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Reuters Sustainability Scenario

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Company responsibilities and accountability have rapidly expanded beyond duties to shareholders, to encompass both interests of non-owner stakeholders as well as their value chains – redefining the very concept of company-related "risk". While materiality remains a key driver of a company's risk profile – impacting share price, business strategy and legal exposure – companies increasingly are adopting additional processes to identify and mitigate "salient" sustainability risks. Those risks are the non-financial impacts of a company, its operations, and its value chain on individuals and communities.

Under the UN Guiding Principles Reporting Framework, salience is premised on four factors: (i) severity (how grave and widespread the impact), (ii) remediability (how hard to correct), (ii) prevalence (how widespread the impact), and (iv) likelihood (how likely that the harm would occur). In this case study, the salient ESG/human rights risks involve environmental, health and safety, and modern slavery issues -- relative to BTSC and to its value chain. BTSC also has risks related to its sustainability governance. Finally, as a publicly traded company, BTSC must take into consideration at every step its public disclosures and other regulatory requirements of the Securities and Exchange Commission (SEC), and the demands of investors and shareholders, along with employees, customers and other stakeholders.

To fully identify, risk-rank and start to manage the numerous sustainability issues before it, BTSC should take the following three steps: conduct structured due diligence; review and revise its sustainability governance structure and strategy; and assess and address its disclosures.

1. Structured Due Diligence. Due diligence is the cornerstone of sustainability risk governance, and fundamental to the UN Guiding Principles on Business and Human Rights (UNGPs). Diligence should be risk-tiered, and should run throughout the company's value chain, upstream and downstream, as well as the full span of company operations, functions and business relationships. While the priority for BTSC is to identify and address salient risks to all stakeholders, the diligence exercise also inherently relates to impact on shareholder value. From the case study, there are several obvious potential salient risks to integrate into a larger diligence exercise. Most obvious are:

(1) *Environmental and human health risks associated with its own activities*. BTSC has hazardous waste connected to its own operations that may create harms to individuals, communities and to the environment. As the case study describes these as "legal" risks, it may be prudent to conduct the diligence exercise under legal privilege, and to include within its review any litigation, investigations or regulatory actions involving the storage and related activities.

(2) *Downstream risks associated with its goods and services*. Depending on the nature of its products and its customers, BTSC's goods could be used in connection with adverse impacts at factories or farms. These might include child labor, modern slavery or human health risks, which are common in factories and the agricultural space, for example. They also could include product misuse risks, such as fertilizer being used for explosives. These kinds of activities could create both salient and material risks for BTSC.

(3) *Upstream risks associated with its supply chain*. The case study notes that BTSC's supply chains are multifaceted and international. Depending on the nature of its sourcing activities, this raises the prospect that BTSC's suppliers – Tier 1 and beyond – may be causing or contributing to adverse human rights and other sustainability impacts. These may implicate sustainability

risks, and potential operational risks in light of the U.S. government's increasing use of Withhold Release Orders to stop at the border goods suspected of being produced with forced labor under the Tariff Act of 1930.

2. Governance. The effective management of sustainability issues requires a calibrated governance structure, including meaningful board engagement and assignment of day-to-day responsibilities to a senior officer. Indeed, a series of recent Delaware cases under the *Caremark* standard make clear that boards should have systems to receive reports from management on salient sustainability and compliance-related risks that also are mission-critical, along with sufficient subject-matter expertise to react appropriately when red flags emerge. At a minimum, the board should require regular management reports on how salient risks are determined, the nature of those risks, how they are managed, the effectiveness of those management approaches, and key issues and dilemmas. Good practice also calls for formally vesting oversight of sustainability issues in the charter of at least one board-level committee. Further, boards, investors and regulators increasingly expect companies to manage their sustainability risks with dedicated professionals who are expert in their field and adequately resourced.

BTSC's proposed plan to "dual hat" a vice president as the Chief Sustainability Officer raises obvious questions regarding individual's subject-matter expertise, capacity and bandwidth. It further raises doubts about the seriousness of the company's intention in managing its sustainability risks. We would recommend that the board insist on a more fulsome governance structure, as well as a dedicated and experienced sustainability professional with appropriate resources to discharge his or her obligations.

3. Disclosure. Transparency and disclosure is critical to stakeholder credibility, shareholder accountability, and meaningful engagement with employees and investors. Identifying material and salient risks, disclosing how salient risks are determined and weighted, and describing how (and how well) they are managed is vital to creating and maintaining stakeholder trust. Good reporting also provides visibility into the company's sustainability governance.

For BTSC, as it conducts its due diligence and enhances its governance structure, it should review prior public disclosures, particularly in annual reports and/or sustainability reports, to ensure its statements are supportable. BTSC then should craft a meaningful disclosure strategy that demonstrates a coherence between its brand and stakeholder strategy, highlights key governance policies and procedures, discloses priority sustainability issues, explains how stakeholder priorities are integrated into business strategy, and identifies relevant risks and impacts, how they are addressed and mitigated, and the effectiveness of those efforts.