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<sup>69</sup> Barboza *supra* note 38.

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THE STAKEHOLDER MOVEMENT AND THE SOCIAL  
RESPONSIBILITIES OF CORPORATIONS:  
A COMPARATIVE INTERNATIONAL PERSPECTIVE

by

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One program that played a central role in our [Chase Manhattan Bank's] cultural revolution was the Corporate Social Responsibility Program. Few companies in the 1970s made charitable contributions, and still fewer had programs whereby a panned percentage of annual earnings were contributed to charity....My [David Rockefeller, CEO of Chase] rationale for an active corporate responsibility program was simple: Businesses could not afford to become isolated for the larger society of which they were an integral part....Any business that does not respond creatively to this world and its growing insistence on an improved quality of life is cutting off its future nourishment. For, however, you interpret its role, the corporation depends on

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the health of its society. Just as society's perception of us molds the laws that govern us, society's health determines whether we will have a vigorous or slack marketplace....<sup>1</sup>

## INTRODUCTION

The United States historically has been a nation committed to individualism. Freedom to think, act, and resolve difficulties without governmental interference continues to dominate the American ethos. The same laissez-faire attitude has been transplanted to the American public corporation. Nowhere in the world is it easier to set up a corporation.<sup>2</sup> Corporations are creatures of the state. They are artificial entities that are created and operate within the state of incorporation and beyond its borders. Corporations throughout the world generally have one of two governance models, the "shareholder" model or the "stakeholder" model with variations within each of the models.<sup>3</sup> Both types of entities vary somewhat from country to country. In this article, we will initially examine the major types of corporate entities prevalent in the business world among nations. Thereafter, we will examine the trend of the American "shareholder" model to incorporate and integrate the social responsibilities inherent in the "stakeholder" model in order to produce a corporate social responsibility ("CSR") model.

### "SHAREHOLDER" vs. "STAKEHOLDER" MODEL

#### *The Shareholder Model*

The classic formulation of the U.S. corporation, clearly described by Adolph A. Berle Jr. & Gardiner C. Means, indicates the relationship that exists between shareholders and managers.<sup>4</sup> In essence, shareholders of public corporations play

no role in the management of the corporation but must delegate the role to managers who are in turn supervised by a board of directors elected by the shareholders.

The U.S. and the U. K. exemplify the Anglo-American shareholder system which is defined by the emphasis upon shareholder value to the virtual exclusion of the other stakeholders: employees, customers, suppliers, and the public. Professor Milton Friedman argued that corporations owe a duty to maximize the profit of shareholders within the confines of legal and regulatory enactment and owe nothing to other stakeholders.<sup>5</sup> Friedman's analysis is questioned by many scholars who posit a theory of legal and social responsibility that corporations arguably have to the state and other constituencies.<sup>6</sup>

The U.S. shareholder model indicates that the shareholders ostensibly elect the board of directors and the board selects the managers who perform the day-to-day operations of the corporation. The distinguishing feature of the U.S. model is the large number of shareholders who are widely disbursed nationally as well as internationally. Shares of stock are not ordinarily concentrated in the hands of a limited number of investors but are owned by small and larger shareholders and, in recent years, increasingly by institutional investors. Under the stakeholder model, as discussed hereinafter, there are relatively few shareholders.<sup>7</sup> Investors, under the U.S. model, are really passive investors due to the fact that they have too few shares and are too widely disbursed to act independently. This scenario, however, is changing with the increasing influence of institutional investors who are becoming more actively involved in the selection process.

The board of directors' main role is to monitor the management on behalf of the shareholders. The board,



however, often consists of managers who also are on the board. These same management board members select the board members who are to monitor the managers. The chief executive officer is often the chairperson of the board. The composition of the board may then cause the board to neglect its duties on behalf of the shareholders. Proxy contests may act as a check on management but the reality is that 99.6% of corporate boards are elected in uncontested proxy solicitations.<sup>8</sup> CEO pay has risen to a staggering degree as high as 400 or more times that of an employee's salary.<sup>9</sup> Often, the dramatic increase in executive pay is due to the CEO's enormous influence over board members.<sup>10</sup>

The chief officers of the corporation (CEO and CFO) are selected by the board. The major difficulty is that they are essentially insulated from the passive shareholders. This insulation has permitted officers, with impunity, to cut back on research and development, or to make investments to maximize the next quarter's earnings. The officers fail to maintain a "Chinese wall"<sup>11</sup> between analysts and investment banking operations. Managers lobby successfully to have states enact anti-takeover laws which have the effect of insulating poor managers. There have been numerous examples of the lack of ethical behavior on the part of managers that go beyond the Enron and related well publicized scandals.<sup>12</sup>

#### *The Stakeholder Model*

The stakeholder model reflects the model most utilized in the non-Anglo-Saxon major industrial nations. There are a variety of subsets of the model but its emphasis varies widely from that of the shareholder model. The stakeholder model emphasizes the social responsibilities to various stakeholders and to society itself. In one form, found previously in Japan, the key feature was corporate assurance of lifetime

employment for the employees of the corporation. Employees there had a greater incentive to develop and supply firm-specific human capital, to practice significant loyalty to the firm, to facilitate team effort, and to be willing to make concessions in times of distress. Management's emphasis was on long-term health of the corporation, to benefit the employees and to return a profit to the shareholders. Since the primary holders of corporate indebtedness were banks, there was less need and incentive for immediate profit gains and, therefore, more for long term profitable outlook. Japanese corporate structure is one that is insular and conservative. It protects management from the external pressures of the market and from shareholders. Banks often dominate the board because corporate capital is raised from bank loans rather than from the public sale of securities.

Japanese firms have been part of a *keiretsu*. Competing corporations thereby became united in protecting each other. Board members often consisted of a number of members from competing organizations. When one company had financial difficulties, it would be propped up by the competing companies or by the entering into "friendly" mergers. These companies should have been permitted to expire. The eventual collapse of the Japanese market left only companies with multinational entities and independently operated entities to survive. Japan enacted legislation in 2002 that permitted companies to adopt a U.S.-style method of corporate management. By March 31, 2004, some 71 firms have so adopted these changes.

Other styles of stakeholder models include those of Germany and, to some extent, those of France. The German securities market is essentially underdeveloped. Of two million companies in Germany, about 4,600 are stock companies. Some 825 of the 4,600 companies are truly publicly traded.

The result is that there are rare unfriendly takeovers. The few German shareholders consist mainly of holders of large blocks of shares with long-term interests. Shares are also owned by large financial institutions which provide funding for the corporations.<sup>13</sup> These shareholders control the actions of the corporate managers.

