Association of Corporate Counsel

QuickCounsel

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SUSTAINABILITY: WHAT DOES IT MEAN FOR YOU?

Overview

Sustainability is often expressed in terms of the triple-bottom line—an expanded measure of accounting that measures not only the economic aspects of a business, but also its social and environmental impacts. Companies are increasingly integrating sustainability concepts into their decision-making. Common strategies to address a company's environmental impacts include: actions to reduce energy, water and material use, waste and pollution reduction, and greenhouse gas inventories. The social impacts may be addressed through community investments, employee training and support, and enhanced occupational safety programs.

Opportunities and Risks

A key component of a sustainability program is the development of a process to identify and manage evolving legal and business risks. For example, the Securities and Exchange Commission recently released guidance describing the obligation of public companies to disclose material climate-change-related information. Beyond regulatory issues, failure to adopt environmentally sound practices may harm a business's financial bottom line as shareholders, consumers, and firms in the business's supply chain (most famously, Wal-Mart) increasingly demand "greener" operations and products.

Sustainability programs can be used as tools to manage these risks, while also offering the opportunity to enhance business reputation and brand, identify operational inefficiencies and cost savings, attract and retain customers, employees and other stakeholders, and encourage innovation. With these benefits, however, come still other risks. For example, marketing materials related to sustainability may expose a business to allegations that it "green washes" its products through dissemination of misleading or exaggerated claims. It is important that those individuals responsible for marketing and sustainability work closely together with the oversight of counsel to assure a consistent, substantiated message is delivered.

Development of a Sustainability Program

If your company decides to develop a sustainability program, it should consider the available sustainability reporting frameworks in order to guide the development of the program—even if you have yet to decide to issue a public sustainability report. For example, the Global Reporting Initiative (GRI) G3 Guidelines provide more than guidance for the issuance of a public report, but also include processes for defining objectives, linking goals and sustainability impacts, engaging with stakeholders, measuring and monitoring impacts, and communicating the results of a sustainability program to stakeholders. Another framework used by some companies is the AccountAbility AA1000 Series. The AA1000 Series includes a set of basic principals to guide the development of a sustainability program, and also guidance on stakeholder engagement and a framework for verification of publicly available sustainability information that can be used in conjunction with other sustainability frameworks.

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Taking the time up front to plan a sustainability program, including an assessment of reporting frameworks, business risks and opportunities, and evolving regulatory requirements, allows a company to tailor its program to its business goals. Another common issue faced by companies is the identification of the individual(s) responsible to create and implement the program, and this issue may best be resolved at the outset. Once the plan is in place, companies often begin with small projects to demonstrate benefits and build managerial support, and then grow the sustainability program over time.

Reporting Results

If a company decides to issue a sustainability report, several voluntary reporting frameworks are available to guide the process. The GRI G3 Guidelines have emerged as the leading framework; they were used by more than 1,000 companies in 2009. The G3 Guidelines provide guidance on how to report, including the content, quality and boundaries of the report. The G3 Guidelines also provide guidance on what to report, and provide that a report should incorporate specified standard disclosures, including a company profile, management approach and performance indicators reflecting an organization's material economic, environmental and social impacts. GRI has also developed "Sector Supplements" to provide further guidance for specific industries. These guidelines may raise significant legal questions, such as whether information is material or whether related entities may constitute a single organization for purposes of a sustainability report.

Additional Resources

ACC Resources

- ACC Green-House Counsel
- ACC Top Ten: Top Ten Practice Points for Developing a Sustainability Program
- ACC Quick Counsel, Green Advertising: The FTC Green Guides

Securities and Exchange Commission

- Commission Guidance Regarding Disclosure Related to Climate Change

Environmental Protection Agency

- Mandatory Reporting of Greenhouse Gases

Sponsor Resources

- MGKF Special Alert: SEC Issue Guidance on Climate Change Disclosure
- MGKF Client Alert: As Climate Change Legislation Cools, "Climate-Friendly" Legislation Heats Up
- MGKF Presentation on Corporate Sustainability Reporting