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Standardizaiton in Corporate Social Responsibility Reporting and a Universalist Concept of CSR?—A Path Paved with Good Intentions

Iris H-Y Chiu

STANDARDIZATION IN CORPORATE SOCIAL RESPONSIBILITY REPORTING AND A UNIVERSALIST CONCEPT OF CSR?—A PATH PAVED WITH GOOD INTENTIONS

*Iris H-Y Chiu**

I. INTRODUCTION

One of the challenges in the study of corporate social responsibility (CSR) is the balance between finding a "universalist" conception of CSR, while acknowledging that each corporation's social responsibility issues may be different. Carroll's[1] and Wood's[2] seminal works, for

* Senior Lecturer, University College London. This Article was presented at the 5th Global Responsibility Conference in Lisbon, Sept. 23-25, 2010. The author is grateful to Professor Charlotte Villiers for her comments on an earlier draft. All errors and omissions are mine.

1. *See* Archie B. Carroll, *A Three-Dimensional Conceptual Model of Corporate Performance*, 4 ACAD. MGMT. REV. 497 (1979); further refined in Archie B. Carroll, *The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders*, 34 BUS. HORIZONS 39-48 (1991).

2. Donna J. Wood, *Corporate Social Performance Revisited*, 16 ACAD. MGMT. REV. 691, 693 (1991).

example, attempt to capture comprehensive and "universalist" ideas of CSR and performance. However, Windsor argues that how CSR is understood and perceived still depends very much upon the business context and the managerial dispositions of each corporation.[3] This Article focuses on CSR reporting. The developments in CSR reporting highlight a crucial point we have reached in the discourse between the "universalist" and "individualized" conceptions of CSR. The dominance of standardization in reporting represents not only the convergence in the language and transparency of CSR, but the convergence of CSR into an agreed concept and a credible form of self-regulatory governance in the issues that are unregulated.

CSR reporting is often seen as the reporting of the "triple bottom line," recognizing environmental, social, and financial performance of companies as being equally important.[4] Further, CSR reporting has also moved from dominantly environmental reporting to more general sustainability reports encompassing various areas of social interest such as community and social impact, and human capital reporting.[5] Three key developments witnessed over the last five years include:

> The development of autonomous or stand-alone CSR reports;
> The acceptance and adoption of standardised reporting guidelines, in particular, those developed by the Global Reporting Initiative ("GRI"), and the growth of CSR ratings; and
> The development of the assurance industry for CSR reports.[6]

Mandatory corporate reporting has always been a mainstay of corporate accountability, but such accountability is usually seen as owed to capital providers in mitigation of the agency problem.[7] Such mandatory reporting is largely financial reporting, although in the 1990s, the United States started to recognize the importance of non-

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3. *See* Duane Windsor, *The Future of Corporate Social Responsibility*, 9 INT'L J. ORGANIZATIONAL ANALYSIS 225 (2001).

4. John Elkington, *Enter the Triple Bottom Line*, *in* THE TRIPLE BOTTOM LINE, DOES IT ALL ADD UP?: ASSESSING THE SUSTAINABILITY OF BUSINESS AND THE CSR 1, 1-16 (Adrian Henriques & Julie Richardson eds., Earthscan 2004).

5. *See* CHARLOTTE VILLIERS, CORPORATE REPORTING AND COMPANY LAW (Barry Rider ed., Cambridge U. Press 2006).

6. The author derives these observations from existing literature such as Villiers, ID and KPMG INTERNATIONAL, KPMG INTERNATIONAL SURVEY OF CORPORATE RESPONSIBILITY REPORTING 2008 13 (2008), *available at* http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/PressReleases/Documents/Corporate_Sustainability_Report_US_Final.pdf [hereinafter KPMG INTERNATIONAL].

7. Paul G. Mahoney, *Mandatory Disclosure as a Solution to Agency Problems*, 62 U. CHI. L. REV. 1047, 1048 (1995).

financial narrative disclosure,[8] and in 2006, the United Kingdom, in promulgating the UK Companies Act, also incorporated non-financial narrative disclosure as part of the mandatory corporate reporting regime.[9] The UK Companies Act 2006 takes the approach of incorporating stakeholder issues into the non-financial narrative report as well.[10]

As such, the United Kingdom has gone forward to recognize some form of stakeholder-oriented reporting, but not necessarily CSR reporting, as part of its narrative non-financial reporting regime.[11] In 2006, I argued that this is not a satisfactory position, as superficial references to stakeholder impacts in annual business reviews do not amount to CSR reporting, which is intended to present the corporation's management with issues of social benefit and cost.[12] CSR reports need to be distinct from non-financial narrative reporting.[13]

I argued that non-financial narrative reporting is concerned ultimately with shareholder demand in evaluating the financial performance of companies, particularly in the short term.[14] Hence, the grafting of minimal stakeholder reporting onto this scheme does not meet the needs of stakeholder interests and accountability.[15] The motivations driving CSR reporting tend to be a mixture[16] of rational and strategic reasons[17] as well as socially conscious values and even moral

8. 17 C.F.R. § 228.303 (2001).

9. Companies Act, 2006, c. 46, § 417 (U.K.).

10. *Id.*

11. This goes beyond the EU Transparency Directive that requires half yearly management reports to be filed by quoted companies in Europe, but such management reports contain matters similar to the US MD&A, and do not explicitly mention stakeholder concerns. *Id.*

12. *See* Iris H-Y Chiu, *The Paradigms of Mandatory Non-Financial Disclosure: A Conceptual Analysis* (pts. 1 & 2), 27 COMPANY LAWYER 259 (2006).

13. *Id.*

14. *Id.*

15. *See Id.*; *see also* Ruth Aguilera et al., *Putting the S Back in Corporate Social Responsibility: A Multilevel Theory of Social Change in Organizations*, 32 ACAD. MGMT. REV. 836 (2007).

16. Well discussed in John M. Conley & Cynthia A. Williams, *Engage, Embed, and Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement*, 31 J. CORP. L. 1 (2005).

17. Li-Wen Lin, *Corporate Social and Environmental Disclosure in Emerging Securities Markets*, 35 N.C. J. INT'L L. & COM. REG. 1 (2009) (dealing with the strategic reason of becoming attractive to investors, particularly for companies in emerging economies); Lori Holder-Webb et al., *The Supply of Corporate Social Responsibility Disclosures Among U.S. Firms*, 84 J. BUS. ETHICS 497 (2009) (mentioning image portrayal and reputational management); Donald S. Siegel & Donald F. Vitaliano, *An Empirical Analysis of the Strategic Use of Corporate Social Responsibility* (2006), *available at* http://ssrn.com/abstract=900521 (arguing that CSR reporting is ultimately part of strategic management of the business).

or ethical dimensions.[18] As a result, the CSR report would deserve its autonomy to be a platform of observability for proper CSR issues.

By 2009 however, the KPMG Survey of Corporate Responsibility Reporting indicates that 80% of the CSR reports provided by the largest 250 global companies are standalone and distinct, no longer enmeshed with non-financial narrative reporting.[19] This also appears to be the practice of the most significant UK companies such as BP, GlaxoSmithKline, and others.[20] In France and Denmark, mandatory regulation that requires separate reporting of certain social responsibility matters in environmental and social impact has helped to enhance the status of the standalone CSR report.[21] However, the trend of producing the CSR report as a distinct species of corporate disclosure has also developed in countries such as the United States, where CSR reporting is voluntary,[22] and in the United Kingdom, where CSR reporting has exceeded the legal threshold of being part of directors' annual business review, which is predominantly a non-financial narrative report of the company's performance.[23]

It is not disputed that CSR reporting is on the rise and is increasingly being treated as a separate species of reporting. However, as CSR reports are narrative in nature, and not susceptible to being evaluated upon objective standards such as accounting standards, they are often criticized to be incomparable, vague, and subjective. The three key trends of convergence and standardization in reporting, the rise in providers of CSR ratings, and the industry for assurance have become important to support the stature and credibility of the CSR report.

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18. Conley & Williams, *supra* note 16, at 1; *see also* Lin, *supra* note 17 (discussing the strategic reason of becoming attractive to investors, particularly for companies in emerging economies); *see also* Holder-Webb et al., *supra* note 17 (discussing image portrayal and reputational management); *see also* Siegel & Vitaliano, *supra* note 17 (arguing that CSR reporting is ultimately part of strategic management of the business).

19. KPMG INTERNATIONAL, KPMG INTERNATIONAL SURVEY OF CORPORATE RESPONSIBILITY REPORTING 2008, at 13 (2008), *available at* http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/PressReleases/Documents/Corporate_Sustainability_Report_US_Final.pdf.

20. *E.g.*, BP Sustainability Review 2009, *at* http://www.bp.com/sectiongenericarticle.do?categoryId=9032632&contentId=7060200; GlaxoSmithKline, New Corporate Responsibility Report 2009, *at* http://www.gsk.com/responsibility/index.htm.

21. *See* Oliver Delbard, *CSR Legislation in France and the European Regulatory Paradox: An Analysis of EU CSR Policy and Sustainability Reporting Practice*, 8 CORPORATE GOVERNANCE 397 (2008). In Denmark, the requirement imposed on large businesses to report CSR policies and impact as part of annual financial statements is found in the Danish Act No. 1403 of December 27, 2008. *Corporate Social Responsibility and Reporting in Denmark*, http://www.csrgov.dk/graphics/publikationer/CSR/CSR_and_Reporting_in_Denmark.pdf (discussing the effects of the legislation).

22. *See* Holder-Webb et al., *supra* note 17, at 497.

23. *See* Companies Act, 2006, c. 46, § 417 (U.K.).

In particular, credibility in CSR reporting may underline the voluntary best-practice nature of CSR as a credible, transparent commitment capable of comparable evaluation, thus meeting a number of objectives. One objective is to provide evidence of convincing and legitimate self-regulation and governance in the areas of social responsibility,[24] hence staving off potential regulation[25] that may be crude or burdensome.[26] This also allows corporations to take the initiative in shaping the agenda and become proactively involved in shaping social perceptions and perhaps policy.[27]

The next objective is to provide processes, postures or outcomes to engage with the expectations and demands of the market or stakeholders,[28] so that corporations can be perceived as both responsive and as taking initiatives in shaping the CSR agenda. The governance of modern enterprise may be characterized by the synergistic interaction between private or market-based governance and public forms of governance relying on law or regulation.[29] CSR reporting is arguably a form of self-regulatory as well as market-based governance, allowing both the corporation and the users of its CSR reports to shape the governance of its enterprise. As more emphasis is placed on standardization in CSR reporting and improvement in the quality and credibility of reporting, these developments seek to establish for CSR itself, a conceptualization of its private nature and the credibility of the power of private governance.

The European Union has tried to facilitate a common approach to identifying and promoting CSR,[30] but has stopped short of introducing

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24. David Hess, *Social Reporting: A Reflexive Law Approach to Corporate Social Responsiveness*, 25 J. CORP. L. 41, 83 (1999); *but see* Aaron A. Dhir, *The Politics of Knowledge Dissemination: Corporate Reporting, Shareholder Voice, and Human Rights*, 47 OSGOODE HALL L.J. 47, 62 n.58 (2009).

25. Gerard F. Davis et al., *The Responsibility Paradox: Multinational Firms and Global Corporate Social Responsibility* (U. of Mich. Ross School Working Paper 2006).

26. Hess, *supra* note 24, at 83.

27. Robert B. Reich, *The New Meaning of Corporate Social Responsibility*, 40 CAL. MGMT. REV. 8, 16 (1998).

28. Dima Jamali, *A Stakeholder Approach to Corporate Social Responsibility: A Fresh Perspective into Theory and Practice*, 82 J. BUS. ETHICS 213, 216 (2008).

