

**The GHRS Conference, Renmin Law School,**

# **IS CORPORATE SOCIAL RESPONSIBILITY AN UTOPIA, A DUTY OR AN OPPORTUNITY ?**

PROF. HENRY PETER, UNIVERSITY OF GENEVA LAW SCHOOL

Saturday, July 12<sup>th</sup> 2014

# The Shareholders value dogma

- Classical and still **mainstream dogma**: private corporation are fundamentally an instrument which sole purpose is to generate the **highest possible profit** for its owners (i.e. shareholders)
- What is pursued is (only) the **shareholders value**:
  - *“There is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits, (...)”*

Milton Friedman, New York Time Magazine, Sept. 13, 1970.

- *“A business corporation is organized and carried on **primarily for the profit of the stockholders**. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end and does not extend to a change in the end itself, to the **reduction of profits or to the nondistribution of profits among stockholders in order to devote them to other purposes**”*

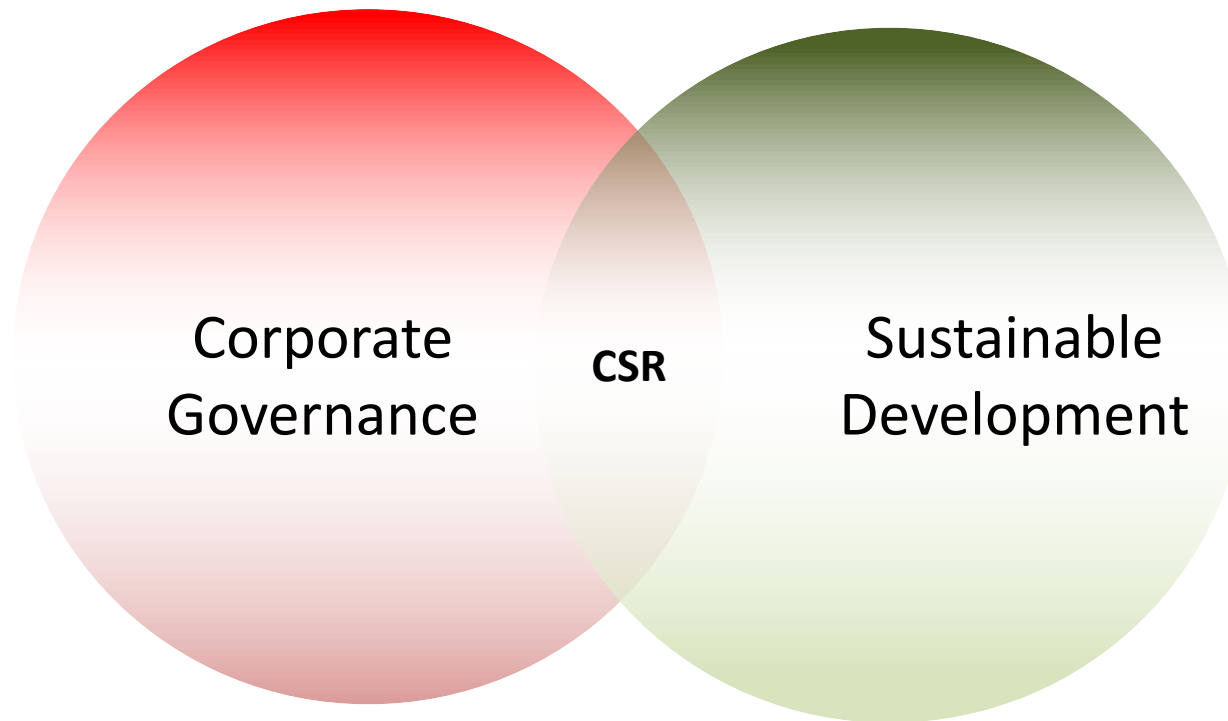
Dodge v. Ford Motor Company, US Court decision, 1919.

