U.S. TRENDS IN ESG MANAGEMENT AND FINANCE, AND SUGGESTIONS FOR JAPANESE COMPANIES

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Ashley Walter advises technology and life sciences companies on strategy, oversight and compliance with respect to environmental, social, and governance (ESG) measures. He approaches sustainability from a governance perspective, helping clients to develop an appropriate framework in which to advance their ESG programs. As **Partner-in-Charge, ESG**, he assists public and private companies and their boards in establishing effective oversight of ESG matters, preparing ESG disclosures, addressing ESG commercial requirements, managing investor engagement with respect to ESG matters, and ensuring compliance with ESG laws and regulations.

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Jennifer Poh is a member of Orrick's Public Companies & ESG practice where she advises clients on ESG strategy, oversight and compliance. Prior to joining Orrick, Jennifer oversaw corporate governance and SEC disclosure matters as an in-house lawyer at a newly Nasdaq-listed solar company based in Asia. She has also worked as an ESG consultant for a range of startups, family offices and venture capital funds.

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Sakon Kuramoto has been engaged in ESG/SDGs/"Business and Human Rights“ + Environment and Climate Change, VC/Startup, M&A, and Compliance from a strategic perspective, paying attention to both domestic and international aspects based on the needs of Japanese companies expanding overseas. Among others, as **a lawyer specializing in ESG/SDGs/Business and Human Rights + Environment and Climate Change**, he supports the corporate clients for human rights/environmental due diligence.

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Gohshun Kawamura focuses on cross-border energy and infrastructure projects, advising foreign and domestic energy investors, project developers, and financial institutions.
Prior to joining Orrick Tokyo Office, he was an assistant judge at the Tokyo District Court and the Matsuyama District Court.

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ESG DRIVERS IN THE U.S. MARKET

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Summary

- Companies that have taken corporate social responsibility issues seriously for many years have developed robust and well-designed CSR programs.
- Recently, the earth has begun to move beneath companies' feet as the following factors have driven a focus on ESG in the U.S.:
  - Vigorous discussion regarding directors' duties with respect to ESG under Delaware law
  - Heightened institutional investor expectations enforced by means of proxy voting, shareholder proposals, direct engagement and demand for ESG ratings
  - Recognition of the critical role of sound ESG oversight in managing ESG risks and opportunities
  - The publication of the SEC Sample Letter to Companies Regarding Climate Change Disclosures, the issuance by the SEC of climate change disclosure comment letters, and the issuance of the SEC's proposed climate rule
  - The imposition by customers of extensive ESG requirements on suppliers by means of supplier codes of conduct
  - The widespread adoption of the recommendations of the Task Force on Climate-related Financial Disclosures
- Many of these same forces are acting upon or indirectly impacting private companies, with the result that the rationale for private companies adopting tailored ESG programs is becoming increasingly compelling.

DEFINITIONS

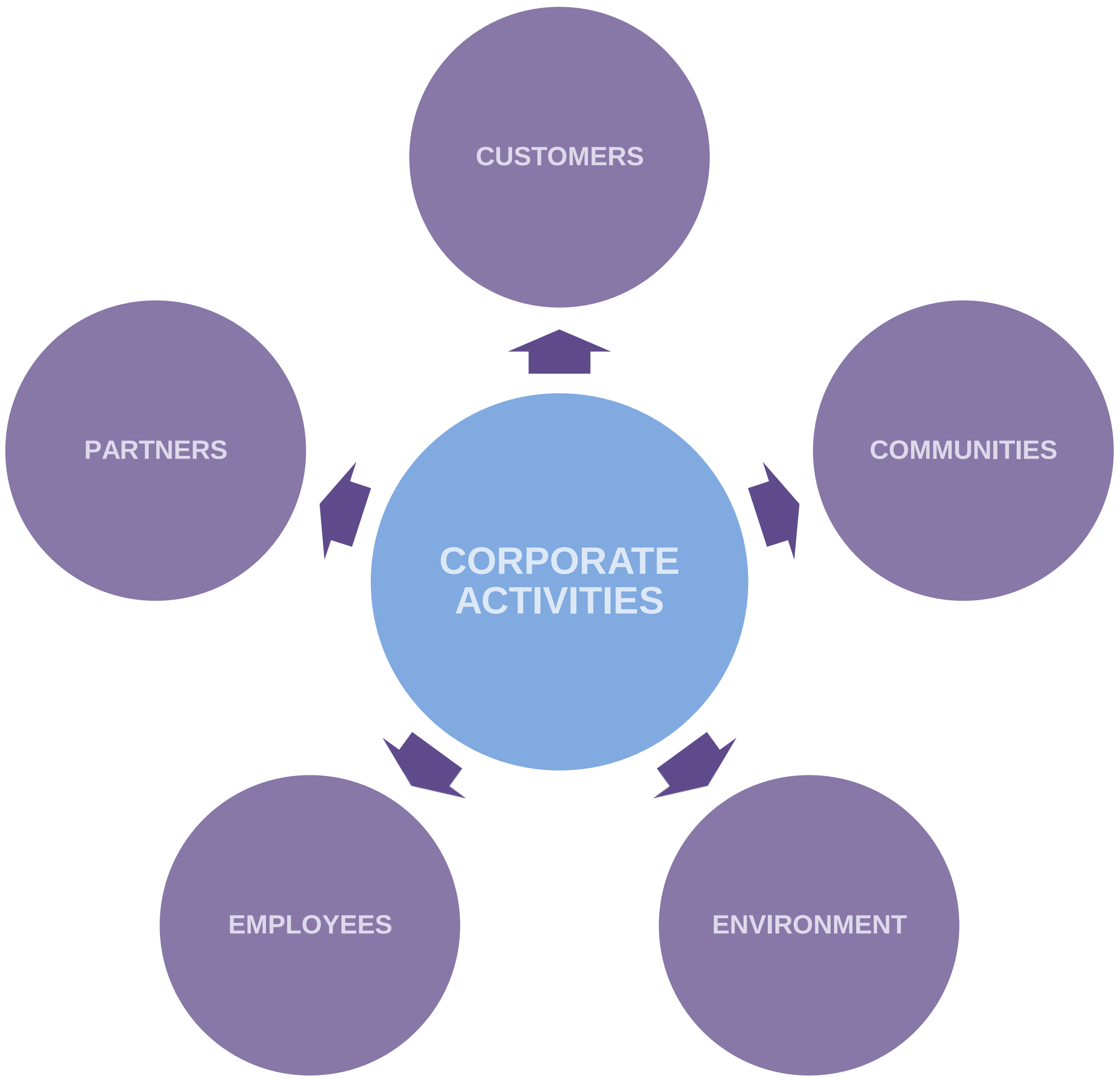
What Is CSR?

The obligation to operate responsibly by managing the impact of corporate activities on stakeholders.

Salient Features

These are common characteristics of CSR programs

- A focus on responsibility to stakeholders
- Equal priority, or greater priority, assigned to non-shareholder stakeholders
- Emphasizes corporate philanthropy and employee giving programs and initiatives
- Business risks and opportunities generally do not play a significant role
- Explicit board oversight of CSR less common



What Is ESG?

A taxonomy that categorizes non-financial factors that impact a company's long-term performance.

Salient Features

These are common characteristics of ESG programs

- Assessment of corporate activities based on impact on company operations and financial results
- Recognition that the adoption of ESG measures drives commercial success
- Involves examining existing programs through the lens of long-term value creation
- Significant focus on the management of ESG risks and opportunities
- Key component of board's oversight responsibilities

ENVIRONMENTAL

- Carbon emissions
- Resource consumption and recycling
- Facility improvements
- Toxic emissions and waste
- Biodiversity and land and water use
- Sustainable procurement
- Design for sustainability

SOCIAL

- Human capital management, which includes DEI, employee training and retention, and culture
- Supply chain responsibility
- Product safety
- Human rights and social impact
- Political engagement
- Content moderation and responsible innovation

GOVERNANCE

- Board composition, including diversity and refreshment
- Board and committee structure and responsibility
- Board assessment
- Shareholder engagement and access
- Robustness of disclosures
- Quality of board oversight
- Executive compensation and leadership

How Does ESG Impact Value Creation?

