

## Conference on Standardized Corporate Social Responsibility Reporting

### **Amanda Rose Solution**

My proposed solution does not answer the ultimate questions posed in the conference prompt—*viz.*, “what the [CSR] reporting standards should be,” “who should determine them,” “what role standardized reporting should play in changing corporate behavior,” and “what constitutes responsible behavior.” But its implementation is a prerequisite, I believe, to any rigorous analysis of these questions.

The admittedly partial solution I offer is this: stop using terms like CSR, sustainability, and ESG. These terms encompass both too much and too little to be useful. They encompass too much because they draw, into a single breath, topics as diverse as privacy, cybersecurity, climate change, labor practices, tax practices, corporate political contributions, issues related to race and gender—the list goes on. They also encompass too little because they do not convey why information on these various topics is important, or to whom it is important. Without clarity on the specific topic under discussion, and why and to whom information about the topic is important, it is impossible to determine whether disclosure mandates are warranted, and if so, what they should look like and which government actor has the expertise and authority to adopt them. Moreover, individuals will imbue these empty terms with their own unstated meaning, leading to misunderstanding and confusion when engaging with others in conversation and debate.

If disclosure were costless and there were no limitations on government power to mandate disclosure, then sweeping with such a broad, vague brush would be less problematic. Under these assumptions, more information would always be better, and shedding sunlight on all aspects of corporate behavior and making it easy to compare firms’ behavior through standardization would be both market- and democracy-affirming: investors and customers could respond to the disclosures as they think fit through their investment and consumption decisions, while stakeholders who lack these tools could respond as more informed citizens—advocating for law reform and voting to elect representatives who shares their views. The problem with this line of thinking, of course, is that disclosure is not costless. Moreover, neither Congress nor any U.S. administrative agency has *carte blanche* authority to mandate disclosures. To the contrary, government-imposed disclosure mandates must comport with the Constitution, including but not limited to the First Amendment, and government agencies must act consistently with their grants of delegated authority and the strictures of the APA. No coherent cost-benefit analysis can be done when the subject of the analysis is “CSR” or “ESG” or “sustainability.” Nor can one begin to examine the legality of disclosure mandates when the topic is couched in such a general way.