29. CHRISTINE PARKER, THE OPEN CORPORATION: EFFECTIVE SELF-REGULATION AND DEMOCRACY 295 (Cambridge University Press 2002); *see* Iris H-Y Chiu, *Enhancing Responsibility in Financial Regulation—Critically Examining the Nature of Public-Private Governance* (pts. 1 &2), 4 L. & FIN. MARKETS REV. 2 (2010), 4 L. & FIN. MARKETS REV. 3 (2010) (discussing public-private governance at length).

30. *Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility*, at 7, COM (2001) 366 final (July 18, 2001) ("efforts should focus on putting the proper regulatory or legislative framework in place in order to define a level playing field on the basis of which socially responsible practices can be developed.").

any soft law toward convergence in the CSR for Member States.[31] However, the European Union relies on the bottom-up convergence and standardization in CSR reporting that is taking place across the corporate sector.[32] CSR reporting is not merely to be regarded as an exercise of information dissemination. What is reported, how it is reported, and the reception of what is reported are all part of the wider discourse on framing the conception(s) of CSR itself. In this Article, I will argue that the developments in standardization and convergence in CSR reporting may meet those needs of improving the stature and legitimacy of the self-governance in CSR. But standardization and convergence in reporting may bring about certain unintended consequences that could undermine the notion of CSR itself. This would ultimately affect the credibility of CSR reporting in seeking to establish a private sphere of governance in CSR.

II. STANDARDIZATION AND CONVERGENCE IN CSR REPORTING

A common criticism of CSR reports may be that they tend to be selective, subjective, and not comparable. In light of global developments in standard setting for CSR reporting, one should not succumb to the simplicity of this criticism. KPMG has reported that an observed trend is the convergence of CSR reports upon common international standards,[33] such as the U.N. Global Compact,[34] the Equator Principles for financial institutions,[35] the Global Reporting Initiative standards,[36] such as G3 standards,[37] and the AA1000 standards developed by the non-profit organization AccountAbility.[38] However, the most popular reporting template may arguably be the GRI, as it presents a comprehensive and inclusive array of CSR issues identified

31. *Id.* at 23 ("[a]t this stage the Commission does not with to [make] . . . corporate proposals for action.").

32. *Id.* at 21.

33. KPMG INTERNATIONAL, *supra* note 19, at 35.

34. *See* U.N. Global Compact, *available at* http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html.

35. *See* The Equator Principles (2001), *available at* http://www.equator-principles.com/documents/Equator_Principles.pdf.

36. *See* Global Reporting Initiative, Reporting Framework Overview, *available at* http://www.globalreporting.org/ReportingFramework/ReportingFrameworkDownloads/.

37. *See* GLOBAL REPORTING INITIATIVE, SUSTAINABILITY REPORTING GUIDELINES (2006), http://www.globalreporting.org/NR/rdonlyres/2619F3AD-0166-4C7C-8FB2-D8BB3C5F801F/0/G3_GuidelinesENU.pdf (last visited Oct. 19, 2010).

38. *See* AccountAbility, http://www.accountability.org/publications.aspx?id=402 (last visited Oct. 19, 2010).

for reporting, plus specific guidelines for industries such as financial services, energy, or mining.[39]

Further, a number of companies have started to produce CSR ratings to help asset managers screen for socially responsible investment opportunities.[40] Empirical evidence indicates that socially responsible investing is on the rise,[41] and the U.N. Principles for Responsible Investment further encourages global convergence in the investment approach of putting emphasis on social performance.[42] The social responsibility ratings industry provides a service to assist socially responsible investors to screen their potential investee companies.[43] KLD, a company now acquired as part of the Risk Metrics group, has developed a popularly used Global Socrates database that produces CSR reports for a large number of globally listed companies, and has also rolled out a rating system from "C to AAA" for the corporate social performance of companies.[44] Experts in Responsible Investment Solutions (EIRIS) has developed Corporate Sustainability ratings on a scale of 1-5 that could be tailored to meet the needs of asset managers.[45] The corporate social performance sector is growing, with a number of companies[46] providing such evaluation[47] and rating services.[48] Standardization and convergence in CSR reporting also reinforces the credibility and comparability of ratings, as rating agencies inevitably derive part of their evaluation from publicly reported information put out by companies.

It is also observed that companies endeavor to improve the

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39. KPMG INTERNATIONAL, *supra* note 19, at 36-38.

40. Lin, *supra* note 17, at 5.

41. *Id.* at 6.

42. *Id.* at 7.

43. AUGUSTIN LANDIER & VINAY B. NAIR, INVESTING FOR CHANGE: PROFIT FROM RESPONSIBLE INVESTMENT 130 (Oxford U. Press 2009).

44. KLD RESEARCH & ANALYTICS, ESG RESEARCH AND RATINGS METHODOLOGY 9 (2009), http://www.kld.com/research/socrates/img/KLD%20Methodology%20and%20Ratings_2009.pdf (last visited Oct. 19, 2010).

45. SUSTAINABLE INVESTMENT RESEARCH ANALYST NETWORK, A REVIEW OF ESG PRACTICES IN LARGE EMERGING MARKET COMPANIES 6-7 (2009), *available at* www.eiris.org/files/research%20publications/emergingmarketsmar09.pdf (last visited Nov. 30, 2010).

46. Bertelsmann Foundation, *Who is Who in Corporate Social Responsibility Rating? A Survey of Internationally Established Rating Systems that Measure Corporate Responsibility* (2006), *available at* http://www.bertelsmann-stiftung.de/bst/de/media/Transparenzstudie2006.pdf [hereinafter Bertelsmann Foundation].

47. A range of evaluation methodologies and ratings services are mentioned in J. Emil Morhardt et al., *Scoring Corporate Environmental and Sustainability Reports Using GRI 2000, ISO 14031 and Other Criteria*, 9 CORP. SOC. RESP. & ENVTL. MGMT. 215 (2002).

48. Bertelsmann Foundation, *supra* note 46; *see* Morhardt et al., *supra* note 47, at 222 (describing a range of evaluation methodologies and ratings and services).

credibility of their CSR reports by seeking third party assurance for such reports.[49] Hence, the assurance industry is also growing and developing methodologies and standards for assuring the integrity and reliability of CSR reports.[50] For example, AccountAbility has developed an assurance standard, AA1000AS,[51] that provides that assurance services can be provided in respect of CSR reporting complying with AA1000 reporting guidelines, the levels of assurance that can be made and on what bases, as well as the duties and competence expected of persons undertaking an assurance engagement.[52] The AA1000AS is currently undergoing further revision from its first release in 2008.[53] The International Auditing and Assurance Standards Board (IAASB) has also developed the ISAE3000[54] as an assurance standard to provide for how an engagement for assurance may be entered into, carried out, as well as the levels of assurance that may be provided and upon what bases.[55] The International Organization for Standardization (ISO) is also introducing its ISO 26000 as a voluntary set of guidelines for companies to adopt socially responsible processes, but has stopped short of assuming the status of a certification standard.[56]

The three key trends mentioned above not only show that CSR reports are gaining a distinct identity of their own, but that the supporting industries for standardization, ratings, and assurance are also developing rapidly to reinforce *and* provide CSR reports with at least an impression of credibility and reliability. These trends are arguably a response to various developments at the micro, meso, national, and transnational levels.[57]

Aguilera et al. argue that at the micro level, individuals are gaining greater awareness of sustainability issues in relation to climate change,

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49. KPMG INTERNATIONAL, *supra* note 19, at 62.

50. *Id.*

51. Henry Schäfer et al., *Who is Who in Corporate Social Responsibility Rating?* (2006), http://www.accountability21.net/uploadedFiles/publications/AA1000AS%202008.pdf (last visited Oct. 20, 2010).

52. *See* ACCOUNTABILITY, AA1000 ASSURANCE STANDARD 2008 (2008), http://www.Accountability21.net/uploadedFiles/publications/AA1000AS%202008.pdf (last visited Oct. 19, 2010).

53. *Id.* at 5.

54. International Standard on Assurance Engagements 3000, http://www.Accountability21.net/uploadedFiles/Issues/ISAE_3000.pdf (last visited Oct. 19, 2010).

55. INT'L ACCOUNTING STANDARDS BD., INTERNATIONAL STANDARD ON ASSURANCE ENGAGEMENTS 3000: ASSURANCE ENGAGEMENTS OTHER THAN AUDITS OR REVIEWS OF HISTORICAL FINANCIAL INFORMATION ¶¶ 7-9, http://www.accountability21.net/uploadedFiles/Issues/ISAE_3000.pdf (last visited Oct. 19, 2010).

56. INTERNATIONAL ORGANIZATION FOR STANDARDIZATION, ISO AND SOCIAL RESPONSIBILITY (2008), http://www.iso.org/iso/socialresponsibility.pdf (last visited Oct. 19, 2010).

57. *See* Aguilera et al., *supra* note 15.

and the social impact of corporate activities following well-publicized scandals of corporate failures such as Worldcom and Enron.[58] At the meso level, corporate organizational culture has been affected by the movements of business ethics[59] and risk management,[60] and senior management have arguably become more keenly aware of the environmental and social impact of corporate activities, as part of general strategic, risk, and business management.[61] Information asymmetry between the corporation and those on the outside is being overcome not only by what the corporation discloses, but by myriad sources of information whether in the media, regulatory, academic, or other spheres.[62]

Greater availability of information has helped to draw out stakeholder responses, which often act as external pressures upon corporations.[63] Empirical research shows that as firms respond to social performance information and ratings put out about them, those that have fared poorly tend to respond significantly in order to improve reputational perception.[64] As a result, CSR reporting and ratings do seem to have a significant effect upon corporate behavior and social performance, such pressures performing a role of incentivizing reflexive self-regulation on the part of corporations.[65]

At the national level, a number of jurisdictions (*e.g.*, France and Denmark) have introduced mandatory CSR reporting legislation,[66] and Norway has enacted legislation to improve gender equality on Boards of Directors.[67] In order to stave off further regulation, corporate behavior

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58. *See* Aguilera et al., *supra* note 15, at 8-15.

59. *See* TIMOTHY L. FORT, ETHICS AND GOVERNANCE: BUSINESS AS MEDIATING INSTITUTION (Oxford U. Press 2001); *see also* Michael Segon & Christopher Booth, *Business Ethics and CSR as Part of MBA Curricula: An Analysis of Student Preference*, 5 INT'L REV. BUS. RES. PAPERS 72 (2009).

60. *See generally* PARKER, *supra* note 29; *see also* CORPORATE RISK MANAGEMENT (David H. Chew ed., Columbia U. Press 2008); *see also* MICHAEL POWER, ORGANIZED UNCERTAINTY: DESIGNING A WORLD OF RISK MANAGEMENT (Oxford U. Press 2007).

61. *See* Beth Kytle & John Gerard Ruggie, *Corporate Social Responsibility as Risk Management: A Model for Multinationals* (John F. Kennedy Sch. of Gov't, Harvard U., Working Paper No. 10, 2005), *available at* http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_10_kytle_ruggie.pdf.

62. *See* Aaron K. Chatterji & Michael W. Toffel, *How Firms Respond to Being Rated*, 31 STRATEGIC MGMT. J. 917 (2010).

63. *See* Dhir, *supra* note 24, at 47.

64. *See* Chatterji & Toffel, *supra* note 62.

65. David Case, *Corporate Environmental Reporting as Informational Regulation: A Law and Economics Perspective*, 76 U. COLO. L. REV. 379, 428-30 (2005); Hess, *supra* note 24, at 65-67.

66. *See supra* text accompanying note 21.

