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REFLECTIONS ON
"IN THE BEST INTEREST OF THE CORPORATION" AND "CORPORATE SOCIAL RESPONSIBILITY": AN ESSAY HONOURING THE MEMORY OF PROFESSOR ALAN R. BROMBERG

Joseph J. Norton*

PRELUDE. I am honoured to contribute this modest Essay in memory of my senior colleague and mentor for over three decades at the SMU Dedman School of Law, the late Alan Bromberg. I first met Alan in the early 1970s, when as a recent law graduate, I visited the SMU Law School in my search for an entry-level law teaching position. Alan was most gracious and kind, and he was direct. He suggested that I first gain a few years of good practical experience (which I did), during which time I should also try to do some legal writing (which I did). In approaching legal scholarship, he suggested that, before embarking upon a writing project, one should first figure out one's specific area(s) of subject-matter interest for the project, as refined into a viable analytical theme. Then, in writing, one should focus on a desired readership audience: law and policy makers, judges, practitioners, students, or academic scholars. It was clear Alan thought the first four categories were the most meaningful. Though, in fact, he fully realized that all these categories were often overlapping or reinforcing of the others. Over his lifetime, he

* SJD (Mich.), Dipl.(Hague), DPhil.(Oxon), LLD (Lond.), LLD (hc, Stockh.). James L. Walsh Distinguished Faculty Fellow and Professor in Financial Institutions Law at the SMU Dedman School of Law, Dallas, Texas; formerly the Sir John Lubbock Professor of Banking Law, University of London (1993–2004). This Essay represents selective "reflections" of the author concerning how the trend toward Corporate Social Responsibility might align with traditional statutory corporate governance requirements, using the Texas Business Organization Code ("TBOC") (Title Two on "Corporations") as the reference point. These reflections, which are intended as a tribute to Professor Bromberg, have been drafted for a lecture to be given in the author's fall 2015 Business Enterprise course at the SMU Dedman School of Law, and are derived from recent research and publications of the author on CSR. The format of this manuscript is in a more informal "essay style" and is not intended to be a formal law review article. As such, internal text headings and footnotes have been kept to a minimum, in light of the nature of this piece and the word limitations imposed for contributions.

1. As an aside, though Alan recognized the educational and professional value of student law review experience, he had little time for dealing with non-SMU student law review editors who had little, if any, knowledge of his subject-matter area. He would only
wrote for all five audiences; and, he established himself as one of the preeminent business and securities law scholars in the country.

Alan presented a demanding “model” for any young aspiring scholar. He, like many of his contemporary SMU Law colleagues, was not only a leading scholar in his area of interest, but was deeply and consistently involved in law reform in his area. Since the mid-1950s, there is hardly a piece of Texas business legislation in which Alan did not have a hand. In addition, Alan was most active in ABA, Texas State Bar, and Dallas Bar committees in his area. Further, Alan maintained a social conscience and promoted the social responsibility of our profession. Also, though Alan never saw himself as a great teacher of law students, for those students who really wanted to learn the areas of business, securities, and corporate finance law, Alan had no peer. His self-constructed Corporate Finance course was one of the first and best in the country, as was his structuring of a six credit hour, two-semester course in Business Associations; and, his securities regulation course was exhaustive.2 Yes, Alan, you were a great teacher! Alan was also a superlative legal practitioner, holding an ongoing consultancy with one of the major Dallas law firms. As to every aspect of the law in which Alan engaged, he did it with the highest degree of thoroughness and professionalism. Alan set the “gold standard” for all his colleagues.

Alan also set the standard for being a good member of our Academy. Over his six decades at SMU, he always participated actively on numerous Law School and University committees and on sundry tenure and promotion committees. Alan was always a person of high integrity and impeccable principles, who always spoke his mind clearly and thoroughly, and who avoided the playing of petty academic politics. Further, in every meeting attended, Alan took detailed, objective notes of what went on. He was the repository we always went to whenever we needed to know what had happened in the past. Most fortunately, that institutional history will remain housed within our Underwood Law Library.

Though Alan kept a consistently prodigious and unparalleled work schedule,3 he always maintained a balanced and a humanist breadth to his life. He and his beloved wife, Anne, maintained a life of broad culture, of give his work-product to a law review if it committed not to tamper with his work-product and otherwise to bother him with petty comments and demands. His view was that people interested in his area and his thoughts on it would find his scholarship, wherever it was published. And he was correct.