# Corporate Social Responsibility

- **What is CSR ?**

- CSR is the **concept** pursuant to which corporations are due to act in a **socially responsible manner** → *protects stakeholder interests*
- Corporations **have to take into account other constituencies' (stakeholders) interests**, such as those of their **employees, suppliers, creditors, local communities, sustainable development**, etc.
- **Sustainable development** can, on turn, be considered as quite far reaching and encompassing **environment protection** (no pollution), **ethics** (no corruption) and **human rights** (including labor issues)
- Corporate governance is part of – or rather a tool to achieve – CSR

# Corporate governance and CSR



# Dilemma real or apparent ?

- ***Prima facie***, pursuing shareholders value is not compatible with CSR, i.e. pursuing stakeholders value...
  - Is this dilemma **real or only apparent** ?
  - **Two hypotheses:**
    - The socially responsible behavior **directly favors the company's interest** (i.e. the shareholders value)
      - Example: building a school in order to dispose of skilled manpower
      - Favoring other stakeholders leads to higher shareholders value → **no conflict**
    - The socially responsible behavior **is not in line with the company interest**
      - Example: choosing sources of energy which are more costly but less damaging for the environment
      - Pursuing stakeholders value affects shareholders value → **conflict**

# Mandatory vs. Soft Law

- There is **no mandatory** (“hard”) **state law** (whether national or supranational) **establishing as a generally applicable principle that corporations have to act in a socially responsible manner**
- ... **but** non-state actors (NGOs) and transnational bodies **act as standard setters by issuing CSR benchmarks** (→ **“soft law”**)
  - **The “UN Global Compact Principles” (2004)**: strategic policy initiative for businesses that are committed to aligning their operations and strategies with **ten universally accepted principles** in the areas of **human rights, labor, environment and anti-corruption**
  - **Carbone Disclosure Project (CDP) (2010)**: international (not-for-profit) organization providing the only global system for companies and cities **to reduce carbon consumption**
  - **OECD Guidelines for Multinational Enterprises (2011)**: comprehensive **set of government-backed recommendations on responsible business conduct** encouraging **sustainable development** and enduring **social progress**

# Mandatory vs. Soft Law

- The trend is for corporations to follow these standards
  - **Why do corporations comply ?**
  - **How do corporations comply ?**

# Why do corporations comply ?

- If they do not, they are exposed to “**naming and shaming**”
  - See for example **The Greenpeace Public Eye Award**, which sheds “*a critical light on irresponsible business practices and **provides a platform to publicly criticize** cases of human and labor rights violations, environmental destruction or corruption*” (= **hall of shame**)
  - See also Greenpeace, which launched **an aggressive campaign against Nestlé** using palm oil from destroyed rain forests. **In response, Nestlé has adopted high standards for the palm oil it uses** and has committed to make sure the standards are met by 2015



# Why do corporations comply ?

- Companies **are rated** based on their compliance with these benchmarks
  - **Specialized rating agencies now rate companies based on their CSR behavior**
    - **The Sustainalytics Global Compact Compliance Service helps investors identify companies** within their portfolios or investment universes that are **in breach of the UN Global Compact principles**
    - **RobecoSAM**, investment specialist **focused exclusively on Sustainability Investing** which publishes a yearbook that looks back at companies' performance and **ranks them based on their sustainability process**

# Why do corporations comply ?

- Compliance to CSR principles can be a **condition for companies to access «public markets»**
  - *“Contracting authorities should further be given the possibility to exclude economic operators which have proven unreliable, for instance because of violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct (...)”*
- **Investors are becoming more socially responsible**; they care about the CSR behavior of companies in which they invest
  - *“Our investment philosophy is based on our conviction that sustainability risks and opportunities directly affect long-term business profitability. We believe the interests of shareholders, over time, will be best served by companies that maximise their financial return by strategically managing their economic, social and environmental performance”*