67. *See* Norway's Mixed-gender Boardrooms, Norway.org (summarizing the Norwegian legislation), *at* http://www.eu-norway.org/news/gender_rep_boardrooms/.

is changing to take social responsibility more seriously.[68] At the national level, existing national regulatory systems and jurisprudence may also be interpreted in new ways to support CSR. This is illustrated in the American case of *Nike v. Kasky*, where a shareholder sought to impugn the salutary picture painted in Nike's annual report as being inconsistent with the reality of sweatshop conditions in Nike's supply chain.[69] At the transnational level, nongovernmental organizations, and international bodies such as the United Nations (Global Compact, Principles for Responsible Investing), the OECD (guidelines for Multi-National Enterprises and Corporate Governance), the International Labour Organisation, and the U.N. Conference on Trade and Development, all contribute not only to awareness of the agenda for social responsibility, but to behavioral change on the part of corporations and regulators.

The rise of socially responsible investing also brings institutional investor power to bear as institutions are setting aside increasing amounts of investment for socially responsible companies, and companies are increasingly motivated to improve their social performance in order to attract such investment.[70] However, the level of shareholder proposals related to corporate social responsibility remains low,[71] as there are procedural difficulties in enabling any individual shareholder to table a proposal to be voted upon at the general meeting. Further, such proposals may be regarded as having been successfully brought up if support of up to 10% can be garnered for them.[72]

Such empirical data indicates that shareholder activism for corporate social responsibility has not exactly become mainstream, but this may nevertheless be an important source of influence for companies to engage with CSR. Nongovernmental organizations and stakeholder groups that can galvanize action through borderless communication over the Internet are also a growing source of social pressure, termed as

68. *See* Conley & Williams, *supra* note 16, at 1.

69. David Monsma & John Buckley, *Non-Financial Corporate Performance: The Material Edges of Social and Environmental Disclosure*, 11 U. BALT. J. ENVTL. L. 151, 193-95 (2004); Michele Sutton, *Between a Rock and a Judicial Hard Place: Corporate Social Responsibility Reporting and Potential Legal Liability Under* Kasky v. Nike, 72 UMKC L. REV. 1159, 1169-72 (2004).

70. Lin, *supra* note 17, at 5-7. However, it is also observed that SRI is still a minority player in the investment markets, and possibly accounts for only about 10% of institutional funds worldwide. *See* Allison M. Snyder, *Holding Multinational Corporations Accountable: Is Non-Financial Disclosure the Answer?*, 2007 COLUM. BUS. L. REV. 565 (2007).

71. Robert Monks et al., *Shareholder Activism on Environmental Issues: A Study of Proposals at Large US Corporations (2000–2003)*, 28 NAT. RESOURCES FORUM 317 (2004); Anastasia O'Rourke, *A New Politics of Engagement: Shareholder Activism for Corporate Social Responsibility*, 12 BUS. STRATEGY & ENV'T 227 (2003).

72. Monks et al., *supra* note 71, at 324.

"social risk,"[73] for corporations. Hence, the convergence and standardization in CSR reporting, and the ratings and assurance industries may be a response to the convergence of global forces, motivations, and perceptions regarding what CSR is and why it is important.

Standardization and convergence in CSR reporting has made the hackneyed criticisms against the selective and non-comparable nature of CSR reports less and less relevant. How does standardization reinforce or support the voluntary and self-regulatory nature of many CSR issues? It could be argued that standardization in CSR reporting may give the impression that we have arrived at an agreed and graspable concept of CSR performance evaluation, and that CSR reporting provides that information in an increasingly credible way. We would increasingly be persuaded to embrace the apparent convergence in the concept of CSR performance, especially in the way corporations report theirs. However, can it be argued that one cannot make the connection between standardization and convergence in reporting, and our conception of what CSR comprises and how it should be evaluated? Standardization and convergence in CSR reporting does not necessarily prescribe for our independent minds how to perceive CSR and CSR performance. However, the technocratic weight of standard-setting bodies such as GRI, which is independent of the corporate sector, and increasing adoption by corporations of standardized reporting templates, would go a long way toward persuading us to accept the wider implications of standardization in legitimizing corporations' conception of CSR performance and the legitimacy of their self-regulatory governance in CSR issues that are unregulated.

CSR performance remains an elusive concept on many levels—from the ideological to the various methodologies in capturing proxy indicators for CSR performance. CSR performance may be based on specific indicators such as toxic emissions or carbon footprints, or an aggregate of indicators similar to the approach with the KLD Global Socrates rankings. CSR performance may be based on popular opinions such as the results of polls and surveys.

CSR performance may be based on stakeholder perceptions, and levels of satisfaction. CSR performance may also be measured by reference to the processes and policies companies are committed to, or may be evaluated by reference to outcomes. The variety of possibilities in CSR performance evaluation stems from the complex nature of CSR itself.

CSR could be based on any of the following representations of the corporation: the corporation as a social citizen whose legitimacy is

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73. *See* Kytle & Ruggie, *supra* note 61.

based on social value and hence its performance is based on social good;[74] or an essentially economic institution whose CSR performance is strategically beneficial to further its economic purposes, even if social benefits beyond the privately economic benefits are achieved.[75] However, standardization and convergence in CSR reporting edges close to having a "universalist" perspective of CSR. This emphasis assists the development of the corporate social performance ratings and assurance industries, and these industries' work may further provide an overly glib impression of the measurability and evaluation of a "universalist" conception of CSR performance.

The standardization and convergence in CSR reporting will arguably serve to facilitate a perception of CSR performance that is impressionistic and ultimately corporate-centric for its strategic purposes. Corporations may think that this impression is key to sustaining the largely self-regulatory nature of many CSR issues that are unregulated. In sum, the argument is that standardization and convergence in CSR reporting that supports a "universalist" conception of CSR performance may be overly glib but successful in managing market-based governance from the demand side of CSR reporting (*i.e.*, user stakeholders). This Article argues that the ramifications and unintended consequences from standardization would ultimately undermine the effectiveness of market-based governance on the demand side, and will in turn raise questions of the legitimacy of corporate self-regulatory governance in these areas. The Article will first explore whether standardization and convergence in CSR reporting is likely to entail these unintended consequences. I will then explore, in Part IV, a gentle reform to CSR reporting to address those problems.

III. THE MEANING OF SOCIAL PERFORMANCE AND THE CONSEQUENCES OF STANDARDIZATION AND CONVERGENCE

According to John Elkington, the founder of the concept of "triple bottom line" reporting, social performance means: "In the simplest terms, the [triple bottom line] agenda focuses corporations not just on the economic value that they add, but also on the environmental and social value that they add—or destroy."[76] Hence, it is arguable that

74. But there are also many competing views of "citizenship," in terms of how individualistic, communitarian or universalist the term may mean. *See* Jeremy Moon et al., *Can Corporations be Citizens? Corporate Citizenship as a Metaphor for Business Participation in Society*, 15 BUS. ETHICS Q. 427 (2005).

75. *See* Abagail McWilliams et al., *Corporate Social Responsibility: Strategic Implications*, 43 J. MGMT. STUD. 1 (2006).

76. *See* Elkington, *supra* note 4.

social performance means the social benefits and costs of the corporations' activities, beyond economic value. However, both social benefit and cost is difficult to evaluate quantitatively and qualitatively. The GDP may be a measure of a country's economic well-being, but it assumes that consumption is sacred and fails to take into account the costs of consumption, particularly waste.[77] On the whole, it is difficult to achieve any comprehensive and credible measure of well-being or societal harm that is both quantitative and qualitative in nature. Hence, "social performance" is measured according to proxy indicators of well-being or harm, such indicators may be "input" based or "output" based.

Input-based indicators include looking at what corporate policies there are regarding corporate commitment to CSR, whether companies have processes, personnel, and resources devoted to CSR,[78] whether they have performance indicators for aspects of CSR and monitor their own performance, whether stakeholder participation and dialogue is carried out,[79] and so on. Input-based indicators thus deal with what a corporation seems to be carrying out in pursuing CSR, and not what a corporation has achieved in aspects of CSR. Output-based indicators refer to the outcomes or effects of a company's CSR activities, or implementation of its input-based processes and procedures. Specific quantifiable output-based indicators may be carbon footprint, quantity of recycling and waste, level of emissions, frequency and level of employee turnover, representation of equality in employee profiles, supply chain labor conditions, and so on. The GRI and KLD capture some of these specific quantifiable outcomes. However, where a corporation may be involved in the generation of social cost, for example, by engaging in corruption in a third world country, the social cost is difficult to measure, as the effects may be both wide-ranging and indirect. A number of eminent academics have also developed "holistic" models for CSR performance to be measured. Carroll argues that a three-dimensional model can be constructed to measure CSR performance.[80] First, companies are thought to be concerned with four categories of CSR matters, from economic to legal, then ethical, and then philanthropic concerns.[81] Then, Carroll suggests that a company's responsiveness to any particular matter may be plotted along a spectrum

77. *See* JOSEPH STIGLITZ ET AL., REPORT BY THE COMMISSION ON THE MEASUREMENT OF ECONOMIC PERFORMANCE AND SOCIAL PROGRESS (2009), *available at* http://media.ft.com/cms/f3b4c24a-a141-11de-a88d-00144feabdc0.pdf.

78. These are important too, for example, GRI, AA1000, and the KLD ratings.

79. *See* Martin O'Connor & Joachim H. Spangenberg, *A Methodology for CSR Reporting: Assuring a Representative Diversity of Indicators Across Stakeholders, Scales, Sites and Performance Issues*, 16 J. CLEANER PRODUCTION 1399 (2008).

80. *See* Carroll, *supra* note 1, at 499.

81. *Id.* at 500.

from defensiveness, with no response, to being accepting and proactive.[82] Finally, a particular CSR issue should be identified such as consumer, labor, or environmental, and then matched with the type of concern and the company's responsiveness to determine the CSR performance of the company.[83] Wood has also proposed a model that takes into account individual, organizational, and institutional factors driving a company's responsiveness, matched with its internal processes and systems, and externally observed implementation and outcomes to determine CSR performance.[84] However, applications and implementations of CSR performance models are not exactly precise and straightforward.

Standardization in CSR indicates which areas or issues are in the realm of CSR, and standardized templates for reporting show the way for evaluating CSR performance, whether input-based, output-based, or based on surveys or opinions. On the one hand, these developments may provide certainty in the construction of CSR as a form of governance or an academic or practical discipline. On the other hand, standardization and convergence in CSR reporting may obscure difficult and contestable issues in defining what CSR performance is. We could become uncritical in accepting the validity and reliability of the standardized indicators of CSR performance, but we would risk forgetting that indicators have been developed to achieve only approximate evaluations of social good and social harm.[85]

Further, social good or social harm may be regarded differently based on the different cultures in different countries. Steurer and Konrad write that central and eastern European states may be indifferent to the lack of voluntary or charity involvement on the part of corporations, but western European countries treat such involvement as being an indicator of positive CSR.[86] Chen and Bouvain also observe that countries with an Anglo-American economic system treat consumer and shareholder interests as being of paramount importance in CSR, but less liberal economies may treat relations with the government and

82. *Id.* at 501-02.

83. *Id.* at 504.

84. *See* Wood, *supra* note 2, at 691.

85. *See* Tomás B. Ramos & Sandra Caeiro, *Meta-performance Evaluation of Sustainability Indicators*, 10 ECOLOGICAL INDICATORS 157 (2010) (arguing that it is necessary to perform meta-evaluations of these indicators to ensure their continued relevance, coherence, effectiveness and justifiability in application). The authors have developed about twenty benchmarks in order to achieve a template for meta-evaluation of sustainability indicators. *Id.* at 162-65.

86. Reinhard Steurer & Astrid Konrad, *Business—Society Relations in Central-Eastern and Western Europe: How Those Who Lead in Sustainability Reporting Bridge the Gap in Corporate (Social) Responsibility*, 25 SCANDINAVIAN J. MGMT. 23 (2009).

regulators as being of greater importance.[87] Anglo-American economies also tend to treat good financial performance as being part of positive CSR, and are keen to establish that CSR is positively correlated with financial performance,[88] although China and Japan may regard business ethics and moral practices as being of paramount importance to CSR.[89] Further, Aras and Crowther suggest that corporations may have reframed the term "sustainability" to mean something fundamentally different from the social good of maintaining the planet's resources—to the ability of the corporation to maintain the continuation of its activities.[90] In spite of the movement toward standardization and convergence in CSR indicators, it remains important to bear in mind the notions of social good and social harm we are trying to perceive and evaluate, in order to critically ascertain what the standardization and convergence trends are going to achieve.