2. Anecdotally, I never told Alan this, but I learned securities regulation from the notes of one of his former students who had taken his course and had taken meticulous notes of his lectures. In studying abroad and then doing an international SJD at Michigan, I never had taken an American course in securities regulation, or for that matter, in American corporation law. Yet, I was hired by one of the old-line Dallas law firms to work in its corporate/securities section and Dean Galvin asked me to be an adjunct lecturer in Securities Regulation and Business Associations. Panic set in on both accounts. Then, I stumbled upon Alan’s course notes. Thank you, Alan, for saving my professional and academic career.

3. As with Immanuel Kant, one could literally set one’s watch by Alan’s work schedule: the time he came to the Law School, the time he went home to dinner, the time he
exotic travels, and of a love of nature. They would regularly open their home not only to Faculty, but to all members of staff (e.g., their annual Halloween Party and Easter get-together). Alan was above snobbery, pretentiousness, and supposed social status. He treated everyone with dignity, respect, and individual concern. Moreover, Alan was always most gracious to many of our overseas visitors. I always found it amazing how knowledgeable he was of the culture and history of the respective countries of these visitors. Hidden by his mask of modesty, Alan was a true Renaissance person.

Thank you, Alan for all you have given to our Academy, to our Law School and University, to our profession, and to me individually. You will be remembered!

The Essay

INTRODUCTION

Under traditional corporation law, a director of a corporation has the statutory and fiduciary responsibility "to manage" the business and affairs of the entity "in the best interest of the corporation" and "its shareholders" (as a group and not individually). More recently, Texas amended its corporation statute in 1997, elaborating that in doing so, a director "is entitled to consider the long-term and short-term interests of the corporation and the shareholders of the corporation, including the possibility that those interests may be best served by the continued independence of the corporation." Further, in discharging these duties, a director "is entitled to consider any social purposes specified in the corporation’s certificate of formation." Pursuant to a further 2013 amendment, nothing "prohibits or limits a director or officer of a corporation that does not have a social purpose specified as a purpose in the corporation’s certificate of formation from considering, approving, or came back to the School, and the time he finally went home in the late evening. To me, seeing the light on in Alan’s office was a most comforting sign over the years.

4. E.g., Anne and Alan maintained by themselves a most enviable “English style” garden at their home, notwithstanding the torrid heat of the Dallas climate, and they regularly retreated to their modest country getaway.

5. Under the common law, the primary objective of a corporation was profit-generation for the benefit of its owners. Non-profit-generating activities (e.g., charitable contributions or other philanthropic activities) needed to be non-conflicted transactions that could be shown “to benefit” the enterprise. Normally, such general activities would be authorized under the powers clause in the Articles of Incorporation, with specific activities being approved by the disinterested members of the board of directors. In more recent years, there have been statutory variants related to such matters that provide greater degrees of liberality in the decision-making processes of the corporate managers. A seminal case on this is A.P. Smith Mfg. Co. v. Barlow, 98 A.2d 581, 13 N.J. 145 (N.J. 1953). For a further discussion, see DOUGLAS M. BRANSON ET AL., BUSINESS ENTERPRISES: LEGAL STRUCTURES, GOVERNANCE, AND POLICY 313-17 (2d ed. 2012).


7. Bus. ORGS. § 21.401(c) (emphasis added).
taking an action that promotes or has the effect of promoting a social, charitable or environmental purpose.\(^8\) As such, today, a director of a Texas corporation, acting in good faith and on an informed basis, would be “entitled” to vote for the corporation’s pursuit of a program entailing “Corporate Social Responsibility” (“CSR”) consistent with what he/she reasonably believes to be in the “short or long-term best interest” of the corporation. But, what might CSR entail in this context; and, how might it comport with Texas statutory and case law standards of corporate governance? This Essay attempts to show that a Texas corporation that adopts a comprehensive CSR program geared to the long-term “sustainability” of the enterprise would align with these standards.

