those who are affected by the actions of the organization)
- ***Transparency:*** Transparency is openness about decisions and activities that affect society, the economy and the environment, and willingness to communicate these in a clear, accurate, timely, honest and complete manner.

[47] ISO 26000 Guidance on Social Responsibility: Discovering ISO 26000 (International Organization for Standardization, 2014) and Handbook for Implementers of ISO 26000, Global Guidance Standard on Social Responsibility by Small and Medium Sized Businesses (Middlebury VT: ECOLOGIA, 2011). The discussion of ISO 26000 in this section is adapted from ISO 26000 Basic Training Manual (ISO 26000 Post Publication Organization, March 15, 2016). ISO 26000 is available for purchase from ISO webstore at the ISO website (www.iso.org) and general information about ISO 26000 can be obtained at www.iso.org/sr.

- ***Ethical Behavior:*** Ethical behavior involves deciding on the right course of action, day to day, and is defined as "behavior that is in accordance with accepted principles of right or good conduct in the context of a particular situation.
- ***Respect for Stakeholder Interests:*** Respect for stakeholder interests requires identifying groups of stakeholders (i.e., those who are affected by the decisions and actions of the organization), understanding the impact of the organization's decisions and actions on those stakeholders and responding to their concerns, although this does not mean that stakeholders should be allowed to make decisions for the organization.
- ***Respect for the Rule of Law:*** In the context of social responsibility, respect for the rule of law means that an organization complies with all applicable laws and regulations, even if they are not adequately enforced.
- ***Respect for International Norms of Behavior:*** In situations where the law or its implementation does not provide for adequate environmental or social safeguards, an organization should strive to respect, as a minimum, international norms of behavior, which are derived from customary international law, generally accepted principles of international law, or intergovernmental agreements that are universally or nearly universally recognized.
- ***Respect for Human Rights:*** Organizations should identify the vulnerable populations among its stakeholders and work to ensure their fair treatment including, in situations where human rights are not protected, taking steps to respect human rights and avoid taking advantage of these situations.

The seven core subjects of ISO 26000 mentioned above are relevant to every organization and should be considered when making decisions and taking actions. Each core subject has its own set of specific issues that should be reviewed to identify those that are relevant and significant in a particular situation.

The first core subject is "organizational governance", which is the means by which organizational leaders practice and promote ethical behavior, accountability and transparency and integrate social responsibility into core organizational decisions. Specific issues for consideration in this area include developing incentives for performance on social responsibility, adjusting the organizational structure to include third-party review of sensitive areas such as financial management, etc., creating ways to track decisions and their implementation, to ensure accountability and follow-through and implementing processes for meaningful (two-way) communication with stakeholders.

The second core subject is "human rights", which consists of the steps an organization can take to fulfill the corresponding core principle of ISO 26000 by identifying and responding to members of vulnerable groups within their sphere of influence. Specific issues in this area include developing mechanisms for "due diligence" (i.e., ways to identify, address and prevent actual or potential human rights damage resulting from the organization's activities); examining the treatment of vulnerable groups in the organization's context, such as indigenous peoples, girls and women, those historically discriminated against on the basis of race, ethnicity or religion, people with disabilities, the elderly, migrants, etc.; and providing remedy and grievance procedures. Other potential concerns include human rights risk situations; avoidance of complicity; civil and political rights; economic, social and cultural rights; and fundamental principles and rights at work.

The third core subject is "labor practices" and ISO 26000 admonishes organizations to commit to key principles such as everyone should be able to earn a living wage through freely chosen work (not forced labor or slavery), all workers should experience just and favorable conditions at work and responsibility goes beyond workplaces that an organization owns or directly controls. Specific issues in this area include employment and employment relationships; elimination of child labor and forced labor; compliance with laws and regulations on the rights of unions and collective bargaining and social protection (i.e., medical coverage, disability leave, etc.); elimination of discrimination in hiring and dismissals; understanding and controlling the health and safety risk involved in activities; providing safety equipment and training; considering the impact on workers' family lives when making scheduling decisions; social dialogue; human development and training in the workplace; and avoiding contracting with suppliers or sub-contractors who use unfair or abusive labor practices, including child labor.

The fourth core subject is "environment" and specific issues in this area include preventing pollution; reducing emissions of pollutants into the air, water and soil as much as possible; practicing green procurement, which includes evaluating suppliers of goods and services on their environmental impacts; using sustainable, renewable resources whenever possible; conserving water in operations; sustainable resource use; climate change mitigation and adaptation; protection of the environment, biodiversity and restoration of natural habitats; and practicing life-cycle approach (including disposal) in order to reduce waste, reuse products or components and recycle materials.

The fifth core subject is "fair operating practices" and specific issues in this area include practicing honesty (i.e., don't ask for or accept bribes; don't attempt to break laws through use of political influence); fair competition; responsible political involvement; respecting property rights; paying fair compensation for property the organization acquires or uses; treating suppliers and customers/consumers fairly, including prompt payment of bills and prompt attention to problems; examining and promoting social responsibility in the organization's value chain/supply chain and being sure that the organization is paying enough to enable its suppliers to fulfill their own social responsibilities.

The sixth core subject is "consumer issues" and specific issues in this area include protecting consumers' health and safety through design and testing of products; reducing waste by minimizing packing material and, if appropriate, offer recycling and disposal services; eliminating or minimizing negative health and environmental impacts of products and services, such as noise or waste; paying particular attention to the information needs of vulnerable individuals (e.g., those with limited vision or hearing, or poor reading ability) and providing them with access to essential services; engaging in fair marketing using factual and unbiased information and fair contractual practices;

providing for consumer service, support and complaint and dispute resolution; ensuring protection of consumer data and privacy; and providing education and awareness.

The seventh and final core subject is “community involvement and development”, which includes integrating actions that benefit communities (e.g., job creation, skill development, wealth and income creation and provision of health, welfare and other services) into the organization’s core “business model”. Specific issues in this area include consulting directly with community members before designing programs; focusing on increasing local procurement, hiring and skills development; when investing in a community, considering the economic, social, and environmental impacts of the investment; respecting the traditional uses of natural resources by local populations, especially indigenous peoples; fulfilling tax and other legal responsibilities as described in law, even when punishments are not likely; and considering “social investments”, which include programs, technologies and infrastructure which will improve the quality of life in the community and increase the capacity of the community to develop sustainably.

ISO 26000 also emphasizes the importance of “stakeholder identification and engagement” as being central to addressing an organization’s social responsibility. Stakeholders are defined in ISO 26000 as any individual or group that has an interest in any decision or activity of the organization and “stakeholder engagement” is defined as any activity undertaken to create opportunities for dialogue between an organization and one or more of its stakeholders, with the aim of providing an informed basis for the organization’s decisions. The goal of stakeholder engagement, through communications with leaders of different stakeholder groups and the broader population to ensure fairness and inclusiveness, is to establish channels for exchanging knowledge, suggestions, complaints and ideas for solutions and to build long-term trust and credibility as opposed to a “quick fix” for a problem that suddenly emerges. Engagement should not be used primarily as a means for publicity. When identifying stakeholders, organizations should consider questions such as: to whom does the organization have legal obligations; who might be positively or negatively affected by the organization’s decisions or activities; who would be disadvantaged if excluded from the engagement; who in the organization’s value chain is affected; who is likely to express concerns about the decisions and actions of the organization; and who can help the organization address specific impacts?