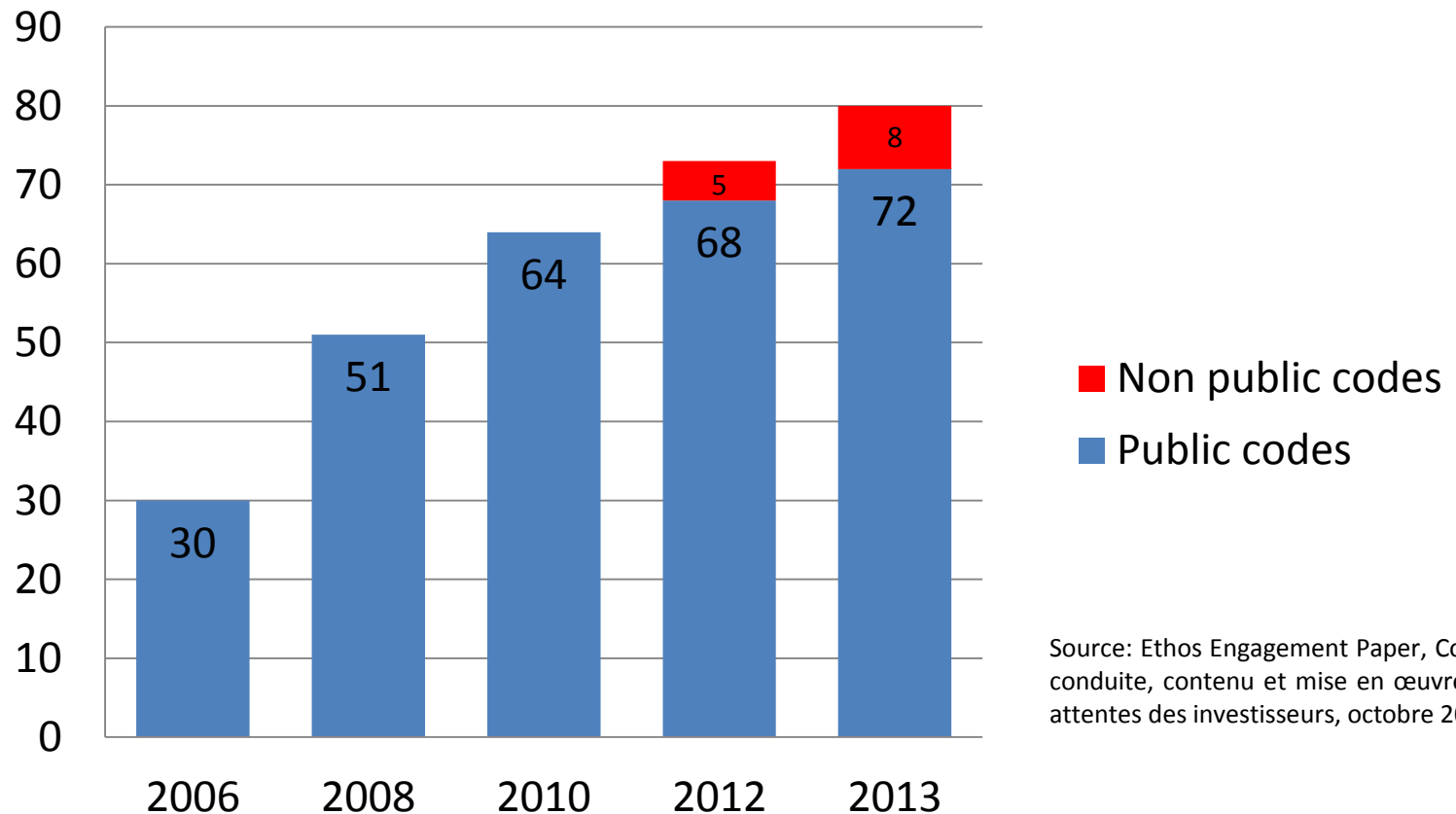
Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

# How do corporations comply ?

- Companies issue **codes of conduct**
  - Corporate codes of conduct **outline the CSR vision and mission** of the companies
    - **UBS** Code of Business Conduct and Ethics: “This “Code of Business Conduct and Ethics of UBS” **sets out the principles and practices** that are binding for all of UBS’s employees and Board members to follow (...). **Compliance with the principles set out in the Code is mandatory.**”
    - **VF Corporation’s** Code of Business Conduct: “Our Code of Business Conduct **demonstrates how our core values of honesty, integrity and respect come to life in our day-to-day business dealings.** It (...) gives us the guidance we need (...) **to help ensure we act ethically at all times.** (...)”
    - **Firmenich** Fundamentals: “We strictly maintain the highest level of **personal integrity and ethical values.** We practice a **sustainable business model** for the well-being of present and future generations. We adopt the strictest international standards on **quality, safety and the environment**”

# How do corporations comply ?

- An increasing number of the hundred largest Swiss listed companies has adopted and disclose a code of conduct



Source: Ethos Engagement Paper, Code de conduite, contenu et mise en œuvre : Les attentes des investisseurs, octobre 2013.