The German corporation is a classic stakeholder model. It consists of two corporate boards, namely, the supervisory board and the management board. The supervisory board (*Aufsichtsrat*) contains a minimum of three members with multiples of three but no more than 21 members. In firms of over 2,000 employees, the shareholders may elect half of the board and the employees the other half of the board members. German supervisory boards must have a minimum of one-third employee membership on the board. The board's primary duty is to appoint and remove members of the management board (*Vorstand*). The Vorstand is responsible for the day-to-day operations of the corporation. It is not subject to the dictates from the general meeting of shareholders. Rather, shareholder demands are to be made to the supervisory board which then makes adjustments and demands upon the management board. The management board must take into consideration the various stakeholders including the shareholders, the welfare of the employees, and the community at large. The profit motive is not the paramount principle governing the corporation's operations.<sup>14</sup>

Members of the management board are prohibited from engaging into any transaction which competes with the corporation except with permission of the supervisory board. The management board's duties include the providing of information to the supervisory board with respect to the corporation's business, condition, policy, and other factors impacting upon the corporation. Management is subject to the

strict control and influence by banks which often own large blocks of shares. Such ownership is prohibited in the United States under the Glass-Steagall Act of 1933.<sup>15</sup>

The principal advantage of the German model is management accountability. The banks demand significant control over management.<sup>16</sup> Both the management and the board seek the firm's long-term health and profitability. Banks receive added information to better react to technology-driven and rapidly changing markets. They, therefore, add their expertise to the decisionmaking process. The cost of capital acquisition is less because as banks are more amenable to grant new loans or restructure existing loan agreements. Lower dividend payout ratios result because of money retained for conservative research and development for factory improvements, equipment, and employee training. It appears that the German system is less efficient and flexible than the United States system. Companies are not subject to diverse shareholder input. Businesses are not vulnerable to takeovers; inefficient firms, therefore, continue their poor performance. Significant bank influence tends to cause management to invest in safe operations and impede investments in new ventures that may have significant risk.

The disadvantages of the German and Japanese stakeholder models are considerable. Corporations following the models now are rethinking their effectiveness in the emerging global marketplace. Due to conservative banking financing, there is an inherent bias against startups, ground-breaking research and development, and human-capital industries. By way of comparison, the average age for a listed firm on the New York Stock Exchange in the U.S. is 14 years; the average for a company on the German stock exchange is 55 years. In the U.S., 40% of the listed firms are less than 10 years old but in Japan it is .7%. There is a tendency towards

overinvestment in capacity, excessive risk avoidance, and insufficient attention to the creation of shareholder wealth. There is less creativity, initiative and adaptiveness. The cost of attending to constituencies other than shareholders is illustrated by the fact that the 1996 cost of labor in the U.S. was \$17.75 per hour as contrasted with \$32 in Germany and \$21 in Japan. Also, legal standards with respect to disclosure of information to shareholders tend to vary greatly in the U.S. and U.K. models as opposed to that of Japan and Germany.<sup>17</sup>

In France, the Paris capital market is the fourth largest in the world. Stock holdings tend to be concentrated. The French Stock Exchange, institutional investors, companies, foreign investors, and friendly shareholders (30-50% of shares) hold most of the shares. Similar to Germany, French banks dominate shareholders with much power over boards and corporate policies. Bank controls prevent many hostile takeovers. Non-bank shareholders do have rights under French law. A shareholder possessing 5% or more of the corporation's capital, for example, may request the appointment of a management expert by a judicial court whose report is given to the shareholders and to the Commission des Operations de Bourse. Shareholders are required to appoint an auditor whose role is to control the financial statements of the corporation and assess the legality of the corporation's operations. French corporations are stakeholder entities accountable to a variety of stakeholders beyond that of the shareholders.<sup>18</sup>

In 2001, the French Assembly passed a law which required annual social and environmental impact reports from businesses. The law requires *premier marche*<sup>19</sup> corporations to issue the reports based on designated social indicators encompassing human resources, community, and labor standards. In addition, mandatory reporting is required concerning the implementation of management systems for

health, safety, and the environment including consumption of energy, water and raw materials, and other requirements.<sup>20</sup>

#### *A Possible Third Way – The Convergence Hypothesis*

Many scandals have arisen from corporate malfeasance within the U.K. and the U.S. Scholarly research and reports by a number of corporate and government committees in the U.K., have suggested a third way of evaluating corporate decisions.<sup>21</sup> The Anglo-Saxon shareholder model must recognize the need to take into account the effects of corporate decisions upon other stakeholders.<sup>22</sup> This convergence process towards a common set of principles and objectives aims at analyzing the standards of each of the systems in order to discover a best standard.<sup>23</sup> Initiatives for the convergence of the two basic theories of corporate governance include the Sarbanes-Oxley Act of 2002; the New York Stock Exchange Report of the Corporate Accountability and Listing Standards and its Rules of 2003; the 2003 Higgs Review of the role and effectiveness direction and the Smith Report of Audit Committees in the United Kingdom; the 2002 German Code on Corporate Governance; the 2002 law on reforming the Japanese corporate governance system; and the 2002 consultative document of the High Level of Company Law Experts in the European Union.<sup>24</sup>

The convergence theory finds a common bond between the shareholder and stakeholder models.<sup>25</sup> The focus has shifted to one of "enlightened shareholder value" that requires companies and shareholder components to recognize and report the effects of business decisions on extended stakeholder constituencies including employees, suppliers, communities, and the environment. A problem, however, arises: the U.S. and U.K. systems rely essentially on legal enforcement for the protection of shareholders; German, French, and Japanese corporate governance systems rely upon concentrated equity

ownership rather than the law to curb undesirable managerial conduct.<sup>26</sup>

### CORPORATE SOCIAL RESPONSIBILITY (CSR)

Capitalism has advocated the creation of wealth, opportunity, and technological advances. Nevertheless, capitalism has been accompanied by a lack of concern for the many persons involved in the accumulation process. Shareholder vs. stakeholder concerns had tipped the scales in favor of the former due to the immense success of the U.S. system. But Enron<sup>27</sup> and other scandals left constituencies paying for the errant ways of corporate management. The corporation is now looked upon as an entity capable of not only doing good for shareholders but also capable of creating harm to diverse persons, especially to workers who directly participated in wealth creation. Thus, the movement towards corporate social responsibility has emerged.<sup>28</sup>

CSR has caused managers to look beyond short-term corporate profits to longer term goals of sustainable development, equitable employment practices, and long-term social and environmental well-being. The failure to heed such concerns may cause companies to sustain significant and catastrophic losses. U.S. automakers' near total lack of concern for environmentally helpful fuel efficient automobiles, for example, has greatly affected profitability.