Recommended steps for using ISO 26000 include the following:

- Setting the direction from the top by building social responsibility into governance and procedures and integrating social responsibility throughout the organization by using mission and vision statements to define values
- Identifying relevant social responsibility issues, determining relevance and significance of the identified issues and establishing priorities such as gap analysis (i.e., identify gaps between current and desired position)
- Assessing the organization’s responsibilities and potential impact in its sphere of influence (e.g., decisions regarding product design can impact suppliers and the resources/raw materials that are used in the manufacturing process)

- Performing "due diligence" (i.e., the process of identifying the actual and potential negative social, environmental and economic impacts of an organization's decisions and activities, with the aim of avoiding and mitigating those impacts) by reviewing the legal requirements and context of activities and involving relevant stakeholders throughout the organization's sphere of influence
- Setting short-term and long-term goals and applying social responsibility to decisions on purchasing, investing, hiring and promoting, advertising, community relations etc.
- Identifying current weaknesses and the causes behind them; identifying the resources needed to overcome the weaknesses (i.e., personnel, time, money, partners etc.); and developing a timeline and action plan to bridge the gaps
- Incorporating transparency and accountability at all levels through reporting and other communications with stakeholders that describe the organization's activities on relevant issues within each of the seven core subjects and establish a continuing dialogue based on honest disclosure and meeting the specific needs of each stakeholder group with respect to the tone and content of communications
- Continuously reviewing and improving social responsibility performance through monitoring and measuring and making improvements in the reliability of information and management processes

There is no certificate process for ISO 26000; however, organizations have communicated, if accurate their effective use of the standard in a variety of ways including public declarations such as the following: "We have **used/applied** ISO 26000 as a **guide/framework/basis** to **integrate/implement** social responsibility into our values and practices" and "We recognize ISO 26000 as a reference document that provides guidance for integration/implementation of social responsibility/socially responsible behavior". It is not appropriate to use wording such as "certified according to ISO 26000" or "meets the requirements of ISO 26000".[48]

§14 Role of the legal department and outside counsel

The legal department, particularly the general counsel, has a significant role to play in developing and implementing the CSR and sustainability initiatives of any organization. While CSR is often described as "going beyond the law", a good deal of the work relating to social and environmental responsibility involves understanding how to comply with existing laws and regulations and planning for and addressing the risks of misbehaviors in areas generally associated with CSR and sustainability such as human rights and child labor issues in the supply chain, discrimination in the workplace, health and safety issues, environmental practices, and cybersecurity and privacy. The legal department is also a natural contributor to organizational efforts to comply with voluntary standards, some of which will inevitably become hard law, and an experience guide on questions of materiality that arise as organizations expand their disclosure and reporting activities to include social and environmental goals and performance.

[48] See ISO 26000 Communication Protocol, https://www.iso.org/files/live/sites/isoorg/files/standards/docs/en/iso_26000_comm_protocol_n15.pdf

Individual attorneys, in-house legal departments and law firms can be affected by CSR in several ways. First of all, all attorneys, regardless of whether they work on their own or for an organization, are subject to various professional ethics codes with respect to the work that they perform on behalf of their clients and the role that they play in the justice system. Second, lawyers may be requested by clients as suppliers of services to submit themselves to the client's CSR policy. For in-house lawyers this means formally acknowledging and agreeing to the code of conduct and other CSR-related policies of their employers. Prospective candidates for law firm positions are increasingly asking firms about their own CSR policies (e.g., in areas such as diversity and work-life balance) and activities and those of the clients that have the most substantial economic impact on the firm. Third, lawyers can receive requests from their clients for advice on development and implementation of CSR and overall compliance plans and, in fact, compliance is an area of CSR in which lawyers are already heavily involved on a day-to-day basis. Fourth, lawyers are often asked to assist client in performing audits to verify compliance. Finally, lawyers, either on their own or as part of a group (i.e., other lawyers from their in-house legal department or law firm or legal colleagues from a bar association), may engage in activities intended to have an environmental and/or social impact such as provide pro bono legal services to client otherwise unable to afford a lawyer who have claims based on a violation of their human rights or damage to health and/or property due to environmentally irresponsible actions of others.[49]

Even if a lawyer is not engaged directly in some sort of CSR-related activity, he or she needs to be aware of the role that environmental and social activists are playing in the marketplaces in which their clients are operating and be able to counsel their clients on the litigation and reputational risks associated with failing to adhere to CSR norms and practices. Lawyers must be familiar with the impact that CSR is having on the type and magnitude of claims based on the negligence of their client, such as the willingness of judges and juries to impose substantial economic sanctions on defendants found to have caused injuries to people and damage to properties due to failure to take their environmental and/or social responsibilities seriously. Transactional lawyers must be mindful of the impact that development projects and acquisitions may have on local communities and counsel their clients on the social aspects of consolidation of workforces and making changes to workplace practices and benefits. Lawyers should also expect to be involved in corporate governance and counseling boards about the role that sustainability plays in their oversight responsibilities; monitoring the activities of supply chain partners; and crisis management in the event that a client, either recklessly or accidently, engages in activities that cause harmful environmental and/or social impact. All of this flows from the growing belief that companies are more than just legal entities and are citizens of the world in which they operate with duties and responsibilities to others and vulnerability to being held financially and criminally accountable for poor citizenship.

[49] Adapted from Corporate Social Responsibility and the Role of the Legal Profession: A Guide for European Lawyers (Council of Bars and Law Societies of Europe, June 2008).

A June 2015 publication prepared under the auspices of the UN Global Compact included the following recommendations for general counsels with respect to their role in the corporate sustainability initiatives of their organizations[50]:

- ***Embrace the breadth of the role:*** Reflect on key drivers of change; create "heat" map of drivers against corporate strategy; identify and assess gaps and trends; and develop "legal model" change plan based on corporate priorities
- ***Prioritize sustainability:*** Mirror corporate emphasis on sustainability within strategic priorities for legal; regularize on your agenda; and commit financial and human resources to capacity-build within legal
- ***Communicate expectations to third party advisers:*** Communicate to external advisers about your strategic priorities; reinforce your expectations about the support and engagement needed from them; have an open dialogue about strengths and weaknesses; and discuss specific changes in approach and team
- ***Build internal credibility:*** Create legal SWOT ("strengths, weaknesses, opportunities and threats") with business and sustainability experts; agree on areas of focus for legal with the business; agree on plan of engagement for legal with relevant constituencies' operations; and formally reassess progress with business periodically to underscore engagement
- ***Redefine career path for legal:*** Articulate that an increased focus on corporate sustainability is key to career development given underlying trends; and assess progress annually and communicate as part of core role
- ***Establish KPIs and rewards:*** Tie sustainability KPIs to team taking a "broadened" role and engagement; agree objective and subjective elements with business and team; create financial and nonfinancial incentives;
- ***Create integrated objectives with business units:*** Objectives for cross-functional teams should be integrated into annual performance assessment of legal team members
- ***Drive change from the top:*** Proactively engage with C-Suite/Board on sustainability issues; communicate strategic importance of corporate sustainability with legal team
- ***Peer-to-peer engagement:*** Discuss the drivers of change and broadened role with other GCs or "C-Suite" executives; discuss approaches to driving corporate sustainability from legal, including through the use of KPIs; capture and share best practices
- ***Embed within legal strategy:*** Identify aspects of key sustainability issues where legal can engage; embed points of engagement on corporate sustainability within legal department strategy/objectives
- ***Engage with third parties:*** Engage with NGOs to develop expertise and credibility; set the tone within legal that "balanced engagement" is a key corporate strategy; and encourage legal team to be part of stakeholder engagement strategy from earliest stages

[50] Guide for General Counsel on Corporate Sustainability (UN Global Compact and Linklaters LLP, June 2015). See also Corporate Social Responsibility and the Role of the Legal Profession: A Guide for European Lawyers (Council of Bars and Law Societies of Europe, June 2008).

- ***Communicate initiatives and engagement regularly:*** Regularize reporting to GC on sustainability/engagement issues; communicate efforts/initiatives of legal team periodically; and use both formal and informal mechanisms to communicate
- ***Build familiarity in legal team:*** Dedicate legal resources to corporate sustainability issues; regularize internal engagement on sustainability issues; focus on practical application of "traditional" legal skills; and engage in skills development and training
- ***Build cross-functional teams:*** Embed legal expertise in key areas; encourage early and regularized engagement by legal team; elevate issues/developments across internal "silos"; and periodic "progress" reports to GC/legal team

§15 Ethical management

Almost by definition, one of the foundational principals of authentic CSR is ethical management and it is imperative for businesses to take ethics seriously and establish and enforce ethical standards for current and future workers.[51] Defining "ethics" and identifying "ethical behavior" are not easy tasks. It is has been said that, in general, ethics can be defined as a set of beliefs about right and wrong, good and bad, and business ethics is the application of right and wrong, good and bad in a business setting.[52] Daft and Marcic defined ethics as "the code of moral principles and values that governs the behaviors of a person or group with respect to what is right or wrong" and explained that ethics can be seen as setting the standards for what is good or bad in conduct and decision making when the conduct or decision may harm or benefit others.[53] The Institute of Business Ethics has defined "business ethics" as the application of ethical values to business behavior.