There are two main arguments that this Article will make in order to show that standardization and convergence in CSR reporting entails unintended consequences that will diminish the stature of its self-regulatory nature. The first argument is that the standardization and convergence in CSR reporting, such as the GRI reporting template, is based on "inclusiveness" in identifying CSR issues. Such inclusiveness is a very thin form that may lead to generic and nondescript reporting, and allows corporations to primarily use the CSR report in pursuit of the business case. The second argument is that the standardization and convergence may prematurely provide glib and overly-confident perceptions of what CSR performance is, resulting in management of demand side perceptions. Such perception management of the demand side is increasingly being reinforced by rating providers, journalistic opinions, and polls and assurance providers. Market-based governance

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87. *See* Stephen Chen & Petra Bouvain, *Is Corporate Responsibility Converging? A Comparison of Corporate Responsibility Reporting in the USA, UK, Australia, and Germany*, 87 J. BUS. ETHICS 299 (2009).

88. *See* Jeffrey P. Katz et al., *The Impact of External Monitoring and Public Reporting on Business Performance in a Global Manufacturing Industry*, 48 BUS. & SOC'Y 489 (2009); *see also* R. Perumal & R. Ramakrishnan, *Financial Performance and Stakeholder Management* (2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1091547; *but see* Peter deMaCarty, *Financial Returns of Corporate Social Responsibility, and the Moral Freedom and Responsibility of Business Leaders*, 114 BUS. & SOC'Y REV. 393 (2009); *see* Hasan Fauzi, *Corporate Social and Financial Performance: Empirical Evidence from American Companies*, GLOBSYN MGMT. J. (forthcoming 2010), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1489494; *see* Rim Makni Gargouri et al., *Causality Between Corporate Social Performance and Financial Performance: Evidence from Canadian Firms*, 89 J. BUS. ETHICS 409 (2008).

89. *See* Adam J. Sulkowski et al., *Corporate Responsibility Reporting in China, India, Japan, and the West: One Mantra Does Not Fit All*, 42 NEW ENG. L. REV. 787 (2008).

90. Güler Aras & David Crowther, *Corporate Sustainability Reporting: A Study in Disingenuity?*, 87 J. BUS. ETHICS 279, 280-81 (2009).

from the demand side may thus be weak and uncritical, and this risks the eventual credibility and integrity of the self-regulatory nature of CSR reporting and performance in areas that are unregulated.

A. *Standardization and Inclusiveness*

Taking the first argument, that standardization and convergence in CSR reporting is very much based on an inclusiveness approach, the GRI states quite clearly that the G3 reporting framework is "applicable to organizations of any size or type, and from any sector or geographic region" and is "developed through a process of systematic, consensus-seeking dialogue with a large network of individuals from over 60 countries, representing stakeholder groups including business, civil society, academia, labor and other professional institutions."[91] "The process is open, inclusive and takes a global perspective on the growing understanding of good reporting on key sustainability issues."[92] It is arguable that the G3 reporting framework approximates towards a construction of a "universalist" view of what the CSR issues are, but such a "universalist" view is ultimately achieved only by inclusiveness, which means taking on board all or most of the views and concerns of a wide range of stakeholders worldwide. Although "inclusiveness" is supported by notions of democracy and transparency, there may be weaknesses in this approach to discerning the social benefits and costs of a corporation's activities.

"Inclusiveness" has also found its way in legal articulation of standards of corporate governance in the United Kingdom. The UK Companies Act 2006 for example, attempts to reconcile the primacy of shareholders to companies and other long-term and stakeholder concerns in its articulation of the director's duty to promote the long-term success of the company.[93] This legal duty requires directors to promote the long term success of the company for the benefit of the members as a whole, but in doing so, directors must consider the list of stakeholder interests in section 172(1) of the Companies Act 2006.[94] Commentators doubt that the legal duty of the director goes beyond

91. Global Reporting Initiative, *supra* note 36.

92. *Id.*

93. Companies Act, 2006, c. 46 § 172 (U.K.). This is referred to as the enlightened shareholder value model of the company where short-term shareholder primacy is rejected in place of an adapted form of shareholder primacy that respects stakeholder interests; *but see* Paul L. Davies, Cassel Professor of Commercial Law, London Sch. of Econ. and Political Science, Lecture at the U. of Melbourne Law Sch.: "Enlightened Shareholder Value and the New Responsibilities of Directors" (Oct. 4, 2005) (arguing that this is not very different from a shareholder approach); *but see* Demetra Arsalidou, *Shareholder Primacy in Cl 173 of the Companies Bill 2006*, 28(3) COMPANY LAW. 67 (2006).

94. Companies Act, 2006, c. 46, § 172 (U.K.).

accountability to shareholders, and that a director's consideration of stakeholder interests would likely be subsumed as part of overall diligent management or acting in good faith in business judgment.[95]

Even if the director's duty to promote long term success of the company implicitly requires some form of taking into account stakeholders' interests, and possibly stakeholder engagement,[96] the inclusive list of stakeholders in section 172 of the Companies Act may make it impracticable for courts to require any particular form of intense consideration or engagement. Hence, the value of "inclusiveness" may be doubtful if this encourages corporations to engage in a superficial and box-ticking exercise in identifying stakeholders and their interests, and the corporation's consideration of, and engagement with, stakeholders' interests may be inevitably "thinned" out. The inclusiveness approach to standardization and convergence in CSR reporting may also suffer from the same weakness. In seeking to address and report on a wide variety of matters that are also universally applicable to all businesses across sectors and geographical locations, a corporation's CSR report is likely to report thinly on all matters and attain generic and common features.

The general nature of CSR reports may fail to capture peculiar CSR issues that are unique to the individual corporation.

A large supermarket PLC reports:

> We are committed to championing equality, diversity, inclusion and flexible working options for our colleagues. We remain committed to recruiting, retaining and engaging the best people, from backgrounds that reflect the communities we serve. We believe that every colleague, no matter where they work or the role they perform, should be encouraged to develop and make best use of their skills. We value the opinions of our colleagues and we communicate honestly with them. We also believe in recognising and rewarding our colleagues for the vital part they play in making . . . a great place to work.[97]

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95. *See* Andrew Keay, *Section 172(1) of the Companies Act 2006: An Interpretation and Assessment*, 28 COMPANY LAW. 106 (2007); *see* John Lowry, *The Duty of Loyalty of Company Directors: Bridging the Accountability Gap Through Efficient Disclosure*, 68 CAMBRIDGE L.J. 607 (2009); *but see* Daniel Attenborough, *The Company Law Reform Bill: An Analysis of Directors' Duties and the Objective of the Company*, 27 COMPANY LAW. 162 (2006) (arguing that the courts may need evidence of directors' consideration of stakeholder interests and such a requirement may then result in a de facto imposition of a duty to consider).

96. Attenborough, *supra* note 95.

97. J. SAINSBURY PLC, ANNUAL REPORT AND FINANCIAL STATEMENTS 2010: CORPORATE RESPONSIBILITY REVIEW 5 (2010), *available at* http://www.j-sainsbury.co.uk/ar10/downloads/pdf/Sainsburys_AR10_responsibility_review.pdf#page=2.

The generic features of the reports may not highlight issues such as the salary differential between the highest and lowest paid employees, the employment of casual and student labor particularly in supermarkets, or whether the call center sales forces in the telecommunications company are overseas or UK-based. The inclusivity in standardization and convergence of CSR reporting may entail thin but wide ranging discussions that present a diffuse picture of a company's overall impression of CSR so that nothing in particular stands out. Mikkilä and Toppinen[98] are surprised at how similar CSR reports of businesses in totally different geographical locations and cultures may look.[99] This brings to question whether the generality therefore lends a nondescript nature to corporations' CSR reports which provide "safety" from being highlighted or targeted.

Blowfield warns that the unquestioning acceptance of the values of inclusiveness or universalism in CSR risks undermining the critical abilities in CSR as a robust discipline:

> [T]he emphasis placed on consensus allows CSR to present itself as inclusive, accommodating different perspectives and promising "win-win" outcomes for diverse and hitherto often hostile entities. As I will discuss later, these premises about diversity, equal partnership and inclusiveness are part of CSR's weakness, but they are in line with postmodernist theory where difference is regarded as unproblematic. This allows CSR to present opposing ideas as coherent and complementary. It also allows companies to claim to engage in complex issues such as sustainability, environmental management, social justice, animal rights, governance and cultural diversity without any real discussion or recognition of the possibility that aspects of such issues might be ideationally or axiologically contradictory. . . .[100]

The portrayal of success as something non-conflictual is indicative of how CSR views dissent as a perversion.[101]

Further, the inclusiveness of the GRI reporting framework is arguably a "thin" form of inclusiveness. As the GRI reporting framework needs to appeal to all, the framework is broad and wide but it does not capture the quality, intensity, and details of reporting, and therefore "leaves a legacy of unresolved tensions" in how all the CSR

98. Mirja Mikkilä & Anne Toppinen, *Corporate Responsibility Reporting by Large Pulp and Paper Companies*, 10 FOREST POL'Y & ECON. 500 (2008).

99. *Id.*

100. Michael Blowfield, *Corporate Social Responsibility: The Failing Discipline and Why it Matters for International Relations*, 19 INT'L REL. 173, 177 (2005).

101. *Id.* at 181.

issues are weighed, balanced, and explored.[102] Hence, companies still have plenty of discretion in reporting, and they may converge on non-descript, vague but generally positive reporting, or there may be specific reporting by companies of matters that may not ultimately be comparable.

Academic research is rich in finding out what motivates companies to report in a certain quantitative and qualitative manner. For example, stakeholder pressures such as those from environmental groups are often important in influencing the devotion of quantity and quality in CSR reporting.[103] The size of a company is also important in determining the quantity and quality of CSR reports.[104] Even if companies may base their reporting on a standardized framework, the direction and emphasis in the reporting may reflect a number of different motivations, such as treating the reporting as an exercise in business language in response to the need to manage perceptions, or based on management's commitment to ethical business practices and values. The "thin" inclusiveness in standardized frameworks for reporting such as the GRI guidelines arguably does not address these differences in quantity and quality of reporting and hence the impression of comparability may be overrated.

The genericity and universalization of CSR reporting also reminds one of the standardization in financial reporting across companies in order to provide comparability for the investment market.[105] The standardization in financial reporting assists in the commoditization of corporate securities. Is the standardization in CSR reporting also for strategic purposes, to support a market for virtue, perhaps from the points of view of branding and marketing,[106] socially responsible investment, and even as part of a corporation's risk profile in credit worthiness?

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102. Halina Szejnwald Brown et al., *The Rise of the Global Reporting Initiative: A Case of Institutional Entrepreneurship*, 18 ENVTL. POL. 182, 182-83 (2009).

103. Rob Gray et al., *Corporate Social and Environmental Reporting: A Review of the Literature and a Longitudinal Study of UK Disclosure*, 8 ACCT., AUDITING & ACCOUNTABILITY J. 47, 52-57 (1995).

104. *Id.*; Arieh A. Ullmann, *Data in Search of a Theory: A Critical Examination of the Relationships Among Social Performance, Social Disclosure, and Economic Performance of U.S. Firms*, 10 ACAD. MGMT. REV. 540, 541, 548 (1985); Pamela Kent & Christopher Chan, *Application of Stakeholder Theory to the Quantity and Quality of Australian Voluntary Corporate Environmental Disclosures*, 1, 15-16 (2003), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=447901; Alan Muller & Ans Kolk, *Extrinsic and Intrinsic Drivers of Corporate Social Performance: Evidence from Foreign and Domestic Firms in Mexico*, 47 J. MGMT. STUD. 1, 2, 5-8 (2010) (arguing that management disposition toward ethical business behaviour is a driver toward the quantity and quality of CSR reporting).

