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Berkshire Hathaway Sustainability Report Resolution

SUBJECT: **Grounds for a Yes Vote on Berkshire Hathaway Shareholder Resolution Requesting a Sustainability Report**

DATE: April 13, 2009

CONTACTS: Bama Athreya, International Labor Rights Forum, 202-347-4100, bama.athreya@ilrf.org; Patrick McCully, International Rivers, 510-848-1155, patrick@internationalrivers.org.[1]

Effect of the Resolution: The resolution (text attached below as Appendix A) would request that the Board of Directors issue a sustainability report to shareholders, produced at reasonable cost and omitting proprietary information, by October 1, 2009.

Reasons for a Yes Vote:

1. In the past three years, three companies in Berkshire Hathaway's investment portfolio (Mid-American Energy Holdings Company, Russell Athletic and PetroChina) **have faced significant environmental, labor rights and human rights issues that have exposed Berkshire Hathaway to material risks to the company's operations, reputation and business.**

2. Berkshire Hathaway does not adequately disclose its sustainability-related risk.

3. Berkshire Hathaway is a corporate outlier in its lack of sustainability reporting and inadequate management of environmental, labor rights and human rights risks.

[1] The resolution was submitted by Berkshire Hathaway shareholder Joseph G. Petrofsky. The International Labor Rights Forum (ILRF), http://www.laborrights.org, and International Rivers (IR), http://internationalrivers.org, own no Berkshire Hathaway stock and have no relationship to Mr. Petrofsky. ILRF and IR are nonprofit organizations which are leading international advocates on the issues, respectively, of the environmental impact of large-scale dams, and labor and human rights issues in global supply chains.

1. In the past three years, three companies in Berkshire Hathaway's investment portfolio (Mid-American Energy Holdings Company, Russell Athletic and PetroChina) **have faced significant environmental, labor rights and human rights issues that have exposed Berkshire Hathaway to material risks to the company's operations, reputation and business.**

Companies publish sustainability reports, in part, to inform investors about the risks and opportunities their businesses face related to environmental and social issues. Such risks may be regulatory, legal, competitive or reputational.

Berkshire Hathaway's 10-K report, its annual report, and CEO Warren Buffet's letter to shareholders, however, offer scant information regarding these risks, even though the company has invested in firms that operate in at least three sectors -- utilities, oil and gas extraction, and garment manufacturing -- where the investment risks associated with environmental impacts, human rights abuses and labor rights violations, respectively, are quite well-known.[2]

The Global Reporting Initiative's (GRI) Sustainability Reporting Guidelines, which the proponent of this resolution recommends Berkshire use in producing its report, covers sustainability performance in six categories (direct economic impacts, environmental impacts, labor practices and decent work conditions, human rights, society, and product responsibility).[3]

Here we discuss risks in three of these areas (environmental, labor practices and decent work conditions, and human rights) as important examples of sustainability-related issues that already have had a bottom-line impact on three Berkshire portfolio companies:

(i) **Mid-American Energy Holdings Company:** environmental and financial impact of dam mitigation and potential removal;
(ii) **Russell Athletic:** labor and human rights issues and competitive and reputational risk in overseas garment manufacturing; and
(iii) **PetroChina:** human rights issues and reputational risk of investing and operating in the oil and gas extraction sector in Sudan.

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[2] *See, e.g.,* Dan Bakal, "Clearing the Air for Wall Street: Grading Utilities on Climate Change Governance," *Energy Daily* (Apr. 19, 2006); Coalition for International Justice, "Soil and Oil: Dirty Business in Sudan" (Feb. 2006), http://www.ecosonline.org/back/pdf_reports/2006/reports/Soil_and_Oil_Dirty_Business_in_Sudan.pdf; Aaron Bernstein, "Incorporating Labor and Human Rights Risks into Investment Decisions," *Capital Matters* 6 (Harvard Law School, Sept. 2008) ("On the LHR [Labor and Human Rights] front, the steady stream of sweatshop allegations about Nike Incorporated, Wal-Mart Stores Incorporated, and other companies over the past decade demonstrated the reputational risks that poor LHR practices can produce. Some Wall Street analysts have come to conclude that these factors have had a meaningful impact on some company's performance."), *citing* Kris Hudson, "Analyst Finds Union Groups Have Impact on Wal-Mart," *Wall Street Journal,* March 9, 2007.