The concept of "ethics management" has been described as a managerial function to regulate the conduct or behavior of the employees from top to bottom through written code or unwritten code and as a managerial tool to enforce integrity of employees where codified rules and regulations are absent yet it is necessary for employees and the company to follow reasonable ethical standards or well-founded standards of right and wrong that prescribe what humans ought to do.[54] Managerial ethics include principal-based ethics that include what is considered fair and ethical in the scope of the workplace (e.g., department boundaries and the use of company equipment), policy-based ethics that cover responses to various situations that arise in the course of day-to-day workplace activities such as conflicts of interest and responding to gifts from vendors and other business partners and strategic-based ethics which includes decisions made with regard to the plans that the company intends to pursue to achieve its financial goals and objectives (e.g., deciding whether to outsource manufacturing activities to reduce costs even though

[51] For further discussion of ethical management, see "Management: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).
[52] M. Kelly, J. McGowen and C. Williams, BUSN (Independence, KY: South-Western Publishing Company, 2014), 53-54.
[53] R. Daft and D. Marcic, Understanding Management (5th Edition) (Mason, OH: South-Western Publishing Co., 2006), 120.
[54] J. Thangasamy, Meaning of Ethics Management, http://www.academia.edu/4152189/Meaning_of_Ethics_Management [accessed September 1, 2016]

it would mean laying off works in the community in which the company is headquartered).[55]

Ethics and ethical behavior has always been a concern for managers; however, ethical issues have become even more important over the years beginning in the early 2000s when news of corporate scandals based on fraud, financial dishonesty and personal greed of senior executives emerged from major US corporations such as Enron, Arthur Andersen, Adelphia, WorldCom and Tyco, In the aftermath of the distressing events at these companies and many others, surveys showed that large numbers of Americans believed that questionable business practices were widespread and that the honesty of CEOs should be questioned. A significant percentage of survey respondents reported that they had personally observed their managers making false or misleading promises to customers, discriminating in hiring or promotions and violating employees' rights.[56] In addition, while most persons would never condone cheating, stealing or lying, the reality is that individuals and companies engage in unethical behavior on a daily basis, often with the knowledge, and outright endorsement, of management. Another factor that has made business ethics even more complex and challenging is the accelerating globalization of business activities that has pushed executives, managers and employees to interact with counterparts in foreign countries where the answers to questions about what constitutes ethical behavior may be quite different. For example, numerous surveys have shown that a number of countries continue to consider bribery an acceptable, even necessary, practice in order to conduct business.

Developing an ethical corporate culture reinforced by codes of ethical conduct is a way for companies to intelligently bridge the gap between the domains of codified law and free choice. Compliance with the rule of law is necessary for companies to avoid fines and other sanctions that can cripple their businesses, and sometimes put them out of business altogether. However, it is a mistake to assume that if a law does not apply then companies have a free choice to act as they wish. Ethically-focused companies recognize the middle domain and the role that ethics plays in contributing to the greater social good. A well-written code of ethics supported by a strong ethical corporate culture eliminates the need for writing more formal laws and reduces the dangers associated with allowing executives, managers and employees to make choices based solely on their personal interests.[57] That said, while laws stipulate what is right or wrong—legal or illegal—a code of ethics cannot fully resolve an ethical dilemma on its own and at best provides individuals and companies with tools to identify and understand the dilemma and guidelines for coming to ethical decisions.

§16 --Universal standards for ethical behavior

[55] A. Burke, What Are Managerial Ethics, http://smallbusiness.chron.com/managerial-ethics-36425.html [accessed September 1, 2016]
[56] R. Daft and D. Marcic, Understanding Management (5^{th} Edition) (Mason, OH: South-Western Publishing Co., 2006), 120.
[57] Id. at 121.

Given the fallibility of laws and regulations as ethical standards and the tendency of people to vary their perceptions of ethical conduct based on the situation, there is a real need for universal ethical standards that everyone can understand and apply in all of the personal and business activities and dealings they encounter. It is certainly fair to question whether such universal standards can be identified for diverse social groups, such as the citizens of a country like the United States; however, Kelly et al. suggested that a good starting point came out of the efforts of educators, community leaders and ethicists working under the auspice of the nonprofit, nonpartisan organization Character Counts. The working group identified the following six core values that they believed transcended political, religious, ethnic or class differences[58]:

- Trustworthiness: Be honest; don't deceive, cheat, or steal; do what you say you'll do.
- Respect: Treat others how you'd like to be treated; be considerate; be tolerant of differences.
- Responsibility: Persevere; be self-controlled and self-disciplined; be accountable for your choices.
- Fairness Provide equal opportunity; be open-minded; don't take advantage of others.
- Caring: Be kind and compassionate; express gratitude.
- Citizenship: Contribute to the community; protect the environment; cooperate whenever feasible.

§17 --Ethical leadership

An ethics-based organizational culture is essential; however, surveys have repeatedly found that the "tone at the top", the actions and behaviors of organizational leaders, is possibly the greatest influencer of organizational ethics. Everyone throughout the organization, managers and employees, follow the actions of the chief executive officer ("CEO") and quickly hear of ethical lapses. As such, it is essential for the CEO and the other members of his or her executive team to make a public commitment to ethical behavior and decision making and proactively communicate with others in the organization on ways in which they can and should act to further the organization's ethical values and standards. Kelly et al. quoted a former CEO of Deere, a widely recognized as an ethical and highly performing enterprise, who said that the tone at the top needed to be reinforced by the actual behavior observed by suppliers, dealers, customers, and employees and that ethical words were not effective unless they were "backed up with documented practices, processes, and procedures, all understood around the globe".[59] In addition, organizational leaders should create and rigorously administer evaluation and reward systems that take into account ethical goals and standards when decisions are made regarding compensation and promotion. At the same time, codes of ethics should be vigorously enforced and it should be clear to everyone in the

[58] M. Kelly, J. McGowen and C. Williams, BUSN (Independence, KY: South-Western Publishing Company, 2014), 54 (citing "Universal Ethical Standards" from the Josephson Institute's Report Card on the Ethics of American Youth Summary (2009)).
[59] Id. at 57.

organization that failure to act in an ethical manner will lead to swift and severe disciplinary action.[60]

Setting the right tone means not only visible positive actions such as supporting local charities but also consciously avoiding actions and behaviors that send the wrong message such as ostentatious use of company airplanes, if there are any; expensive "retreats" for members of the executive team; gaudy refurbishing of the personal offices of executives; excessively large severance packages for executives; and spending lavish amounts of company funds on entertainment and recreation.[61] Some executives justify these types of actions by arguing that they are immaterial when balanced against the company's overall emphasis on socially responsible products and business practices; however, one misstep can undo years of effort to build a company's brand as an ethical organization. CEOs have also been known to engage in highly unethical behavior that did not necessarily generate immediate benefits for themselves but was calculated to create a competitive advantage for the company. One example is John Mackey, the co-CEO and co-founder of the well-known socially responsible branded company Whole Foods, who was found to have made literally thousands of anonymous posts on social media over several years promoting Whole Foods and disparaging a competitor to drive down that company's value to the point where Whole Foods could launch a takeover bid at advantageous pricing.[62]

While direct responsibility for the "tone at the top" lies with the CEOs and others on the front lines of the company's daily business operations, the board of directors also has a fiduciary and ethical duty to the shareholders and other stakeholders of the company to be mindful of actions and transactions that may be perceived as being ethically unsound. In fact, to the extent that one of the traditional, albeit arguably narrow, duties of the board is to protect and enhance shareholder value, knowingly countenancing acts and contractual relationships with officers that reflect poorly on the company's reputation may rightly be construed as a fiduciary failure on the part of directors. For example, shareholders, employees and other stakeholders might reasonably look askance on directors who have approved gaudy severance packages for CEOs who oversaw extended periods of poor performance and who appear to sit idly by as the media releases embarrassing reports of CEO expenses and/or unethical practices in the company supply chain come to light.

§18 --Code of ethics

One of the elements of a strong ethically-focused organizational culture is formal documents that provide concrete guidelines for ethical behavior and making ethical decisions. Companies of all sizes have taken to creating formal ethics programs and the centerpiece of these programs is a written code of ethics that serves as a formal statement

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[60] R. Daft and D. Marcic, Understanding Management (5th Edition) (Mason, OH: South-Western Publishing Co., 2006), 141.
[61] M. Kelly, J. McGowen and C. Williams, BUSN (Independence, KY: South-Western Publishing Company, 2014), 56.
[62] Id. at 57.

of the organization's values concerning ethics and social issues.[63] The code of ethics explicitly announces the company's intent to act in an ethical manner in furtherance of its core values and lays out overriding principals and specific rules and procedures that employees are expected to follow when confronted with an array of common situations that raise ethical dilemmas. The code of ethics should be supported by continuous communications to employees and appropriate training programs.