Top Line Growth

Access to Capital/Resources

Costs

Asset Value (Tangible and Intangible)

Stock Price/Performance

DIRECTOR DUTIES
AND INVESTOR EXPECTATIONS

Delaware Fiduciary Duties and ESG

- Under Delaware case law, directors must "promote the value of the corporation for the benefit of its stockholders." *Allen v. El Paso Pipeline Gp. Co.*, 113 A.3d 167, 180 (Del. Ch. 2014).
- Directors may also take actions "that do not maximize corporate profits currently" such as stakeholder initiatives so long as "such activities are rationalized as producing greater profits over the long-term." *Allen,*113 A.3d at 180.
- As a consequence, boards should consider all factors that could reasonably contribute to the short- and long-term value of a corporation, which would include the material risks and opportunities related to ESG.
- **It is therefore a critical function of the board to manage risks and opportunities related to ESG.**

The Delaware Public Benefit Corporation

- Required to balance the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation’s conduct, and a specific public benefit or public benefits.
- Required to produce a public benefit statement at least every two years.
- Distinct from B Corp status, which is a commercial certification.
- Public company Delaware PBCs: Lemonade, Vital Farms, Veeva Systems, Coursera, Zevia, Warby Parker and Allbirds.

Institutional Investor and Proxy Advisor Pressure

Major institutional investors and proxy advisors are focused on board oversight of ESG given the impact on long-term value.

Vanguard

"If a situation arises in which the board has failed to effectively identify, monitor, and ensure management of material risks and business practices under its purview based on committee responsibilities, a fund will generally vote against the relevant committee chair. These risks may include material social and environmental risks, inclusive of climate change." (2022 U.S. Proxy Voting Policy)

BlackRock

"With regard to material ESG risk factors, or where the company has failed to provide shareholders with adequate disclosure to conclude appropriate strategic consideration is given to these factors by the board, we may vote against directors of the responsible committee, or the most relevant director." (2022 U.S. Proxy Voting Guidelines)

ISS

Considers "demonstrably poor risk oversight of environmental and social issues" among the governance failures that may justify recommending a vote against individual directors, committee members or the entire board (2022 U.S. Proxy Voting Guidelines)

GLASS LEWIS

"In situations where we believe that a company has not properly managed or mitigated material environmental or social risks to the detriment of shareholder value, or when such mismanagement has threatened shareholder value, Glass Lewis may recommend that shareholders vote against the members of the board who are responsible for oversight of environmental and social risks. In the absence of explicit board oversight of environmental and social issues, Glass Lewis may recommend that shareholders vote against members of the audit committee. In making these determinations, Glass Lewis will carefully review the situation, its effect on shareholder value, as well as any corrective action or other response made by the company." (2022 U.S. Policy Guidelines)

ESG Ratings Construction

The most influential ESG ratings assess the financial impact of ESG measures, long-term performance, resilience and/or environmental and social risk.

MSCI

“An MSCI ESG Rating is designed to measure a company’s resilience to long-term industry material environmental, social and governance (ESG) risks. We use a rules-based methodology to identify industry leaders and laggards according to their exposure to ESG risks and how well they manage those risks relative to peers."

ISS

"E&S Disclosure QualityScore measures and identifies risk in environmental and social areas of concern through thorough analysis of company disclosures. Scores can also indicate best-in class disclosure practices and save time in performing peer comparisons."

SUSTAINALYTICS
a Morningstar company

"The world’s leading corporations, lenders and banks rely on our ESG Risk Ratings to identify and understand the financially material ESG issues (MEIs) that can affect their organization’s long-term performance."

Business Model Sustainability v. Operational Sustainability

- Business model sustainability:
  - Products/services in the environment or energy industries
  - Products/services that can be used to solve sustainability challenges
  - Products/services that can be applied to sustainability use cases
- Operational sustainability:
  - ESG governance
  - Environmental performance
  - Diversity, equity and inclusion programs
  - Human rights impacts

OVERSIGHT

Board-Level ESG Oversight

Board of Directors

Audit Committee

- Compliance policies including code of business conduct and anti-corruption
- Data privacy and cybersecurity
- Enterprise risk management
- ESG accounting disclosures

Nominating and ESG Committee

- Governance matters
- Environmental issues
- Social issues
- Public policy

Compensation Committee

- Diversity, equity and inclusion
- Talent recruitment, development and retention
- Employee engagement
- Human health and safety

Management Steering Committee

Management-Level ESG Oversight

Walmart ESG Oversight Structure

Board of Directors

↓

Board Committees:

Compensation and Management Development Committee:
Review and advise management regarding the Company's human capital management strategies, including culture, diversity, and inclusion strategies, programs and initiatives.

Nominating and Governance Committee:
Review and advise management regarding social, community and sustainability initiatives of the Company.

↓

Executive Vice President of Corporate Affairs

↓

Chief Sustainability Officer

↓

ESG Steering Committee:
Composed of leaders from various departments throughout the business, including the Office of the Corporate Secretary, the Controller's Office, Investor Relations, Ethics and Compliance, Audit, People, Global Public Policy and Government Affairs, and Sustainability.

ESG Strategy and Engagement Team:
Led by the Senior Director of ESG Strategy and Engagement, reports to the CSO and helps Walmart business leaders prioritize ESG issues and define impact theses. The team helps to improve ESG strategies, performance and disclosures; engage with investors and other stakeholders; and shape evolution of the ESG field to increase focus on shared value impact.

ESG Working Group

ESG Disclosure Committee

Yum! Brands, Inc. ESG Working Group

Cross-Functional Working Groups

The company convenes working groups with employees from across their operations, including food safety, human resources, supply chain, development, sustainability, communications and legal teams at the corporate and brand division levels. These groups meet regularly throughout the year to advance priority-area agendas at the "local level".

ESG Working Group

Day-to-day management of the company's ongoing ESG efforts

- Global Citizenship & Sustainability Report
- Materiality Assessment
- Data Collection
- ESG Ratings and Questionnaires

Yum! has a dedicated data collection tool, **TrueView**, that it used to prepare the 2021 Global Citizenship & Sustainability Report

"*TrueView, our new data collection tool, captures data gathered throughout the company, such as by our food safety and supply chain teams, providing a comprehensive picture of our business. The tool was used to collect sustainability data in 2021 and will be fully rolled out in 2022.*"

Global Leadership Team

- Chief Executive Officer

ESG Council

Manages the company's overall citizenship and sustainability strategy and priorities.

- Chief Communications & Public Affairs Officer
- Chief Sustainability Officer & Vice President of Global Government Affairs
- Chief Operating Officer & Chief People Officer
- Chief Financial Officer
- Chief Legal & Franchise Officer & Corporate Secretary
- Chief Food Safety Officer
- Chief Food Innovation Officer
- Chief Equity & Inclusion Officer
- Chief Development Officer
- Chief Strategy Officer
- Vice President, Supply Chain

Board of Directors

Audit Committee

Updated annually on the Company's environmental commitments and progress.

Yum! Risk Committee

Management level committee responsible for the evaluation and reporting (as appropriate) of possible corporate risk to the Audit Committee of the Board of Directors for inclusion in our public Filings.

ESG content in 10-K

The Chief Communications and Public Affairs Officer oversees the global reputation of Yum! and is responsible for shaping the company's "*Citizenship and Sustainability Strategy*" with the CSO and other senior leaders on the ESG Council.

The CSO is responsible for the oversight of environmental issues and for promoting a centralized alignment and execution of the company's sustainability strategy, including collaboration with other positions and committees.

Pepsico, Inc. ESG Disclosure Review Process

Chief Sustainability Officer

Global Sustainability Office

The Sustainability Office is the central connection point for the company's ESG efforts and works with leaders from across the business to make progress on PepsiCo's sustainability agenda.

Data Governance & Report Content

Global Sustainability Office review and validation → Subject matter expert review and certification → Corporate Control review → Legal review → Disclosure Committee Review → **ESG Disclosure**

- PepsiCo has a dedicated team within their Sustainability Office which manages the data governance structure for each of their 24 sustainability goals across 6 focus areas.
- This team sits within a centralized "Global Sustainability Office," and is responsible for the accuracy, consistency, and precision of ESG data.
- The company's sustainability reporting is available digitally, broken out across the company's 6 focus areas and mapped to prevailing ESG standards (GRI, SASB, SDGs, CDP and TCFD) allowing audiences to navigate to disclosures on their priority issues.