[3] *See,* GRI, "GRI Sustainability Reporting Guidelines—Reference Sheet," http://www.globalreporting.org/NR/rdonlyres/DDB9A2EA-7715-4E1A-9047-FD2FA8032762/0/G3_QuickReferenceSheet.pdf.

Mid-American Energy Holdings Company: *The Environmental Impact of Dams and the Financial Impact of Dam Mitigation and Potential Removal*

PacifiCorp, a subsidiary of Mid-American Energy Holdings Company, of which Berkshire Hathaway is majority owner, has a series of hydroelectric dams on the Klamath River near the California-Oregon border that block migration of salmon, steelhead, and lamprey over 350 miles of spawning habitat. As noted in the proponent's resolution, these dams create behind them reservoirs that produce massive blooms of toxic blue-green algae each summer posing a heath risk to the fish and to local communities.

In 2002, the Klamath River was the site of ecological disaster when over 68,000 fish were killed by disease in a matter of days, the worst such incident in U.S. history.[4] For the next six years, despite continued elevated levels of toxic algae, PacifiCorp sought the dams' re-licensing and continued operation, even though studies by the California Energy Commission and the Federal Energy Regulatory Commission concluded that dam removal would be cheaper than bringing the dams into compliance with environmental laws.[5] Finally, in November 2008, PacifiCorp agreed in principle that it would contribute up to $200 million for the removal of four of the dams by 2020[6] -- a dramatic turnaround in company policy, though negotiations among the concerned parties are still continuing.

Russell Athletic: *Labor and Human Rights Issues and Competitive and Reputational Risk in Overseas Garment Manufacturing*

Russell Athletic, a division of Berkshire Hathaway subsidiary Fruit of the Loom, is a leading producer of collegiate licensed apparel – sweatshirts and t-shirts which colleges and universities have licensed to carry their names and emblems – a $3 billion per year annual market in the United States. For humanitarian reasons and to address their own reputational risks, US colleges and universities have adopted codes of conduct governing labor and human rights practices in factories producing under these licenses and have affiliated with nongovernmental organizations that monitor this production.[7]

In late 2007, after two of these monitoring organizations (including one to which Russell, itself, is affiliated as a paying member) reported that Russell had illegally terminated 145

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[4] *See,* "Economic Modeling of Relicensing and Decommissioning Options for the Klamath Basin Hydroelectric Project, California Energy Commission," California Energy Commission, November 2006 (Page 14) http://www.energy.ca.gov/2006publications/CEC-700-2006-010/CEC-700-2006-010.PDF

[5] *See, e.g.,* Federal Energy Regulatory Commission, "Draft Environmental Impact Statement for Relicensing of the Klamath Hydroelectric Project No. 2082-027" (September 25, 2006), http://www.ferc.gov/industries/hydropower/enviro/eis/2006/09-25-06.asp#skipnavsub.

[6] *See* California Resources Agency, PacifiCorp, State of Oregon and U.S. Government, "Agreement in Principle" (Nov. 13, 2008), *referenced in* U.S. Dept of Interior, "Agreement in Principle Marks First Critical Step on Presumptive Path to Remove Four Klamath River Dams" (Nov. 13, 2008), http://www.doi.gov/news/08_News_Releases/111308.html,

[7] These nongovernmental organizations are the Worker Rights Consortium (WRC), to which more than 180 schools are affiliated, *see,* http://www.workersrights.org/about/as.asp, and the Fair Labor Association (FLA), which has over 200 such affiliates, *see,* http://www.fairlabor.org/fla_affiliates_d1.html.

workers in its Honduran garment factories for attempting to form a union,[8] several US universities threatened the company with possible termination of its licenses if the situation was not corrected. Russell responded by offering reinstatement and back-wages to all of the fired employees.[9] Little more than a year later, however, new reports began to surface, including one written by a widely-respected international labor law expert, that Russell was shutting down one of its plants entirely, in part, to defeat workers efforts at unionization – a move affecting nearly 2,000 workers, and a clear violation of university licensors' codes of conduct.[10] The U.S. State Department highlighted the case in its most recent annual report on the human rights environment in Honduras.[11]

