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The Corporate Social Responsibility Report: A Key Component of Effective Stakeholder Engagement

Companies today are being called upon by their shareholders and other stakeholders to not only boost the bottom line, but also to help address some of the country's most challenging problems, including those concerning economic development and the environment. While opinions differ on how responsibility should be allocated across the public and private sectors, corporate stakeholders (which typically include shareholders, employees, customers, suppliers, communities, governments and regulators) are demanding that companies recognize a broader scope of responsibility in addressing those problems. As a result, companies are increasingly working with stakeholders to understand their views and concerns on various environmental, social, corporate governance and economic issues (such issues often referred to as corporate social responsibility ("CSR") issues) and to incorporate and address those views and concerns in the company's strategic decision-making processes.

The CSR report (also commonly known as a corporate citizenship, sustainability or social performance report), due to the typical breadth of information most relevant to stakeholders' interests, can be a key component of a company's stakeholder engagement strategy. The CSR report, for instance, may be used to inform stakeholders how a company has addressed or is addressing stakeholders' CSR concerns and incorporating them into the company's strategic decision-making processes.

This corporate governance update (1) discusses the importance of stakeholder engagement, CSR and the CSR report, (2) outlines the principal elements of and disclosures made in the CSR report and (3) presents other related considerations for companies and boards of directors.

Why Stakeholder Engagement?

Corporate Value. Stakeholder engagement includes the formal and informal ways a company stays connected to its stakeholders (the individuals or parties that have an actual or potential interest in or impact on the company, its operations and financial results). Stakeholders often have the ability to influence the success (or failure) of a company at various levels. A primary objective of corporate stakeholder engagement is to build relationships with stakeholders to better understand their perspectives and concerns on key issues (including CSR issues) and to integrate those perspectives and concerns (when and where feasible and prudent) into the company's corporate strategy. Companies tend to recognize certain value associated with stakeholder engagement, including:

- enabling informed board and management decision making (as effective stakeholder engagement will likely enhance business intelligence thereby assisting boards and management in their decision-making processes);
- avoiding or reducing business risks due to better business intelligence;
- developing and expanding business opportunities, brand value and reputation; and
- bringing diverse perspectives together to facilitate innovation; all of which help drive long-term sustainability and shareholder value.

Rise in Shareholder Activism. Shareholder activism on CSR issues (particularly those focused on environmental and social ("E&S") issues) continues to rise, necessitating further engagement between companies and their shareholders and other stakeholders. Institutional Shareholder Services Inc. ("ISS") recently reported that the 2013 proxy season (from January 1 through June 30, 2013) saw an increase in the number of E&S resolutions filed by shareholders with US companies (395 filed in 2013 compared to 368 in 2012). Average shareholder support for those resolutions also increased to 21.7% in 2013, up from 18.6% in 2012, continuing the general upward trend of increasing shareholder support for such issues.

As was the case in 2012, the single largest number of E&S resolutions submitted in 2013 was on political issues (i.e., resolutions seeking political contributions disclosure and lobbying disclosure), followed by resolutions requesting sustainability reporting and addressing other environmental issues (ranging from the financial risks of climate change to energy efficiency to water-related issues). ISS reported that another notable development during the 2013 proxy season was the significant increase in the number of board diversity proposals (focused on increasing gender diversity in corporate boardrooms) submitted by shareholder proponents (26 filed in 2013 compared to eight in 2012).[1] Consequently, as shareholder activism on CSR issues continues to increase, it would benefit companies to effectively engage their shareholders, and other stakeholders as necessary, on those issues so that (1) related stakeholder concerns can be proactively discussed and addressed, (2) companies may be able to avert a potentially costly and prolonged proxy fight, and (3) relationships between companies and their stakeholders may be nurtured.

Rise in Sustainable and Responsible Investing. Stakeholder engagement and understanding and addressing stakeholders' CSR concerns have become especially important as shareholders and potential investors are increasingly evaluating CSR issues when analyzing investment decisions. Under sustainable and responsible investing ("SRI") principles, investors apply various CSR criteria in their investment analysis. It has been reported that SRI grew by more than 22% to $3.74 trillion in managed assets during the period from 2010–2012.[2] In 2011, the California Public Employees' Retirement System ("CalPERS"), for instance, as part of its "total fund" approach to investment, adopted three core themes for integrating CSR issues into its investment decisions: (1) corporate governance (including issues such as shareowner rights and executive compensation), (2) climate change (including issues related to water stress, carbon emissions, energy efficiency, clean technology and renewable energy) and (3) human capital (including issues of health and safety, responsible contracting and diversity).[3]

Why CSR and the CSR Report?