Codes can be presented using several different approaches and formats. For example, the code of ethics for some organizations are essentially a list of core principles intended to define fundamental values that organizational leaders hope to infuse into the organization's culture. Each core principle is accompanied by a brief description. Boeing's principles cover the following[64]:

- *Integrity*: We take the high road by practicing the highest ethical standards and honoring our commitments. We take personal responsibility for our own actions.
- *Quality*: We strive for first-time quality and continuous improvement in all that we do to meet or exceed the standards of excellence stakeholders expect of us.
- Safety: We value human life and health above all else and take action accordingly to maintain the safety of our workplaces, products and services. We are personally accountable for our own safety and collectively responsible for each other's safety. In meeting our goals for quality, cost and schedule, we do not compromise safety.
- *Diversity and Inclusion*: We value the skills, strengths and perspectives of our diverse team. We foster a collaborative workplace that engages all employees in finding solutions for our customers that advance our common business objectives.
- *Trust and Respect*: We act with integrity, consistency, and honesty in all that we do. We value a culture of openness and inclusion in which everyone is treated fairly and where everyone has an opportunity to contribute.
- *Corporate Citizenship*: We are a responsible partner, neighbor and citizen to the diverse communities and customers we serve. We promote the health and wellbeing of Boeing people, their families and our communities. We protect the environment. We volunteer and financially support education and other worthy causes.
- *Stakeholder Success*: By operating profitably and with integrity, we provide customers with best-value innovation and a competitive edge in their own markets; enable employees to work in a safe, ethical environment, with a highly attractive and competitive mix of pay and benefits, and the ability to further share in the company's success; reward investors with increasing shareholder value; conduct business lawfully and ethically with our suppliers; and help to strengthen communities around the world.

Companies may recite certain core principals and commitments regarding their operations such as eliminating all forms of forced and compulsory labor; condemning work by children under the age of 15, except for training; eliminating all unlawful

[63] R. Daft and D. Marcic, Understanding Management (5th Edition) (Mason, OH: South-Western Publishing Co., 2006), 142.
[64] http://www.boeing.com/principles/vision.page [accessed July 27, 2016]

discrimination with respect to hiring and job performance; promoting individual success; ensuring a favorable working environment at all company sites; promoting local employment and respect local laws; taking initiatives in favor of more responsible environmental practices; fighting corruption in all forms; guaranteeing the security of the company's assets and those of its clients and customers; and ensuring the confidentiality of client and customer information and respecting data privacy laws.[65]

The well-known Johnson & Johnson "Credo" takes a different approach and covers the company's duties and responsibilities to four key groups of stakeholders[66]:

- The doctors, nurses and patients, mothers and fathers and all others who use the company's products and services: To this group the duties include providing high quality, reasonable prices, prompt and accurate service and an opportunity for suppliers and distributors to make a fair profit.
- Employees: All of the men and women who work for the company are entitled to respect for their dignity, recognition for their merit, a sense of security in their jobs, fair and adequate compensation and clean, orderly and safe working conditions.
- The communities in which the company lives and works and the world community: The company's obligation is to act as a good citizen, support goods works and charities, encourage civil improvements and better health and education, protect the environment and bear its fair share of taxes.
- Stockholders: Stockholders are entitled to a fair return on their investment and the company must be make a sound profit in order to sustain its operations and have the ability to experiment with new ideas, engage in research and innovative programs, purchase new equipment, provide new facilities, launch new products and fund reserves that can be relied upon in adverse times.

Other organizations implement codes of ethics or conduct that are based on setting out policies and procedures that members of the organization are expected to following in specific ethical situations. As is the case with the principle-based approach, the intent is that the code will serve as a foundation for the workplace culture and a guide for conducting business affairs in an ethical manner. For example, the code of ethics or conduct may require that employees:

- Not engage in any activity that might create a conflict of interest for the employee or the organization and inform his/her management of potential conflicts of interests that may give the impression of influence over his/her judgment and actions
- Not take advantage of their organizational position to seek personal gain through the inappropriate use of organizational or non-public information or abuse such position
- Follow all restrictions on use and disclosure of confidential information including following all requirements for protecting organizational information and ensuring that non-organizational proprietary information is used and disclosed only as authorized by the owner of the information or as otherwise permitted by law

[65] Adapted from Ethics Charter of Cegedim as in effect as of March 2011.
[66] http://www.jnj.com/about-jnj/jnj-credo/ [accessed July 26, 2016]

- Ensure that gifts and invitations received or offered have a symbolic value in accordance with acceptable local practices, regulations and customs
- Apply organizational communication rules when communicating on behalf of the organization, particularly in relation to journalists and analysts, and make refrain from making public statements that contradict with the organization's stated objectives and operating philosophy.
- Observe fair dealing in all of my transactions and interactions
- Protect all organizational, customer and supplier assets and use them only for appropriate organization approved activities
- Without exception, comply with all applicable laws, rules and regulations
- Promptly report any illegal or unethical conduct to management or other appropriate authorities

Another approach in drafting a code of ethics or conduct is to include a framework that employees can use to evaluate and resolve an ethical issue. For example, one organization urged its employees to go through the following questions[67]:

- Is this action legal?
- Does it comply with company policies and/or good business conduct?
- Is it something I would not want my supervisors, fellow employees, subordinates or family to know about?
- Is it something I would not want the general public to know about?

In addition to these questions, employees were provided with specific policies and procedures covering conflicts of interest, unfair competition, relations with customers and suppliers, protection of confidential information and acceptance of gifts and favors.

While the specifics the code of ethics will vary substantially among organizations, it is possible to identify certain core characteristics and elements of an effective code that will actually be followed by everyone within the organization. Kelly et al. argued that organizations should take each of the following steps in order to ensure that their efforts to create a meaningful and impactful code of ethics are successful[68]:

"1. Get executive buy-in and commitment to follow-through. Top managers need to communicate—even over-communicate—about the importance of ethics. But talking works only when it's backed up by action: senior management must give priority to keeping promises and leading by example.

2. Establish expectations for ethical behavior at all levels of the organization, from the CEO to the nighttime cleaning crew. Be sure that outside parties such as suppliers, distributors, and customers understand the standards.

[67] R. Daft and D. Marcic, Understanding Management (5th Edition) (Mason, OH: South-Western Publishing Co., 2006), 143 (citing the code of ethics of Journal Communications, the parent company of *The Milwaukee Journal* newspaper).

[68] M. Kelly, J. McGowen and C. Williams, BUSN (Independence, KY: South-Western Publishing Company, 2014), 58.

3. Integrate ethics into mandatory staff training. From new-employee orientation to ongoing training, ethics must play a role. Additional, more specialized training helps for employees who face more temptation (e.g., purchasing agents, overseas sales reps).
4. Ensure that your ethics code is both global and local in scope. Employees in every country should understand both the general principles and the specific applications. Be sure to translate it into as many languages as necessary.
5. Build and maintain a clear, trusted reporting structure for ethical concerns and violations. The structure should allow employees to seek anonymous guidance for ethical concerns and to report ethics violations anonymously.
6. Establish protection for whistleblowers, the people who report illegal or unethical behavior. Be sure that no retaliation occurs, in compliance with both ethics and the Sarbanes-Oxley Act. Some have even suggested that whistle-blowers should receive a portion of the penalties levied against firms that violate the law.
7. Enforce the code of ethics. When people violate ethical norms, companies must respond immediately and—whenever appropriate—publicly to retain employee trust. Without enforcement, the code of ethics becomes meaningless."