The backlash on university campuses has been unprecedented. Since the beginning of this year, Russell's violations of worker rights in Honduras have led over twenty major U.S. universities to end their licensing relationships with Russell, a move that potentially could affect millions in company sales and already has attracted considerable media attention.[12] The universities taking action against Russell include some of the leading names in American athletic and academic life – among them, Columbia, Cornell, Duke, Georgetown, Harvard, Miami, Michigan, Minnesota, NYU, North Carolina, Penn State, Purdue, Rutgers, Stanford, University of Connecticut, University of Pennsylvania, and Wisconsin – with more schools still considering severing ties.[13]

PetroChina: *Human Rights Issues and Reputational Risk of Investing and Operating in the Oil and Gas Extraction Sector in Sudan*

In 2007, Berkshire Hathaway was the subject of a human rights advocacy campaign, including a shareholder resolution, regarding its holdings in PetroChina. According to an

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[8] *See* Worker Rights Consortium, "Assessment Regarding Jerzees Choloma (Honduras)" (Oct. 3, 2007), http://www.workersrights.org/freports/Jerzees_Choloma_Report_10-03-07.pdf; Worker Rights Consortium, "Code of Conduct Violations at Jerzees de Honduras" (Oct. 22, 2007) http://www.workersrights.org/freports/WRC_Memo_re_Jerzees%20de%20Honduras_10-22-07.pdf; ALGI, "Fact-Finding Independent Investigation" (Oct. 11, 2007), http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2008/jerzees_de_choloma_revised_report_10-11-07.pdf.

[9] *See* WRC, "Update on Remediation at Russell Athletic Facilities in Honduras" (Jan. 30, 2008) http://www.workersrights.org/freports/Update%20re%20Russell%20Factories%201-30-08.pdf; ALGI, "Independent Verification of Russell's Corrective Action Plan for Jerzees Choloma and Jerzees de Honduras" (Feb. 22, 2008), http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2008 /jerzees_de_choloma_and_honduras_independent_verification_report.pdf.

[10] *See* Worker Rights Consortium, "Assessment of Jerzees de Honduras" (Nov. 7, 2008) http://www.workersrights.org/freports/Jerzees%20de%20Honduras%2011-07-08.pdf; Adrián Goldin, "Mission Report on the Closure Process at Jerzees de Honduras, Previous Investigations and Freedom of Association," http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2009 /jerzees_de_honduras_second_jdh_investigation_jan_2009.

[11] U.S. Dept. of State, "2008 Human Rights Report: Honduras" (Feb. 25, 2009), http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119164.htm.

[12] *See, e.g.,* "Michigan Joins List of Schools Scrapping Deals with Russell," *USA Today* (February 25, 2009), http://www.usatoday.com/sports/college/2009-02-24-michigan-russell-liscensing_N.htm; for other media coverage of schools terminating licenses with Russell, *see*: http://www.workersrights.org/ MediaCoverage-Russell.asp.

[13] Ibid.

April 2007 report from the Sudan Divestment Task Force,[14] PetroChina is the target of a stock divestment campaign by human rights groups because of the extensive operations in Sudan by its parent company, China National Petroleum Corporation (CNPC). PetroChina and CNPC have a nearly complete overlap in management. This campaign has caused considerable damage to PetroChina's reputation and has put at risk the company's future business in global markets.

The Sudan Divestment Task Force report and a February 2006 report by the Coalition for International Justice, *Soil and Oil: Dirty Business in Sudan*, both directly connected CNPC to human rights abuse in Sudan by the Sudanese government and by CNPC itself.[15] These reports describe how CNPC benefits from human rights abuses in Sudan through its subsidiaries, Greater Nile Petroleum Oil Company (GNPOC) and PetroDar, and how CNPC's lack of action has encouraged continued abuses.[16] The reports assert that this complicity happens several ways: through military use of oil company infrastructure, through provision of funding for weaponry, and when human rights violations are committed directly by oil companies, including GNPOC and PetroDar.[17]

The campaign focused on Berkshire Hathaway's holdings in PetroChina included a shareholder resolution,[18] correspondence with top management and board members,[19] and considerable media coverage of the controversy, including questions posed directly to Warren Buffet on the Charlie Rose Show on May 10, 2007.[20] Berkshire Hathaway subsequently divested itself of its holdings in PetroChina. However, the company took this action in the wake of a campaign that significantly harmed the reputation of Berkshire Hathaway, and dominated significant time of top management.

