REUTERS SUSTAINABILITY PROJECT

Mayer Brown response

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The global, regulatory and political landscape regarding environmental, social and governance (ESG) matters is rapidly evolving across the globe. For example, consistent with increasing investor focus and reliance on climate and ESG-related disclosures and investment, the US Securities and Exchange Commission recently established a Climate and ESG Task Force to develop initiatives to proactively identify ESG-related misconduct. In addition, the European Commission has announced that it will develop legislation requiring companies to carry out human rights and environmental due diligence. These are just a couple of the latest developments in an increasing tide of regulation on the topic of ESG.

In this context and with the recent environmental challenges facing BTSC (including queries received from stakeholders regarding its sustainability profile), here are three key recommendations to BTSC as its seeks to prioritize its ESG-related challenges and opportunities.

#1 Develop, implement and articulate a rigorous, but realistic, framework for your ESG policies and goals

- **Be specific**:
  - Priority initiatives should be clearly articulated, and limited in number
  - Benchmark your policies and goals against other companies including sustainability leaders, others in the industry, etc.
  - These policies or goals should also go through rigorous evaluation by a separate team, which considers alignment to business and strategy, extent of business evolution necessary to achieve within the stated time-frame, and priority areas of focus for internal stakeholders
  - As a starting point, identify, investigate and, if possible, resolve problematic issues, including the known battery storage issue, as a priority
- **Be practical**:
  - Ensure your ESG priorities link to value, and demonstrate how, ideally by reference to objective and measurable data Identify issues and initiatives with the greatest potential - analyse what matters along the

    - company's value and supply chains will have the most impact for the company
    - Research potential initiatives thoroughly before committing – explore with thought leaders and industry experts, rehearse with internal and external stakeholders, and communicate the results
    - Make your case publicly – helps enforce rigour and ensure that practical actions follow
- **Be realistic (but vigilant)**:
    - Assess the value at stake from external engagement and consider scenarios for potential hits to operating profits
    - Be thoughtful and transparent about ESG risk - this is long-term value enhancement but be prepared for some short-term discomfort and pain
    - Remain mindful of the risks (including regulatory and litigation exposures) of "overpromising" and "underperforming"
- **Be prepared, proactive and future focused:**
    - Measure and report performance against your goals
    - While voluntarily for most countries, be cognisant of the increasing global regulations regarding corporate ESG data reporting
    - 90% of companies in the S&P 500 have already published their annual corporate sustainability/ESG reports (2020)
    - Keep in mind the crucial importance of accuracy of reporting, and use disclaimers where appropriate

#2 Build and maintain the required ESG talent and capacity

- ***Specific and immediate:***
    - Rebranding a Vice President as a Chief Sustainability Officer is insufficient
    - As you would expect for others in the "C-suite" of a public company, an individual in this role should have established and proven ESG experience and credentials
    - This should be a board-level appointment, backed up with appropriate and sufficient resource to fulfil the role
    - Charging a single individual with responsibility for the company's ESG agenda – without the support of other suitably qualified individuals, committees and teams – is unlikely to be sufficient
- ***General – talent development:***
    - Establish appropriate policies and programs to attract, develop and retain the right talent
    - Seek to partner with institutions, both within and outside the industrial farm and factory sectors, to attract diverse talent

    - Promote and establish employee-run working groups – develop these around a common dimension of diversity, interest, or experience that affects the workplace – these groups can address things like employee development, community involvement and business alignment

#3 Audit, assess and manage your supply chain risk

- ***Specific and immediate:***
    - Investigate, understand and solve your battery problem, and related environmental exposure and liabilities
    - Consider and address reputational issues and risks
    - Develop and adopt a program for the sustainable management of batteries
- ***General – recycling program:***
    - Establish a policy framework capable of identifying players, responsibilities and economic incentives in support of the long-term viability of the recycling measures
    - Categorise battery waste and determine priorities
    - Improve communication – once established and proven, communicate the company's high standards of environmental performance to the community and the workforce
    - Build trust - with your stakeholders as a responsible recycler through effective community, customer and investor outreach programs
- ***General – supply chain risk management:***
    - Ensure proper oversight and management of, and accountability for, supply chains
    - Recognize the potential significant reputational and economic losses, as well as regulatory and stakeholder scrutiny
    - Integrate supply chain considerations into the ESG framework and policies discussed above
    - Focus on transparency, consider climate-related risks and opportunities
    - Consider regulatory risk and scrutinize compliance; be duly diligent and react efficiently but effectively to problems that emerge (ideally in accordance with established protocols)
    - Be efficient but not at the expense of resiliency
    - Consider the opportunities to digitalize and adopt new technologies but be cognizant of related cyber risks