105. *See* CHARLOTTE VILLIERS, COMPANY LAW AND CORPORATE REPORTING 125-201 (Cambridge U. Press 2006).

106. Siegel & Vitaliano, *supra* note 17, at 773.

B. *Standardization as Reinforcing the Strategic Purpose of CSR*

Standardization and convergence in CSR reporting may be a reflection of convergence in supply side and demand side perspectives, and it is arguable that such convergence is found to support the strategic purpose of the CSR report.[107] The 2009 KPMG Reader's Choice Survey found that the company's CSR report chiefly affects decisions for investors whether to invest in a particular company, or decisions for contractors whether to enter into economic relations with a company, or decisions for potential acquirers in the market for corporate control.[108] Hence, on the demand side, the role of the CSR report seems to be instrumental in nature, for the indication of certain characteristics of the company that have an economic dimension.

The growth of socially responsible investing and the approach of mainstream institutional investors taking into account social responsibility in investee companies has also made the research issue of social performance and its connection with financial performance an important one.[109] The general trend in CSR is that most businesses "[implement] . . . a CSR strategy with a rationale of protecting corporate reputation and earnings."[110] Hence, the strategic approach to CSR[111] seems to be the point of convergence between perspectives from the supply side (*i.e.*, the corporations) and the demand side (*i.e.*, investors, potential acquirers, contractors, and even creditors).

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107. Judy Brown & Michael Fraser, *Approaches and Perspectives in Social and Environmental Accounting: An Overview of the Conceptual Landscape*, 15 BUS. STRATEGY & ENV'T 103, 104-07 (2006); Siegel & Vitaliano, *supra* note 17, at 774-75.

108. KPMG & ACCOUNTABILITY, COUNT ME IN, THE READERS' TAKE ON SUSTAINABILITY REPORTING: A REPORT OF THE GRI READERS' CHOICE SURVEY, 1, 15-16, 26 (2009), *available at* http://www.globalreporting.org/NR/rdonlyres/3F57ACC8-60D0-48F0-AF28-527F85A2A4B4/0/CountMeIn.pdf (indicating that readers' preferences and motivations in reading or not reading CSR reports and what readers hope to see in CSR reports is largely economic, even though the readers are drawn from a broad range including business and civil society) [hereinafter KPMG & ACCOUNTABILITY, COUNT ME IN].

109. *See* Marc Orlitzky, *Links Between Corporate Social Responsibility and Corporate Financial Performance: Theoretical and Empirical Determinants*, *in* 2 CORPORATE SOCIAL RESPONSIBILITY: PERFORMANCE AND STAKEHOLDERS 41 (José Allouche ed., Palgrave Macmillan Publishers 2006) [hereinafter CORPORATE SOCIAL RESPONSIBILITY]; *see also* Laura Poddi & Sergio Vergalli, *Does Corporate Social Responsibility Affect the Performance of Firms?* (2009), *available at* http://ssrn.com/abstract=1444333; *see also* Katz et al., *supra* note 88, at 489 (supporting a generally positive correlation); *but see* Michael L. Barnett & Robert M. Salomon, *Beyond Dichotomy: The Curvilinear Relationship Between Social Responsibility and Financial Performance*, 27 STRATEGIC MGMT. J. 1101, 1101-02, 1113 (2006) (suggesting ambiguous findings where the correlation is indeterminate).

110. Peter Pruzan, *Spirituality as a Basis for CSR*, *in* THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY 532 (Andrew Crane et al., eds., Oxford U. Press 2008); *see also* Brown & Fraser, *supra* note 107 (examining critically the motivations for CSR reporting).

111. McWilliams et al., *supra* note 75, at 1-2.

The recent GRI survey[112] on how CSR reports are read and used shows a surprisingly significant amount of convergence in what readers regard as useful and important.[113] Readers generally affirm the value of the standardized items for disclosure in the G3 guidelines.[114] However, the GRI survey also shows that other civil society stakeholders view concerns such as stakeholder engagement to be still inadequately addressed.[115]

It could even be argued that there may gradually be a case of CSR reporting becoming price-sensitive in the short term if the ramifications of the American decision of *Kasky v. Nike* are further explored. In *Kasky v. Nike*,[116] Marc Kasky issued a private attorney-general action against Nike, alleging that its CSR reports of responsible labour conditions in its supply chain were misrepresented.[117] Nike tried to defend its statements under the constitutional right of free speech but the court eventually held that the CSR reports were commercial.[118] The case eventually settled, but the commercial nature of the CSR report had been noted.[119] In light of the increasing importance of the business case to CSR and companies being engaged in CSR reporting for that purpose, would the strategic nature of CSR reports entail its eventual classification as material and price-sensitive information for investment purposes in due course? It is to be noted that in the United Kingdom, information relating to management of stakeholder interests is required to be part of the directors' business review,[120] and hence there is room for courts to regard such information as having the same weight of materiality as traditional financial disclosure. However, the European Union Transparency Abuse Directive,[121] which regulates ongoing disclosure of securities information to the markets, does not include such stakeholder information.[122] Hence, it remains to be seen if CSR reporting may become part of the landscape of securities regulation in the United Kingdom.

The strategic nature of CSR reporting will likely continue to influence the gradual standardization of CSR reporting. These developments also increasingly define for us an economic perspective to

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112. KPMG & ACCOUNTABILITY, COUNT ME IN, *supra* note 108, at 26.

113. *Id.*

114. *Id.* at 11.

115. *Id.* at 12-13, 16.

116. Kasky v. Nike, 45 P.3d 243, 247 (Cal. 2002); the case was eventually settled out of court.

117. *Id.*

118. *Id.* at 259.

119. Sutton, *supra* note 69, at 1175-76.

120. Companies Act, 2006, c. 46, § 417 (Eng.).

121. Enacted in 2006.

122. Council Directive 2004/109, 2004 O.J. (L 390) 38 (EC).

CSR performance, and CSR performance may form a basis for market-based governance, especially if socially responsible investing becomes more significant.

In sum, on the first argument, the standardization and convergence in CSR reporting based on the value of inclusiveness of all stakeholder interests may arguably create a generic and universal template for reporting that is thin, diffuse, non-particular to any business and perhaps will only go towards commoditizing "virtue" in the pursuit of corporation's strategic and economic purposes. However, one needs to observe the future directions in CSR standardization: is standardization led by voices and groups that are likely able to dominate or capture the process by means of being focussed on economic concerns, technocratically competent, resourceful or politically influential? In particular, corporations are themselves keen to table the indicators that should be accepted for CSR evaluation.[123] This Article will argue, in Part IV, that the process of developing and subjecting CSR indicators to debate and scrutiny and the framing of the conception of social performance must continue to be dynamic. Part IV will also argue that CSR reports and CSR performance should aim to approximately capture the individualized picture of social benefits and costs resulting from a corporation's existence and activities. This is key to the effective exercise of market-based governance which in turn supports the self-regulatory nature of CSR issues that are unregulated.

C. *Standardization: Perception Management or CSR Performance?*

Standardization and convergence in CSR reporting is likely to contribute to the building up of market-based governance in CSR issues that are unregulated, although it is more apparent than real that such standardization and convergence has moved any closer to achieving a universalist conception of CSR and its performance. Further, the rise in rating service providers for CSR performance and the use of assurance for CSR reports further reinforce impressions that CSR performance may be determined universally and credibly. Market-based governance in the form of ratings agencies, journalist opinions and polls, and assurance providers are heavily derived from the corporation's CSR report, and such reliance is likely to continue as standardization and convergence in reporting provides the impression that CSR reporting is credible. Hence, it will be argued that such market-based governance is unlikely to be critical and will allow corporations to strategically use the CSR report for business purposes, instead of showing an individual reflection upon peculiar social benefits and costs of its corporate

123. *See* O'Connor & Spangenberg, *supra* note 79, at 1399-1400.

activities.

Fauzi et al.[124] explain that CSR performance is usually evaluated by using one of the following five means: a) evaluation or ratings based on content analysis of CSR reports; b) specific quantitative measurements such as pollution indices or toxic emissions; c) perceptual evaluation based on opinion surveys and polls; d) indicators of corporate reputation that may be based on popular opinion and poll surveys or industry surveys and asset manager surveys; and e) aggregate data and rankings produced by organizations, whether corporate or voluntary. These different forms of social performance measurements rely on four different categories of information: the companies' CSR reports; popular opinions (*i.e.*, aggregate popular wisdom as information); other organizations' CSR evaluations and rankings; and distinct quantitative measurements taken for specific issues such as emissions or carbon footprint.

The five methodologies in social performance evaluation mentioned earlier are heavily based on information contained in the company's own CSR report. Although external third party reports, polls, and surveys are also forms of evaluation, they are also heavily based on information provided by the company in its own CSR report. The standardization and convergence of CSR reporting based on the U.N. Global Compact or GRI guidelines,[125] operates in the selection of issues that need reporting, so that CSR is framed along those identified issues, but the quality, detail, and intensity of reporting may vary greatly among corporations using the same reporting framework.

Morhardt et al. argue that much CSR reporting is heavily based on policies and procedures, posturing a form of corporate social responsiveness, that does not say much about the social effects and outcomes.[126] Van Oosterhout and Heugens have also commented that evaluations of social performance may be based too heavily on policies, procedures, and systems reported in CSR reports rather than social outcomes or empirical effects on the community.[127] Further, corporate CSR reports also tend to contain laudatory items and may avoid mentioning more controversial issues.[128] However, we may still feel that

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124. Hasan Fauzi et al., *"Triple Bottom Line" as "Sustainable Corporate Performance": A Proposition for the Future*, 2 SUSTAINABILITY 1345, 1349 (2010).

125. KPMG INTERNATIONAL, *supra* note 19, at 9.

126. Morhardt et al., *supra* note 47, at 228-29 (discussing current corporate environment report scoring systems and a company's ability to manipulate their score).

127. J. (Hans) van Oosterhout & Pursey P. M. A. R. Heugens, *Much Ado About Nothing: A Conceptual Critique of CSR*, ERIM REPORT SERIES RESEARCH IN MANAGEMENT 7-8 (2006), *available at* http://publishing.eur.nl/ir/repub/asset/7894/ERS-2006-040-ORG.pdf.

128. Holder-Webb et al., *supra* note 17, at 501. Further, some research has also pointed out that only 40% of companies on the Fortune 100 list may be regarded as living up to their CSR rhetoric. *See* Lisa M. Fairfax, *Easier Said than Done? A Corporate Law Theory for*

a corporation is somewhat socially responsible because it reports, and it does this according to a standardized framework. A number of commentators have looked into the perceived management effects of CSR reporting, and report that positive perception of management is generally achieved through the strategic use of CSR reporting and initiatives.[129] Hence, does standardization now provide a means for determining CSR performance, or is it merely a way to frame business communication in such a way that social responsibility is perceived to be taken care of?

In Foka's view, there could be a significant difference between the internally generated CSR data as perceived by the company's officers and employees, and externally generated data which may represent stakeholder views regarding the corporation.[130] She argues that a sound evaluation of social performance could only be achieved if such internal and external data and perspectives are aggregated for each company.[131] Banerjee further argues that "CSR is more beneficial for corporations than for society."[132] Corporations shape the CSR discourse by reporting, which is supported by standardization in reporting, and they are able to influence the perception of CSR through the business perspective, making corporate purposes and objectives an equal stakeholder to other external stakeholders and their non-business concerns.[133] Hence, CSR reporting may be able to achieve a persuasion toward an impressionistic affirmation of a corporation's CSR performance, converging on the strategic purpose.