2. Berkshire Hathaway does not adequately disclose its sustainability-related risk.

The risks Berkshire's portfolio companies face in the areas of environmental protection and labor and human rights are hardly confined to the specific examples we cite above. Yet the information provided to shareholders by the company, while rich with the wit and wisdom of CEO Warren Buffett, addresses sustainability issues in a manner which is, at best, scattered and incomplete.

One reason for sustainability reporting is that the risks and opportunities for companies that are associated with these issues tend to be both varied and interrelated. For example, the company's 10-K briefly mentions that state governments' increasing concerns over climate change are putting its Mid-American Energy division under increasing regulatory

[14] Sudan Divestment Task Force, "PetroChina, CNPC, and Sudan: Perpetuating Genocide" (Apr. 15, 2007) http://www.sudandivestment.org/docs/petrochina_cnpc_sudan.pdf.
[15] Ibid; Coalition for International Justice, *supra,* note 3.
[16] Ibid.
[17] Ibid.
[18] http://www.berkshirehathaway.com/sudan.pdf.
[19] *See, e.g.,* Eric Cohen, "Letter to Berkshire Hathaway Board of Directors" (May 21, 2007), http://fidelityoutofsudan.googlepages.com/lettertowarrenbuffett2.
[20] *See,* Charlie Rose, "A Conversation with Warren Buffett" (May 10, 2007), http://www.charlierose.com/view/interview/8520.

pressure to develop renewable sources of energy. Likewise, Warren Buffett's letter to shareholders notes the growth of the company's wind power business. But what is lacking is any information regarding the mix of renewable resources with which the company plans to meet these requirements, and the possible environmental impacts associated with them. As discussed, in the case of its dams on the Klamath River, this erstwhile source of renewable energy may not be so renewable after all.[21] Indeed, their environmental impact is so severe that the company has agreed to pay up to 200 million dollars for their dismantling and removal.[22]

Nor, for that matter, is Russell Athletic the only Berkshire Hathaway division with exposure to risk associated with labor and human rights practices in its overseas manufacturing. The U.S. State Department's Human Rights Report for Honduras also referenced reports by a women's organization in that country of "systematic cover[] up of work-related health and injury reports" by another supplier factory of Fruit of the Loom.[23] Moreover, Fechheimer Brothers, a Berkshire Hathaway company which is a leading manufacturer of work uniforms for public sector employees, may be subject to not only reputational and competitive risks, but also regulatory risks, as increasing numbers of cities and states adopt "sweat-free" ordinances and statutes mandating labor and human rights standards for the product supply chains of their vendors. Indeed, reports already have surfaced in the last year of labor rights violations at Fechheimer supplier factories in China and Honduras.[24] Under these ordinances and statutes, firms with supply chain practices marred by labor and human rights violations are likely to be at a competitive disadvantage in securing public sector contracts.[25]

Yet nowhere in management's discussion of either Feccheimer, Fruit of the Loom or Russell's operations is there any mention of the potential reputational, competitive and regulatory risks associated with labor and human rights issues in their supply chains. The company's Form 10-K report does note that earnings were negatively affected by costs associated with consolidation of Russell operations -- i.e., the closing of a number of its factories -- but it neglects to report that labor rights violations reported in relation to one such closing have led to the termination of key licensing relationships. The absence of any consideration of the reputational or competitive risks associated with labor and human rights practices is surprising considering that there is widespread recognition that such issues have, in recent years, negatively impacted the performance of other major garment manufacturers and retailers.[26]

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[21] *See, supra,* note 6.
[22] Ibid.
[23] *See, supra,* note 11.
[24] *See,* SweatFree Communities, "Subsidizing Sweatshops: How Our Tax Dollars Fund the Race to the Bottom and What Cities and States Can Do,"15, 24 (July 2008), http://www.sweatfree.org/docs/subsidizing_sweatshops_lr_color.pdf.
[25] *See, e.g.,* City of San Francisco, Ordinance No. 223-05 (Sept. 16, 2005) ("Sweatfree Contracting Ordinance"), *amended by* Ordinance No. 265-07, (Nov. 14, 2007), http://www.sweatfree.org/policies/SFordinance_Nov_2008.doc.
[26] *See,* Bernstein, *supra,* note 2.