#### *U.S. Governmental Responses to Corporate Lack of Social Responsibility*

The failure of corporations to attend to responsibilities, other than the making of profit for shareholders, has caused the creation of federal and state agencies to address the problems attendant to wealth creation. The Occupational Safety and

Health Administration (OSHA) was created to address the problem of employee injuries due to the lack of safe working conditions; the Consumer Product Safety Commission assures that products manufactured in the U.S. and in foreign countries meet safety standards to prevent caused untold numbers of injuries to consumers; and the Environmental Protection Agency was created to address the pollution and harm to the environment by careless corporate entities such as General Electric whose decisions spoiled the Hudson River.<sup>29</sup>

#### *The Emergence of Suggested U.S. Multinational Corporate Codes of Conduct*

In the U.S., codes of conduct have been in existence for several decades. The Rev. Leon H. Sullivan, for example, who was a member of the Board of Trustees of General Motors Corporation, proposed six basic principles for dealing with the apartheid policies of the Union of South African regime. Among the principles included are the prohibition of racial segregation in eating, comfort, and work facilities, and the increase of non-whites in managerial and supervisory positions.<sup>30</sup>

The earlier Sullivan Code of the 1980s led to the evolving of a more general code of conduct known as the Global Sullivan Principles of Social Responsibility. The Code enunciated principles by which multinational corporations pledged to: (1) respect the employees' freedom of association; (2) compensate employees so as to enable them to meet at least their basic needs; (3) provide a healthy workplace environment; (4) protect human health and the environment; and (5) promote sustainable development. Numerous multinational corporations have signed onto the Code. They did so in part to forestall governmental rulemaking in this arena.<sup>31</sup>



*Selected International Codes of Corporate Social  
Responsibility*

International codes of conduct are inherently voluntary and concern employee, environmental, or human rights issues. They are designed to make corporations more accountable to those persons directly or indirectly affected by their production. The difficulty has been that such codes are most often ignored in developing countries due both to their desire to encourage corporate investment and as a result of bribery of governmental officials by foreign business entities.<sup>32</sup>

*Voluntary Governance:*

The needs of impoverished nations for capital investment and employment have caused them to permit multinational corporations to own and manage large segments of industries critical to the needs of the inhabitants. The problems affecting these nations include extensive poverty, poor working conditions, child labor, lack of employee protection, and low environmental standards. Multinationals have threatened to go elsewhere unless these nations permit them to exploit their natural and human resources. Major companies, such as Nike, looked the other way in the exploitation of employees until they were called to task with highly unfavorable publicity. Codes of conduct for corporations operating in both undeveloped and developed countries appeared. The codes, for the most part, have been voluntary and lacked enforcement absent adverse publicity. They varied and were either general in nature or specific to a particular industry. They were in accordance with suggested international norms or were based on the laws and regulations of the particular nation or subdivision thereof. The codes could be formulated by nations, international organizations, with or

without the input of various stakeholder groups such as religious, environmental, labor, and others.

Compliance with the codes by corporations both aided them and impeded their planning and goals. Negative aspects of the codes include added costs, higher wages, furnishing of better working conditions, lessening pollution emanating from their plants, and changing their internal policies and those of the managers with respect to adherence to the codes. Benefits include worker satisfaction and elimination or lessening the possibilities of strikes and other related actions, lack of adverse publicity, possible lower insurance premiums, a more productive workforce, avoidance of consumer boycotts, and better relations with local and state governments.<sup>33</sup>

*Institutional Governance:*

An emerging trend that has significant potential influence over corporate governance is the growth of the institutional investor. There has been an unprecedented expansion of power being exercised by such investors. Pension funds, mutual funds, and insurance companies, and asset management firms have a total equity of well over a trillion dollars.<sup>34</sup> Their emergence has been assisted by cross-border equity flows, technological innovation, and financing needs of European Union and other countries. The investors demand that their funds, consisting in large part of retirement savings, be invested in companies that are well managed. These institutional investors bring a great deal of capital to their investments. They also have the capability of overseeing the governance of corporations and the use of tools necessary for proper governance maintenance.<sup>35</sup> Accordingly, organizational and governmental proposed codes of conduct have proliferated. These codes and principles include the ones stated hereinafter.



*The U.N. Code of Conduct for Transnational Corporations:*

The draft contains four parts: (1) The activities of multinational corporations must comply with local laws and traditions, respect human rights, avoid corruption, disclose information, and be in accord with economic, financial, and social rules; (2) The treatment of multinational corporations requires host states to protect these entities; (3) Intergovernmental cooperation fosters exchange of information and consultations; and (4) The implementation of the Code requires dissemination of the Code to the affected nations and report to the U.N. Commission on Transnational Corporations.<sup>36</sup>

*The 1977 ILO Tripartite Declaration of Principles:*

The International Labor Organization (ILO) is composed of employers, employees, and government. Its Declaration of Principles aims to guide multinational corporations and other stakeholders to develop policies aimed at social process. Multinationals are called upon to promote equal opportunity, security, and collective bargaining in employment as well as the preclusion of arbitrary dismissal, strike-breaking, and other unfair labor practices. Multinationals are compelled to obey local laws and regulations and to respect the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the ILO's Constitution, and other ILO conventions. It serves, however, as a voluntary guide for appropriate multinational behavior. Unless corporations and nations act in accordance with the Declaration of Principles, there are no effective mechanisms for effective enforcement thereof.<sup>37</sup>

*The 2003 U.N. Sub-Commission on Human Rights Code on Transnational Corporations:*

The Code is concerned with the rights and obligations of both governments and transnational corporations. It requires multinationals to adopt rules of operation to comply with, report on implementation, and incorporate the Code into their contracts with suppliers, distributees, licensees, and other actors. Transnational corporations are to be subject to transparent and independent monitoring and verification by the U.N. and other international and national agencies. The Code requires states to create the legal framework necessary for implementation of the Code. The Code sets for six types of rights or obligations of multinationals: (1) the right to equal opportunity and non-discriminatory treatment; (2) the right to security of persons; (3) the rights of workers including rights against forced or child labor, remuneration that ensures an adequate standards of living, and collective bargaining; (4) respect for national sovereignty, e.g., refraining from bribing public officials, and human rights, e.g., food and drinking water; (5) consumer protection; and (6) environmental protection, including compliance with national and international laws. The Code is voluntary in nature, without enforceable mechanisms.<sup>38</sup>