CSR is defined many ways but generally refers to how a company addresses and manages its environmental, social, corporate governance and economic impacts and how such impacts may affect the company's stakeholders. CSR provides companies an opportunity to strengthen their business (through cost savings, risk mitigation and value enhancement) while contributing to society. CSR should focus on the important areas of interaction between the company and its key stakeholders and address value creation actions as part of the company's strategy.

A 2013 global consumer survey reported that CSR remains a powerful differentiator, influencing both consumer behavior and corporate reputation. Nearly all consumers in that survey noted that when companies engage in CSR, they have a more positive image of the company, would be more likely to trust that company and would be more loyal to that company. Consumer respondents added that it is acceptable if a company is not perfect, provided that the company is honest and transparent about its CSR efforts.[4]

The CSR report, therefore, provides a company with an opportunity to communicate its CSR efforts to the company's stakeholders and to discuss (within the confines of a single document) certain company successes and challenges on a wide array of CSR issues, including corporate governance, climate change, employee and supplier diversity initiatives, and community investments and partnerships. The CSR report is also a medium for transparency (which often improves a company's reputation with certain stakeholders, particularly shareholders, employees, suppliers and communities within which the company operates) and may be used as an effective outreach tool as part of an ongoing shareholder relations campaign (which may deter activist shareholders from submitting E&S shareholder proposals or pursuing or threatening litigation). In addition, the CSR report provides existing and potential investors with CSR information to assist in analyzing investment decisions.

The CSR Report

As companies acknowledge the importance (and associated value) of stakeholder engagement, the use of CSR reports by US companies as a tool for such engagement has rapidly increased. A 2012 survey revealed that 53% of S&P 500 companies are currently reporting and disclosing CSR information, compared to approximately 20% of such companies in 2010.[5]

Corporate CSR reports vary greatly in format, length and detail. There are, however, certain elements and disclosures

[1] *2013 US Proxy Season Review (Environmental & Social Issues)*, ISS (October 17, 2013).

[2] *2012 Report on Sustainable and Responsible Investing Trends in the United States,* US SIF Foundation: The Forum for Sustainable and Responsible Investment (November 2012).

[3] *Towards Sustainable Investment: Taking Responsibility,* CalPERS (April 2012).

[4] *2013 Cone Communications/Echo Global CSR Study*, Cone Communications LLC (May 2013).

[5] *2012 Corporate ESG/Sustainability/Responsibility Reporting: Does It Matter? Analysis of S&P 500 Companies' ESG Reporting Trends & Capital Markets Response, and Possible Association with Desired Rankings & Ratings,* Governance & Accountability Institute, Inc. (2012).

that consistently appear in such reports. Those elements and disclosures include (1) an opening letter from the company's chief executive officer and/or chief CSR executive (noting the company's commitment to CSR issues and its willingness to discuss challenges and promote successes relating thereto), (2) the company's CSR policy or mission statement, (3) a "forward-looking statements" disclaimer and (4) most significant, disclosures addressing issues most important to each of the company's key stakeholders, for example:

- **Shareholders** - addressing the company's business model and corporate governance, including disclosing the role of the board in risk management, in sustainability reporting and in evaluating CSR performance.
- **Employees** - addressing diversity, health and safety, training and mentoring, employee relations, and wages and benefits.
- **Customers** - addressing customer service and privacy.
- **Suppliers** - addressing labor standards and whether suppliers are required to implement their own CSR programs.
- **Communities** - addressing corporate philanthropy and charitable contributions, community investment and partnerships, volunteerism and the environmental impact of operations.
- **Governments and Regulators** - addressing lobbying, public policy and the effects of and compliance with environmental regulations.

The Global Reporting Initiative ("GRI") G4 Guidelines is another resource that can assist companies in drafting their CSR reports.[6] More than half of the S&P 500 companies publishing CSR reports use the GRI reporting framework. The G4 Guidelines outline recommended disclosures that may be included in a CSR report, which such disclosures include, but are not limited to, certain of those identified above in addition to the following:

- **Economic Considerations** - disclosing the company's impacts on the economic conditions of its stakeholders and on economic systems at local, national and global levels.
- **Environmental Issues** - disclosing the company's impacts on living and non-living natural systems (land, air, water and ecosystems), including impacts related to inputs (such as energy and water), outputs (such as emissions, effluents and waste) as well as environmental compliance and expenditures.
- **Ethics and Integrity** - disclosing the company's values, principles and standards, and its internal and external mechanisms for (1) seeking advice on ethical and lawful behavior and (2) reporting concerns about unethical or unlawful behavior and matters of integrity.
- **Social Impact** - disclosing the company's impacts on the social systems within which it operates, including those relating to human rights, society and product responsibility.
- **Stakeholder Engagement** - disclosing the company's stakeholder engagement during the reporting period and not limiting it solely to engagement conducted for purposes of preparing the CSR report.[7]

The G4 Guidelines also identify certain recommended industry-specific supplemental disclosures, for example, for companies in the financial services industry.