THE BACKDROP

In considering the notional contours of CSR and how these might impact upon the governance of a Texas corporation, my primary emphasis will be on the larger corporation (e.g., the publicly-held corporation).\(^9\) This group of enterprises have shown the greatest trend to date in embracing CSR. However, the CSR notion also can apply to small and medium-sized enterprises (“SMEs”).\(^10\) Yet, notwithstanding the existence of over twenty-four million state-chartered small profit-making businesses, the field of “social business enterprise” in the United States as to SMEs is a relatively new area of study in business schools,\(^11\) with only minimal and sporadic federal government efforts to promote such ventures.\(^12\) To date, most socially oriented SME businesses in the United States have been through the vehicle of special state non-profit corporations statutes,\(^13\) most often combined with separate, special federal tax exempt status so long as they pursue educational, charitable, social, religious, civic,

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8. BUS. ORGS. § 21.401(c).

9. Not all large corporations are publicly held (i.e., subject to ongoing federal securities regulation). For example, it is estimated that there are over 150,000 businesses in the United States that have annual revenues in excess of $10 million. Approximately 90% of those are privately-held companies. See Private Company Valuation Techniques, PRIVCO, www.privco.com/knowledge-bank/private-company-valuation (last visited July 25, 2015). Further, there are over 200 privately-held businesses in the U.S. that have annual revenues between $2 and $135 billion. See Andrea Murphy, America’s Largest Private Companies 2014, FORBES (Nov. 5, 2014, 7:16 AM), www.forbes.com/largest-private-companies.

10. There is no agreed definition of an SME in the United States. Commentators seem to opt for some combination of maximum employees (e.g., 200–300) and maximum annual revenues (e.g., $10–$50 million). Overall, in the United States, it is estimated there are over 30,000 businesses with $50 million or more in annual revenues, of which approximately 1,000 do some form of CSR reporting.

11. E.g., the Harvard, Yale, Columbia, and Georgetown Business Schools have a special “Social Enterprise Initiative.” Oddly and regrettably, the notion of social enterprise (and, for that matter, of CSR) has not seemed to find its way into the mainstream of Law Faculties. Various states, through different state agencies, have differing initiatives on fostering community enterprises with a social objective.

12. The federal Small Business Administration has various “social initiatives” (e.g., as to woman and minority-owned enterprises), but it has not yet developed any set notion of the “social enterprise.”

or humanitarian purposes.\textsuperscript{14} Most recently, there have also been efforts of various states to create special business statutes for "benefit enterprises," which statutory form is designed to provide greater legal protection for the management of profit-seeking businesses in pursuing social objectives alongside great transparency and accountability as to such pursuits.\textsuperscript{15}

Though there appears to be a discernible trend for the larger corporation to adopt CSR programmes, the CSR "push" (notwithstanding having historical roots tracing back several centuries)\textsuperscript{16} is still in an early developmental stage.\textsuperscript{17} And, in all candour, CSR is not without its adamant skeptics and detractors.\textsuperscript{18} Moreover, in as much as the modern CSR notion is a recent and evolving component of corporate culture and governance, in both an organizational and substantive context, it remains without any agreed denotation. Reaching a common definition is most difficult, as CSR is being molded by an array of domestic and global, public and private influences.

\textbf{POLICY UNDERPINNINGS}

It appears that the development of CSR has historical policy underpinnings. With the development of the Industrial Revolution in the United States during the initial period of 1760–1840 and subsequently, a resulting "Progressive" Political Era emerged during the latter part of the 19th century and the turn of the 20th century. During this period, an array of socially directed regulations precipitated, including a progressive federal income taxation system, antitrust laws, labor and workplace legislation.

\textsuperscript{14} There are approximately 1.5 million non-profits in the U.S. (including public charities) with total annual revenues exceeding $1.65 trillion and assets of over $3 trillion. Non-profits account for over 5% of annual national GDP and pay over 9.2% of annual wages to over 9 million employees in the United States. In 2012, individuals, corporations, and foundations gave $316.23 billion in charitable, tax exempt contributions to non-profits, and 25.4% of Americans volunteered through a formal organization. See National Center for Charitable Statistics, nccs.urban.org/statistics/quickfacts.cfm (last visited July 25, 2015).

\textsuperscript{15} "B" corporations are formed under special state corporate statutes that enable corporate management to consider environmental and societal considerations in making corporate decisions without negating profit-making as a major business objective. "B" corporations are legally required to account for the public benefits generated. The first such statute was in Maryland in 2010. To date, twenty-eight states have adopted similar statutes. Delaware did so in 2013. Texas has not adopted such a statute; and, in this author's view, does not need to do so in light of the TBOC provisions referenced above in notes 6–8. See Benefit Corporation, benefitcorp.net/policymakers/why-pass-benefit-corporation-legislation (last visited July 25, 2015).