*The OECD Guidelines for Multinational Corporations:*

The 1976 declaration on international investment and multinational enterprises by the Council of Ministers of the 33-member Organization of Cooperation and Development (OECD) as amended in 2000 consists of standards of good conduct for all multinational corporations operating in or from OECD nations. The Code prescribes conduct concerning taxation, financing, and information disclosure. The Code has a section of employment and industrial relations which prohibits

discrimination in employment and promotion of personnel, respect of the right of employees to be represented by trade unions, and other worker protections. The section on environmental protection provides that multinational enterprises (MNEs) must avoid creating environmentally-related health problems and must respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments; MNEs are to apply principles of corporate conduct compatible with the guidelines with respect to business partners, suppliers, subcontractors, and other third parties with whom they deal; parties must eliminate child labor and forced labor. They must improve environmental management and provide a contingency plan respecting environmental impacts. They also must incorporate disclosure and transparency by encouraging social and environmental accountability. Additional sections seek to combat corruption.<sup>39</sup>

As with other codes of institutional governance, the OECD Code is not legally mandatory on the OECD countries but rather is a political commitment to foster corporate conduct. Disputes, however, are referable to the OECD's Committee on Investment and Multinational Enterprises. Committee recommendations have caused pressure on MNEs for compliance particularly due to the numerous complaints that have been filed with the said Committee.

*The 1999 UN Global Compact:*

The Global Compact seeks to promote good corporate governance in human rights, labor, and the environment. It draws upon the Sullivan Principles, the Universal Declaration on Human Rights, the ILO 1998 Fundamental Principles on Rights at Work, and the Rio Declaration on Environment and Development. It invites MNEs to join governmental efforts,

international organizations, and non-governmental organization (NGOs) to advance social and economic development. The Global Compact principles state that businesses should: support and respect the protection of internationally proclaimed human rights within their spheres of influence; make sure they are not complicit in human rights abuses; uphold freedom of association and forbid compulsory labor; eliminate racial and gender discrimination in employment and occupation; support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; encourage the development and diffusion of environmentally friendly technologies, and work against all forms of corruption, including extortion and bribery.

Companies adhering to these principles are to send a letter from the CEO to the Secretary-General agreeing to abide by the principles and to change their culture in day-to-day operations and public communications. A company's annual report must describe the ways it is supporting the Global Compact. Progress is reported on a U.N. site. A number of companies have agreed to adhere to the Compact including British Petroleum, Daimler-Chrysler, DuPont, Shell, and others. The lack of enforcement and monitoring of compliance raises concerns about the Compact's effectiveness.<sup>40</sup>

In 2004, the United Nations Global Compact issued a report, "Who Cares Wins: Connecting Financial Markets to a Changing World," which examined the social, environmental, and governance issues that can have a material impact on corporate governance performance.<sup>41</sup> There appears to be convergence at the values level. There is an emerging paradigm of governance that perceives CSR and corporate governance to have a unified interest at the values level. It is imperative that governance have an ethical component. CSR examines the kind of product and service the company produces, how it is

produced, and the social and environmental impacts of production. It includes corporate philosophy governing medium and long-term actions, and renegotiation of corporate responsibility.

*International Organization for Standardization (ISO):*

The ISO is a nongovernmental organization, based in Geneva, which is affiliated with national standards institutes located in 146 nation-states. The institutes are either part of a governmental structure or are compelled by governments. The organization has focused on voluntary international standards for many products and for activities in producing goods and services. It has developed some 12,000 standards to insure that products or services conform thereto. Its environmental management system was established in 1996 and is called the ISO 14,000 Series. The ISO environmental management system requires a company to establish and make publicly available an environmental policy suitable to its size and environmental impact. The system seeks to identify impacts and the management processes to reduce them. In particular, the system seeks to ascertain a process by which pollution emissions are scientifically reduced and efficiency improved.<sup>42</sup> Companies must comply with local laws and make a commitment to prevent pollution. They are to adopt procedures to assess and document the environmental impact of their operations; employees are to be trained in these procedures. There are no specific standards set forth but rather a management systems approach is to be used. There are provisions for internal and external audits of the process.

By December 2003, over 66,000 ISO 14,000 management system registrations have been completed worldwide. The lack of specific standards and the failure to call upon companies to adhere to treaties concerning ozone

depletion, biological diversity, or hazardous wastes continue to plague the system. There is no requirement that the corporation actually release its report on adverse environmental effects nor is there a requirement for an external audit. The International Standards Organization plans to institute a proposed ISO 26,000 which would set forth social responsibility guidelines for customer assurance of ethical standards being practiced.<sup>43</sup>

*World Bank and IMF Reports:*

The World Bank and the International Monetary Fund prepare Reports on the Observance of Standards and Codes (ROSC) in order to aid countries in strengthening their corporate governance frameworks. Reports of some 35 countries have been prepared which incorporate OECD corporate governance principles and their observance by the affected countries. Included in substantial detail are the assessment, description, and policy recommendations of the rights of shareholders, the equitable treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency, and Board responsibility.<sup>44</sup>

*Codes focused on Specific Industries:*

Industries, including the oil and the extractive and energy sectors, have been criticized for their alleged lack of environmental and social concerns. In December 2000, the Voluntary Principles on Security and Human Rights was promulgated. Companies must ensure respect for human rights and fundamental freedoms as well as maintain the safety and security of their operations. Companies are to assess a series of risk factors based on credible information from a range of perspectives, including civil society groups knowledgeable about local conditions. Companies are to use their influence with public security so as to not to use the services of

individuals credibly implicated in human rights abuses; use force unless strictly necessary and to an extent proportionate to the threat; and violate the rights of individuals when they are exercising the rights of freedom association and peaceful assembly, or other related rights; Companies must follow similar procedures with respect to private security providers.<sup>45</sup>

#### *Governance Practices Demonstrating CSR Principles*

There are generally acceptable requirements for corporate governance systems wishing to adhere to CSR principles. These requirements include the following:

##### *Disclosure, accountability, and transparency:*

Companies need meaningful disclosure of the social, environmental, and ethical issues so that they can go beyond window-dressing. Issues of risk management and strategic advantages are to be specified. Companies must review the progress of CSR integration and examine whether internal control systems cover CSR. Incentive compensation is to be given for addressing CSR objectives. The board's CSR operations and status of the company's stakeholder's relationships are to be transparent. The company is to develop policies covering CSR issues and report on policy implementation.

##### *Board composition and diversity:*

A corporation is to move away from cronyism and towards the recruitment of independent directors with diverse skills, knowledge, backgrounds, and expertise. The board of directors shall include directors with non-traditional backgrounds who can add fresh perspectives. Diverse genders and ethnicity are to be a goal for companies.

##### *Risk management oversight:*

A key board duty is the consideration of long-term corporate risks. A critical issue is the directors' competencies. Their active efforts to take a broad view of things that affect intangible assets and their ability to assess strategies critical for effective governance and corporate performance are to be a priority.