ESG Disclosure Platforms

Coca-Cola's Environmental, Social and Governance Index

- Alcohol Responsibility
- Animal Testing
- Animal Welfare
- Board Diversity
- Board Leadership Structure
- Board of Directors
- Child Labor
- Climate
- Community Impact
- Corporate Governance
- Deforestation
- Deposit Scheme
- Diversity, Equity & Inclusion
- Employee Health & Safety (EHS)
- ESG Reporting
- Ethics & Compliance
- Extended Producer Responsibilities (EPR)
- Forced Labor
- Foundation (The Coca-Cola Foundation)
- Freedom of Association
- Gender Parity
- Greenhouse Gas (GHG) Emissions
- Human Rights
- Ingredients

McDonald's Performance & Reporting Webpage

Climate Action

Goal

By 2030, partner with Franchisees to reduce GHG emissions related to McDonald's restaurants and offices by **36%** from a 2015 base year.

In Progress

As of the end of 2020, we have made an **8.5%** reduction in our restaurants' and offices' absolute emissions from the 2015 baseline. This means approximately **23.6%** of our target has been achieved.

Goal

By 2030, reduce emissions intensity (per metric ton of food and packaging) by **31%** across our supply chain from 2015 levels.

In Progress

As of the end of 2020, the emissions intensity of our supply chain has decreased by **5.9%** from the 2015 baseline. This means we are **19.3%** of the way toward our target.

Pepsico's ESG Topics A-Z

Products & Nutrition

- Advertising and Marketing to Children and School Sales
- Breast-milk Substitutes
- Caramel Coloring
- Nutrition
- Product Labeling and Claims
- Product Safety and Quality
- Saturated Fat
- Sodium
- Sugar
- Trans Fat

People

- Diversity, Equity, and Inclusion
- Employee Engagement
- Employee Learning and Development
- Employee Recruitment
- Employee Well-being
- Environment, Health, and Safety
- Gender Parity
- Human Rights
- Pay Equity
- PepsiCo Employees Key Statistics
- Philanthropy
- Supplier Diversity

SEC ACTION

SEC Sample Letter on Climate Change Disclosures

- On Sep 22, 2021, the Division of Corporation Finance published a sample letter to companies regarding climate change disclosure.
  - The comment letter builds on disclosure matters discussed in the 2010 Climate Change Guidance.
  - Intended to be an illustrative letter containing sample comments that the SEC may issue to companies.
  - SEC subsequently sent letters with some combination of the questions contained in the sample letter.
- Companies must disclose, in addition to the information expressly required by regulation, “such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.”

U.S. SECURITIES AND EXCHANGE COMMISSION

Sample Letter to Companies Regarding Climate Change Disclosures[1]

September 2021

Name
ABC Corporation
Address

Dear Issuer:

We have reviewed your filing and have the following comments regarding compliance with the topics addressed in the Commission’s 2010 Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 2, 2010). In some of our comments, we may ask you to provide us with information so we may better understand your disclosure. Please respond to these comments by providing the requested information and/or revising or updating your disclosure as applicable. If you do not believe our comments apply to your facts and circumstances, please tell us why in your response.

General

1. We note that you provided more expansive disclosure in your corporate social responsibility report (CSR report) than you provided in your SEC filings. Please advise us what consideration you gave to providing the same type of climate-related disclosure in your SEC filings as you provided in your CSR report.

SEC Sample Letter on Climate Change Disclosures

- First three questions:
  - "We note that you provided more expansive disclosure in your corporate social responsibility report (CSR report) than you provided in your SEC filings. Please advise us what consideration you gave to providing the same type of climate-related disclosure in your SEC filings as you provided in your CSR report."
  - "Disclose the material effects of transition risks related to climate change that may affect your business, financial condition, and results of operations, such as policy and regulatory changes that could impose operational and compliance burdens, market trends that may alter business opportunities, credit risks, or technological changes."
  - "Disclose any material litigation risks related to climate change and explain the potential impact to the company."

SEC Proposed Climate Rules

- **Greenhouse Gas ("GHG") Emissions Reporting**. The Proposed Rules require public companies to report their GHG emissions.
- **Carbon Intensity**. The SEC would also require reporting of GHG intensity (or "carbon intensity") with respect to Scope 1, Scope 2 and (if applicable) Scope 3 emissions.
- **Third-Party Assurance of Scope 1 and 2 GHG Emissions Data**. The Proposed Rules would require public companies to obtain independent third-party verification, referred to as "assurance," regarding the accuracy of Scope 1 and Scope 2 GHG emissions calculations.
- **Climate Change Goals**. The Proposed Rules provide that if a public company has publicly identified climate-related targets or goals, it must disclose certain information.
- **Disclosure of Carbon Offsets or Renewable Energy Credits If Used**. If, as part of its net emissions reduction strategy, a company uses carbon offsets or renewable energy credits or certificates, the proposed rules would require it to disclose the role that carbon offsets or RECs play in the registrant's climate-related business strategy.

SEC Proposed Climate Rules

- **Risks Related to Climate Change**. Under the Proposed Rules, public companies would be required to disclose potential risks associated with climate change that have had or are likely to have a material impact on a company’s business and consolidated financial statements.
- **Financial Statement Metrics**. The Proposed Rules would modify Regulation S-X, which prescribes financial reporting requirements, to require separate notes on climate-related costs, capital expenditures and reserves if those exceed a certain threshold.
- **Board and Management Oversight**. The Proposed Rules would require a description of the oversight and governance of climate-related risks to a public company by its board of directors and management, including disclosure of director expertise in climate-related risks, how the board is informed about such risks, and how frequently the board considers such risks.

SEC Action: Key Considerations

- Key Considerations:
  - The company should generally avoid employing the concept of materiality in its CSR Report or ESG website material unless it is used with disclosures that are actually deemed to be material, in which case such disclosures should be included in SEC filings.
  - The content of the CSR Report, any ESG website disclosures, ESG disclosures in the company's SEC filings (10-K and proxy statement) and public statements regarding ESG topics (press releases, earnings releases, etc.) must be aligned in terms of message and tone and cannot be prepared in silos. In particular, disclosures regarding climate change risk in an ESG report and key performance metrics must be carefully vetted.
  - Voluntary ESG disclosures should be subjected to the same disclosure controls and procedures used for SEC filings.
  - The timeline and cadence for the preparation and approval of voluntary ESG disclosures and SEC filings must be managed so that ESG disclosures can be prepared in parallel.

Intel 10-K Disclosure: Business Section

Natural Capital

Driving to the lowest possible environmental footprint as we grow helps us create efficiencies, lower costs, and respond to the needs of our stakeholders. We invest in conservation projects and set company-wide environmental targets to drive reductions in greenhouse gas emissions, energy use, water use, and waste generation. We build energy efficiency into our products to help our customers lower their own emissions and energy costs, and we collaborate with policymakers and other stakeholders to use technology to address environmental challenges.…Our 2030 strategy and goals also focus on improving product energy efficiency and increasing our "handprint"—the ways in which Intel technologies can help others reduce their footprints, including Internet of Things solutions that enable intelligence in machines, buildings, supply chains, and factories, and make electrical grids smarter, safer, and more efficient.

intel®

Coca-Cola 10-K Disclosure: Risk Factors

Our ability to achieve our environmental, social and governance goals are subject to risks, many of which are outside of our control, and our reputation and brands could be harmed if we fail to meet such goals.

Companies across all industries are facing increasing scrutiny from stakeholders related to environmental, social and governance (“ESG”) matters, including practices and disclosures related to environmental stewardship; social responsibility; diversity, equity and inclusion; and workplace rights. Our ability to achieve our ESG goals and objectives and to accurately and transparently report our progress presents numerous operational, financial, legal and other risks, and are dependent on the actions of our bottling partners, suppliers and other third parties, all of which are outside of our control. If we are unable to meet our ESG goals or evolving stakeholder expectations and industry standards, or if we are perceived to have not responded appropriately to the growing concern for ESG issues, our reputation, and therefore our ability to sell products, could be negatively impacted. As the nature, scope and complexity of ESG reporting, diligence and disclosure requirements expand, we may have to undertake additional costs to control, assess and report on ESG metrics.

THE Coca-Cola COMPANY

HPE Proxy Statement Disclosure

LIVING PROGRESS

In our world of rapid change and mounting global challenges, the role and responsibility of a corporation have never been more important. Living Progress is HPE’s business strategy for creating sustainable IT solutions that meet the technology demands of the future, while advancing the way people live and work. Because our commitment to environmental, social, and governance (“ESG”) leadership extends to (and is integrated into) many aspects of our operations, HPE’s competitiveness, resilience, and relationships with a broad array of stakeholders are enhanced in countless ways.

Hewlett Packard Enterprise

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Our sustainability credentials provide a competitive advantage, support talent acquisition and retention, and ensure ongoing access to global markets.