\textsuperscript{16} One can proffer that CSR can find its DNA in the "enlightened self-interest" of Adam Smith. Moreover, in the 19th century, one can identify certain British and U.S. industrialists promoting "benevolent capitalism" (e.g., Quakers, such as the Cadburys and the Barclays in the U.K., and the Carnegies and the Hersheys in the United States). See \textit{generally} Gavin Kennedy, Adam Smith's Lost Legacy (2005).

\textsuperscript{17} See, e.g., Nathan E. Hurst, Corporate Ethics, Governance and Social Responsibility: Comparing European Business Practices to Those in the United States (Markkula Center for Applied Ethics, Santa Clara University, Spring 2004).

health and food laws, and the incipient judicial rise of products liability. Then, in the 1930s, we witnessed a rash of FDR "New Deal" regulations geared to substantial business, financial market, employment, and other socially-oriented reforms.\textsuperscript{19}

Further, during the 1930s and 1940s, the so-called Dodd-Berle debate as to the goals of corporate management played out. Professor Berle, Jr. of Columbia University argued for "profit maximization" while Professor Dodd of the Harvard Law School proffered that the modern corporation had a "social service" dimension, with the government having the right to regulate the corporation not just for the benefit of the shareholders, but also for a broader range of "stakeholders" (e.g., employees, consumers, and the local community).\textsuperscript{20} The U.S. corporate world and the courts appeared to have moved toward an embrace of Dodd's view of the role of corporate management as balancing a variety of interests to the point that, in the early 1950s, Berle conceded that Dodd had won the debate.\textsuperscript{21}

Arguably, the specific terminology of corporate "social responsibility" reared its head in the early 1950s.\textsuperscript{22} We see that CSR is based on a corporate "stakeholder" theory similar to Dodd's view as mentioned above; that is, the corporate responsibility involves not only stockholders, but also to a wider constituency base. This base would include the interests of employees, consumers, long-term purchasers, suppliers, distributors, creditors, the local community, the environment, and perhaps a more embracive notion of "society." In fact, even respecting the primary stockholder constituency, CSR signals that the owners' "best interests" are not simply short-term profit generation, but are better served by a longer-term context requiring other core considerations, such as ethical, environmental, and social responsibilities.\textsuperscript{23}

Further, the 1960s and early 1970s witnessed the Civil Rights Movement, the LBJ "Great Society" social reforms, and the rise of women's rights, consumerism, and environmentalism. All these generated additional, significant "social" regulations impacting the business world and marketplace. Accordingly, by and during the 1970s, the framework of the American economy and business society appeared to be moving beyond the notion of pure corporate self-interest and an unfettered "free market."


\textsuperscript{20} E.g., racial non-discrimination laws, the environmental movement, women's rights, workplace health and safety reforms, a rise in shareholder activism, and the rise of activist NGOs.

\textsuperscript{21} See generally, A.A. Berle, Jr., \textit{The 20th Century Capitalist Revolution}, (1st ed. 1954).

\textsuperscript{22} See \textit{Howard R. Bowen, Social Responsibilities of the Businessman} (1953). For example, in the early 1950s, Frank Abrams, the Chairman of Standard Oil and one of the most respected U.S. business titans, emphasized a "social compact" between business and society.

But, in 1962, Milton Friedman, a University of Chicago economist, published his groundbreaking treatise on modern capitalism, wherein he strongly argued that the sole purpose of the corporation is to maximize profits for the benefit of stockholders, with the responsibility for any corporate and market regulation being that of the government. This treatise became the foundation stone for the highly influential “Chicago School” of “free market” economists, and became adopted into the political and business worlds of the U.S. and U.K. through the Reaganism-Thatcherism mantras of “free markets” and resulting “economic growth.” The pursuit of CSR was beginning to be viewed by some, if not many, policymakers now as a wrong-headed and counterproductive corporate goal and activity. But, the screw turned with the Great U.S. and global recession of 2007, with the “free-marketeers” being in retreat.

