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ATTORNEYS AT LAW

## Corporate Environmental & Sustainability Reporting: Environmental and Legal Perspectives

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Thursday, December 11th, 2013  
MCTA Board of Directors Meeting



## What is Sustainability Reporting?

- “A sustainability report is a type of corporate or organizational report. A sustainability report *conveys sustainability-related information* in a way that is *comparable with financial reporting*.” *The Global Reporting Initiative.*



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## What is Sustainability Reporting?

- “To ... openly report health, safety, environmental and security performance.”  
*Responsible Care® Guiding Principles, American Chemistry Council.*



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3



## What is Sustainability Reporting?

- “Companies that measure their environmental risk are better able to manage it strategically. And those that are transparent and disclose this information are providing decision makers with access to a critical source of global data that delivers the evidence and insight required to drive action.” *The Carbon Disclosure Project.*



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## Why Adopt a Reporting Program?

### Investor and Customer Pressure:

**95%** of the world's largest 250 companies report on their environmental and social performance. (BNA World Climate Change Report, Nov. 7, 2011).

**NOTE** the potential impact on producers in their supply chain.

**“Investors. . . have shown increasing interest in transparency up and down the supply chain.”** (BNA World Climate Change Report, Nov. 7, 2011)



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## Why Adopt a Reporting Program?

- **Supply Chains are scrutinized by investors & the media:**
  - Microsoft & the New York City Pension Fund
  - Apple & Bad Publicity
- **Downstream customers looking to fulfill their own sustainability objectives**

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## Why Adopt a Reporting Program?

- **Investor Groups:**
  - **Principles for Responsible Investment (PRI)**
    - The United Nations-backed PRI is a network of international investors working together to put the “Six Principles for Responsible Investment” into practice.
  - **Ceres and the Investor Network on Climate Risk**
    - Investor members include BlackRock, Deutsche Asset Management and TIAA-CREF, as well as public pension funds in California, Florida and New York.

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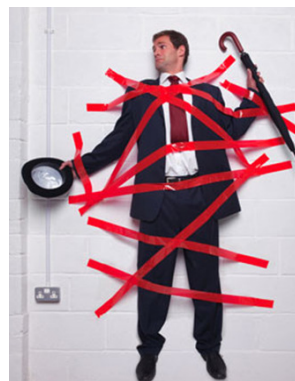
7



## Why Adopt a Reporting Program?

### SEC Guidance requires annual reporting of “Climate-Related Material Risk,” including:

- impacts of existing and pending laws and regulations relating to climate change;
- impacts of foreign and international treaties and accords relating to climate change;
- indirect impacts of legal, technological, political and scientific developments regarding climate change; and
- physical impacts of climate change.



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## Why Adopt a Reporting Program?

- **Dodd-Frank Act**



- Imposes reporting requirements regarding the source of conflict minerals, impacting business in the electronics, pharmaceutical, automotive and manufacturing industries.
- Must track supply chains to the “mine of origin.”
- “Name and shame” regulation: customer and media attention focused on “conflict” products

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## Why Adopt a Reporting Program?

- **International Obligations – Europe**

- Discussion of relevant “non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters” required in annual reporting.
- In April, the European Commission proposed an amendment to the current accounting rules that would require large companies (more than 500 employees) to disclose relevant and material environmental and social information in their annual reports.

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## Initial Considerations: Adopting a Reporting Program

1. Who is included in your program?
2. What is included in your program?
3. What framework will you rely on?
4. How will you use the information?

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## Who is included in your program?

- Examination of your Supply Chain



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## Who is included in your program?

- According to the Council of Supply Chain Management Professionals, “Supply chain management encompasses the planning and management of all activities involved in sourcing and procurement, conversion, and all logistics management activities. Importantly, it also includes coordination and collaboration with channel partners, which can be suppliers, intermediaries, third party service providers, and customers.”

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## Who is included in your program?

### Supply Chain Management Examples:

- **Wal-Mart**
  - Aims to provide customers with information on a “product’s lifecycle.” The first step is implementing a “Supplier Sustainability Assessment.”
- **Microsoft**
  - Suppliers Code of Conduct by 2013
- **Nike & Adidas**
  - Pledge to eliminate hazardous chemical discharge from their supply chains.

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## What is included in your program?

### Environmental

- Materials
- Energy
- Water
- Biodiversity
- Emissions
- Effluents and Waste
- Products and Services
- Compliance
- Transport
- Overall
- Supplier Environmental Assessment
- Environmental Grievance Mechanism

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## What is included in your program?

### Social

- Labor Practices and Decent Work
- Human Rights
- Society and Product Responsibility
- Society and Product Responsibility.

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## What is included in your program?

### Economic Performance

- Market Presence
- Indirect Economic Impacts
- Procurement Practices

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## What framework will you rely on?



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## How will you use the information?

- Increased efficiency & internal improvements
  - 47% of the world's largest 250 companies report fiscal gains after adopting supply chain policies;
  - Possible hiring tool for new graduates who value sustainable principles;
  - Reputation, brand & ethical considerations
  - Cost savings
  - Avoided or limited costs
    - Media scrutiny & public relations
    - Shareholder action
    - Market share impact
  - Avoid or limit potential for crisis

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## Topics for Consideration

### *Legal Considerations*

### Risks of Controlling the Supply Chain:

- Should you have a supply chain contingency plan?  
Consider the same question with attention to vendors.
- How much control is too much control?
  - Is there a liability risk associated with exercising control over supplier business practices?
    - Possible owner/operator/arranger liability and other considerations



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## Topics for Consideration

- Considering your supply chain, decide where your company or client is on the spectrum:  
     **Aggressive Outsourcing**  $\leftrightarrow$  **Conservative Outsourcing**
- Is there adequate staff to screen, oversee and/or monitor compliance and reporting?
- Is supplier compliance realistic?
- Will enforcing supplier compliance/reporting affect cost?
- Who has leverage to impose supply chain requirements?

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## Topics for Consideration

- How do you structure a supplier contract to monitor/ensure/impose compliance?
- How much flexibility can/should be built into a contract?
- What representations and warranties are made/received? Reliance?
- Are the representations and warranties continuing?

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## Topics for Consideration

- What about auditing? By a third party or corporate?
- Sanctions for supplier? And if so, what are the sanctions for non-compliance?
  - Cure; liquidated damages; consequential damages
- How do you address future changes in law or science?
- What happens to the supplier relationship when the system fails? Business continuity and emergency planning.

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## Related Resources

- American Chemistry Association “Responsible Care” program
- ISO Guide 64
- Global Reporting Initiative
- Carbon Disclosure Project

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## Thank you & Questions

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25