# How do corporations comply ?

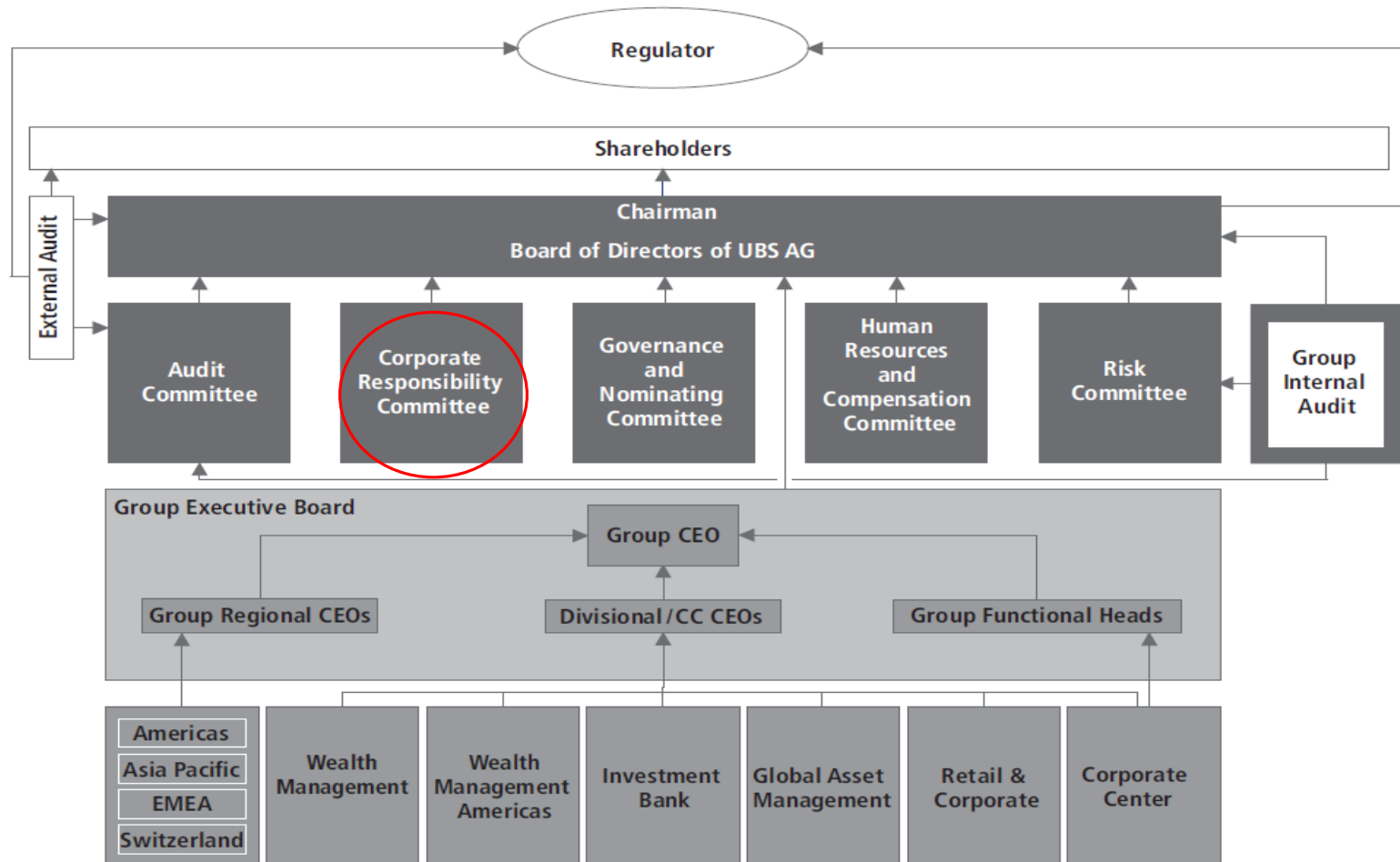
- Companies put in place specific **corporate governance structures**
  - The trend is for corporations to establish **specific CSR committees** (often of their board of directors)
  - Example **UBS**:

*“The Corporate Responsibility Committee **supports the BoD** in fulfilling its duty to safeguard and advance the Group’s reputation for responsible corporate conduct. It **reviews and assesses stakeholder concerns and expectations for responsible corporate conduct** and their possible consequences for UBS, and **recommends appropriate actions to the BoD**”*

UBS annual report 2013, corporate responsibility governance, p. 285 ss.