In any event, if corporate management decides to institute a CSR program, under traditional corporate law requirements, there would appear still to be a need to link this program substantively and procedurally to the statutory standard of “the best interest of the corporation and its shareholders” (in Texas, this could be the corporate “long-term best interest,” which could factor in “social, charitable and environmental purposes”). For instance, initially the corporation might place a general statement of its CSR objectives in its incorporation charter. Following up on this, the board of directors could adopt a more detailed delineation of this program as tied into the company’s core corporate governance values. Ultimately, a specific corporate strategy for the implementation of the program and a system of accountability tied into the mainstream corporate decision-making processes and corporate “value system” could be put into play.

As CSR is being embraced in an increasing number of corporate boardrooms and business schools, the term appears to overlap with a range of related, but separate business management components, such as corporate philanthropy, corporate ethics, corporate governance, corporate compliance, corporate responsibility, corporate sustainability, socially responsible investment, social entrepreneurship, and responsible and corporate citizenship. For instance, though corporate philanthropy historically has preceded the CSR movement and has developed separately from the CSR movement, modern corporate philanthropy is, most often, no longer an ad hoc process divorced from core business strategies and objectives. Whether corporate philanthropy comes under the CSR umbrella remains debatable; but, it appears that corporate philanthropy

and more formal CSR initiatives are complimentary, reinforcing components of responsible corporate citizenship.

Another example of this complementariness is corporate ethics. Applied corporate ethics is about embedding within the core, long-term corporate “culture” the sense of functioning responsibly and eschewing wrongful conduct at the organizational, operational, and individual levels: it is geared to fostering “responsible corporate citizenship,” a predicate for any meaningful CSR program. A further illustration would be that of corporate governance, which alludes to the manner in which the traditional corporate governance structure effects its corporate policy-making and decision-making processes.

It is self-evident that the “legal environment” in the United States for businesses is indeed broad, intense, and complex. The need to operate in compliance with the ensuing legal requirements, interjects elements of CSR, in many respects (e.g., good labor standards, environmental protection, and consumer and investor protection), as key dimensions of sound corporate governance. Admittedly, one can argue that much of this is mandatory under statutes and regulations; however, irrespective of strict legal compliance, prudent corporate management does not operate in isolated silos or on an ad hoc basis. Management should be evaluating a broad mix of relevant inputs such as governmental (domestic, regional and international), marketplace, consumer and general public expectations as these may contribute to the longer-term objectives of the enterprise.

THE MODERN-DAY DRIVERS OF CSR

Current “drivers” of the CSR agenda rest, in part, upon a foundation of new socially and environmentally oriented laws and regulations, new policy concerns, and expectations from citizens, consumers, public authorities, and investors. Behind all this are the relentless pressures of globalization and large-scale industrial and technological change. Moreover, individual and institutional investors are more frequently incorporating social and environmental criteria into their investment decisions. This is being increasingly magnified by the growth of socially active NGOs and networks of NGOs. More generally, today, there is greater public concern respecting the harm caused by unrestrained economic activity vis-à-vis the environment. Further, a recent series of major corporate and financial scandals in the United States and around the world has triggered a public cry for greater transparency of business activities, which is being magnified by the media and modern information and communication technolo-

27. An excellent website for the relation of ethics and corporate/business activities is that of the Seven Pillar Institute for Global Finance and Ethics (Dr. Kara Bhala, Director), available at http://www.sevenpillarsinstitute.org (last visited July 26, 2015).
28. One of the oldest and most comprehensive websites on CSR is the Boston College Carroll School of Management Center for Corporate Citizenship website, www.ccc.bc.edu, and its CSR media component, www.csrwire.com.
gies. Also of practical significance, there continue to be shifts in management theories and practices that highlight "brand" enhancement, long-term wealth maximization, and competitive positioning through corporate embrace of CSR.

Yet, unfortunately, it remains most difficult to abstract any coherent sense out of the CSR terminology and practices. CSR currently is being used by different domestic and multinational companies, public and private organizations, and commentators and policy-makers in a wide range of differing contexts. In fact, as of yet, there is no one, precise definition. For many, the term stresses voluntary, external, and socially related activities. However, in stepping back, one can see that the voluntary aspect is not entirely helpful in that in most instances CSR activities are not altruistic or gratuitous activities, but are responses to specific internal and external pressures.