§19 --Organizational structures and systems

In addition to leadership, organizational culture, codes of ethics and compliance programs, organizations striving to improve their ethical profile create various organizational structures and systems to help put values into practice and shape and influence ethical behavior throughout the organization. One structural move is the creation of an ethics committee and the appointment of a chief ethics officer. The role of the ethics committee, which is composed of executives from different functional areas, is to oversee the company's ethics and this includes interpreting, clarifying and communicating the codes of ethics, resolving thorny ethical issues and, quite importantly for the signals sent to other managers and employees, disciplining wrongdoers. The activities, duties and responsibilities of the committee should be laid out in a charter that is vetted and approved by the board of directors and distributed to all executives, managers and employees. Such a charter might provide for the committee to[69]:

- Oversee the company's ethics initiatives;
- Oversee and help shape the definition of the company's value proposition;
- Oversee management's efforts to enhance and communicate the company's value proposition, evaluate management's progress and provide feedback on these efforts;
- Review and assess the company's organizational culture to determine if further enhancements are needed to foster ethical decision-making by employees;
- Oversee management's efforts to support ethical decision-making in the organization, evaluate management's progress and provide feedback on these efforts;
- Review and/or provide input to management on the implementation and effectiveness of the company's ethics initiatives, including training on ethical decision-making and the processes for the reporting and resolution of ethics issues;

[69] Adapted from the Citigroup Inc. "Ethics and Culture Committee Charter" as in effect as of January 29, 2016. See http://www.citigroup.com/citi/investor/data/ethicsculturecharter.pdf [accessed July 27, 2016].

- Review the company's code of ethics at least annually and make recommendations to management regarding changes to the codes;
- Assess whether the company's code of ethics and the company's other internal ethical policies and guidelines instill appropriate ethical behavior in the company's organizational culture, business practices and employees;
- Approve any waivers to the code of ethics;
- Review employee training materials regarding the code of ethics prior to distribution to company personnel;
- Advise management on the company's response to behavioral issues and its communications with employees on these issues; and
- Make recommendations to the personnel and compensation committees of the board of directors on possible employee compensation actions, such as "clawbacks" and other remedies, to reward ethical behavior and discourage unethical behavior.

The ethics committee is led by a chief ethics officer, who is an executive of the company with responsibility for overseeing all aspects of ethics including establishing and broadly communicating standards, ethics training, dealing with exceptions or problems, advising senior managers as they make ethical decisions, providing counseling for employees faced with ethical dilemmas and establishing and administering confidential hotlines that managers and employees can use to report behavior they believe to be unethical or otherwise questionable. In some cases the chief ethics officer is also the chief compliance officer and thus responsible for legal compliance; however, it is common to separate these two positions given that law and ethics are really separate domains of human behavior. Chief ethics officer is a full-time position and companies generally budget for creation and staffing of an ethics office to support the activities described above, provide the ethics committee with reports and other relevant information and ensure that ethics becomes an accepted part of the operations of the company.[70] A job description should be prepared for the chief ethics officer and typically includes duties and activities such as the following:

- Lead and provide oversight of the company's ethics program to assure compliance with legal, regulatory, policy and ethical requirements impacting the company;
- Develop, revise as necessary and monitor implementation of the company's ethics plan, consistent with emerging best practices in the company's industry;
- Provide oversight of the company's ethics risk assessment process;
- Develop, revise as necessary and monitor implementation of the company's ethics program policies;
- Provide oversight of the company's ethics program training and education;
- Provide oversight of the company's ethics hotline and assure that questions and concerns raised through the hotline are promptly and appropriately addressed;
- Provide oversight of all ethics-related investigations, working with outside counsel as necessary;

[70] A number of support resources are available for persons serving as chief ethics officer including the Ethics and Compliance Officer Association.

- Chair the company's ethics committee;
- Provide ethics program updates at regular meetings of the board of directors and/or the committee of the board charged with oversight of ethics issues;
- Provide oversight for periodic, independent assessment of the effectiveness of the company's ethics program;
- Apprise the CEO, senior management and members of the board of directors about the company's ethics program; trends, issues, and best practices in ethics programs;
- Unless prohibited by law or in deference to an ongoing investigation by a law enforcement agency, apprise the board of directors and/or the committee of the board charged with oversight of ethics issuer in a timely manner of actual or alleged instances of material fraud by employees, actual or alleged criminal acts perpetrated by an executive, manager or employee of the company, matters required to be referred to or otherwise involving a governmental entity (e.g. a Federal, State or local oversight agency), other ethics and compliance related matters that pose a high probability of garnering significant negative publicity or media attention and other significant ethics and compliance related matters that in the judgment of the ethics officer warrant reporting;

Reporting channels for the chief ethics officer should be carefully considered. In general, the position reports to the CEO with a dotted-line reporting structure to the chair of the committee of the board of directors responsible for overseeing ethics issues, which may be the audit committee or a separate ethics committee that also has authority over related areas such as compliance and/or corporate governance. If an ethics issue arises with respect to the CEO and/or other members of the executive team, the chief ethics officer should report the matter directly to the appropriate board member and seek guidance from the relevant board committee as to the steps that should be taken with respect to notifying the CEO.

Ethics training is one of the most important activities for the chief ethics officer and his or her staff and companies implement training programs as a means for assisting executives, managers and employees in identifying ethical issues and applying the principles of the code of ethics to their day-to-day activities. Larger companies typically require all employees to participate in ethics training at least annually and many firms, large and small, have training events more frequently (e.g., weekly or monthly meetings to discuss workplace ethics and role play the proper steps for assessing commonplace ethical dilemmas). Of course, a training program will only be effective if organizational leaders support and practice the principles that are covered in the program.

One area where the law has moved over the soft line between the legal and ethical domains is "whistleblowing", which is disclosure by managers or employees of illegal, immoral, illegitimate, dangerous or unethical practices by or on behalf of their employer. For a long time, whistleblowers had no practical internal path for reporting wrongdoing and often made their disclosures to outside parties such as regulators, legislators or reporters. This was often done because whistleblowers feared that internal reporting would not be taken seriously and/or would jeopardize their positions with the company.

Recently, however, companies have begun to see that whistleblowing is a benefit to the company and have established procedures to make it easier for reports to be filed and, quite importantly, protect whistleblowers from retaliation. While these steps have been positive, and protection from retaliation is now mandated by federal and state laws, whistleblowing remains a risky proposition for employees and persons reporting issues are still often seen as being disgruntled troublemakers. Nonetheless, creating an atmosphere in which employees feel free to come forward with concerns is essential for an effective ethics program since there will always be mistakes and/or people who simply are not interested in following the ethical path.

Larger companies have established separate departments or offices of ethics staffed by professionals who provide support in all aspects of their company's ethics initiatives. Staffing for these units typically focuses on people with backgrounds in human resources management, law and accounting. Working under the supervision of the chief ethics officer, personnel concentrate their efforts on educating executives, managers and employees about the company's code of ethics and related procedures. Large companies also hire professionals to work on their CSR and environmental initiatives. Members of the CSR group need to have good communications skills as they are typically expected to spend a good deal of time working with external groups such as environmental activists and establishing and maintaining dialogue with the communities in which the company is operating. CSR professionals may also be involved in auditing factories of supply chain partners in foreign countries to determine if they are being operated in compliance with the company's standards and local laws.

§20 Alternative legal architectures for sustainability-oriented businesses

Another potential impediment for sustainability initiatives that require investment of resources in activities that may appear to be unrelated to the traditional focus of corporations on maximizing profits for the stockholders is the fiduciary duties of the directors of the corporation. For example, when Henry Ford proposed to use surplus profits to hire additional employees to fight unemployment and increase benefits for employees rather than distribute such profits to the stockholders of Ford Motors, the Michigan Supreme Court, writing in 1919, found that Ford's actions would breach his fiduciary duty of good faith to the corporation.[71] The Court explained: "A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non-distribution of profits among stockholders in order to devote them to other purposes." The Court also made it clear that "it is not within the lawful powers of a board of directors to shape and conduct the affairs of a corporation for the merely incidental benefit of shareholders and for the primary purpose of benefiting others".

[71] D. Sampselle, Sustainable Organization Design Principles, OTMT 608.13. http://www.brevolutionconsulting.com/assets/Sustainable-Organization-Design-Principles.pdf [accessed December 6, 2016], 11.