COMMERCIAL REQUIREMENTS

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ESG Customer Requirements

AIRBUS
CISCO
DAIMLER
Ford

General Mills
gsk
Lenovo
NORTHROP GRUMMAN

SAMSUNG
SIEMENS
UBS

United Healthcare
verizon
VISA
xerox

ESG Customer Requirements

- Increasingly common for large customers with significant leverage to impose burdensome ESG requirements that can be the single most important driver of a company's ESG program.
- Requirements can be used by customers to advance their own ESG strategies/goals.
- Types of requirements:
  - ESG questionnaires
  - ESG certifications in RFPs or vendor agreements
  - ESG representations or covenants in vendor agreements
- Topics addressed may include:
  - Specific human rights issues (e.g., forced labor, minerals sourcing)
  - Diversity, equity and inclusion
  - Environmental sustainability
  - Adoption of or adherence to ESG policies or codes (e.g., RBA Code of Conduct)

ESG Customer Requirements: Climate

Ford

Minimize their impact on climate change aligned with the United Nations Framework Convention on Climate Change (Paris Climate Agreement), striving towards carbon neutrality. Our suppliers are required to:

- Report their Scope 1, 2, and 3 emissions and water usage data to Ford if requested.
- Establish science-based GHG reduction targets, action plans, and transparent reporting mechanisms.

Lenovo

GHG Emission Targets and Progress Tracking

- Set aggressive and public GHG emission reduction target which is expected to align with Paris Agreement. Near-term and long-term science-based GHG emission reduction goals validated by the Science Based Targets initiative (SBTi) to meet 1.5°C ambition are strongly recommended.
- Track progress against above target to ensure improvement.
- Have a comprehensive strategy to address climate change in all aspects of their business.

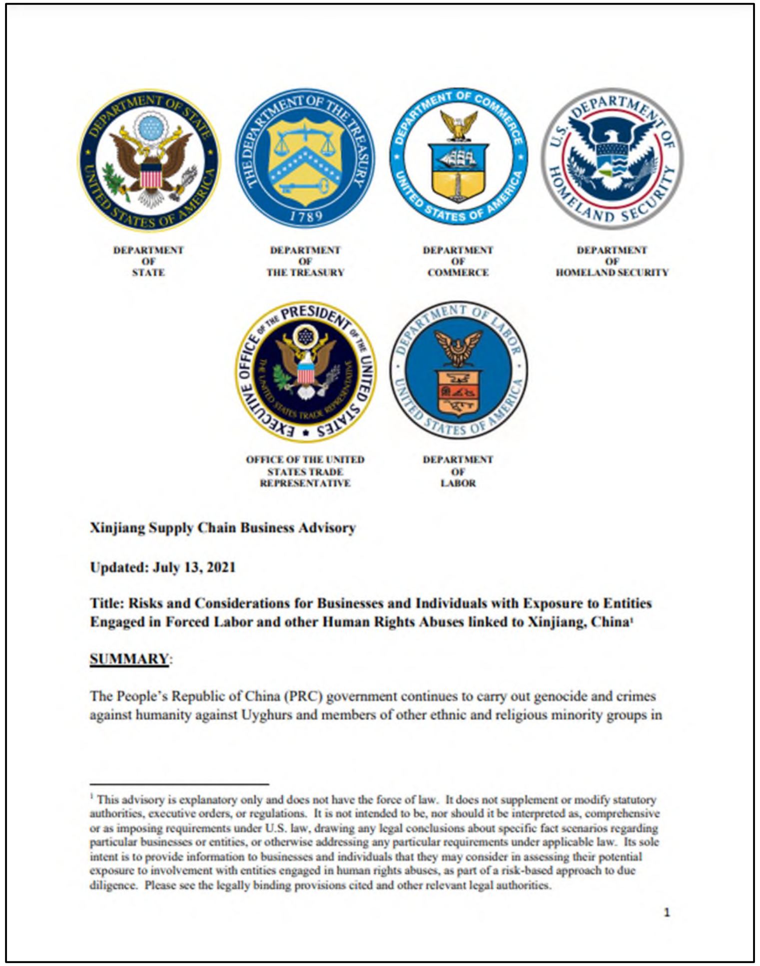
vodafone

Climate Change

Supplier shall, where requested by Vodafone, identify, monitor and minimize Greenhouse Gas emissions (GHG) and energy consumption from its own operations including CO2 emissions from transportation and travel and support providing relevant data to Vodafone or recognised third parties appointed by Vodafone to measure improvements.

Uyghur Forced Labor Prevention Act

- On December 23, 2021, the President signed into law the Uyghur Forced Labor Prevention Act of 2021 (the "Uyghur Act").
- The Uyghur Act, effective June 21, 2022, will strengthen the prohibition on U.S. imports of goods made through forced labor by focusing on goods mined, produced or manufactured in whole or part in the Xinjiang Uyghur Autonomous Region in China ("Xinjiang"), or by entities to be specified by the U.S. government that use forced labor.
- To import goods made in Xinjiang to the United States, companies must rebut the presumption that the goods were made using forced labor.
- The U.S. government is to issue guidance explaining how importers may rebut this presumption.



DEPARTMENT OF STATE | DEPARTMENT OF THE TREASURY | DEPARTMENT OF COMMERCE | DEPARTMENT OF HOMELAND SECURITY

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE | DEPARTMENT OF LABOR

Xinjiang Supply Chain Business Advisory

Updated: July 13, 2021

Title: Risks and Considerations for Businesses and Individuals with Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses linked to Xinjiang, China[1]

SUMMARY:

The People's Republic of China (PRC) government continues to carry out genocide and crimes against humanity against Uyghurs and members of other ethnic and religious minority groups in

[1] This advisory is explanatory only and does not have the force of law. It does not supplement or modify statutory authorities, executive orders, or regulations. It is not intended to be, nor should it be interpreted as, comprehensive or as imposing requirements under U.S. law, drawing any legal conclusions about specific fact scenarios regarding particular businesses or entities, or otherwise addressing any particular requirements under applicable law. Its sole intent is to provide information to businesses and individuals that they may consider in assessing their potential exposure to involvement with entities engaged in human rights abuses, as part of a risk-based approach to due diligence. Please see the legally binding provisions cited and other relevant legal authorities.

1

CASE STUDIES

Transition from CSR to ESG: VMware

2020

2021

Transition from CSR to ESG: Cisco

+ ESG Reporting Hub

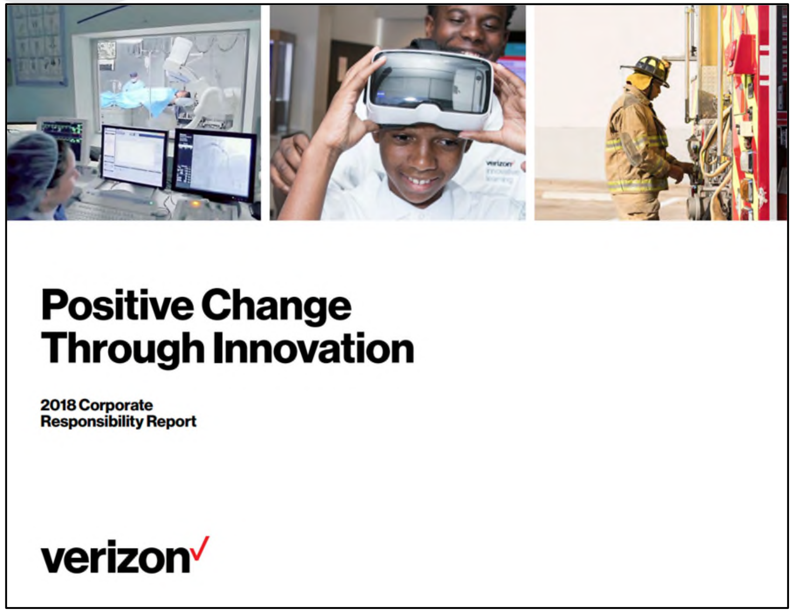
+ ESG Reporting Hub

2019

2020

2021

Transition from CSR to ESG: Verizon



+ ESG Resources Hub

2018

2019

2020

BEST PRACTICES

Climate Change

- New SEC proposed rules on climate change disclosures:
  - Risks related to climate change
  - Board and management oversight on climate-related risks
  - Publicly announced climate goals (use of carbon offsets)
  - Reporting of internal policies (transition plans, scenario analyses, carbon price)
  - GHG emissions, including Scope 3 and third-party assurance for Scopes 1 and 2
- Trends/ Outcomes:
  - **Increased scrutiny of disclosures**: Increased attention on voluntary disclosures, increased enforcement and liability for inaccurate statements.
  - **Need for climate leadership:** Focus on director skills and expertise, and external advisors.
  - **Importance of risk management**: Increased focus on board and management processes.