Nor, is external all that useful, because, as already alluded to, a number of the foundational and/or componential aspects as to a CSR program are internally based and driven; and, for CSR to make sense and to be effective, it needs to be integrated within and engrafted to the core culture and systems of the enterprise. Even social is inadequate, as this seems to ignore or at least brush over the need for sound "economic" performance and the production of high-quality products and services and also environmental responsiveness. All this being said, over the past decade, there is a discernible trend toward posturing CSR from a "triple bottom-line" perspective; that is, a framework for directing, monitoring, and reporting on "economic," social, and environmental performance against set corporate goals and objectives.

For myself, I do not want to leave the impression that CSR is all about process and is without substance; but, I would suggest that, in practical terms, CSR is being viewed as more a directed process or set of directed processes rather than as specific substantive subject-matter, a condition, or an end. It is the direction that leads to the shaping of the CSR substance and otherwise helps provide the framework for CSR. This direction would entail both internal and external dimensions and pressures. Within this directed and shaped process(es), the specific subject-matter of a company's CSR initiative is then largely discretionary, except as may be legally mandated and as qualified by the internal and external forces at play. In this context "of shaping" a CSR program, I would note that while

30. E.g., employees.
31. E.g., government regulation and the business regulatory environment, customer expectation, NGO onslaughts, institutional investor pressures, competitive pressures, or even "club peer pressure."
32. E.g., corporate ethics, corporate governance, and workplace/employment forces at play.
33. The initial notion of the "triple bottom line" is often attributed to John Elkington. See John Elkington, Cannibals with Forks: The Triple Bottom Line of 21st Century Business (1999).
34. Depending upon the particular country and circumstances, law and regulation can provide direction, shape, and substance to a CSR program.
there is certainly a *reactive* aspect to this vis-à-vis various “pressures,” a mature and vital CSR program should be a proactive one that reaches out to and interacts positively with its various stakeholders, constituencies, and “spheres of influence.”

CONCLUDING OBSERVATION—CORPORATE SUSTAINABILITY: THE KEY?

From my own perspective, I see “corporate ethics,” and within this the personal integrity of the various individual corporate actors, as the corporate foundation and “corporate DNA” upon which sound “corporate governance,” faithful corporate compliance, and meaningful, long-term CSR corporate initiatives can be laid alongside and interlaced with the traditional components of corporate decision-making and operations. In doing so, corporate management (top to bottom and bottom to top) needs to develop system(s) for integrating CSR wherever relevant through the corporate structures, systems, processes, and operations. For instance, CSR should be tied into risk management, brand integrity, marketing, distribution, advertising, treasury function, long-term planning, etc. While an enterprise may well have individual corporate CSR and corporate philanthropy projects and programs, CSR is not a corporate stand-alone notion but is as suggested already an integral and integrated part of the overall “enterprise DNA.” Further, the CSR directional set of processes, to a significant extent, is about operational integration, accountability, assessment, and monitoring.

Increasingly today, the term “sustainability” invokes environmental and other long-term considerations. Indeed environmental responsibility is a key aspect of corporate sustainability. But, it seems this term is more broadly speaking about a corporation taking a “longer term view” of how best to generate, enhance, and sustain “shareholder value.” This notion of sustainability, as with the CSR notion itself, is in a state of evolution. But, it does capture an attempt to coordinate economic objectives with good governance and ethical objectives, selective social goals,

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35. Increasingly, enterprises that embrace CSR use phrases such as “part of the corporate culture,” “embedded,” and “rooted in corporate core values” to make the point that CSR is not a façade or merely a PR ploy. In fact, Dell, Inc. has adopted a 21-point “2020 Legacy for a Good Plan” that guides all aspects of the company’s operations. In effect, Dell has redefined its “corporate soul” and “core values in action.” I would suggest generally that the reader read through the Dell, Inc. 2015 Corporate Social Responsibility Report to gain a sense of how far substantive CSR has evolved with one Fortune 100 Company. See Dell, Inc. 2015 Corporate Social Responsibility Report, http://www.dell.com/learn/us/en/us-corpl/dell-fyl3-cr-report (last visited July 25, 2015).

36. See, e.g., GE SUSTAINABILITY, www.gesustainability.com/how-ge-works/sustainability-at-ge (last visited July 25, 2015). As summarized in Appendix A hereto, General Electric (a Fortune 5 Company) has adopted a total, comprehensive CSR company approach based on the notion of “sustainability.”

and environmental objectives, while still primarily pursuing the fundamental goal of corporate wealth enhancement (i.e., as related primarily to long-term best interest of the enterprises, its owners, and other stakeholders) on a "sustainable basis."