##### *Compensation of board, executives, and staff:*

Incentives are to be given to encourage CSR performance and for a holistic approach to risk and opportunity management. There is a need to examine corporate policies from a long-term perspective.

##### *Global Reporting initiative identification of cross-over indicators:*

Directors are to be independent and possess expertise for corporate performance. Board-level processes are to be instituted for overseeing the identification and management of economic, environmental, and social risks and opportunities. Also, a linkage between executive compensation and the achievement of financial and non-financial goals is to be set forth.

##### *Need for CSR alignment and embedment:*

CSR is to be embedded throughout the organization so as to assure a company's CSR performance. Once embedded,



CSR will affect corporate strategy so as to lead a company towards investments in less harmful alternatives, e.g., in matters of environmental concern. Risk management, diversity, disclosure, and compensation are to be enablers of CSR performance.<sup>46</sup>

#### *Regional and Local Statutory Enactments of CSR*

There has been pressure placed upon Japanese and European governments to incorporate U.S.-style principles of corporate governance. The Enron and other U.S. corporate scandals, however, have made them reluctant to bring about dramatic changes. The E.U. and its 25 member states have recommended or mandated the identification and disclosure of social and environmental risks. The E.U., France, Belgium, Germany, and the U.K. have enacted regional and local legislation requiring pension funds to disclose the extent to which they take ethical, social, and environmental information into account in constructing their portfolios.<sup>47</sup>

Denmark, the Netherlands, Norway, and Sweden require companies to provide expanded environmental information in their annual reports. France, in its "New Economic Regulations" (*Nouvelles Regulations Economique*), requires companies to have a "triple-bottom-line" reporting of all companies trading on the French stock exchange (the *Bourse de Paris*). Companies must disclose very detailed social<sup>48</sup> and economic information, including environmental, labor, community involvement, health and safety information, in their annual reports to shareholders.<sup>49</sup>

The E.U. has initiated a number of internal and external plans concerning CSR. The internal European Employment Strategy, E.U.-Ecolables, and the Eco-Management and Audit Scheme (EMAS) are all designed to promote CSR. The E.U.-

Ecolables voluntary initiative encourages the production of more environmentally friendly goods and services and ensures transparency to consumers. EMAS was created in order to promote "continuous improvements in the environmental performance of industrial activities by committing firms to evaluate and improve their own performance." Externally, the Cotonou Agreement with African, Caribbean, and Pacific nations seeks to promote human rights norms. The Agreement "incorporated defining human rights as a fundamental element of the agreement which serves as the basis for dialogue with a third country government on human rights." It imposes obligations upon states rather than on the corporate entities themselves.<sup>50</sup>

The "Communication on the E.U. role in promoting human rights and democratization in third countries" liberalizes trade under the E.U.'s Generalized Systems of Preference with countries complying with the E.U.'s minimum social and environmental standards.<sup>51</sup> It seeks to ensure compliance by providing sanctions in the form of preference withdrawal when countries commit serious and systematic violations of International Labor Organization core labor standards.<sup>52</sup> The E.U.'s Manifesto of Enterprises against Social Exclusion led to the creation of the European Business Network in 1995. The Manifesto advocated an open dialogue between the relevant actors and the exchange of best practice on CSR. In the E.U.'s Lisbon Summit of the European Council, CSR was made a major priority within the framework of sustainable development.<sup>53</sup>

The Goteburg Summit of June, 2001, was concerned with the role of companies within society and within the context of sustainable development strategy for Europe. It led to the publication of a "Green Paper on Corporate Social Responsibility" that sought to stimulate debate on the subject.

The Green Paper undertook to determine the role of the E.U. in the development of CSR, the role of CSR in corporate business strategies, the role of other stakeholders, the monitoring and evaluation of CSR strategies, and the mechanisms appropriate for developing CSR. It rejected the "one-size-fits-all" approach and reflected the desire to have companies self-regulate.<sup>54</sup>

The E.U.'s forays into CSR have had some modest success. It has harmonized financial disclosure and recognition of contractual obligations. Social and environmental responsibilities of corporations are emphasized. Its "Lisbon Strategy" of March 2000 has provided for social and governmental disclosure obligations including environmental concerns. The E.U. Commission issued a Recommendation<sup>55</sup> concerning the recognition, measurement, and disclosure of environmental issues in annual reports and financial accounts. The Recommendation divides the environmental issues into 39 very specific categories that are to be considered. The purpose of the information is to convey informational data to regulatory authorities, investors, financial analysts, and the public concerning the potential environmental risks and liabilities that may face a company.<sup>56</sup>

The 2003 Communication on Corporate Governance is prefaced by the comment that "well managed companies, with strong corporate governance records and sensitive social and environmental performance, outperforms their competitors." The E.U. Commission recognizes that the need to integrate the capital markets with an enhancement of the quality of financial reporting, the development of industrial policies to achieve sustainable economic development, and the examination of social responsibility. In its Communication for Sustainable Development, the E.U. invited companies with 500 or more employees to publish a triple bottom-line report to shareholders evaluating their performance against specified economic,

environmental, and social criteria. The 2003 Modernization Directive that followed the Communication amended prior directives incorporating International Accounting Standards into E.U. companies' financial reporting.<sup>57</sup> Thus, commencing in 2005, companies are required to include a fair review in their financial reports of the development and performance of the company's business together with principal risks and uncertainties that they face. Companies are also to include financial and other nonfinancial key factors including environmental and employee matters.<sup>58</sup>

The U.S., mandates substantial reporting requirements especially after Sarbanes-Oxley. The country, nevertheless, has very limited requirements concerning the disclosure of nonfinancial information due mainly to the failure of the U.S. government to have policies favoring sustainable development. Statutory requirements are most often based on individual state laws which vary considerably from state to state. Other than operating for any lawful purpose, there are few obligations concerning stakeholders other than shareholders' compliance with local statutes and regulations especially affecting employees. Sarbanes-Oxley has only tangentially affected corporations with respect to CSR but is concerned mainly with reporting financial results accurately and with the reduction of conflicts of interest.

The few regulations concerning corporate environmental obligations include the requirement that a public reporting company disclose environmental information under Regulations S-K of federal securities law, namely the costs of complying with new environmental regulations at any governmental level. Companies are required to disclose pending environmental litigation wherever the litigation is brought by a government agency. Possible penalties for noncompliance are fines of \$100,000 or more. Companies are

also required to disclose their financial and operational results and to disclose any known "events, trends, or contingencies" that might have a material impact in the future.