Climate Change

Recommendations

Best practices recommended to U.S. companies:

- Begin to implement changes to climate policies and practices in line with proposed rules thoughtfully and incrementally, paying attention to disclosure strategies.
- Consider modifying climate goals and consider if such goals need to be stated in more specific or limited terms.
- Carefully weigh whether it is advisable to adopt formal or specific climate change policies or metrics and if so, employ rigorous processes to report such measures.
- Develop appropriate data and reporting structures to collect and report GHG emissions.
- Consider solidifying relationships with potential attestation providers.
- Think about what climate change risk expertise may look like at the director level and whether any of the existing directors possess it, and if necessary, explore non-traditional director recruitment strategies, such as targeting academia, NGOs and thinktanks.
- Work with advisors to consider whether existing board practices are sufficient, in particular, the board's role in goal setting and oversight of progress against these goals.
- Consider whether any changes to the company's Enterprise Risk Management program are necessary.

A note on alignment with the Task Force on Climate-Related Financial Disclosures:

- Companies that have made disclosures aligned with TCFD should review for any gaps of differences between their previous reports and what would be required under the proposed rules.
- TCFD disclosures should be made with consideration for SEC disclosures and materiality standards.

A word on Responsible Innovation and Impact Investing

Responsible Innovation: An approach that considers the role that new products have in society and incorporates intentional design of products to help advance social, environmental, or community goals.

- Design for Sustainability

Impact Investing: A general investment strategy that seeks to generate financial returns while also creating a positive social or environmental impact.

- The size of the impact investing market more than tripled between 2017 and 2020 to $715 billion in assets under management (GIIN).
- Corporate impact investors in innovation now manage more than $7.2 billion in committed capital (an amount that has been increasing at a 54% compounded annual growth rate since 2016).

Recommendation

It is easier to start thinking about ESG early rather than retrofitting an ESG framework on an existing business strategy.

- Be proactive about identifying potential unintended consequences in order to mitigate them early.
- Utilize impact measurement frameworks (e.g. Impact Measurement Project, IRIS+, New Philanthropy Capital Impact Risk Classification) to drive innovation and growth.

Supply Chain and Human Rights

- **Legal oversight of supply chain management is coming to the fore as regulators increasingly focus on ESG impacts within the corporate value chain.**
  - In Aug 2012, the SEC introduced a rule for disclosing the use and sourcing of conflict minerals based on OECD due diligence guidance.
  - In Dec 2021, the Uyghur Forced Labor Prevention Act was signed into law and will become effective on Jun 21, 2022.

Recommendations

Best practices recommended to U.S. companies:

- Adopt codes of conduct based on international standards, such as the Responsible Business Alliance Code of Conduct, United Nations Global Compact, Solar Supply Chain Traceability Protocol.
- Perform gap analyses on suppliers' codes of conduct to ensure adherence to international standards and customer requirements and flow down responsible business obligations when negotiating contracts.
- For codes of conduct adopted, ensure that there are internal processes (e.g. an internal playbook) for implementation and assessment.

Diversity, Equity and Inclusion (DEI)

INVESTOR PRESSURE

Companies faced 37% more shareholder proposals focused on social issues in 2021 (Lex Mundi).

RECRUITMENT

67% of job seekers consider diversity an important factor when considering employment opportunities (Glassdoor).

EMPLOYEE ENGAGEMENT

83% of millennials are more actively engaged when they believe their company fosters an inclusive culture (Deloitte).

SHAREHOLDER RETURNS

Higher representation of women in C-suite level positions results in 34% greater returns to shareholders (Fast Company).

INNOVATION

Companies with more diverse management teams have 19% higher revenues due to innovation (Boston Consulting Group).

FINANCIAL PERFORMANCE

Companies with highly engaged employees and a more diverse workforce result in up to 58% higher financial performance (Gallup).

MARKET CAPTURE AND GROWTH

Companies with higher-than-average diversity are 45% more likely to capture a larger portion of the market and 70% more likely to enter a new market (Harvard Business Review).

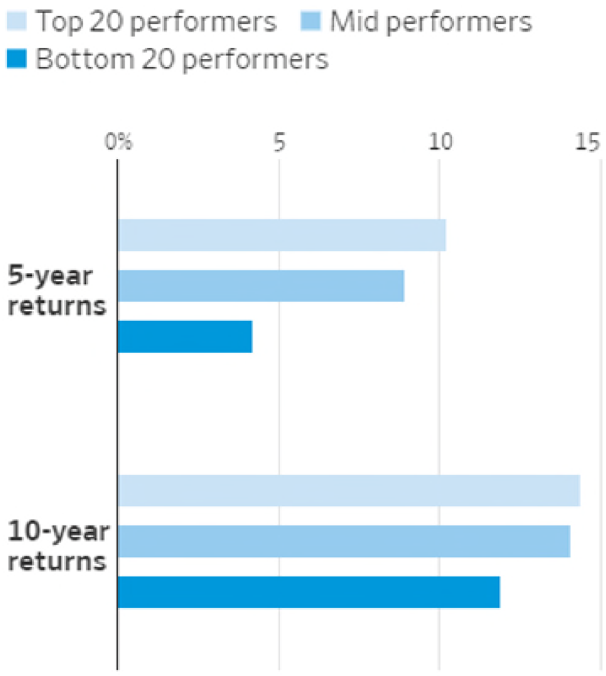
PEER OUTPERFORMANCE

Companies in the top quarter for racial/ethnic diversity are 35% more likely to surpass peers, while those in the same bracket for gender diversity are 15% more likely to do so (McKinsey).

Diversity and the Market

The stocks of companies that score well in diversity have outperformed low scorers.

Diversity and inclusion performance



Note: Average compounded annual total stock return data is for the five and 10 years ended June 28.
Source: WSJ environment, social and governance research analysts

Human Capital Management (HCM)

- 82% of S&P 500 companies include a qualitative discussion regarding the company’s commitment to diversity, equity, and inclusion.
- In Aug 2020, the SEC amended Item 101 to Reg S-K to include in the "Business" section of Form 10-K Human Capital Management.
  - New SEC rules are expected imminently.
  - Disclosure topics include workforce turnover, skills and development training, compensation, benefits, workforce demographics including diversity, health and safety.

"Mental health is finally coming to the forefront of Corporate America." – Forbes

In a survey of 150+ CEOs in 2021 by MIT Media Lab:

- 92% report that their companies have increased focus on mental health as a result of the COVID-19 pandemic.
- More than half report that talking about mental health makes CEOs a better leader and nearly 90% of employees appreciate it.

Recommendations

Best practices recommended to US companies:

- Appoint a global head of diversity role (e.g. a chief diversity officer).
- Adopt diverse slate protocol in hiring.
- Establish employee resource groups/ employee networks/ affinity groups that foster a diverse and inclusive workplace.
- Create a DEI council that oversees and recommends policies aimed at preventing and addressing workplace misconduct, including conducting internal investigations.
- Supplement codes of conduct with standalone policies on sexual harassment, anti-discrimination, and anti-retaliation.
- Provide training on DEI.
- Encourage merit-based promotions and offer equal growth opportunities to all employees.
- Ensure management and senior executives are being held accountable for the performance of DEI programs.
- Track HCM metrics and include compensation committee oversight of such metrics.

Board Diversity

- On Aug 6, 2021, the SEC approved Nasdaq's proposal to amend its listing standards to promote greater board diversity and require board diversity disclosures.
  - The new rule requires Nasdaq-listed companies to have at least 2 self-identified "diverse" directors, with at least 1 director self-identifying as female and at least 1 director self-identifying as an "underrepresented minority" and/or LGBTQ+.
  - The rule applies to Foreign Private Issuers ("FPIs") as well:
    - FPIs are permitted to satisfy the requirement with 2 female directors.
    - Note that what constitutes an "underrepresented minority" in a specific home country jurisdiction may not be clear.

