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FOLEY & LARDNER LLP

*Bringing Sustainability  
to the Bottom Line*

**NATIONAL DIRECTORS INSTITUTE**  
2009 WEB CONFERENCE SERIES



## **Bringing Sustainability to the Bottom Line**

On April 4, 2009, Foley & Lardner LLP presented “Bringing Sustainability to the Bottom Line” as part of its National Directors Institute — 2009 Web Conference Series. Bruce A. Keyes, Foley Environmental Regulation Partner, led the panel discussion. The panel included Kim Marotta of MillerCoors, Inc.; Clay G. Nesler of Johnson Controls, Inc.; and Christopher Park of Deloitte Consulting.

### **The Green Economy**

During a period of financial uncertainty, the discussion of implementing “sustainable” practices in any business often seems out of place. However, in recent years, businesses have begun to realize that the benefits of such green initiatives go far beyond creating good “buzz” and publicity; they also decrease those businesses’ energy and packaging costs, reduce liability and climate-change risks, and increase sales and worker morale.

#### **The Triple Bottom Line**

Sustainability initiatives, when properly implemented, can contribute to growth, protect against climate-change risk, and promote environmental and social stewardship. This “triple bottom line” concept is used to quantitatively relate the social and environmental impact of an organization’s activities to its economic performance in order to show improvement in all three areas. Measuring the triple bottom line or, at a minimum, establishing a baseline of current performance allows for better decision-making regarding the relative cost and benefit of sustainability measures. The definition of “return on investment” can be extended to include non-financial metrics such as improvement in public opinion of the company, avoided costs for regulatory and climate risk, and more immediate financial savings. Furthermore, projects with longer payback periods may make sense when taking into account measures of the triple bottom line.

With such accounting tools, the means of financing green initiatives becomes easier to justify. Moreover, the push from increased government regulations, along with the pull of substantial government funding, will assist in bringing sustainability to the bottom line.

### **The Cost and Benefits of Carbon**

Internalizing the cost of carbon and demonstrating its impact on the bottom line has become a business imperative in 2009. The cap and trade system currently proposed by congressional Democrats would require companies to pay for 100 percent of their current carbon emissions. Although it is yet to be seen what the final statutes and regulations will ultimately require, it is likely that, regardless of which cap and trade system is eventually implemented, there will be a period of uncertainty during which prices for carbon credits will fluctuate and enforcement issues will be resolved. However, based on current cap and trade markets for other air contaminants, the market for carbon credits and offsets should eventually stabilize. Therefore, companies of all sizes would benefit now by knowing their carbon emissions. Audits of carbon emissions, followed by a comprehensive review of how such emissions could be reduced, are an economic necessity in the face of both the upcoming regulations and increasingly frequent shareholder resolutions requiring such action. Measures to implement carbon reductions also can save on costs and have reasonable, or even short, payback periods.



Businesses that are first to recognize such challenges and identify carbon saving measures will be well positioned to reap a potential windfall by selling their excess carbon credits when the demand for carbon credits increases in the future, while at the same time decreasing their risk of price fluctuations in the market by lowering their own need for such credits.

### **The Cost and Benefits of Water Efficiency**

Most of the civilized world pays only a fraction of the cost for transporting, purifying, and ultimately disposing of fresh, potable, water. This low cost, coupled with population increases and the rise of industry in previously undeveloped areas of the globe, has led to a growing demand for a resource that often takes decades to replenish. Such demand has garnered the attention of water-dependent companies that are attempting to assure their continued rights to water in a world where water quality and quantity are no longer guaranteed commodities.

As a result, companies such as MillerCoors and Coca-Cola have developed integrated water strategies to reduce the amount of water used and disposed of in both production and agricultural processes. Such programs have become economic necessities as public awareness of water scarcity has increased, often leading to protest against large corporate users of the resource. Even companies that would not traditionally be thought of as water-intensive, including GE and IBM, have taken steps to lower their water consumption and wastewater discharges in the face of mounting public pressure. Due to the current low costs of water worldwide, such water efficiency initiatives will not likely benefit the bottom line in the near future; however water-efficient companies will face much lower risks associated with the future scarcity or cost increases expected in the next 20 to 50 years. In addition, increasing energy prices may shorten the payback period, given the close relationship between energy usage and the delivery and management of water.

### **The Costs and Benefits of Energy Efficiency**

Perhaps the best-known of the sustainability initiatives, energy efficiency has come a long way from simply adding insulation to buildings and replacing defunct heating ducts. Performance contracting, wherein the cost of an energy-efficiency improvement is paid for in energy savings over the life of the improvement, has made large gains in the past five years as businesses begin realize that such investments can help alleviate pressure from volatile energy markets and increasing regulation of carbon dioxide (CO<sub>2</sub>) emissions. Modern energy-efficiency projects often go beyond traditional means of energy savings and now often include the utilization of renewable energy to reduce a building's fossil fuel dependence.