Can it be argued that third party providers in the market such as ratings agencies, journalists, and assurance providers may provide a "critical check" on CSR reporting and hence a more credible assessment of CSR performance as posited in reports? In relation to the CSR evaluation carried out by external bodies or companies, such as the

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Actualising Social Responsibility Rhetoric, 59 FLA. L. REV. 771, 796 (2007).

129. *See* Manuel Castelo Branco & Lucia Lima Rodrigues, *Exploring the Importance of Social Responsibility Disclosure for Human Resources*, 13 J. HUM. RES. COST & ACCT. 186, 191 (2009) (indicating that labor market perceptions provide companies a competitive edge and disclosing CSR information can provide a positive basis for such); Sandro Castaldo et al., *The Missing Link Between Corporate Social Responsibility and Consumer Trust: The Case of Fair Trade Products*, 84 J. BUS. ETHICS 1, 1 (2009) (theorizing that consumers are attracted to companies with a positive social and ethical reputation); Jan Bebbington et al., *Corporate Social Reporting and Reputation Risk Management*, 21 ACCT., AUDITING & ACCOUNTABILITY J. 337, 339-41 (2008) (proposing that CSR reporting is an essential part to a company's reputation risk management, a practice necessary for strategic purposes).

130. Ioanna Foka, *The FSM: A Holistic Approach to Measuring Ethical and Social Performance*, 12 BUS. ETHICS: EUROPEAN REV. 314, 315 (2003).

131. *Id.*

132. SUBHABRATA BOBBY BANERJEE, CORPORATE SOCIAL RESPONSIBILITY: THE GOOD, THE BAD AND THE UGLY 146 (Edward Elgar Publ'g Ltd. 2007).

133. *Id.*

KLD, van Oosterhout and Heugens[134] argue that the CSR evaluations are in fact subjective and based on certain sweeping assumptions such as negative filtering.[135] Certain industries, such as tobacco, alcohol, and gambling are given low CSR evaluations primarily because of the nature of the business, rather than an in-depth analysis of the companies as such.[136] Further, many of these evaluation agencies present an aggregate score or ranking in order to facilitate ease of use, particularly by socially responsible investors.[137]

Where an evaluation is based on aggregate data, van Oosterhout and Heugens ask how an aggregation can be meaningfully made of diverse issues such as gender equality and waste management, or trade union relations, and community pro bono involvement.[138] The authors are of the view that aggregate evaluations, which are leading the way in convergent developments in measuring CSR performance, are not likely to provide useful information as the aggregate masks the levels of issue-specific information which may perhaps be more informative to recipients if treated separately.[139] Aggregated evaluations may be criticized for having opaque processes of selection and weighting, and may be over or under-inclusive, and may fail to be quantitatively or qualitatively meaningful.[140] Research by Chatterji et al. point out that KLD, for example, systematically underweighs information of related companies in the same group, and overweighs corporate information that is predictive in nature, and hence the evaluation of CSR performance may be more optimistic than warranted.[141] Further, van Oosterhout and Heugens also point out that CSR performance evaluated in academic writing tends to be based on different selections of indicators and criteria, and hence any aggregate evaluation depends highly on the selection of indicators made in the first place.[142]

CSR performance may also be based on opinion surveys, such as the Fortune 500 rankings, which rank companies according to an aggregate of concerns from stakeholder engagement to financial performance.[143]

134. Van Oosterhout & Heugens, *supra* note 127, at 20-22.

135. *Id.*

136. *Id.* at 19.

137. *Id.* at 20.

138. *Id.*

139. *Id.*

140. Risako Morimoto et al., *Corporate Social Responsibility Audit: From Theory to Practice*, 62 J. BUS. ETHICS 315, 319 (2005).

141. Aaron K. Chatterji et al., *How Well Do Social Ratings Actually Measure Corporate Social Responsibility?*, 18 J. ECON. & MGMT. STRATEGY 125, 132-62 (2009).

142. Van Oosterhout & Heugens, *supra* note 127, at 18.

143. *See* Fortune 500, 2010: Annual Ranking of America's Largest Corporations from *Fortune Magazine*, *at* http://money.cnn.com/magazines/fortune/fortune500/2010/index.html (listing the Fortune 500 rankings in 2010 and the key factors for arriving at the rankings).

Some rankings are by and large based on a company's CSR report and the evaluations issued by external agencies. For example, from 2005, Fortune has started to rank the CSR performance of companies with the assistance of opinion surveys and data collection undertaken by AccountAbility.[144] Other ranking agencies may undertake their own research in addition to issuing questionnaires to corporations whose provision of information may be based on what is in the CSR report.[145] For example, in the United Kingdom, the "*Sunday Times* 100 Best Companies to Work For" ranks companies according to the results of an employee survey and organizational questionnaire. Ethisphere, a non-profit organization with representation from business, academia, and government also ranks companies by their ethical profiles, using the results of organizational questionnaires and the analyses of data on companies available publicly.[146] Opinion surveys convey an easily understandable and comparable format for CSR performance to be popularly discerned, but it is ultimately based on information that corporations put out, and like aggregate scores in ratings, it provides a bite-size journalistic piece of information that is largely based on the corporation's CSR report and may not provide any insight into peculiar issues the corporation may face.

Standardization and convergence in CSR reporting may facilitate an impression of comparability, greater credibility, and greater ease of use in aggregate performance ratings and rankings, which are derived from CSR reports, without actually addressing the issues of the diversity in CSR performance and the quality of CSR reports. That said, the ratings industry is very diverse, with fifty-eight leading companies issuing ratings based on diverse methodologies.[147] However, research shows that leaders in rating services such as KLD are able to influence long-term stakeholder attitudes and decisions.[148] Standardization and convergence in CSR reporting may be further reinforced by the rise of assurance services for CSR reports.

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144. *See* Social Responsibility: Most 'Accountable' Companies 2007: Full List, CNNMoney.com, *at* http://money.cnn.com/magazines/fortune/global500/2007/accountability/full_list.html.

145. *E.g.*, *Sunday Times* 100 Best Companies to Work For, TIMES ONLINE, *at* http://business.timesonline.co.uk/tol/business/career_and_jobs/best_100_companies/best_100_tables/; ETHISPHERE INSTITUTE, *infra* note 146.

146. ETHISPHERE INSTITUTE, 2009 WORLD'S MOST ETHICAL COMPANIES, http://ethisphere.com/wme2009/ (last visited Oct. 8, 2010).

147. Bertelsmann Foundation, *supra* note 46, at 91.

148. *Id.*

D. *The Rise of Assurance Services for CSR Reporting and the Ramifications*

Assurance services may be offered by independent third parties, usually with technocratic expertise, to assure the credibility of information that is put out by corporations. Information asymmetry between the corporation (essentially management) and others is at the root for the demand for assurance services, which provide a form of market-based governance for business relations. Assurance services, as well as certification services such as the ISO standards (except the ISO26000 social responsibility guidelines), have become a contemporary form of governance, mitigating the information asymmetry between corporations and others, and reducing transaction costs.[149]

A well-recognized form of assurance is the financial audit of companies, or public sector bodies, as documented in Power's provocative book.[150] The audit has been developed over the twentieth century as a staple form of assurance for the financial reporting of companies.[151] The importance of the audit has been established through the leadership of the accounting profession, navigating the influences and pressures from policymakers and regulators, and the self-regulating preferences of business managers for internal controls and risk management.[152] The auditing profession has developed not only a professional service, but professional education and trade bodies to support the perceived quality, reputation, and exclusivity of the audit service.[153] Over the years, remarkable convergence has taken place in financial reporting standards across the world, and there remain two dominant sets of standards in the GAAP and IFRS.[154]

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149. *See* Margaret Blair et al., *The Roles of Standardization, Certification, and Assurance Services in Global Commerce* (2008), *available at* http://ssrn.com/abstract=1120503.

150. MICHAEL POWER, THE AUDIT SOCIETY: RITUALS OF VERIFICATION 28 (Oxford U. Press 1999).

151. *Id.* at 23.

152. *Id.*

153. *See* KEES CAMFFERMAN & STEPHEN A. ZEFF, FINANCIAL REPORTING AND GLOBAL CAPITAL MARKETS: A HISTORY OF THE INTERNATIONAL ACCOUNTING STANDARDS COMMITTEE, 1973-2000, at 105 (Oxford U. Press 2007) (charting the historical development of accounting standards under the IASB, formally the IASC); BRIAN A. RUTHERFORD, FINANCIAL REPORTING IN THE UK: A HISTORY OF THE ACCOUNTING STANDARDS COMMITTEE, 1969-1990, at 22 (Routledge 2007) (dealing with the political and professional struggles in the development of accounting standards in the United Kingdom); Aila Virtanen, *Revealing Financial Accounting in Finland Under Five Historical Themes*, 14 ACCT. HIST. 357, 366 (2009) (discussing the domination of regulatory, political, and professional influence in the development of accounting standards first for internal bookkeeping use and then mainly for financial reporting).

154. Although some contend that there is no material difference between the IFRS and U.S. GAAP and that the United States is increasingly moving toward accepting the

In comparison to the standardization of financial reporting standards, the standardization of CSR performance standards has been more checkered. However, the rise of assurance services for CSR reporting may be a way in for the accounting profession, in particular to take leadership on reinforcing the standardization of CSR reporting and perception management of CSR performance.

The two dominant assurance standards for social responsibility are found in the second edition of AA1000AS issued by AccountAbility, and the ISAE3000 issued by the International Accounting Standards Board (IASB). The AA1000AS is intended to be used by assurance practitioners who may be able to provide assurance that companies have adhered to the AA1000 Principles of Accountability (AA1000 Principles).[155] The scope of assurance may extend to other sustainability matters outside of the AA1000 Principles, as may be agreed upon by the company and assurance provider.[156] The assurance provider may provide a high or limited level of assurance depending on the sources of information verified, and the depth of evidence.[157] The ISAE3000 is issued to professional accountants who may be involved in CSR assurance.[158] However, it is less specific than AA1000AS as it relates to how a professional accountant should accept and conduct an assurance engagement, such as the use of experts and evidence collection, evaluation of the reasonableness and consistency of the company's CSR disclosures, identifying the criteria for evaluating the specific subject matter evaluated, delineating the assurance practitioner's responsibilities, and preparing a report and drawing conclusions.[159] The assurance may be on a reasonable, limited, or no-assurance basis, a reasonable assurance meaning that the professional accountant is able to verify that CSR disclosures are fairly stated, a limited assurance meaning that the professional accountant does not positively verify the fair reporting of the CSR disclosure, but states that there is nothing that may cause him to believe that the CSR reporting is unfair.[160] A professional accountant is able to draw qualified, adverse, or disclaimers of conclusion if the CSR disclosures by the company may be misstated or misleading.[161]

The AA1000AS supports the AA1000 Principles, and presents a

internationalization of the IFRS as non-U.S. companies listed in the United States need only file financial reports in compliance with the IFRS. *See* L. Murphy Smith et al., *Going International: Accounting and Auditing Standards*, 23 INTERNAL AUDITING 3, 6-11 (2008).

155. AccountAbility, *supra* note 38, at 8.

156. *Id.* at 6.

157. *Id.* at 11.

158. INT'L ACCOUNTING STANDARDS BD., *supra* note 55, ¶ 1.

159. *Id.* ¶¶ 26-49.

160. *Id.* ¶ 49(j).

161. *Id.* ¶¶ 51-53.

package for both companies and the assurance industry to use. The market leader in standardized reporting is the GRI, and it could be envisaged that assurance standards such as the ISAE3000 that does not attach its assurance standard to any particular reporting standard, may be able to accommodate the verification of GRI template disclosure. Where there may be a combination of a market leader in the CSR reporting template and persistent use of assurance in relation to that template, even a neutral assurance standard such as the ISAE3000 may become important in boosting the market leader in convergence.