Board Diversity Matrix (As of [DATE])				
Board Size:				
Total Number of Directors	#			
Gender:	**Male**	**Female**	**Non-Binary**	**Gender Undisclosed**
Number of directors based on gender identify	#	#	#	#
Number of directors who identify in any of the categories below:				
African American or Black	#	#	#	#
Alaskan Native or American Indian	#	#	#	#
Asian	#	#	#	#
Hispanic or Latinx	#	#	#	#
Native Hawaiian or Pacific Islander	#	#	#	#
White	#	#	#	#
Two or More Races or Ethnicities	#	#	#	#
LGBTQ+	#	#	#	#
Undisclosed	#	#	#	#

Board Diversity

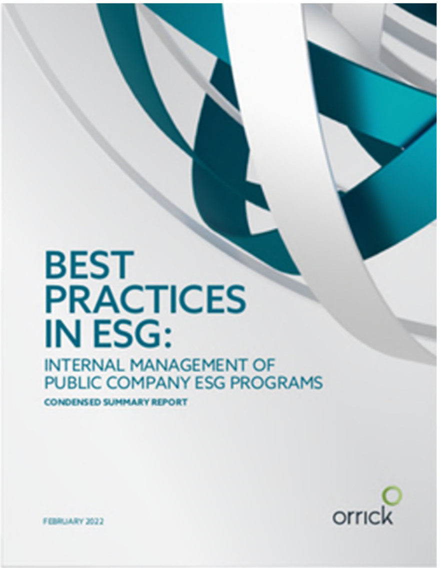
Recommendations

Best practices recommended to U.S. companies:

- Reassess the composition of boards and add or replace board members to meet SEC requirements.
- Consider recruiting from non-traditional backgrounds, e.g. academia, thinktanks.
- Continuously review and revisit the skills matrix of the board to ensure the right mix of backgrounds among board members.
- Beware that diverse candidates who have traditional qualifications may be "overboarded" because they serve on a number of other company boards.
- Consider building diversity into board succession planning.
- To encourage board refreshment and avoid entrenchment, adopt mandatory director retirement age guidelines or other tenure-related requirements.

- **Institutional investors are putting pressure on companies to diversify boards.**
  - ISS will recommend voting against board leadership where the board has no apparent racially or ethnically diverse members, and Glass Lewis will recommend voting against board leadership where there are no diverse members on the basis of gender.
  - In Jan 2022, StateStreet announced that they may vote against board leadership for all portfolio companies without a woman on the board, with a minimum expectation of 30% women directors by 2023.

Corporate Governance Best Practices



Recommendation

Foreign Private Issuers are generally permitted to follow home country practice in lieu of the exchange listing standards, but many reference U.S. domestic company best practices.

- **Board independence**: NYSE and Nasdaq require that a majority of board members are independent.
  - Boards must conduct regular executive sessions of the independent directors (at least 2x/year under Nasdaq listing standards).
- **Committee requirements**: SEC rules and exchange listing standards impose certain requirements on the committee structure of a public company's board.
  - Committees include audit, compensation, and nominating/ corporate governance.
  - Each committee must have a charter that includes the responsibilities and authority prescribed by SEC rules and listing standards.
- **Board self-assessment/ evaluation**
- **Corporate policies and codes of conduct**: Whistleblower, conflicts of interest, insider trading policy

Internal Management of ESG Programs

Recommendations

Best practices recommended to U.S. companies:

- Make sure that board-level oversight of ESG is explicitly allocated and disclosed.
- Ensure that there is clear executive ownership and accountability towards ESG, preferably create an ESG steering committee comprising cross-functional leaders.
- Create dedicated ESG functions to facilitate accurate, timely and easily accessible data and reporting, and to help operationalize strategy.
- Establish rigorous practices for ESG data collection, management and disclosures (including the use of assurance) to improve ESG reporting processes.
- Consider the process of ESG goal setting, and the role of legal in reviewing these goals for achievability in light of regulatory expectations and other legal risks.

- Based on a study done by Equilar of 500 largest revenue-generating U.S.-headquartered companies trading on one of the major U.S. stock exchanges:
  - Percentage of companies disclosing ESG-related policies rose from 10.3% in 2017 to 81.8% in 2021.
  - In 2021, 21.5% of companies elected to tie executive bonuses to an ESG-related performance metric.
- In a benchmarking report by Orrick of 19 U.S.-headquartered companies:
  - 79% percent of participants established clear board-level oversight of ESG through a dedicated committee.
  - 74% had a single ESG leader who oversaw a dedicated ESG team.
  - 95% published an ESG report.
  - 89% published at least one specific, measurable, time-bound ESG goal.

Conclusion

KEY POINTS FOR JAPANESE COMPANIES TO TACKLE ESG ISSUES

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The Importance of Stakeholder Relations for Japanese Companies

- "Stakeholder Capitalism" and "New Capitalism"
- Revised Corporate Governance Code:
  - Basic Principle 2 (Appropriate engagement with stakeholders other than shareholders),
  - Initiatives to address issues relating to sustainability (Approach to Basic Principle 2, Supplementary Principle 2-3①, Supplementary Principle 3-1③, Supplementary Principle 4-2②)

The Importance of Stakeholder Relations for Japanese Companies

- As companies' economic activities expand and their value chains stretch around the world, being failure to recognize and understand the impact of their business on stakeholders in Japan/overseas must be a serious management risk.
- If Japanese companies recognize the importance of ESG issues, such as human rights and the environment, and respond appropriately to them as opportunities (profit opportunities), it is possible to increase corporate value.

The Importance of Stakeholder Relations for Japanese Companies

- Expansion of SDGs management and ESG investment and financing
- Expansion of non-financial information disclosure:
  1. In November last year, the IFRS Foundation announced the establishment of the International Sustainability Standards Board (ISSB) and plans to establish a new unified standard for non-financial information disclosure;
  2. Japanese government plans to establish rules for non-financial information disclosure within this year.
- Increased requests from business partners, especially international companies.

The Importance of Stakeholder Relations for Japanese Companies

- The Uyghur Forced Labor Prevention Act:
  - Enacted in December 2021 in the U.S.
  - Prohibits imports originating in China's Xinjiang Uyghur Autonomous Region
    - Imports of products produced, manufactured or mined in Xinjiang Uyghur Autonomous Region to be strictly prohibited
- Products involving entities designated by the U.S. government's Forced Labor Task Force will be subject to the Act as well.
- Important to confirm the Task Force's guidance (to be formulated by June 21, 2022) on DD methods, etc.

The Importance of Stakeholder Relations for Japanese Companies

- Expanding geopolitical risks centered on the U.S.-China confrontation and the need to respond to economic security:
  - The "fate" of Japanese companies located in Asia

    ⇒ Uyghur issue, Hong Kong issue, Myanmar issue, etc.
- Progress of overseas legislation:
  - Enactment of the Law for Appropriateness of Foreign Technical Intern Training System (2016)
  - Enactment of full-fledged supply chain DD guidelines and DD law in Japan in the near future

The Importance of Stakeholder Relations for Japanese Companies

- Increased media coverage of foreign technical intern trainees, promotion of women's activities, reasonable accommodation for people with disabilities, and treatment of LGBTQ employees, etc.
- Differences in sensibilities between Japan and other countries such as EU and the US were revealed in the process leading up to the Tokyo Olympics and Paralympics last year.
- Expansion of individual's ability to communicate through social media
  ⇒ Increased flaming risk

The Importance of Stakeholder Relations for Japanese Companies

- EU Human Rights and Environmental Due Diligence Directive, which will require certain EU/non-EU companies to conduct human rights and environmental due diligence, establish grievance mechanisms, etc.
- The European Commission's draft Directive is expected to be enacted into law after approval by the EU Council and the European Parliament (probably in 2023?)
- Based on the Directive, EU member states will enact national legislation within 2 years
  - Should pay attention to amendments to existing national legislation in some EU countries, such as Germany.