The obligations include the disclosure of social or environmental information especially in industries that are extractive in nature especially in unstable countries or where their production might make the companies liable under the Superfund legislation. The perceived difficulty with the said Regulations is the near total lack of enforcement by the current Administration but companies should nevertheless comply with the Regulations should the position of the present Administration change or when there has been a change in leadership. Other U.S. requirements in this post-Enron era include the requirement that mutual funds and registered investment advisers disclose the policies and procedures they use to determine how to vote proxies for portfolio securities and how they actually voted.

## CONCLUSION

The question remains whether social responsibility is compatible with economic success. It is clear that the U.S. economy leads the world in competitiveness. Nevertheless, it has had less than enviable success in the area of corporate social responsibility. Japan, on the other hand, together with France and Germany, have attended to the corporate social responsibility requirements but have lagged substantially behind the U.S. in economic success. Japan, for example, has until recently maintained lifetime employment for employees while the U.S. has promulgated an employment-at-will position that has displaced many thousands of employees in ensuing layoffs when companies faced economic crises. U.S. companies are permitted to go bankrupt or undergo reorganization. Japanese, French and German companies in the

past were supported by bank investors and became conservative and stagnant in business practices. The financial success of the U.S. companies appears to favor the shareholder model over the stakeholder model and even to favor shareholder concerns in any possible third convergence model. U.S. companies have become enormously powerful while the Japanese and even French and German companies and their bank investors have undergone many periods of crisis. Japanese executives, in fact, are now restudying U.S. corporate governance methodologies, thereby reversing U.S. companies' attempts to emulate the successes of Japanese companies two decades ago.

It seems that economic success is the main consideration in determining the extent of corporate social responsibility. Many problems arise, however, when individuals, institutions and nation states do not insist, in some enforceable way, that local and transnational companies attend to many global concerns: consumer and employee rights, the environment, global warming, terrorism and warfare<sup>59</sup>. The unity of peoples brought about by transportation, communication and the media have focused global awareness: companies must attend to obligations other than making immediate profits.

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## ENDNOTES

<sup>1</sup> DAVID ROCKEFELLER, MEMOIRS 378-379 (Random House, 2002).

<sup>2</sup> For example, in New York State, one need only file a simple form with the Secretary of State in Albany, containing the proposed non-conflicting name, state that the corporation is to be used for lawful purposes, fix the number of initial shares to be offered (usually 200 shares no par value), name the location of the corporation, the name and address of the person

upon whom process may be served, and the signature of the incorporator. Only one person need incorporate (often the attorney's secretary), pay the appropriate filing fee, and await the formal acceptance (usually within two weeks of filing). There is no requirement that the individual be a citizen and there is no minimum capitalization requirement. In a few states, e.g., California, there is a relatively small minimum capitalization requirement. In France and Germany, the capitalization requirements are much more onerous. For example, the minimum German capitalization requirement is 100,000 deutsche marks while in France, it is 1,500,000 francs or the present equivalent in euros. France Law Digest, MARTINDALE-HUBBELL LAW DIGEST, p. FRA-3 (1998); German Law Digest, *id.* p. GER-6.

<sup>3</sup> "Corporate governance" has been defined in a number of ways, most of which have common characteristics. Included among the definitions are:

[T]he top management process that manages and mediates value creation for, and value transference among, various claimants in a context that ensures accountability toward these claimants. Timothy L. Fort & Cindy A. Schipani, *Competitive Corporations with Moral Integrity: A Blended Model of Corporate Governance*, 1 ALSB INT'L BUS. L.J. 62 (2000).

In its narrowest sense, corporate governance can be viewed as a set of arrangements internal to the corporation that define the relationships between managers and shareholders. The shareholders may be public or private, concentrated or dispersed. Magdir Iskander and Nedereh Chamlou, *Corporate Governance: A Framework for Implementation*, THE WORLD BANK GROUP (2000).

<sup>4</sup> THE MODERN CORPORATION AND PRIVATE PROPERTY (Macmillan Co., 1933).

<sup>5</sup> Milton Friedman, *The Social Responsibility of Business is to Increase Its Profits*, N.Y. TIMES, Sept. 13, 1970 (Magazine), at 33.

<sup>6</sup> See, e.g., Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443 (Dec. 2001) and Amir N. Licht, *The Maximands of Corporate Governance: A Theory of Values and*

*Cognitive Style*, 29 DEL. J. CORP. L. 649 (2004).

<sup>7</sup> The largest percentage of outstanding shares owned by the five largest shareholders in the U.S. is 25.4%, while Japan has 33.1% and Germany has 41.5%.

<sup>8</sup> A possible reason for the lack of contests is the well known use of "poison pills" to dissuade possible contests. They include "preferred stock plans" whereby the target company offers stock shareholders a dividend of preferred shares that would be convertible into large multiples of the stock of the takeover company; "flip-over rights" which allow the holders of shares to buy stock in the acquiring firm at a low price; "flip-in rights" which allow holders of rights to acquire stock in the target company; "golden parachutes" that grant special lucrative compensation to upper management in the event of a takeover; "white knight" whereby the target company seeks a friendly bidder as an alternative to a hostile bidder; "white squire" whereby the target company places shares in the hands of a friendly firm or investor; "pac-man defense" where the target company seeks to buy the takeover company; "supermajority provisions" whereby corporate charter is amended to provide for a much higher percentage of shareholder vote approval for a merger (e.g., 66 2/3rds %, 75%, or even 95%); and many other types of defenses. The takeover defenses are taken from PATRICK A. GAUGHAN, *MERGERS, ACQUISITIONS, AND CORPORATE RESTRUCTURINGS* (John Wiley & Sons, Inc.) (1996).

<sup>9</sup> Ronald C. Anderson, Richard T. Boylan, & David M. Reeb, *Paying the CEO: The Integrity Reputation Premium* (Feb. 16, 2006), [www.astro.temple.edu](http://www.astro.temple.edu). The figure for the United Kingdom's CEO is up to 125 times that of the worker's salary. SUNDAY GUARDIAN [UK] (April 5, 2006).

<sup>10</sup> For a detailed discussion, see James McConvill, *Executive Compensation and Corporate Governance: Rising Above the "Pay-for-Performance" Principle*, 43 AMERICAN BUSINESS LAW JOURNAL 413 (No. 2, 2006).

<sup>11</sup> "Chinese wall" is defined as "the procedures enforced within a securities firm that separate the firm's departments to restrict access to non-public, material information, in order to avoid the illegal use of inside information." [www.investorwords.com/854/Chinese\\_Wall.html](http://www.investorwords.com/854/Chinese_Wall.html).



<sup>12</sup> See LARUE TONE HOSMER, *THE ETHICS OF MANAGEMENT*, 2d Ed. (Irwin, 1991).

<sup>13</sup> E.g., the top five shareholders in Daimler-Chrysler own 79% of the shares. In contrast, the top five shareholders of General Motors stock possess only 5.74% of its shares.