The greatest opportunities for CO<sub>2</sub> reduction can be realized by increasing a building's efficiency gains in heating, lighting, and water use and by implementing fuel-efficient commercial transportation. These opportunities will not only considerably reduce CO<sub>2</sub> emissions but also offer positive payback opportunities, as such energy-efficiency projects provide those businesses with a green public relations platform.

Governments of all sizes also are realizing that efficient buildings are perhaps the most effective way to cut both energy consumption and CO<sub>2</sub> emissions, and many municipalities and counties are passing stringent green-building requirements for all new construction within their boundaries. These requirements often require new or renovated construction projects to meet the minimum standards of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) or an equivalent rating system. Companies that already have their own requirement to meet



such standards — and therefore have already internalized such costs — will be poised to take advantage of situations and locations that their competitors may not be able to afford.

### **The Costs and Benefits of Life Cycle Cost Accounting**

Product design — from the molecules that make up a product to the packaging used to sell it — has a profound impact on both a company's ability to be sustainable and its bottom line. Consumers and governments are beginning to require that companies conduct assessments of the raw material production, manufacture, distribution, use, and disposal of their products to fully account for the "life cycle" cost of each product. In aggregate, the life cycle cost perspective on production requires that companies retain responsibility for their goods after they sell them, thus ensuring both the products and packaging are as harmless as possible to people and the environment.

Such assessment can allow a company to move toward zero-waste operations with an emphasis on the reuse and recycling of post-production waste while indicating where costs may be saved on more minimal packaging alternatives. Additionally, a life cycle cost assessment can provide companies with a resource for monitoring the risk associated with the potentially toxic contents of their products and packaging, which have come under increased regulatory scrutiny since the widely publicized lead-contaminated toy scares in 2008. Consequently, the primary benefits of life cycle cost accounting and assessment to the bottom line are the reduction of risk associated with an increasingly ambitious regulatory agenda, the promotion of the highly efficient use of materials, and the related cost savings from a decrease in raw products, energy, and resource costs.

### **Funding Sustainability Initiatives**

In the current economic climate, the ability to find some type of government assistance — either in the form of subsidized loans or grants — is crucial to the success of most sustainability initiatives. Fortunately, the U.S. Congress and the Obama administration have made the funding of sustainability initiatives a priority, with significant funding made available in the following pieces of legislation:

- Energy Improvement and Extension Act of 2008 (TARP) (October 3, 2008)
- American Recovery and Reinvestment Act (ARRA) (February 17, 2009)
- 2009 Omnibus Spending Bill (March 11, 2009)
- 2010 Omnibus Spending Bill (April 2009)

Sustainability initiatives will likely see an additional boost from a possible second stimulus bill in 2009, which likely will increase the focus on spending mechanisms instead of tax cuts. However, funding under the current federal packages comes with a series of hurdles, the most arduous being that most projects must be "shovel ready," with 40 percent of funding under ARRA designated for use in 2009 and 90 percent designated for use by 2011. Despite such requirements, agencies have indicated a willingness to use whatever means necessary to see that the full amount of funds allocated under TARP, ARRA, and the Spending Bills are fully utilized, which may mean waiving certain requirements such as matching funds and other program requirements. Once allocated, such funds provide means of freeing up capital for sustainability initiatives that may otherwise go unfinanced in the current private lending climate. For specific information related to funding from TARP, ARRA, and the Spending Bills, please see [www.recovery.gov](http://www.recovery.gov), [www.grants.gov](http://www.grants.gov), [www.USMayors.org](http://www.USMayors.org), or [Foley.com](http://Foley.com).



## Reporting Sustainability Initiatives

Financial reports are increasingly becoming forums for public companies to publicize their environmental and sustainability initiatives as well as disclose environmental risks associated with their current activities. Because the goal of financial reports is often to communicate to investors a company's financial position, performance, liabilities, and risk, this should come as no surprise.

Currently, more than 30 percent of the companies that make up the Standard & Poor's 500 index include some form of "non-financial" environmental information either in their yearly reports or as a separate stand-alone document. Many of these companies follow the guidelines of the Global Reporting Initiative, which provides standardized forms so that investors have the ability to compare and contrast environmental and sustainability performance.

In addition, a substantial number of companies are facing pressure both from the outside — in the form of rating agencies — and internally — from shareholder resolutions — to disclose their environmental risks and liabilities. It is likely that in the future companies will need to disclose their total carbon emissions, even before the implementation of a cap and trade system, due to the future risk associated with a volatile carbon-credit market. Companies that are leading the way have begun reporting such environmental risks as well as sustainability initiatives on a voluntary basis to develop and refine such communication mechanisms.

### For More Information

For more information on this session or Foley's National Directors Institute — 2009 Web Conference Series, visit [Foley.com/ndi](http://Foley.com/ndi) or contact the following panelists:

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