The fiduciary duties described in cases such as the one described above complicate efforts of directors to authorize sustainability initiatives that, by their very nature, are intended to create benefits for stakeholders other than stockholders that may well adversely impact stockholder value, at least in the short term, and deprive stockholders of distributions of surplus profits.[72] In an effort to free directors of these constraints, and thus promote more aggressive and entrepreneurial sustainability efforts, lawmakers in more than half of the states have passed legislation that permit organizers to form special purpose corporations (generally referred to as "benefit corporations") that are explicitly allowed to operate in a responsible and sustainable manner as a means for not only maximizing stockholder value but also providing benefits to society in general.[73]

Maryland was the first state to adopt legislation recognizing a "benefit corporation", which the statute described as a corporation formed to create a material positive impact on society; consider how decisions affect employees, community and the environment; and publicly report their social and environmental performance using established third-party standards."[74] In Maryland, a benefit corporation must create a "general public benefit", which was defined as a material, positive impact on society and the environment, as measured by a third-party standard, through activities that promote a combination of specific public benefits including providing individuals or communities with beneficial products or services; promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; preserving the environment; improving human health; promoting the arts, sciences, or advancement of knowledge; and/or increasing the flow of capital to entities with a public benefit purpose.

While it is conceivable that a traditional for-profit corporation could pursue many of the "public benefit" activities mentioned above, the actions of the directors would be hamstrung by above-described case law that has clearly and continuously proclaimed that the directors' duty of good faith to the corporation requires that they carry on the business of the corporation so as to maximize the profits of the stockholders. The statutes creating benefit corporations allow directors to consider the interests of stakeholders other than the stockholders. For example, while the Maryland statute did not create a separate duty of the director to the beneficiaries of the public benefit purposes of the corporation, it did mandate that directors must consider the effects of any action or decision not to act not only on the stockholders but also on the employees and workforce of the benefit corporation and the subsidiaries and suppliers of the corporation; the interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit

[72] For further discussion of fiduciary duties of directors, see "Governance: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

[73] For further discussion of benefit corporations, see "Benefit Corporations: A Guide for Sustainable Entrepreneurs" in "Governance: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

[74] D. Sampselle, Sustainable Organization Design Principles, OTMT 608.13. http://www.brevolutionconsulting.com/assets/Sustainable-Organization-Design-Principles.pdf [accessed December 6, 2016], 12-13 (see Maryland Corporations and Associations Article §§ 5-6C-01 through -08).

corporation; community and societal considerations, including those of any community in which offices or facilities of the corporation or the subsidiaries or suppliers of the benefit corporation are located, and the local and global environment.

When Delaware, the recognized leader in statutory and case law innovations in the area of corporate law, passed its statute in 2013 recognizing “public benefit corporations”, the Governor made the following observations[75]:

> “Delaware public benefit corporations will function like and enjoy all the same benefits as traditional Delaware corporations and they will have three unique features that make them potential game changers. These three features concern corporate purpose, accountability, and transparency.
>
> Corporate Purpose: Delaware public benefit corporations will have a corporate purpose ‘to operate in a responsible and sustainable manner’. In addition, to provide directors, stockholders, and ultimately the courts, some direction, they are also required to identify in their certificate of incorporation a specific public benefit purpose the corporation is obligated to pursue. The overarching language helps ensure that a public benefit corporation serves the best long term interests of society while it creates value for its stockholders. The requirement to identify a specific public benefit purpose gives managers, directors, stockholders, and the courts, important guidance to ensure accountability, while preserving flexibility for business leaders and their investors to choose the specific public benefit purpose they feel will drive the greatest total value creation.
>
> Accountability: Unlike in traditional corporations, whose directors have the sole fiduciary duty to maximize stockholder value, directors of public benefit corporations are required to meet a tri-partite balancing requirement consistent with its public benefit purpose. Directors are required to balance ‘the pecuniary interest of stockholders, the best interests of those materially affected by the corporation’s conduct, and the identified specific public benefit purpose.’
>
> Transparency: Delaware public benefit corporations are required to report on their overall social and environmental performance, giving stockholders important information that, particularly when reported against a third party standard, can mitigate risk and reduce transaction costs. Given the trend in public equity markets toward integrated ESG (Environmental, Social and Governance) reporting and the growing private equity market for direct impact investing, this increased transparency can help investors to aggregate capital more easily as they are able to communicate more effectively the impact, and not just the return, of their investments.”

[75] J. Markell, “A New Kind of Corporation to Harness the Power of Private Enterprise for Public Benefit”, Huffington Post (July 22, 2013), http://www.huffingtonpost.com/gov-jack-markell/public-benefit-corporation_b_3635752.html [accessed December 7, 2016]

California is another state that has promoted the creation of benefit corporations. For many years that state has recognized consumer cooperative corporations, small business corporations and business and industrial corporations. Recently, however, the choices have been expanded to include two additional corporate entities: benefit corporations and social purpose corporations. In California, a "benefit corporation" may be formed for the purpose of creating general public benefit, defined as a material positive impact on society and the environment, taken as a whole, as assessed against a third-party standard that satisfies certain requirements.[76] A benefit corporation may also identify one or more specific public benefits as an additional purpose of the corporation including, without limitation, providing low-income or underserved individuals or communities with beneficial products or services, promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business, preserving the environment and improving human health.

Directors of California benefit corporations are required to consider the impacts of any action or proposed action upon specified considerations including, among others, the shareholders and employees of the corporation, customers of the corporation who are beneficiaries of the general or specific public benefit purposes and the environment. In addition, directors of benefit corporations are allowed to consider the impacts of those actions on, among other things, the resources, intent, and conduct of any person seeking to acquire control of the benefit corporation. California benefit corporations must prepare an annual benefit report which includes, among other things, a statement indicating whether, in the board's opinion, the benefit corporation failed to pursue its general public benefit and any specific public benefit, a description of the ways in which the benefit corporation pursued those benefits, the extent to which those benefits were created and the process and rationale for selecting the third-party standard used to prepare the benefit reports.

The formation and operations of California social purpose corporations is governed by the California Social Purpose Corporations Act ("SPCA")[77], which provides that a social purpose corporation may be formed for special purposes, in addition to any other lawful purpose, including, but are not limited to, charitable and public purpose activities that could be carried out by a nonprofit public benefit corporation.[78] The SPCA requires management and directors to specify objectives for measuring the impact of the social purpose corporation's efforts relating to its special purpose, and to include an analysis of those efforts in annual reports, together with specified financial statements, to shareholders and requires that specified information be made publicly available.[79]

A handful of other states have adopted similar legislation covering benefit corporations, sometimes referred to as "B corporations", and there viability will depend in large part on

[76] See Ca. Corp. Code §§ 14600 et seq.
[77] See Ca. Corp. Code §§ 2500 et seq..
[78] Ca. Corp. Code § 2602(b)(2).
[79] Ca. Corp. Code §§ 3500.

the development of case law regarding the permissible purposes of such corporations and the flexibility afforded to directors in discharging their fiduciary duties.

While benefit corporations have attracted a significant amount of attention, there have been other attempts to create and popularize alternative business structures for social entrepreneurship. For example, a "L3C", or "low-profit limited liability company", is a for-profit, social enterprise venture that has a stated goal of performing a socially beneficial purpose, not maximizing income, which has been recognized by statute in a handful of states and tribal nations. The first state to recognize the L3C was Vermont, which defined it to mean a limited liability company ("LLC") organized for a business purpose that satisfies and is at all times operated to satisfy each of the following requirements: (A) the company significantly furthers the accomplishment of one or more charitable or educational purposes and would not have been formed but for the company's relationship to the accomplishment of charitable or educational purposes; and (B) no significant purpose of the company is the production of income or the appreciation of property; provided, however, that the fact that a person produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property. Proponents of the L3C have touted the entity as embodying the operating efficiencies of a for-profit company along with a reduced regulatory structure. As an LLC, a L3C is able to bring together foundations, trusts, endowment funds, pension funds, individuals, corporations, other for-profits and government entities into an organization designed to achieve social objectives while also operating according to for-profit metrics. The L3C can also take advantage of the LLC structure to operate with the flexibility of membership and organization needed to cover a wide variety of social enterprise situations while including the liability protection of a corporation.[80]

Commentators have also suggested that the operating agreement of a traditional Delaware LLC may be drafted to create the same characteristics of purpose, accountability and transparency as benefit corporations.[81] When the business is being operated as a traditional for-profit corporation the charter documents may be drafted to give control over the socially responsible mission of the company to a single class of shareholders,

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[80] For additional information on the L3C, see the website of Americans for Community Development (https://americansforcommunitydevelopment.org/). See also M. Carreira da Cruz, "Legal Innovation and Social Entrepreneurship Formats", American International Journal of Contemporary Research, 2(10) (October 2012), 59 (discussing the L3C and efforts to create a new corporate format dedicated to social entrepreneurship in foreign countries such as Belgium, the United Kingdom and Luxemburg).