Other Considerations

With respect to CSR, the CSR report and stakeholder engagement, a company and/or its board of directors may also want to consider the following:

- **CEO Responsibility and Board Oversight.** The chief executive officer should ultimately be responsible for establishing effective communications with the company's stakeholders with CSR oversight by the board or board committee (or committees). Such oversight may include (1) review of CSR trends and impacts on the company's operations, financial results and stakeholders and (2) periodic updates from the chief executive officer/management concerning the company's positions on and actions taken relating to relevant CSR issues and how such positions and actions have affected or may affect stakeholders.

[6] GRI is noted as a leading organization in the sustainability industry that promotes the use of sustainability (or CSR) reporting as a way for companies (and other entities) to become more sustainable and contribute to sustainable development. GRI refers to its current sustainability reporting guidelines as the G4 Guidelines (GRI's fourth reiteration of its original guidelines).

[7] *G4 Sustainability Reporting Guidelines: Reporting Principles and Standard Disclosures*, GRI (2013). See also *G4 Sustainability Reporting Guidelines: Implementation Manual,* GRI (2013).

- **Focus on Impact.** Because management time and resources are limited, companies should focus on those CSR issues that may have the greatest impact on them and their operations and finances.

- **Stock Exchange Reporting Initiatives.** Although the CSR report is not currently mandated by any federal law or regulation, there is a reported global effort by certain groups, including investors, to mobilize stock exchanges to adopt a listing requirement regarding sustainability (CSR) reporting. Regulators in the United Kingdom, for example, are requiring companies listed on the main market of the London Stock Exchange to publish full details of their greenhouse gas emissions for reporting years ending on or after September 30, 2013. While there currently is no mandatory sustainability (CSR) reporting requirement for companies listed on the New York Stock Exchange or NASDAQ, both exchanges have joined the United Nations' Sustainable Stock Exchanges initiative which aims to explore how exchanges can work together with investors, regulators and listed companies to enhance corporate transparency on CSR issues and encourage responsible long-term approaches to investment.

- **Potential Legal Issues.** Companies should be cognizant of certain potential legal issues involving the CSR report, including (1) Regulation FD (Fair Disclosure), as the CSR report should not be the medium to release material nonpublic information, (2) other public disclosures, as the CSR report should contain information consistent with disclosures in other public documents (e.g., securities and other regulatory filings) and (3) other company policies and practices, as the CSR report should be in compliance with other company policies and any self-imposed restrictions or standards.

- **Identify Corporate Team.** Companies should identify the corporate team that will be responsible for their CSR report and include, at a minimum, employees from their investor/public/community relations, legal, compliance, regulatory and human resources departments.

- **Other Components of Stakeholder Engagement.** The CSR report is only one component of an effective stakeholder engagement strategy. Other components of such strategy may include supplemental reports (e.g., Carbon Disclosure Project reports), regulatory filings, the annual meeting of shareholders and direct dialogue with stakeholders (e.g., community town hall and employee as well as supplier meetings).

- **Drafting Pointers.** CSR report drafting pointers include:

    - focusing on material issues most important to the company and its stakeholders (not all CSR issues that a company monitors need be included);
    - detailing the company's CSR practices as well as policies;
    - writing in plain English and balancing detail versus brevity;
    - incorporating, as often as possible, easy-to-read charts, tables and graphs, exposés and interviews, facts and figures, survey results, and graphics to highlight and summarize CSR information;
    - discussing the company's past CSR successes and future CSR goals;
    - highlighting CSR awards and recognitions received by the company; and
    - adding third-party evaluations, which may verify the reliability of and provide further credibility to the company's CSR reporting processes and information.

How Chapman Can Help

Chapman and Cutler attorneys provide corporate and business counseling to a wide range of clients, both publicly and privately held entities, including financial services institutions, utilities, investment advisors, insurance companies, manufacturers, distributors, wholesalers, retailers, contractors, transportation companies, professional service providers, pension funds and not-for-profit entities. Chapman and Cutler maintains a dedicated Corporate Counseling Practice Group with the necessary skills and experience to counsel on the issues presented in this corporate governance update. If you would like to discuss any of the issues contained in this update or other legal, regulatory, compliance or corporate governance-related issues facing your institution, please contact an attorney in our Corporate Counseling Practice Group.

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