In the past decade, organizationally, a number of corporations embracing a "sustainability" approach to CSR engage in voluntary, comprehensive CSR reporting ("Sustainability Reports") based on the third (G3) and fourth (G4) generations of CSR reporting formulated in October 2006 and amended in 2013 by the Global Reporting Initiative (GRI) (a private-based global network). These reporting guidelines go beyond environmental reporting and encompass the "triple bottom-line" approach. In sum, the usage of "sustainability" adds another comprehensive, long-term framework for the continually evolving and constructive embrace of CSR.

In sum, "sustainability," as applied in connection with CSR, provides a longer-term and more appropriate "stakeholder" context to corporate decision-making. This still leaves the enterprise with numerous options and considerable flexibility in providing the economic, social, and environmental "filling." But, the ultimate goal, end, and status for the enterprise should be responsible corporate citizenship, which is the essence of good corporate governance. In this sense, it is clear that CSR based on "sustainability" aligns with the current Texas standards for corporate decision-making as discussed above in the "Introduction" to this Essay.

40. See JOHN ELKINGTON, supra note 33.
At GE, sustainability means aligning our business strategy to meet societal needs, while minimizing environmental impact and advancing social development. This commitment is embedded at every level of our company—from high-visibility initiatives such as Ecomagination and "healthymagination" to day-to-day safety and compliance management around the world.

GE’s approach to sustainability is coordinated by a Sustainability Steering Committee, chaired by the vice president of Environment, Health and Safety (EHS), and composed of leaders from across the company with deep subject matter expertise. The Committee meets to review stakeholder feedback and emerging trends and to assess our sustainability performance and reporting. Their findings inform our ongoing work programs and are discussed with GE’s executive management as needed.

Our sustainability efforts are one element of our industry-leading strategies for assessing and mitigating risks and evolving our environmental, social and governance practices. Risk oversight is carried out by senior management within GE as well as by key committees within the GE Board. The Policy Compliance Review Board within GE management, which is chaired by the Company’s general counsel and includes the chief financial officer and other senior-level functional leaders, has principal responsibility for monitoring compliance matters across GE.

To identify our highest sustainability priorities (materiality in the Global Reporting Initiative sense), we began by evaluating the world’s needs with stakeholders and identifying the intersections of those needs with GE’s business strategies. Our sustainability strategy and reporting process are also informed by external stakeholder feedback gathered through formal advisory panels and regular engagement with customers and peer companies, academics, industry associations, NGOs, sustainability strategists and other partners. False. We select priority issues where both the need as expressed by critical stakeholders and GE’s unique potential for impact are greatest. For each sustainability priority, we employ GE’s deep expertise and advanced technologies to improve outcomes. Our strategy includes setting ambitious targets for minimizing our own footprint, developing products and solutions that enable our customers to meet their goals, and partnering with others to tackle challenges requiring a multisector approach. Working with colleagues at GE and key external stakeholders, we then monitor our progress and evolve as needed.

GE’s Board of Directors (Board) oversees the execution of GE’s sustainability strategy through oversight of GE’s business strategy and risk management. The Board and its committees conduct numerous formal reviews with our executive teams regarding sustainability aspects of our

operations such as risk, employee health and safety, operations, executive talent, compliance and business strategies.

GE infuses compliance and governance into every aspect of its business. We are committed to maintaining a world-class compliance culture in every GE business, everywhere we operate around the world, and to be recognized for it—internally and externally.

At the heart of GE’s Integrity & Compliance program is *The Spirit & The Letter*, a code of conduct and set of policies that cover our integrity commitments on critical subjects and risk areas.

At GE, we draw upon the insights of experts across our Company and around the globe to assess our sustainability priorities and relate them to our business strategy. We work regularly with hundreds of customers, regulators, non-governmental organizations, academics, government bodies and other partners to identify emerging issues and develop collaborative solutions.

GE also leverages the knowledge of our employees at all levels of the organization who are often closest to our customers, partners and communities as part of their work responsibilities and volunteer initiatives.

GE has three formal stakeholder engagement processes supporting our sustainability strategies. In 2014, we changed our Citizenship Advisory Panel to a smaller group of sustainability advisors with the goal of a deeper, more strategic engagement on fewer issues.