[81] F. Alexander, E. Klinger-Wilensky and M. Divincenzo, "Certificate of Incorporation (DE): Public Benefit Corporation Provisions" (Thomson Reuters: Practical Law, 2016). Alexander et al. noted: "…the LLC structure is sufficiently flexible to create a benefit corporation-like arrangement through private ordering. In fact, many LLCs are already certified as "B Corps" (*e.g.*, Urban Green Development, LLC; Blue Earth Consultants, LLC; Good Capital, LLC) by B Lab, a non-profit entity that certifies socially conscious business entities and that requires a legal structure that creates broad accountability. B Lab requires certain language in the operating agreement to ensure the LLC's mission is aligned with its stakeholders." The recommended B Lab language is reproduced as Appendix 10 to Alexander et al. The additional suggestions in this paragraph are based on S. Mac Cormac, "When and How to 'B'—Responsible B Corp Conversion" (September 6, 2017), http://impact.mofo.com/category/corporate-form/

thus providing members of that class with veto power over certain corporate acts that may be at odds with a specific sustainability-related purpose that is of importance to a significant number of shareholders. In lieu of provisions in the charter documents, shareholders and officers of a traditional for-profit corporation may enter into contractual agreements pertaining to the mission. Another method that might be used is a licensing arrangement wherein valuable intellectual property is held by a non-profit or the founders in order to preserve the mission through a protective license back to the company. Finally, many social entrepreneurs choose to formally organize their mission-based businesses as a nonprofit corporation.[82]

It should come as no surprise that jurisdictions outside of the US have also attempted to develop and/or otherwise support governance frameworks that might be suitable for sustainable entrepreneurs with interests that extend beyond profit-making. In Europe, for example, the European Commission launched a Social Business Initiative in 2011 that aimed to introduce a short-term action plan to support the development of social enterprises, key stakeholders in the social economy and social innovation.[83] The initial priorities of the Commission were organized around three themes: making it easier for social enterprises to obtain funding; increasing the visibility of social entrepreneurship; and making the legal environment friendlier for social enterprises. The Commission described "social enterprises" as follows:

> A social enterprise is an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities.

As opposed to US benefit corporations, which are distinguishable legal entities, the social enterprise that the Commission has in mind does not follow a single legal form and the Commission noted that many social enterprises operate in the form of social cooperatives, some were registered as private companies limited by guarantee, some were mutual, and a lot of them were non-profit organizations such as voluntary organizations, charities or foundations. Regardless of form, social enterprises should be understood to include businesses for which the social or societal objective of the common good is the reason for the commercial activity, often in the form of a high level of social innovation; businesses in which profits are mainly reinvested to achieve this social objective; and businesses that have adopted a method of organization or ownership system that reflects the enterprise's mission, using democratic or participatory principles or focusing on social justice. Common fields of operation for social enterprises according to the Commission include work integration, personal social services, local development of disadvantaged

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[82] For discussion of nonprofit corporations, see "Nonprofit Corporations" in "Governance: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).
[83] The discussion of "social enterprises" in this section is adapted from information appearing at http://ec.europa.eu/growth/sectors/social-economy/enterprises_en

areas, recycling, environmental protection, arts, culture or historical preservation, science, research and innovation and consumer protection.

An important trend to watch is the movement of the benefit corporation concept to Europe and the recognition of a European Benefit Corporation. The first steps were taken in Italy in December 2015 when the Italian parliament adopted the "Stability Act of 2016," which provided for the creation of a "Società Benefit," a separate legal entity formed and organized for the pursuit of one or more "common benefit" purposes as well as an economic activity. The move was notable for the fact that it was the first benefit corporation created in a civil law legal system and commentators have noted that while the new entity has many of the characteristics of US benefit corporations, it was created in a completely different legal and social context given that directors in Italy and in other civil law countries were already allowed to take into consideration stakeholder interests and thus it was not necessary to be too concerned about protecting directors.[84]

The main objective of the European benefit corporation movement seems to be promoting a completely new model of conducting business that supports pursuit of both economic and social purposes simultaneously. The Stability Act describes a "Società Benefit" as a company that aims at the distribution of profits, but, at the same time, pursues one or more common benefit goals in favor of other stakeholders in the business, including people, communities, territories and the environment, cultural heritage, social activities, entities and associations, by working in a responsible, sustainable and transparent manner. Designation as a "Società Benefit" is available to any for-profit company and while the model has borrowed many of the main characteristics of a US benefit corporation there are important differences: the "Società Benefit" must list in the bylaws the specific benefit activities; the annual report must be more detailed than the US benefit corporation; directors are not eligible for limitation of their liabilities with respect to third party lawsuits and the scope of the law applies not only to for-profit companies, but also to limited-profit companies.[85]

§21 Certifications and ratings systems

Sustainable entrepreneurs may decide to measure and demonstrate the commitment of their organizations to social and environmental responsibility through participation in ratings agencies and ratings systems that have been created in order to give external stakeholders a means by which they can assess the social and environmental impact of the organization's activities. In order to participate in these systems, some of which actually offer opportunities for certification, organizations must be prepared to adjust their internal structures in order to comply with the requirements of the system and ensure that the information necessary for measurement can be collected, analyzed and properly reported. While there are similarities among the most popular systems, there is still no universal standard and many of the systems operate without extensive efforts to

[84] A. Pelatan and R. Randazzo, The First European Benefit Corporation: Blurring the Lines Between "Social" and "Business", https://www.bwbllp.com/file/benefit-corporation-article-june-16-pdf
[85] Id.

verify or audit the information provided by organizations, although organizations should expect that they will be required to submit to site visits and renew their certifications on a regular basis.[86]

Perhaps the most well-known certification program is overseen by B Lab Company ("B Lab"), a Pennsylvania non-profit corporation that administers certification as a Certified B Corp., which offers access to the Certified B Corporation logo often seen as being a "Good Housekeeping Seal of Approval" for sustainable businesses. B Lab has explained that certified B corporations are purpose-driven and create benefits for all stakeholders, not just shareholders. According to B Lab, certified B corporations believe that we must be the change we seek in the world; that all business ought to be conducted as if people and place mattered; that, through their products, practices, and profits, businesses should aspire to do no harm and benefit all; and to do so requires that we act with the understanding that we are each dependent upon another and thus responsible for each other and future generations.

Certified B corporations and benefit corporations, which are described above, share the same characteristics with respect to accountability and transparency (i.e., directors are required to consider the impact of the company's activities on all stakeholders and a report of overall social and performance assessed against a third party standard must be prepared and publically published). As for performance, benefit corporations "self-report" while certified B corporations must achieve a minimum verified score on a "B Impact Assessment". Benefit corporation status depends on the law of the particular state in which the corporation is organized; however, B corporation status is available to every business regardless of corporate structure, state, or country of incorporation. While benefit corporations must pay state filings, B corporations must pay annual certification fees to B Lab based the amount of revenues from the company's activities.

The steps that must be completed for validating a company's social and environmental performance are referred to as the "assessment process" and begin with a "B Impact Assessment" that assess the overall impact of the company on its stakeholders taking into account various factors such as number of employees, sector and location of the company's primary operations. The questions in the B Impact Assessment have by created and revised by the Standards Advisory Council, a group of independent experts in business and academia, and cover financial performance; suppliers; the impact of the business on all its stakeholders; best practices regarding mission, measurement and governance; and the company's "impact business model". Companies that complete the B Impact Assessment will receive a B Impact Report that contains an overall score based on performance in three key impact areas (i.e., workers, community and the environment) and will move on an assessment review and submission of supporting documentation. At this point, the focus will be on the operations of the company and demonstration of practice relating to the company's social and environmental impact. Additional steps in the assessment process include completion of a disclosure questionnaire, which allows

[86] While Legal Structure is Right for My Social Enterprise?: A Guide to Establishing a Social Enterprise in the United States (Thomson Reuters Foundation and Morrison & Foerster, September 2016), 111-112.

companies to confidentially disclose to B Lab any sensitive practices, fines and sanctions related to the company and its partners, and background checks by B Lab staff which include a review of public records, news sources, and search engines for company names, brands, executives/founders, and other relevant topics.