# How do corporations comply ?

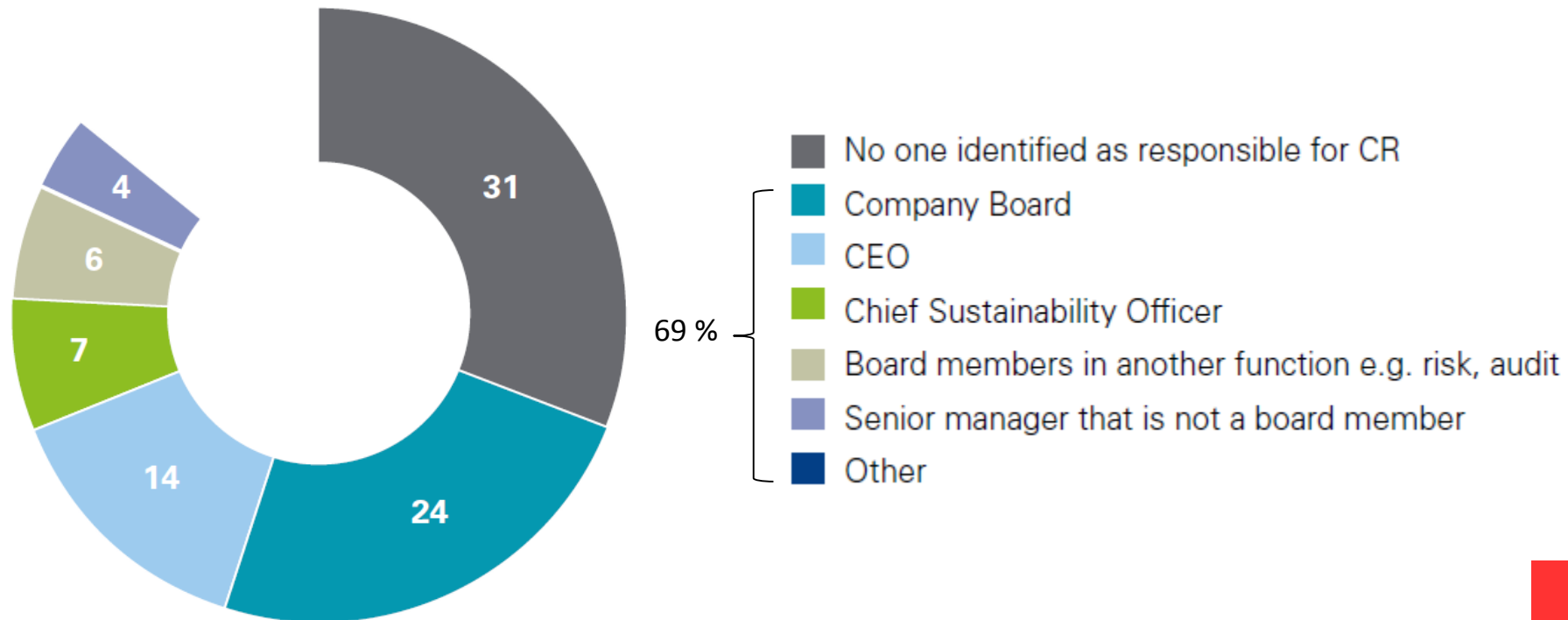
## ➤ Example: The organizational chart of UBS



# How do corporations comply ?

- Companies identify *who has ultimate responsibility* for CSR

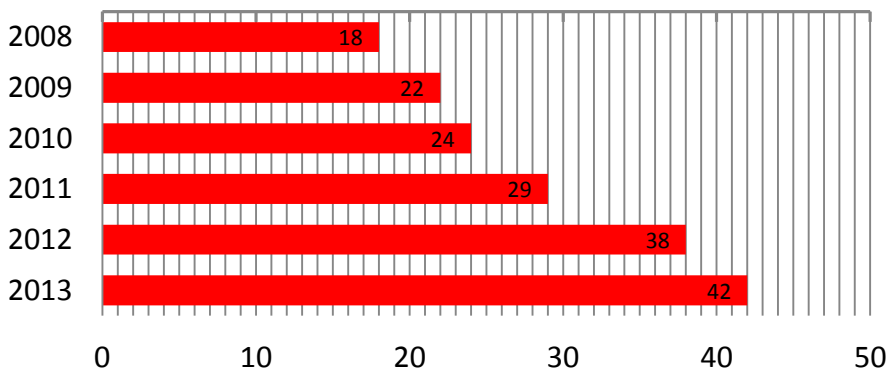
Who has ultimate responsibility for CR?



Source: KPMG International, The KPMG Survey of Corporate Responsibility Reporting 2013, p. 72, figure 44; based on the 233 of the world's largest 250 global companies.