Empirical research points out an interesting phenomenon of assurance that is highly demanded in jurisdictions where stakeholder groups are more recognized or influential, and where shareholder litigation as a form of discipline is relatively weak.[162] Hence, in these jurisdictions, assurance is the key to the market-based governance in respect of the CSR profiles of companies.[163] There is still little evidence as to whether the extent of assurance affects stakeholders' perceptions (*i.e.*, whether stakeholders will perceive a limited assurance differently from a reasonable assurance).

Empirical research is clearly needed in this area in order to understand to what extent assurance, is perceived to act or actually acts as a form of governance over the CSR profiles of companies. In relation to the financial audit, Power[164] has pointed out how the financial audit is accepted as a form of governance that engenders external trust for corporate disclosure and comfort for stakeholders, although it may not produce substantive effects such as fraud prevention or prevention of financial collapses and loss.[165] Where assurance for CSR reporting is concerned, the potential effects of assurance may be more disturbing.

One, the assurance still says nothing about CSR performance as such, and is a much weaker form of assurance than the financial audit, which in a way vouches for the way corporate financial performance has been presented by the company. The two dominant assurance standards mentioned above only go toward assuring if the CSR reporting is based on information that the assurer could verify. If such information relates to the existence of certain CSR processes and

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162. Ans Kolk & Paolo Perego, *Determinants of the Adoption of Sustainability Assurance Statements: An International Investigation*, 19 BUS. STRATEGY & ENV'T 182 (2010); David N. Herda & Martin E. Taylor, A Worldwide Comparison of Assurance on Corporate Social Responsibility Reports: Are Audit Firms Willing to Sustain This Line of Service? (American Accounting Association, Paper Presented at 2010 International Accounting Section Mid-Year Conference Jan. 29, 2010).

163. *See* Christine Parker, *Meta-Regulation: Legal Accountability for Corporate Social Responsibility*, *in* THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW 207-37 (Doreen McBarnet et al. eds., Cambridge U. Press, 2007).

164. POWER, *supra* note 150, at 98.

165. *See id.*

systems, an assurer could verify that they exist and hence a corporation reporting that they exist may gain assurance for so reporting.

Such assurance does not ensure that the proxy indicators for CSR performance contained in the corporate reporting are relevant or indicative of social cost or benefit. Next, if assurance is attached to an increasingly standardized form of CSR reporting, the assurance creates a perception of reinforcing the legitimacy and popularity of the standardized template as indicative of CSR performance. Thirdly, the assurance may in time perform a function of ritualistic comfort for the concerned stakeholders, like how the financial audit has become, as argued in Power's book.[166]

In relation to the convergence of financial reporting standards, Sunder opines that:

> Uniformity discourages research and debate in academic and practice forums, and promotes increasingly detailed rule-making. It shuts the door on learning through experimentation, making it difficult to discover better ways of financial reporting through practice and comparison of alternatives. Better financial reporting calls for a careful balance between written standards and unwritten social norms.[167]

Standardization and convergence in reporting, reinforced by assurance, may entail an acceptance of impressionistic perceptions of CSR reporting and performance that would primarily be useful to the business case. Such a perception could in time weaken market-based governance that could become complacent, uncritical, and unchallenging.

Further, if stakeholders look to the assurance as a form of governance for CSR, it is important for further research to be carried out on the governance effects of assurance, and whether qualified and limited assurances may provide disciplining effects on corporations. One should note Power's concern with the perception of the role of financial audit—as a ritualistic comfort, despite being substantively rather hollow. O'Dwyer[168] also suggests that assurances given for a company's CSR statements may go no more than affirming that a company is posturing toward becoming more responsible.[169] Such

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166. *Id.*

167. Shyam Sunder, *Adverse Effects of Uniform Written Reporting Standards on Accounting Practice, Education, and Research*, 29 J. ACCT. PUB. POL'Y 99, 100 (2010).

168. Brendan O'Dwyer, *Theoretical and Practical Contributions of Social Accounting to Corporate Social Responsibility*, *in* 1 CORPORATE SOCIAL RESPONSIBILITY, *supra* note 109, at 219.

169. *Id.* at 220-21.

assurances would relate more to corporate social "responsiveness" rather than responsibility as such.

E. *Standardization and the Hegemony of Certain Values*

Standardized templates for CSR reporting are arguably framed along a consciousness of CSR that is very much based on the social consciousness of the western developed economies. Sulkowski et al. argue that what may be socially important to eastern emerging economies, such as communitarian values and close relationships with the government, are not regarded as important in the western notion of CSR.[170] Further, the dominance of CSR indicators based on the western conception of social good and responsibility risks decontextualizing the community and social concerns in local conditions, particularly in developing economies. Schwartz and Tilling argue that standardization removes from context specific local issues that need attention, and compels corporations to engage in a one-size-fits-all implementation of generic CSR.[171] This often results in disproportionate costs being imposed on the supply chain and a series of cosmetic "compliance" measures that are taken without true engagement with the social impact of the corporation.[172] The conception of CSR performance that is drawn out of standardized reporting may actually undermine the richness of diverse and peculiar CSR issues that each corporation may need to address.[173]

In sum, this Article argues that convergence or standardization in CSR reporting may entail the following unintended consequences:

Standardization in the subject matter for reporting is based on inclusiveness of all stakeholder concerns, but such standardization is thin and allows corporations to engage in a manner of reporting that is chiefly strategic in nature;

Market-based governance may, however, be content with such CSR reports, and where supported by ratings providers, journalistic opinions/polls, market-based governance on the demand side for CSR reports is likely to be insufficiently critical.[174] Questions remain in whether there is continuous and critical process in corporations and

170. Sulkowski et al., *supra* note 89, at 796-97.

171. Birgitta Schwartz & Karina Tilling, *'ISO-lating' Corporate Social Responsibility in the Organizational Context: A Dissenting Interpretation of ISO 26000*, 16 CORP. SOC. RESP. & ENVTL. MGMT. 289, 291 (2009).

172. *Id.* at 294; *see also* Ralph Hamann et al., *Universalizing Corporate Social Responsibility? South African Challenges to the International Organization for Standardization's New Social Responsibility Standard*, 110 BUS. & SOC'Y REV. 1 (2005) (discussing the failure of standardized CSR to address specific issues in South Africa).

173. Schwartz & Tilling, *supra* note 171, at 297.

174. *See id.*

stakeholders meta-evaluating CSR indicators and their proxy values;[175]

It remains uncertain if assurance may provide a form of governance and discipline for CSR reporting or reinforce standardized CSR reporting frameworks and provide ritualistic comfort to stakeholders.[176]

All these unintended consequences may entail from the standardization and convergence movement, a path albeit paved with good intentions. Back to the fundamentals, what stakeholders are interested in knowing, is the individual CSR profile of a corporation and the social benefits and cost of its activities. Hence, Part IV will embark on introducing some thoughts in order to diminish the imperceptibility of a corporation's individual CSR profile or the marginalization of the needs of small or minority groups of stakeholders. This Article will advocate an approach that emphasizes the need for the "individualization" of a corporation's CSR profile as a countervailing challenge against the increasing standardization in reporting and the consequences it may entail. The "individualization" of a corporation's CSR profile would involve the "critical engagement" of stakeholders of individual companies. This approach will arguably maintain the individual character of each company's CSR, without damaging any benefits in comparability that may have already been achieved in the movements toward standardization. To this end, the Article will draw on critical management perspectives in stakeholder theory to argue that companies need to include as part of their CSR reporting, a report on engagement with stakeholders on issues of social benefit and cost, as seen from the stakeholders' critical perspectives. It is hoped that such a report would be able to capture the peculiar CSR concerns of each individual company as affecting stakeholders. This also seems to be the empirically reported demand from certain user groups in the recent GRI survey.[177]

IV. THE "CRITICAL STAKEHOLDERS" REPORT

Company CSR reports are often criticized for being selective in terms of the stakeholders with whom they have engaged.[178] Corporate recognition of selected stakeholders' interests tends to be strategic in nature, and Noland and Philips argue this phenomenon is unavoidable, as corporations are inherently unable to have a Habermasian type of moral discourse with stakeholders without the incursion of strategic

175. Tomás B. Ramosa & Sandra Caeiro, *Meta-performance Evaluation of Sustainability Indicators*, 10 ECOLOGICAL INDICATORS 157, 157 (2010).

176. *See* Schwartz & Tilling, *supra* note 171.

177. KPMG & ACCOUNTABILITY, COUNT ME IN, *supra* note 108, at 2.

178. *See* O'Connor & Spangenberg, *supra* note 79.

interests and concerns.[179] However, the critical management studies movement would argue that the selection of which stakeholders are to be regarded as deserving of engagement could be based on questionable and flawed perceptions as to the actual purpose(s) of CSR.[180] Although this Article is not written in the tradition of the critical management studies movement, it does question and challenge the benefits of the standardization trend. This part will argue that, in order to preserve the dynamic in the evolution of the conceptualization of what really amounts to CSR performance, and perhaps CSR in general, there needs to be attention given to encouraging the individualization of a corporation's CSR profile and the peculiar challenges it faces, amidst the standardization movement in CSR reporting. In particular, this part will argue that perhaps companies should append to their CSR reports an individual "critical stakeholders" report that discusses who the company regards as stakeholders under the conditions of "denaturalization" and "anti-performativity," and what issues of social benefits and costs have been raised by these stakeholders. The critical stakeholders report should also explain whether the company ranks the importance of different stakeholders differently and why. The critical stakeholders report would be unique to each company and the identification of stakeholders could change and reflect the dynamism in the conduct of corporate activities.

At this juncture, it is perhaps apt to distinguish the suggested "critical stakeholders report" from CSR reporting based on the AA1000 principles of accountability[181] which emphasize stakeholder engagement in material issues.[182] The AA1000 principles are based on the principles of inclusivity, materiality and responsiveness.[183] Corporations adopting the AA1000 principles should thus have processes and systems that ensure ongoing stakeholder engagement on an inclusive basis, but based on material issues.[184] The determination of what is material would depend on the outworking of the processes and

179. *See* James Noland & Robert Philips, *Stakeholder Engagement, Discourse Ethics and Strategic Management*, 12 INT'L J. MGMT. REVIEWS 39 (2010).

180. Critical management studies as an alternative way of looking at management studies has been championed since 1992. MATS ALVESSON & HUGH WILLMOTT, CRITICAL MANAGEMENT STUDIES (Sage 1992); *see also* Mats Alvesson et al., *Introduction*, *in* THE OXFORD HANDBOOK OF CRITICAL MANAGEMENT STUDIES 1 (Mats Alvesson et al. eds., Oxford U. Press 2009) (describing the nature of critical management studies as being challenging of mainstream right-wing views or views that are instrumental/performative in nature).

181. *See* AA1000 Accountability Principles Standard 2008, http://www.accountability21.net/uploadedFiles/publications/AA1000APS%202008.pdf (last visited Oct. 19, 2010).