3. Berkshire Hathaway is a corporate outlier in its lack of sustainability reporting and inadequate management of environmental, labor rights and human rights risks.

In 2007, Berkshire executives Warren Buffett and Charles Munger garnered headlines with comments that they saw little merit in attempts to rate companies' social, human rights or environmental practices and would not consider these factors in Berkshire's investment strategies.[27] Today, Berkshire management says, in its statement of opposition to this resolution, that "We recognize the importance of sustainability considerations to our shareholders and to the future of Berkshire and its subsidiary companies," but that it does not believe providing such a report would "result in a meaningful additional benefit to our shareholders or otherwise."

As sustainability reporting and attention to sustainability issues have become standard practice at most other top-performing companies, however, such statements appear increasingly anachronistic. Of the companies in the Global Fortune 250, 80% released sustainability reports in 2007 -- up from 64% in 2005 – as did the majority of the top 100 publicly-traded S&P companies and 80% of Business Week's Top Fifteen Global Brands.[28] Indeed, of the publicly-traded companies which comprise Berkshire Hathaway's top ten investments in common stock, six – Coca-Cola, Johnson and Johnson, POSCO, Procter and Gamble, Sanofi-Aventis and Swiss re – have released sustainability reports under the GRI guidelines.[29] Unfortunately for shareholders, however, no such reports are available for *any* of Berkshire's own subsidiary companies.

Contrary to management's previous pronouncements, there is a growing consensus among both managers and analysts on the benefits to shareholders of taking sustainability-related issues into account in business and investment strategies. According to Dow Jones, "Corporate Sustainability . . . creates long-term shareholder value by embracing opportunities and managing risks deriving from economic, environmental, and social developments. Corporate sustainability leaders achieve long-term shareholder value by gearing their strategies and management to harness the market's potential for sustainability products and services while at the same time successfully reducing and avoiding sustainability costs and risks."[30] Similarly, an assessment by research analysts at twenty-three investment firms with over $435 billion in managed assets reported that, "We find compelling the large and growing body of evidence linking companies' strong performance addressing social and environmental issues to strong performance in creating long-term shareholder value."[31]

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[27] *See* Charles Piler, "Buffett Rebuffs Efforts to Rate Corporate Conduct," *Los Angeles Times* (May 7, 2007), http://www.latimes.com/business/la-na-berkshire7may07,1,2180048.story.
[28] *See* GRI, "Who Is Reporting" http://www.globalreporting.org/NR/rdonlyres/E033E311-68E7-41F9-A97F-9F3B94F3FE40/2623/19992009GRIlist_April8.xls.
[29] Ibid.
[30] *See,* Dow Jones Sustainability Index, http://www.sustainability-index.com/htmle/sustainability/corpsustainability.html.
[31] *See,* Business for Social Responsibility, http://www.bsr.org/Meta/200510 _Corp-Sustainability-Reporting.pdf.

Indeed, it is becoming increasingly clear to both analysts and business leaders that attention to sustainability-related issues is a necessary element of not only managing risk, but also identifying opportunity. For example, a study by the UK-based SERM Rating Agency, Ltd. estimated the risk from sustainability-related issues for the 500 largest companies in the US and EU at 12.5% of market value, a figure comprised of economic and socio-economic risk (2.0%), social and ethical risk (5.1%) and environmental risk (5.4%).[32] As Unilever CEO Patrick Cescau has stated, "The agenda of sustainability and corporate responsibility is not only central to business strategy but will increasingly become a critical driver of business growth. . . . [H]ow well and how quickly businesses respond to this agenda will determine which companies succeed and which will fail in the next few decades."[33]