# How do corporations comply ?

- Companies ***report and disclose*** about their CSR behavior
  - Like IFRS financial reporting standards, **CSR now has its codified reporting guidelines**
  - The global reporting initiative (GRI) is a **reporting system developed by an international NGO**
  - GRI provides metrics and methods for **measuring and reporting sustainability-related impacts and performance**
  - **The GRI reporting guidelines are the most used worldwide**



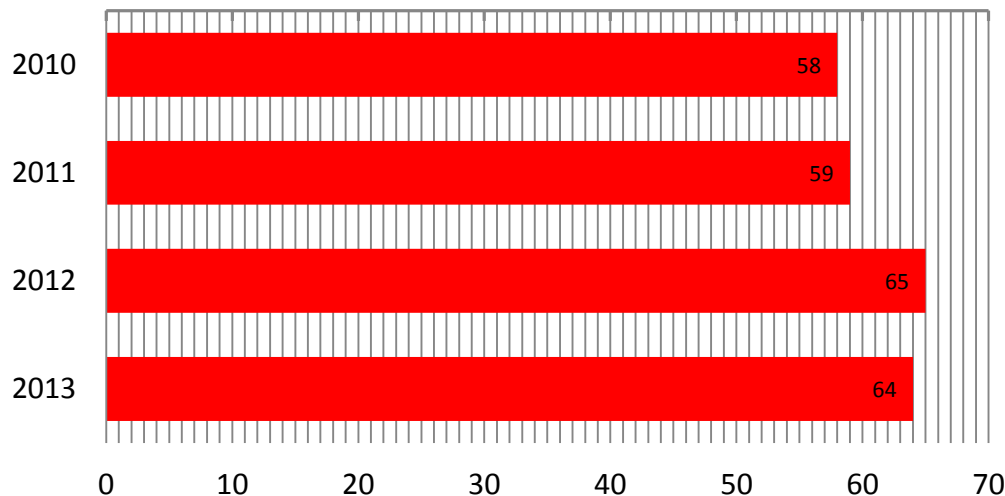
Percentage of the 100 largest listed companies in Switzerland applying the GRI Guidelines.

Source: Ethos Engagement Pool, Thèmes et principaux résultats 2013, p. 11.



# How do corporations comply ?

- In addition, specific reporting:
  - Typically, Carbon Disclosure Project (**CDP**) results are **made public online and in annual reports**



Number of companies, among the 100 largest listed companies in Switzerland, participating in the Carbon Disclosure Project.

➤ **Example: UBS CDP reporting**

➤ **CSR treated as an investment producing a return**

Activity type	Description of activity	Estimated annual CO2e savings (metric tonnes CO2e)	Annual monetary savings (unit currency - as specified in Q0.4)	Investment required (unit currency - as specified in Q0.4)	Payback period
Energy efficiency: Building fabric	Office building in Zurich: Replacement of old humidifier unit	39	135000	1400000	11-15 years
Energy efficiency: Building fabric	Small office building in Murten: Improvement in isolation of facade and windows	3	1200	250000	>25 years
Energy efficiency: Processes	Consolidation of servers in efficient data center	1980	2000000	7000000	4-10 years

# How do corporations comply ?

- Companies have to report and disclose.... but they also understand that **this has a positive impact on their image**
  - CSR acting as a promotional tool
    - **Nestlé:** *“Henri Nestlé founded the Company in 1866 on the success of a life-saving infant cereal. Today, **we aim to enhance the quality of life of all our consumers by offering tastier and healthier food and beverages, (...)**”*
    - **Novartis:** *“We aim to improve global health. Through our business, **we make an important contribution to society:** We discover and develop innovative medicines and vaccines. Novartis collaborates with others to **help address some of the world’s greatest health challenges**”*

# Conclusion

- **Even though States do not generally compel** companies to adopt a socially responsible behavior, benchmarks are issued by (non-state) standards setters.
- **No company of a certain importance does – can – ignore** these standards → ex ante effect
- **To act in a socially responsible manner might be a moral duty but is in any event in the well understood interest of all companies**
- **As a result, the incompatibility between profit-maximization and CSR is only apparent**
- **Pursuing stakeholders value is ultimately a way to increase shareholders value → a (new) duty of all directors ?**
- **For corporations, being CSR compliant is not an utopia, is not only possible, but is necessary... and even an opportunity.**