Conference on Standardized Corporate Social Responsibility Reporting

Tentative Solution – George S. Georgiev
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My view is that we need three separate reporting systems that encompass CSR (or ESG/sustainability) concepts. These concepts are too complex to be combined in a single reporting system, both as a matter of substance and as a matter of implementation. Designing a disclosure regime involves a number of interrelated policy choices, including: (1) the goals of the disclosure regime, (2) the intended audience(s) for the information to be disclosed; (3) the substantive content of the disclosure requirements, (4) the method and format of presentation of information (including, e.g., level of granularity, narrative vs. numerical presentation, textual vs. tabular vs. pictorial presentation, a "plain English" narrative style vs. a style of presentation that describes developments "through the eyes of management," etc.), (5) the frequency of disclosure (annual, quarterly, episodic, real-time, etc.), (6) the legislative, administrative, or other body setting the disclosure, and (7) the enforcement, monitoring, and liability provisions. The optimal choices differ depending on the context, which is why we need more than one disclosure regime.

System 1: Securities Disclosure Regime: The first system is the traditional securities disclosure regime, which applies to public companies. This regime needs to incorporate sustainability information to a much greater extent than it currently does, including information about the business impacts of climate-related and other environmental factors, human capital management (HCM) matters, cybersecurity, etc. At the same time, it needs to do so carefully and with appropriate limiting principles in order to withstand legal and political scrutiny. Consequently, I am in favor of a "single materiality" approach, whereby the focus is on information about matters affecting a firm's business over the near, medium, and long term. (The "double materiality" approach includes a second prong: the impact of a firm's activities on the environment and society.) As I've discussed in my work on the SEC's climate disclosure rule and the HCM movement, single materiality should not be confused with "universal materiality" or with a requirement for particularized testing of every piece of potentially disclosable information using the *TSC/Basic* liability test. In addition, my point here is about the *mandatory* disclosure regime. It should still be possible for shareholders to use the shareholder proposal process to request *voluntary* disclosure about the impact of a firm's activities. In other words, single materiality is the floor, not the ceiling.

System 2: Stakeholder Disclosure System: The second system should be a stakeholder disclosure system that applies to both public and private companies and that elicits certain basic information for stakeholder audiences. This information should be released publicly in a centralized repository. Ideally, the contours of this regime will be determined through international consultation and coordination. The standards set by the Global Reporting Initiative, which has been in operation since the late 1990s, offer a useful starting point. In the United States, this stakeholder regime would ideally be administered by the FTC, though it is possible to imagine a regime administered by a large state (e.g., California) or a group of large states. The merits of such a stakeholder disclosure system have been discussed in the literature, including by Case (2005) with respect to environmental matters, Estlund (2011) with respect to workforce matters, Lipton (2020) with respect to the informational needs of non-investor audiences, and LoPucki (2022) with respect to the overlapping needs of investor and non-investor audiences. Importantly, this stakeholder disclosure regime should elicit sustainability information not just from business firms, but from *all entities engaged in economic activity*, including non-profits such as hospitals, universities, foundations, etc., which account for a substantial share of overall economic activity; this is a point I make in greater detail in recent work on the limits of imposing federal economic regulation through the "public company" regulatory category.

System 3: A Stakeholder Rating and Certification System: The stakeholder disclosure system (above) stands to face many of the challenges faced by the traditional investor-focused disclosure system, including questions about how to treat confidential or business-sensitive information and how to ensure that the intended consumers of information are capable of accessing and processing it as part of their decisionmaking. Rating systems and certification schemes can be very effective in solving these problems, and many such systems exist already. I believe that these systems need to be expanded considerably. They should be treated as public goods and should be encouraged/sponsored by governmental and intergovernmental bodies. Importantly, there need to be proper legitimacy and accountability mechanisms built into these systems, including mechanisms suggested by Gadinis (2014), Gadinis & Havasy (2022), and others. Economic actors should be able to submit information *confidentially* and the rating/certification providers should come up with *simplified indicators of sustainability*. Such indicators stand to have the greatest impact on ensuring (1) that consumers, employees, and other stakeholders have access to sustainability information, and (2) that economic actors prioritize sustainability matters.