<sup>14</sup> For a discussion of German corporations, see Florian Stamm, *A Comparative Study of Monitoring of Management in German and U.S. Corporations After Sarbanes-Oxley: Where are the German Enrons, WorldComs, and Tycoos?*, 32 GA. J. INT'L & COMP. L. 813 (Summer, 2004).

<sup>15</sup> 12 U.S.C. Section 347a.

<sup>16</sup> *Id.* at 821-828.

<sup>17</sup> A survey of institutional investors found that the percentage of such investors who said that their laws and practices require corporations to disclose sufficient information to investors ranged from a high of 84% in Britain and 82% in the U.S. vs. 53% in Germany to only 10% in Japan. *A Global Vote for U.S. Style of Corporate Openness*, NEW YORK TIMES, May 9, 1999, Sec. 3 at 4.

<sup>18</sup> For a discussion of French corporate governance and the rise of shareholder activism, see, Perry E. Wallace, *The Globalization of Corporate Governance: Shareholder Protection, Hostile Takeovers and the Evolving Corporate Environment in France*, 18 CONN. J. INT'L L. 1 (Fall, 2002).

<sup>19</sup> Literally, the "first market" on the French stock exchange (Bourse).

<sup>20</sup> GREENMONEY JOURNAL, [www.greenmoneyjournal.com/article.mpl?newsletterid=2&articleid=19](http://www.greenmoneyjournal.com/article.mpl?newsletterid=2&articleid=19).

<sup>21</sup> The most cited committee report is that of the Cadbury Committee, *Report of the Committee on the Financial Aspects of Corporate Governance*, (Dec. 1, 1992). For a discussion of the report see: Brian R. Cheffins, *Current Trends in Corporate Governance: Going from London to Milan via Toronto*, Vol.1, 10 DUKE J. OF COMP. & INT'L 5

(Fall/Winter, 1999).

<sup>22</sup> There is substantial literature on the theory of convergence. Among the articles suggesting the convergence are: Cynthia A. Williams & John M. Conley, *An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct*, 38 CORNELL INT'L L.J. 493 (2005); John C. Coffee, 93 NORTHWESTERN LAW REVIEW 641-708 (1999); RONALD J. GILSON, *GLOBALIZING CORPORATE GOVERNANCE: CONVERGENCE OF FORM OR FUNCTION*, (Columbia Law School, Working Paper, May 2000), [www.law.columbia.edu/lawec/](http://www.law.columbia.edu/lawec/); Davis, Gerald F. & Marquis, Christopher, *The Globalization of Stock Markets and Convergence in Corporate Governance*, [www.iese.edu/en/files/6\\_15519.pdf](http://www.iese.edu/en/files/6_15519.pdf); Georges Ugeux, *Towards global convergence in corporate governance: An assessment of the current situation*, 1 INT'L J. OF DISCLOSURE AND GOVERNANCE (No. 4, 2004); Allison Dabbs Garrett, *Themes and Variations: The Convergence of Corporate Governance Practices in Major World Markets*, 32 DENV. J. INT'L & POL'Y 147 (Spring, 2004); JOSEPH A. MCCAHERTY, PIET MOERLAND, THEO RAAIJMAKERS, & LUC RENNEBOOG ed, *CORPORATE GOVERNANCE REGIMES: CONVERGENCE AND DIVERSITY* (2002) and book review of the study by John W. Cioffi, 52 AM. J. COMP. L. 770 (Summer, 2004).

<sup>23</sup> Ugeux *Id.*

<sup>24</sup> Other initiatives include the Lyons G7 meetings which concerned in major part towards the creation of a regulatory framework for global financial institutions and capital markets; the World Federation of Exchanges and the International Organization of Securities Commissions which made a number of suggestions; and the Organization of Economic Cooperation and Development (OECD) which drafted international standards of corporate governance.

<sup>25</sup> Timothy L. Fort and Cindy A. Schipani call the shareholder-stakeholder model approaches "contractarian-communitarian" approach. *Competitive Corporations with Moral Integrity: A Blended Model of Corporate Governance*, 1 ALSB INT'L BUS. L.J. 62 (2000).

<sup>26</sup> A Shleifer, and R.W. Visny, *A Survey of Corporate Governance*, 52 JOURNAL OF FINANCE 737-783 (1977), cited by Diane K. Denis and John J. McConnell *International Corporate Governance* 38 JOURNAL OF FINANCIAL AND QUANTITATIVE ANALYSIS 1-36 (March, 2003).

- <sup>27</sup> The Enron debacle has led to an enormous output of articles. Some examples include: John C. Coffee, Jr., *What Caused Enron? A Capsule Social and Economic History of the 1990s*, 89 CORNELL L. REV. 269 (2004) and Geoffrey P. Miller, *Catastrophic Financial Failures: Enron and More* 89 CORNELL L. REV. 423-455 (2004).
- <sup>28</sup> There are numerous articles concerning the misbehavior of corporations and the drive towards corporate responsibility. Included among them are: Sorcha MacLeod, *Corporate Social Responsibility Within the European Union Framework*, 23 WIS. INT'L L.J. 541 (Summer, 2005). The call for a change in corporate governance while adhering to the goal of shareholder wealth accumulation is exemplified by Kent Greenfield, *New Principles for Corporate Law*, 1 HASTINGS BUS. L.J. 89 (May, 2005). Greenfield proposes a number of principles focusing on society's well-being. They are: (1) that "the ultimate purpose of corporations should be to serve the interests of society as a whole;" (2) "corporations are distinctively able to contribute to the societal good by creating financial prosperity;" (3) corporate law should further the first two principles; (4) "a corporation's wealth should be shared fairly among those who contribute to its creation;" and (5) "participatory, democratic corporate governance is the best way to ensure the sustainable creation and equitable distribution of corporate wealth."
- <sup>29</sup> Daniel T. Ostas, *Cooperate, Comply or Evade? A Corporate Executive's Responsibility with Respect to Law*, 41 AM. BUS. L.J. 559 (Summer, 2004).
- <sup>30</sup> [www.globalsullivanprinciples.org](http://www.globalsullivanprinciples.org).
- <sup>31</sup> [www.thesullivanfoundation.org/gsp](http://www.thesullivanfoundation.org/gsp).
- <sup>32</sup> For a listing of countries in the order of alleged degree of corruption, see [www.transparency.org](http://www.transparency.org).
- <sup>33</sup> For a review of various corporate codes of conduct, see WORLD BANK GROUP CORPORATE SOCIAL RESPONSIBILITY PRACTICE, COMPANY CODES OF CONDUCT AND INTERNATIONAL STANDARDS: AN ANALYTICAL COMPARISON (2003), [www.worldbank.org/html/fpd/privatesector/csr/doc/Company%20Codes%20of%20Conduct.pdf](http://www.worldbank.org/html/fpd/privatesector/csr/doc/Company%20Codes%20of%20Conduct.pdf).