Source: *The Forefront of Stakeholder Capitalism Series (13) – "EU Human Rights and Environmental Due Diligence Act" (NBL, Nr. 1218, May 2022)*

CORPORATE PPAS IN JAPAN SWITCHING TO RENEWABLE ENERGY

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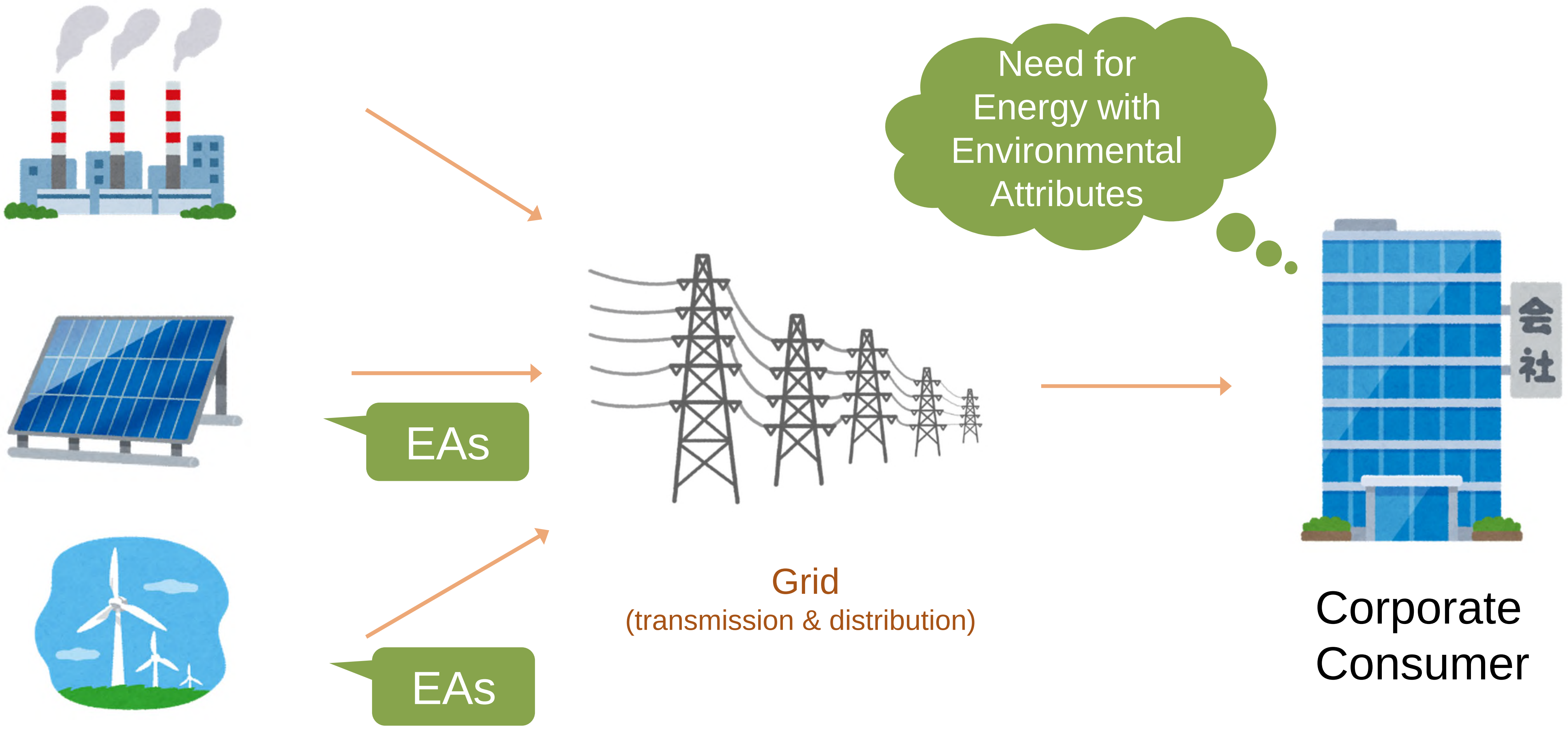
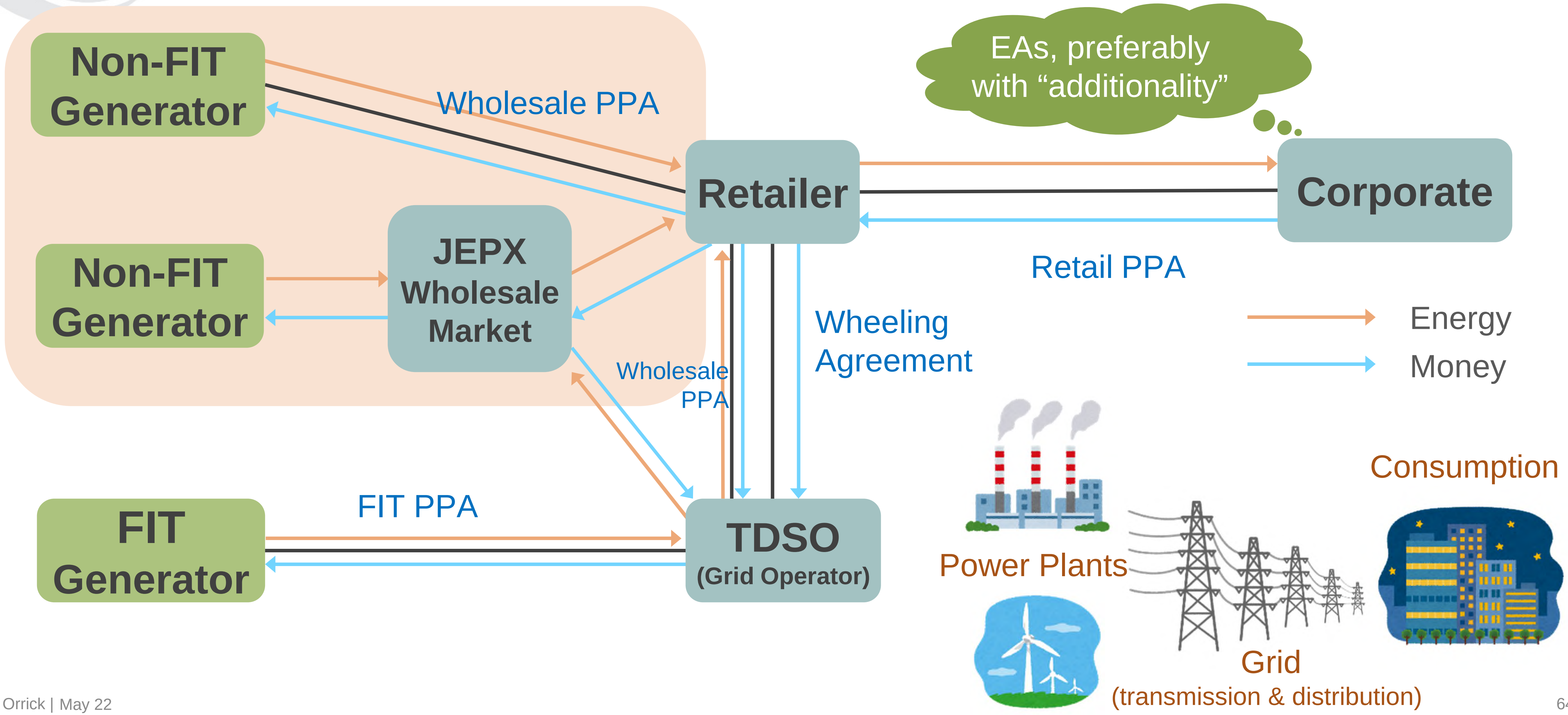
Grid Energy with Environmental Attributes



