

University of Florida 2023 Conference on Standardized Corporate Social Responsibility Reporting

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Why: What are the moral and policy grounds for imposing public disclosure obligations on private companies.? They are much clearer for capital markets than for stakeholder markets. Absent a clear and persuasive foundation that can survive First Amendment scrutiny, mandatory E&S disclosure for private companies will not become part of U.S. law. We need a survey like the EU sustainable corporate governance initiative. In the meantime, some possibilities:

- The European Commission said the 2022 Corporate Sustainability Reporting Directive (CSRD) will make “all large companies publicly accountable for their impact on people and the environment.” Will that have traction in the U.S.?
- Compliance with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises – currently the subject of the U.S. National Action Plan on Responsible Business Conduct review.
- Reflecting the true cost of business operations through disclosures reflecting Harvard Business School’s Impact-Weighted Accounts Initiative (IWAI).
- Compliance with the EU’s Corporate Sustainability Due Diligence Directive, which will apply to many large U.S. businesses (having sales in the EU).

Who/What: The standard-setting body should be as independent as possible from financial, industry and political influence (Brest & Honigsberg in Malhotra, ed., 2022). Preferably, not a regulator. FASB and IASB have been largely successful in establishing financial accounting standards, and there is reason to believe that the ISSB could be equally successful in establishing sustainability metrics. The EU is using the European Financial Reporting Advisory Group (EFRAG), which is consulting with GRI and ISSB. Business is global. E&S disclosures and due diligence laws require global inquiries. Ideally, the standards will be global.

To promote efficiency (lower costs) for regulators, producers and consumers of corporate disclosures, while increasing the corporate and public valence of E&S disclosures, reports should be integrated in one reporting system (“double materiality”). The EU is requiring integrated reports in the CSRD. The SEC, for its disclosure expertise, or the Department of Commerce, for its economic expertise, should be the supervisor and repository of integrated reports. Either would require legislation. Inter-agency coordination could be elicited as necessary. That is the point of the NEC.

How: Third-party assurance of E&S disclosures should be required (*see* EU CSRD). Underwriters will increasingly require it anyway. There must be a system for examining and licensing E&S auditors and firms should be subject to PCAOB-like registration.

Neither capital nor stakeholder markets have successfully diminished corporate externalities absent liability and enforcement. Disclosers and auditors should eventually have liability for false disclosures. Private enforcement should be considered. In the EU, it will exist under the French vigilance law and the Sustainability Diligence Directive.