Around 10% of certified B corporations are randomly selected each year for an in-depth site review, which takes place either in person or virtually and typically takes 6-10 hours depending on the size and scope of the business. Site reviews are considered to be a crucial step for verifying the requirements of the Certified B Corp. certification and confirming the accuracy of the responses of the specific company. Companies wishing to maintain their Certified B Corp. certification are required to update their assessment every two years by providing additional documentation and achieving a minimum score on the impact assessment. Recertification requirements provide assurances that companies are continuing to engage in a high level of impact with their stakeholders even as their businesses grow or change. The recertification process also provides companies with opportunities to set their own internal improvement goals against B Lab standards and benchmark their performance over time.[87]

The Global Reporting Initiative ("GRI") (www.globalreporting.org) is a multi-stakeholder developed international independent organization that helps businesses, governments and other organizations understand and communicate the impact of business on critical sustainability issues such as climate change, human rights, corruption and many others. The Global Sustainability Standards Board ("GSSB") issues and maintains the GRI Standards for organizations to use in their "sustainability reporting", described by the GSSB as "an organization's practice of reporting publicly on its economic, environmental, and/or social impacts, and hence its contributions–positive or negative–towards the goal of sustainable development".[88] Each of the GRI Standards includes requirements, recommendations and guidance, and the GRI Standards are divided into four Series: the 100 Series, which includes universal reporting principles, guidance on reporting contextual information about an organization and its sustainability reporting practices and guidance on reporting how an organization manages a material reporting topic; the 200 series for reporting on economic topics; the 300 series for reporting on environmental topics and the 400 series for reporting on social topics. The GRI is not a rating agency, does not monitor whether a particular organization has correctly applied its guidelines, and does not provide any certifications.[89]

Various product, safety and environmental certifications are available depending on the industry and activities of the organization. For example, UL (www.ul.com) helps

[87] For complete information about becoming a Certified B Corp., see the B Lab website at http://www.bcorporation.net/ (which is the primary source of the summary description in this section) and R. Honeyman, The B Corp Handbook: How to Use Business as a Force for Good (Oakland, CA: Berrett-Koehler Publishers, 2014).
[88] GRI 101: Foundation 2016 (Amsterdam: Stichting Global Reporting Initiative, 2016), 3.
[89] For detailed discussion of GRI Standards, see "Sustainability Reporting and Auditing" in "Corporate Social Responsibility: A Library of Resources for Sustainable Entrepreneurs" prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

companies demonstrate safety, confirm compliance, enhance sustainability, manage transparency, deliver quality and performance, strengthen security, protect brand reputation, build workplace excellence, and advance societal wellbeing through a range of services including inspection, advisory services, education and training, testing, auditing and analytics, certification software solutions, and marketing claim verification. UL's Sustainability Quotient (SQ®) Program provides organizations with the opportunity to achieve third party sustainability certification for their whole enterprise, demonstrating clear market leadership and a commitment to environmental stewardship at every level of business operations. The SQ® Program is a comprehensive system of assessing, rating and certifying the sustainability initiatives of corporations. With a focus on the environment, governance, workforce, customers/suppliers and community engagement/human rights, the SQ® Program promotes the adoption of a standardized language and rating platform for corporate sustainability. UL also tests and certifies products, processes and materials against current environmental standards and maintains a database of validated and certified products that can be accessed by industry professional and consumers.

Impact Reporting and Investment Standards (“IRIS”) is managed by the Global Impact Investing Network (“GIIN”) (www.iris.giin.org), a nonprofit organization dedicated to increasing the scale and effectiveness of impact investing. The GIIN offers IRIS as a free public good to support transparency, credibility, and accountability in impact measurement practices across the impact investing industry and to serve as a common framework for describing social, environmental and financial performance of an investment. The Sustainability Accounting Standards Board (www.sasb.org) publishes the SASB Implementation Guide for Companies that provides the structure and the key considerations for companies seeking to implement sustainability accounting standards within their existing business functions and processes.[90] The Guide helps companies to select sustainability topics; assess the current state of disclosure and management; embed SASB standards into financial reporting and management processes; support disclosure and management with internal control; and present information for disclosure. The SASB’s online resource library also includes annual reports on the state of disclosure, industry briefs and standards and guidance on stakeholder engagement. Companies should monitor CSR disclosures by their peers and the SASB library has examples of disclosures made by companies in annual reports filed with the SEC on Form 10-K.

Costs to organizations for attempting to comply with certification programs and standards will vary and consideration should be given to fees that must be paid to the agency and the investments that must be made in order to fulfill the agency’s requirements. Organizations must also consider the potential impact of participating in a particular rating or certification program, or complying with a formal reporting regime, on the organization’s governance or regulatory obligations depends on the program. However, the costs and disruptions to traditional operating procedures must be balanced against the

[90] For detailed discussion of the activities of the SASB, see “Sustainability Reporting and Auditing” in “Corporate Social Responsibility: A Library of Resources for Sustainable Entrepreneurs” prepared and distributed by the Sustainable Entrepreneurship Project (www.seproject.org).

benefits of being able to provide potential investors and stakeholders with reliable information to accurately assess the social impact such companies make, thus making it easier for organizations to raise capital from investors seeking to support socially responsible ventures and attract employees and customers want to do business with companies that are having a positive social and environmental impact.[91]

[91] While Legal Structure is Right for My Social Enterprise?: A Guide to Establishing a Social Enterprise in the United States (Thomson Reuters Foundation and Morrison & Foerster, September 2016), 114-115.

About the Author

Dr. Alan S. Gutterman is the Founding Director of the Sustainable Entrepreneurship Project (www.seproject.org). In addition, Alan's prolific output of practical guidance and tools for legal and financial professionals, managers, entrepreneurs and investors has made him one of the best-selling individual authors in the global legal publishing marketplace. His cornerstone work, *Business Transactions Solution*, is on online-only product available and featured on Thomson Reuters' Westlaw, the world's largest legal content platform, which includes almost 200 book-length modules covering the entire lifecycle of a business. Alan has also authored or edited over 40 books on sustainable entrepreneurship, management, business law and transactions, international law business and technology management for a number of publishers including Thomson Reuters, Kluwer, Aspatore, Oxford, Quorum, ABA Press, Aspen, Sweet & Maxwell, Euromoney, CCH and BNA. Alan has over three decades of experience as a partner and senior counsel with internationally recognized law firms counseling small and large business enterprises in the areas of general corporate and securities matters, venture capital, mergers and acquisitions, international law and transactions, strategic business alliances, technology transfers and intellectual property, and has also held senior management positions with several technology-based businesses including service as the chief legal officer of a leading international distributor of IT products headquartered in Silicon Valley and as the chief operating officer of an emerging broadband media company. He has been an adjunct faculty member at several colleges and universities, including Boalt Hall, Golden Gate University, Hastings College of Law, Santa Clara University and the University of San Francisco, teaching classes on a diverse range of topics including corporate finance, venture capital, corporate law, Japanese business law and law and economic development, He received his A.B., M.B.A., and J.D. from the University of California at Berkeley, a D.B.A. from Golden Gate University, and a Ph. D. from the University of Cambridge. For more information about Alan, his publications or the Sustainable Entrepreneurship Project, please contact him directly at alangutterman@gmail.com, and follow him on LinkedIn (https://www.linkedin.com/in/alangutterman/).

About the Project

The Sustainable Entrepreneurship Project (www.seproject.org) engages in and promotes research, education and training activities relating to entrepreneurial ventures launched with the aspiration to create sustainable enterprises that achieve significant growth in scale and value creation through the development of innovative products or services which form the basis for a successful international business. In furtherance of its mission the Project is involved in the preparation and distribution of Libraries of Resources for Sustainable Entrepreneurs covering Entrepreneurship, Leadership, Management, Organizational Design, Organizational Culture, Strategic Planning, Governance, Corporate Social Responsibility, Compliance and Risk Management, Finance, Human Resources, Product Development and Commercialization, Technology Management, Globalization, and Managing Growth and Change. Each of the Libraries include various Project publications such as handbooks, guides, briefings, articles, checklists, forms, forms, videos and audio works and other resources; management tools such as checklists and questionnaires, forms and training materials; books; chapters or articles in books; articles in journals, newspapers and magazines; theses and dissertations; papers; government and other public domain publications; online articles and databases; blogs; websites; and webinars and podcasts.

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