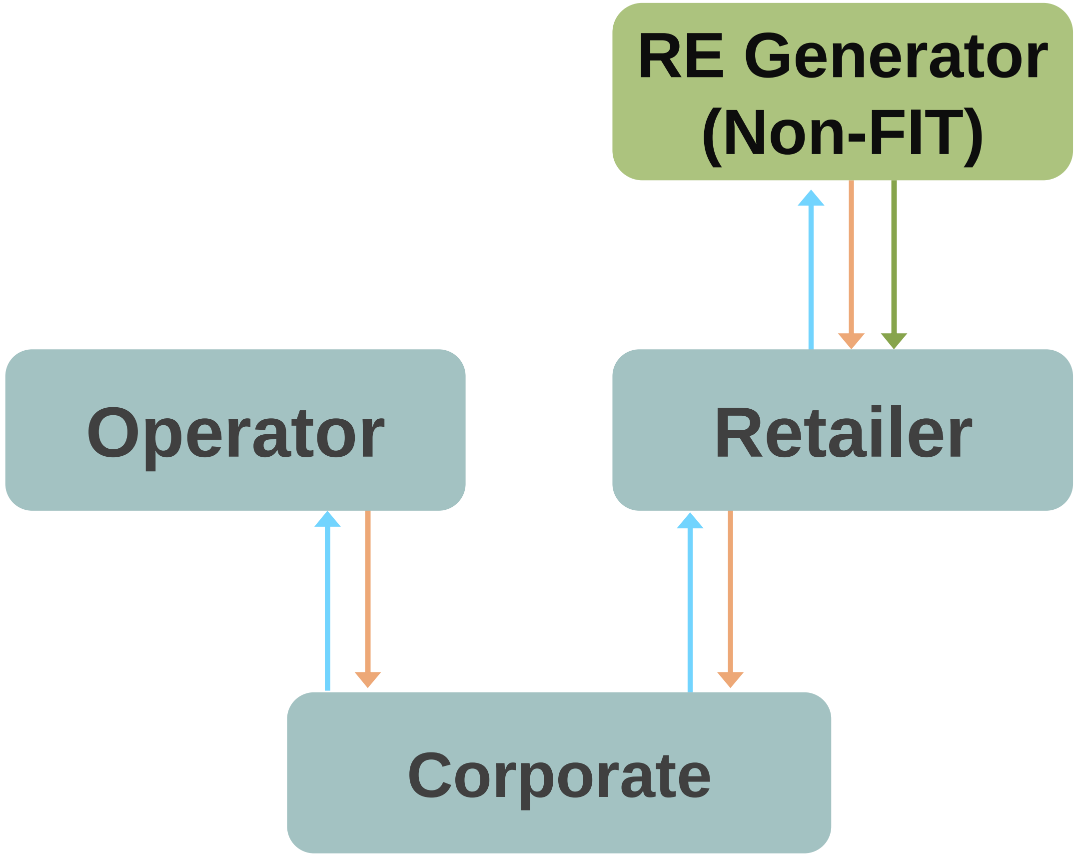
Electricity Transaction - PPAs



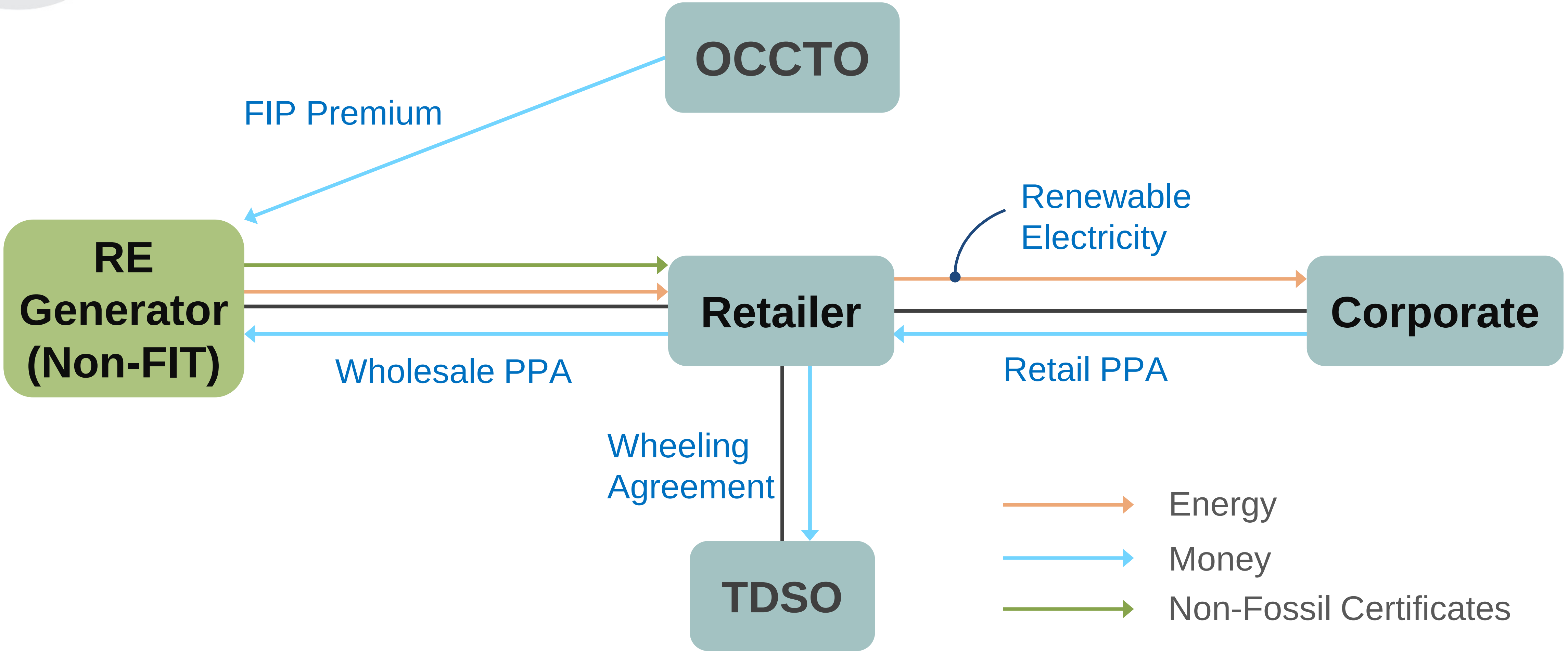
Onsite PPAs

Off-Grid Energy

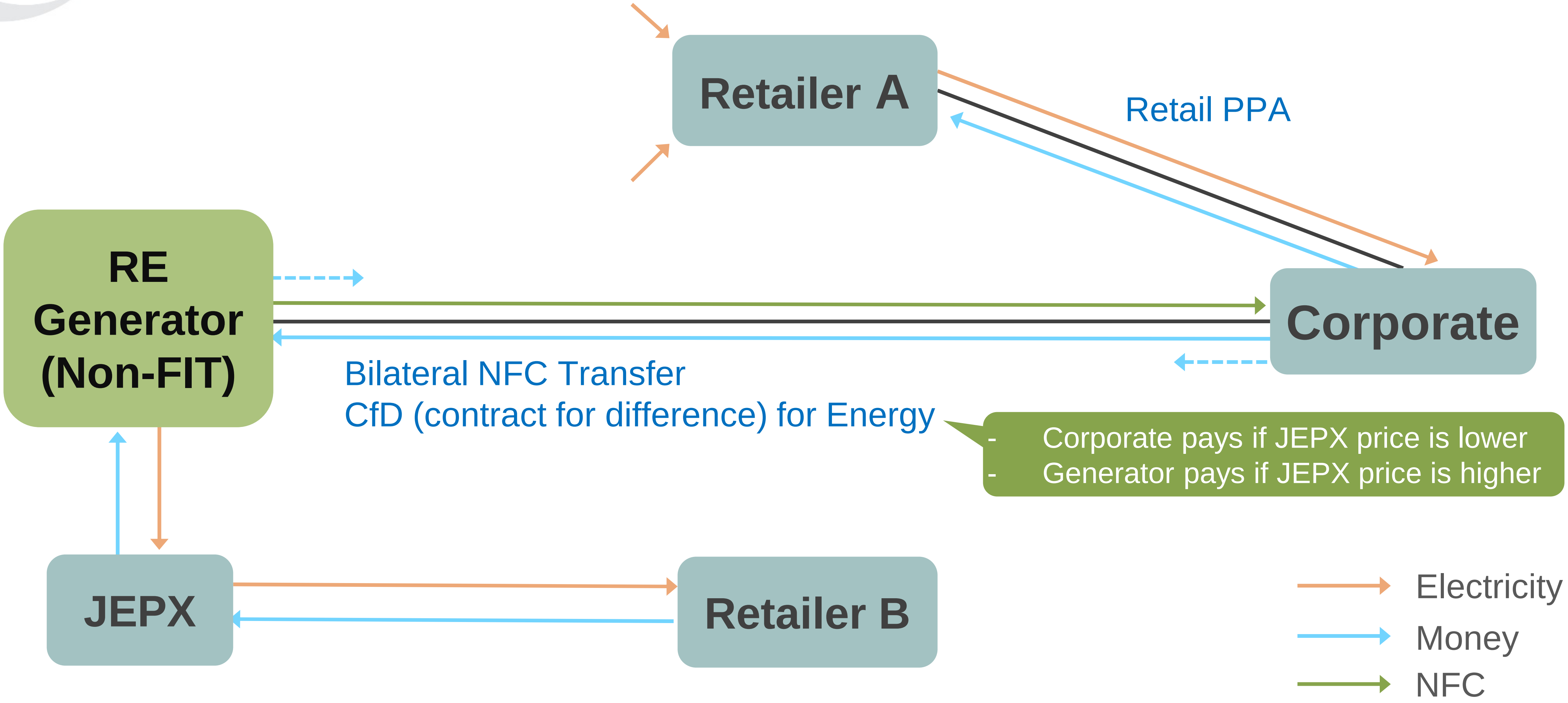
Grid Energy



Offsite PPAs–Physical PPAs (sleeved PPAs)



Offsite PPAs—Virtual PPAs



TOTAL ACCESS