- <sup>34</sup> Eric L. Zagar and Roy Jones, *European institutional investor winning corporate governance reforms in US investee companies*, [http://216.239.51.104/search?q=cache:ZJQngQRw\\_dsJ:www.sbclasslaw.com/pr/1%26PE...](http://216.239.51.104/search?q=cache:ZJQngQRw_dsJ:www.sbclasslaw.com/pr/1%26PE...)
- <sup>35</sup> *Id.*
- <sup>36</sup> UNITED NATIONS CENTRE ON TRANSNATIONAL CORPORATIONS, THE UNITED NATIONS CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS, (Boston: Graham and Trotman, 1988). For a discussion, see William C. Frederick, *The Moral Authority of Transnational Corporate Codes*, 10 JOURNAL OF BUSINESS ETHICS 165 (March, 1991).
- <sup>37</sup> 41 ILM 186 (2002), [www.ilo.org/public/english/standards/norm/sources/mne.htm](http://www.ilo.org/public/english/standards/norm/sources/mne.htm).
- <sup>38</sup> UN ESCOR, 55<sup>th</sup> Sess., Agenda Item 4, UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (13 Aug 2003). For a discussion, see David Weissbrodt and Muria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, 97 THE AMERICAN JOURNAL OF INTERNATIONAL LAW 901 (Oct. 2003).
- <sup>39</sup> THE OECD DECLARATION AND DECISIONS ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES: BASIC TEXTS (2000), [www.oilis.oecd.org/olis/2000doc.nsf/c5ce8ffa41835d64c125685d005300b0/c125692700623b74c1256991003b5147/\\$FILE/0085743.PDF](http://www.oilis.oecd.org/olis/2000doc.nsf/c5ce8ffa41835d64c125685d005300b0/c125692700623b74c1256991003b5147/$FILE/0085743.PDF).
- <sup>40</sup> In the introduction to the UN COMPACT, 2004, WHO CARES WINS: CONNECTING FINANCIAL MARKETS TO A CHANGING WORLD, it states:

In a more globalized, interconnected and competitive world, the way that environmental, social and corporate governance issues are managed is part of companies' overall management quality needed to compete successfully. Companies that perform better with regard to these issues can increase shareholder value by, for example, properly managing risks, anticipating regulatory action or accessing new markets while at the same time contributing to the sustainable development of the

societies in which they operate. Moreover these issues can have a strong impact on reputation and brands, an increasingly important part of company value.

<sup>41</sup> [www.unglobalcompact.org/](http://www.unglobalcompact.org/).

<sup>42</sup> Mallen Baker, *Standards of Corporate Responsibility*, 83 BUSINESS RESPECT (June 15, 2005), [www.mallenbaker.net/csr/CSRfiles/page.php?Story\\_ID=1446](http://www.mallenbaker.net/csr/CSRfiles/page.php?Story_ID=1446).

<sup>43</sup> [www.iso.org/iso/en/ISOOnline.frontpage](http://www.iso.org/iso/en/ISOOnline.frontpage).

<sup>44</sup> For a summary and detailed analysis of individual countries and their observance of OECD principles, see [www.worldbank.org/ifa/rosc\\_cg.html](http://www.worldbank.org/ifa/rosc_cg.html).

<sup>45</sup> [www.voluntaryprinciples.org](http://www.voluntaryprinciples.org).

<sup>46</sup> See, generally, BOB GARRETT, THIN ON TOP: WHY CORPORATE GOVERNANCE MATTERS AND HOW TO MEASURE AND IMPROVE BOARD PERFORMANCE, (Nicholas Brealey Publishing, 2003) 105-111; and FRED R. KAEN, A BLUEPRINT FOR CORPORATE GOVERNANCE: STRATEGY, ACCOUNTABILITY, AND THE PRESERVATION OF SHAREHOLDER VALUE 29-31 (American Management Association, 2003).

<sup>47</sup> RONALD J. GILSON, *The Globalization of Corporate Governance: Convergence of Form or Function*, (Columbia Law School Working Paper No. 174, May, 2000), at 31.

<sup>48</sup> Social information that must be disclosed include information about labor arrangements with all workers; organization of working hours and overtime; gender equity; labor relationships and collective bargaining agreements; health and safety, and other such data.

<sup>49</sup> Article 116 of the NOUVELLES REGULATIONS ECONOMIQUE requires that environmental information to be furnished includes the use of resources, such as water, energy, and raw materials; emissions that could cause air, water, noise, or other pollution; the company's management's efforts and systems to reduce environmental impacts; accounting reserves for environmental risks; and monetary awards paid for environmental damage.

<sup>50</sup> [ec.europa.eu/comm./development/body/Cotonou/index\\_en.htm](http://ec.europa.eu/comm./development/body/Cotonou/index_en.htm).

<sup>51</sup> Commission, *Promoting a European Framework for Corporate Social Responsibility*, Green Paper, [europa.eu.int/comm./employment\\_social/soc-dial/csr/greenpaper\\_en.pdf](http://europa.eu.int/comm./employment_social/soc-dial/csr/greenpaper_en.pdf).

<sup>52</sup> It states that "Human rights are advanced by the encouragement of businesses operating in developing states to promote human rights values in relation to workers' rights and ethical standards, particularly where their operations have an influential role in countries with a poor record in this area."

<sup>53</sup> [www.eeb.org/activities/sustainable\\_development/review-sds-13-04-04.pdf](http://www.eeb.org/activities/sustainable_development/review-sds-13-04-04.pdf).

<sup>54</sup> Commission *supra* note 53.

<sup>55</sup> 2001/453/EC.

<sup>56</sup> MACLEOD *supra* note 29.

<sup>57</sup> See [Eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0707:EN:NOT](http://Eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0707:EN:NOT).

<sup>58</sup> For a discussion, see Karel Lannoo and Arman Khachatryan, *Reform of Corporate Governance in the EU*, 5 EUROPEAN BUSINESS ORGANIZATION LAW REVIEW 37-60 (Apr. 2004) and Ian P. Dewing and Peter O. Russell, *Accounting, Auditing and Corporate Governance of European Listed Countries: EU Policy Developments Before and After Enron*, 42 JOURNAL OF COMMON MARKET STUDIES 289 (June, 2004).

<sup>59</sup> For the latest extensive media discussion concerning global warming, see *Global Warming*, TIME, April 3, 2006, at 28-62.