Finally, failure to provide sustainability reporting may increasingly put the company at a competitive disadvantage relative to other publicly-traded firms. Even if Berkshire management, itself, does not incorporate firms' performance on sustainability issues in its investment decisions, many institutional investors *do* and they expect this information to be made available to them. Assets comprising 15% of total global capital markets are now managed by signatories to the UN Principles for Responsible Investment (UNPRI).[34] Signatories to the UNPRI commit to integrating economic and social issues into their investment analysis and seeking disclosure on these issues from firms in which they invest.[35] In short, attention to sustainability issues and sustainability reporting are no longer simply optional activities for company management; instead, they are, increasingly, vital elements of investment strategy and investor relations.

APPENDIX A: TEXT OF RESOLUTION AND PROPONENT'S SUPPORTING STATEMENT

RESOLVED: Sustainability requires balancing the needs of the present with the environmental, economic and social needs of the future. Berkshire Hathaway invests in and owns a broad array of companies for which sustainability issues, such as climate change, human rights, and securing a "license to operate" from local communities affect core business.

Sustainable business includes "encouraging long lasting social well being in communities where [companies] operate, interacting with different stakeholders (e.g. clients, suppliers, employees, government, local communities, and non-governmental organizations), and responding to their specific and evolving needs, thereby securing a long-term 'license to

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[32] Linda Spedding, "Sustainable Risk Management and Values," *CSR Journal* 13, 15 (Aug. 2008), http://meetings.abanet.org/webupload/commupload /IC634100/sitesofinterest_files/CSR_Journal-8.31.08.pdf.
[33] Id. at 13.
[34] *See* GRI, "Companies that fail to link their ESG Disclosures to Company Strategies Fail to Connect with Investors" (Mar. 25, 2009), http://www.globalreporting.org/NewsEventsPress/PressResources/Pressrelease25March2009.htm.
[35] Id.

operate,' superior customer and employee loyalty, and ultimately superior financial returns."(Dow Jones Sustainability Group)

Sustainability reporting is a mechanism through which a company can demonstrate that it is taking the necessary steps to identify, understand, monitor, and manage sustainability issues, such as managing finite natural resources, changing public policies and public expectations.

We believe that such a reporting process could help Berkshire Hathaway to better integrate and gain strategic value from existing corporate social responsibility programs, identify gaps and opportunities, develop company-wide communications, and publicize innovative practices or respond to critiques. Mainstream institutional investors are using information on companies' social and environmental practices to inform investment decisions.

As shareholders, we believe that the economic, environmental, and social problems posed by PacifiCorp's Klamath River dams exemplify the need for Berkshire Hathaway to develop a sustainability report. Berkshire Hathaway is majority owner of Mid American Energy Holdings Company, of which PacifiCorp is a wholly owned subsidiary.

PacifiCorp owns on the Klamath River near the California/Oregon border a complex of dams that block all migration of native anadramous fish such as salmon, steelhead, and lamprey over 350 miles of historic spawning habitat and create reservoirs that produce massive blooms of toxic blue-green algae each summer posing a heath risk to local communities. The river and salmon are cornerstones of Native Tribes of the Klamath Basin including the Yurok, Karuk, and Klamath.

Economic studies by the California Energy Commission and the Federal Energy Regulatory Commission have concluded that dam removal would be cheaper than bringing the dams into compliance with current environmental laws.

On November 13, 2008, PacifiCorp agreed in principle to a plan to remove four dams in the Klamath River by 2020.

Shareholders request that the Board of Directors issue a sustainability report to shareholders, produced at reasonable cost and omitting proprietary information, by October 1, 2009.

SUPPORTING STATEMENT:

We recommend that the report include the company's definition of sustainability, as well as a review of how company policies, practices, and metrics affect long-term social and environmental sustainability.

We recommend that Berkshire Hathaway use the Global Reporting Initiative's Sustainability Reporting Guidelines ("the Guidelines") to prepare the report. The

Guidelines provide guidance on report content, including performance in six categories (direct economic impacts, environmental, labor practices and decent work conditions, human rights, society, and product responsibility). The Guidelines provide a flexible reporting system that allows omission of content that is not relevant to company operations.