182. *Id.*

183. *Id.*

184. *Id.*

systems corporations establish for that purpose.[185] The corporation should also have processes to respond and explain to stakeholders.[186] The "critical stakeholders report" suggested here would also require corporations to engage with stakeholders, but corporations are required to identify the stakeholders under the conditions of denaturalization and anti-performativity, and hence the strategic conception of CSR which is mainstream is disapplied.[187] Further, the element of "materiality" in the AA1000 principles, which relate to strategic concerns, would also not be applied so that corporations may consider marginalized, minority, or alternative views that are of concern to stakeholders.[188]

The "denaturalization" approach refers to an approach that does not accept as necessarily correct mainstream views or established positions, such as shareholder primacy as the primary corporate goal.[189] It seeks to question what may be the alternatives to the mainstream perceptions.[190] The "anti-performativity" approach does not accept the pursuit of any knowledge as a means to an end, in particular, the end of "maximization" of say, efficiency. Fournier and Grey describe "anti-performativity" as "[Critical Management Studies] questions the alignment between knowledge, truth and efficiency . . . and is concerned with performativity only in that it seeks to uncover what is being done in its name."[191]

It is suggested that in identifying the "critical stakeholders" for the purposes of the recommended stakeholders report, companies should refrain from identifying as stakeholders only those that necessarily are affected by or influence the business case. This is because concerns that are relevant to these groups are already largely reflected in the increasingly standardized templates for reporting. Instead, companies should arguably be challenged to explore its weaknesses in other stakeholder concerns that may not necessarily affect the business case. The examples raised by Banerjee are indigenous rights to resources, community rights against displacement, and the preservation of culture.[192] The process of engaging with and documenting CSR concerns from a denaturalized and anti-performative perspective may allow companies to self-reflect upon alternative views and non-majoritarian concerns that may still be valid causes of concern where

185. *Id.*
186. *Id.*
187. *Id.*
188. *Id.*
189. Valerie Fournier & Chris Grey, *At the Critical Moment: Conditions and Prospects for Critical Management Studies*, 53 HUM. REL. 7, 18 (2000).
190. *Id.*
191. *Id.* at 17.
192. BANERJEE, *supra* note 132, at 149.

social benefit and cost are involved. This individualized report should also not become aggregated into a composite social performance score or evaluation in order to preserve its individual character for the purposes of discourse, engagement, and reflection.[193]

Reed[194] suggests that stakeholders could be looked at from alternative perspectives by identifying alternative "stakes" a constituent may have which is not economic in nature. [195] Such stakes may be based on the need for political equality in the development of laws, norms, or governance, the need for fair economic opportunities to secure material and non-material pursuits (and looking at the role of the corporation in affecting that), and the need for authenticity in calling a corporation to reflect upon and account for its role as a social citizen within the fabric of the community of certain shared values, ethics, and norms. These examinations would allow us to recognize stakeholders with alternative "stakes" and the concerns that arise from these stakes in relation to corporate activities, thereby providing a framework for identifying the scope of "normative corporate responsibility."[196] Such alternative "stakes" fit in well with the denaturalized and anti-performative parameters of the suggested "critical stakeholders report." Hence, the suggested "critical stakeholders report" is able to draw from existing academic literature in identifying the groups of stakeholders and the type of concerns that corporations should give attention to in order to prepare an individualized discussion of what "alternative" stakeholders think. This is not to say that corporations need to act on all feedback provided by alternative stakeholders, but the engagement process should provide alternative spaces for reflection.[197] It is also suggested that corporations discuss in this report their reflections or proposed courses of action or discourse following engagement with these stakeholders.

Further, Gao and Sirgy[198] suggest that companies should identify

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193. *See* Virginie Xhauflair & Marc Zune, *Managing Corporate Social Responsibility in Complex Environments: Stakeholder Theory in Action*, *in* 2 CORPORATE SOCIAL RESPONSIBILITY, *supra* note 109, at 119 (indicating that a generic approach to stakeholders requires mediating between stakeholder interests without giving cognizance to which interests are more "critical," the use of this is the ordinary meaning and not in the meaning of critical management studies. An individualized stakeholder identification and engagement approach may be more relevant to the company's unique interests).

194. *See* Darryl Reed, *Stakeholder Management Theory: A Critical Theory Perspective*, 9 BUS. ETHICS Q. 453, 453-83 (1999).

195. *Id.*

196. *See id.*

197. For a critical opinion, see Conley & Williams, *supra* note 16.

198. Tao Gao & M. Josepg Sirgy, *Revisiting Sirgy's Corporate Performance Measurement Model: Towards A Management Audit that Captures Corporate Social Responsibility and Beyond*, *in* 2 CORPORATE SOCIAL RESPONSIBILITY, *supra* note 109, at 154.

their unique sets of internal, external, and distal stakeholders.[199] Internal stakeholders generally refer to employees in various departments in the corporate bureaucracy; external stakeholders generally refer to outsiders with contractual relations with the company; and distal stakeholders may be outsiders without such a contractual connection, but are nevertheless influential upon and interested in the company's activities and reputation.[200] They also suggest that CSR performance should also evaluate the quality of stakeholder relationships in these three groups, based on how far stakeholder trust, commitment, and satisfaction are achieved.[201] This alternative perspective sees the quality of stakeholder relationships as important *per se*, and not necessarily as instrumental to any other ends.[202]

Would this critical approach of engaging stakeholders enmesh the corporation into procedural rituals, seeking discourse only to appear responsible? Or would, as Hunt suggests critically, maneuvers in CSR so dominate corporate activity that business would lose its focus and its way?[203] However, a purely liberal and private view of the corporation is increasingly difficult to sustain,[204] especially where multinational corporations may wield great economic, social, and political power,[205] and the activities and impact of a corporation often extend well beyond its contractual parameters.[206] The proposed suggestion to create a

199. *Id.* at 153-54.

200. *Id.* at 154.

201. *Id.* at 157-58.

202. *See* Thomas Donaldson & Lee E. Preston, *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*, 20 ACAD. MGMT. REV. 65 (1995) (arguing that the corporation could see stakeholder engagement or accountability as descriptive, being reflective of practice, instrumental, being key to achieving economic ends, or normative, being important and valued as such).

203. *See* BENJAMIN HUNT, THE TIMID CORPORATION: WHY BUSINESS IS TERRIFIED OF TAKING RISK (John Wiley & Sons, Ltd. 2003).

204. *See generally* J.E. PARKINSON, CORPORATE POWER AND RESPONSIBILITY: ISSUES IN THE THEORY OF COMPANY LAW (Oxford U. Press 1993).

205. Eric Kolodner, *Transnational Corporations: Impediments of Catalysts of Social Development?* (World Summit for Soc. Dev., Occasional Paper No. 5, 1994). Multinational corporations may be powerful in corporate relations with host governments, and in corruption. *See* Peter Rodriguez et al., *Three Lenses on the Multinational Enterprise: Politics, Corruption and Corporate Social Responsibility*, 37 J. INT'L BUS. STUD. 733, 733-46 (2006). But the multinational corporation as one coherent institution on its own is not an accurate depiction. The multinational business of today spans a number of different corporate personalities and includes outsourcing, investments, joint ventures in many different jurisdictions, and hence what is the corporation and where it is a "rootless cosmopolitan," and hence where are the boundaries of its social responsibility? *See* Gerald F. Davis et al., *The Responsibility Paradox: Multinational Firms and Global Corporate Social Responsibility* (U. of Mich. Ross Sch. of Bus. Working Paper Series, Working Paper No. 1031, 2006), *available at* http://deepblue.lib.umich.edu/bitstream/2027.42/41221/1/1031.pdf.

206. *See* JOEL BAKAN, THE CORPORATION: THE PATHOLOGICAL PURSUIT OF PROFIT AND

"critical stakeholders report" in order to provide a platform for engagement of alternative stakeholder concerns that are denaturalized and anti-performative in nature should be seen as a gentle extension into the self-regulatory governance landscape of CSR issues that are unregulated. The suggested "critical stakeholders report" is likely to assist in enhancing the quality of self-regulatory governance, or otherwise the persistence of thin market-based governance may eventually be seen as a market failure warranting more intrusive forms of regulation, which may not always be intelligent and appropriate.

The recent GRI survey[207] also documents many stakeholders' opinion that CSR reports still need to improve in explaining how and why stakeholder engagement with selected groups takes place, and the treatment of stakeholders' feedback and critical views.[208] This reflects practical concerns surrounding the need for better corporate engagement with stakeholders, which underlines a general concern for the corporation's individualized reflection upon, recognition of, and response to its unique set of stakeholders and their responsibility concerns. Returning to stakeholder engagement and views is arguably the key approach to challenging the increasingly corporate-centric form of CSR reporting and evaluation that dominates perception, and is supported by a thin form of standardization in reporting frameworks.

This Article argues for preserving the capacity and demonstration of individualized corporate reflection, recognition, and response, so that the corporation may be able to demonstrate legitimate and credible self-governance,[209] addressing its unique responsibility concerns through discourse and action. This Article is particularly concerned that the gradual convergence or standardization in CSR reporting may not eclipse the importance of individualized corporate responsibility or allow CSR performance to descend into a form of perception management without addressing the yet dynamic and multifaceted developments in conceptualizing what constitutes CSR performance. Hence, CSR reporting should attempt to capture the peculiar and individual aspects of corporate responsibility unique to each corporation based on its stakeholder profiles, especially within a denaturalized and anti-performative approach that will provide an account of the CSR management by the corporation beyond standardized reporting. This is essential in order to support the credibility or legitimacy of the

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POWER (Free Press 2005); *see also* LAWRENCE E. MITCHELL, CORPORATE IRRESPONSIBILITY: AMERICA'S NEWEST EXPORT (Yale University Press 2001); *see also* Benedict Sheehy, *Corporations and Social Costs: The Wal-Mart Case Study*, 24 J.L. & COM. 1 (2004).

207. KPMG & ACCOUNTABILITY, COUNT ME IN, *supra* note 108, at 15-16.

208. *Id.*

209. *See* PARKER, *supra* note 29, at 104.

voluntary and self-governing nature of CSR, which many, to date,[210] have pointed out is under threat for being unenforceable, cosmetic, and too corporate-centric.

V. CONCLUSION

This Article observes that CSR reporting has developed rapidly, and the contemporary trend is that of standardization and convergence in reporting standards. Although users generally perceive this as establishing credibility and comparability for CSR reports, and hence the legitimacy of the private nature of self-regulatory and stakeholder governance in CSR in general, this Article suggests that standardization may result in certain unintended consequences that may undermine market-based governance in CSR issues that are unregulated. The Article has argued that the standardization is in fact rather thinly based and does not affect the corporate capacity to use the CSR report as a form of strategic business communication that may not provide much insight into CSR performance. However, if reinforced by the rise of assurance and ratings derived from CSR reports, CSR reports may still be regarded as credible information on CSR performance, allowing CSR performance to be determined impressionistically rather than rigorously. This would bring to question the reality of market-based governance on the demand side of the CSR reports. The Article delves, at length, into critically challenging such market-based governance and seeks to find a way so as to enhance market-based governance instead of calling for its substitution or diminution by regulation. The Article argues that this may be achieved by asking that corporations append to their CSR reports a critical stakeholders report that adopts a denaturalized and anti-performative approach to identifying and reflecting upon affected stakeholders and their non-business concerns. Perhaps this move to re-individualize a corporation's CSR profile may be necessary to countervail some of the unintended consequences from standardization and convergence in CSR reporting that may undermine the conception of CSR performance itself and the market-based governance surrounding that conception. Even if the arguments in this piece may not particularly appeal to corporations, it is arguable that

210. *See* Joseph Corkin, *Misappropriating Citizenship: The Limits of Corporate Social Responsibility*, *in* PERSPECTIVES ON CORPORATE SOCIAL RESPONSIBILITY: CORPORATIONS, GLOBALISATION AND THE LAW 39-60 (Nina Boeger et al. eds., Edward Elgar Publ'g 2008) [hereinafter PERSPECTIVES ON CORPORATE SOCIAL RESPONSIBILITY]; *see* Charlotte Villiers, *Corporate Law, Corporate Power and Corporate Social Responsibility*, *in* PERSPECTIVES ON CORPORATE SOCIAL RESPONSIBILITY, *supra*, at 85-108. *See also* BANERJEE, *supra* note 132.

taking such steps to re-individualize a part of CSR reporting and reflect on non-business stakeholder issues may be key to preserving credible legitimacy of the voluntary and self-governing nature of CSR in the wider landscape of public-private governance of enterprise.