

SKUNK AT THE PICNIC: THE LEGAL CONSTRAINTS ON PRIVATE ENVIRONMENTAL GOVERNANCE

**Summit on Private Environmental Governance:
Facing the Challenges of Voluntary Standards,
Supply Chains and Green Marketing**

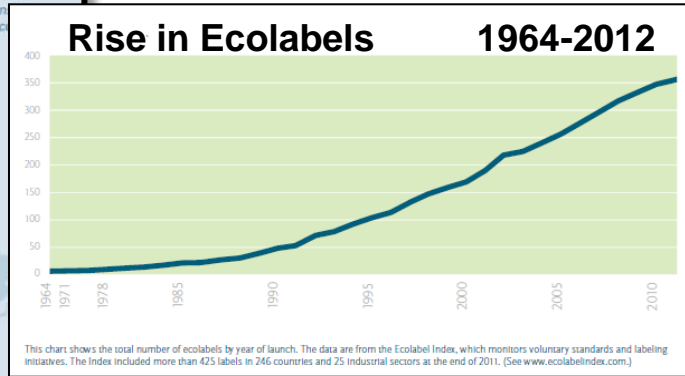
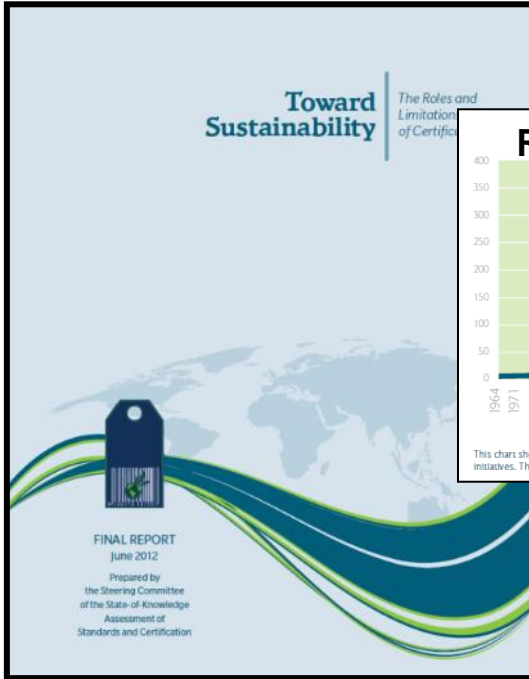
Cassie Phillips

Vice President, Sustainable Forests & Products

Weyerhaeuser



CUSTOMERS ARE THE NEW REGULATORS



Source: Toward Sustainability; the Roles and Limits of Certification (RESOLVE 2012)



Accounting for a Sustainable Future

Companies

Disclosure Overload?

Focus your efforts on the sustainability factors that drive value creation.

The Consumer Goods Forum and The Sustainability Consortium Announce Global Partnership

[Read More](#)

A joint program to accelerate the development and implementation of a global approach to measure and communicate product life cycles.



THE CHALLENGE



SHARKS; Dogs of Scyllia.

BRITANNIA between SCYLLA & CHARYBDIS.

Publ. & sold at 4 pp. by N. Humphrey, No. 10. Broad Street.

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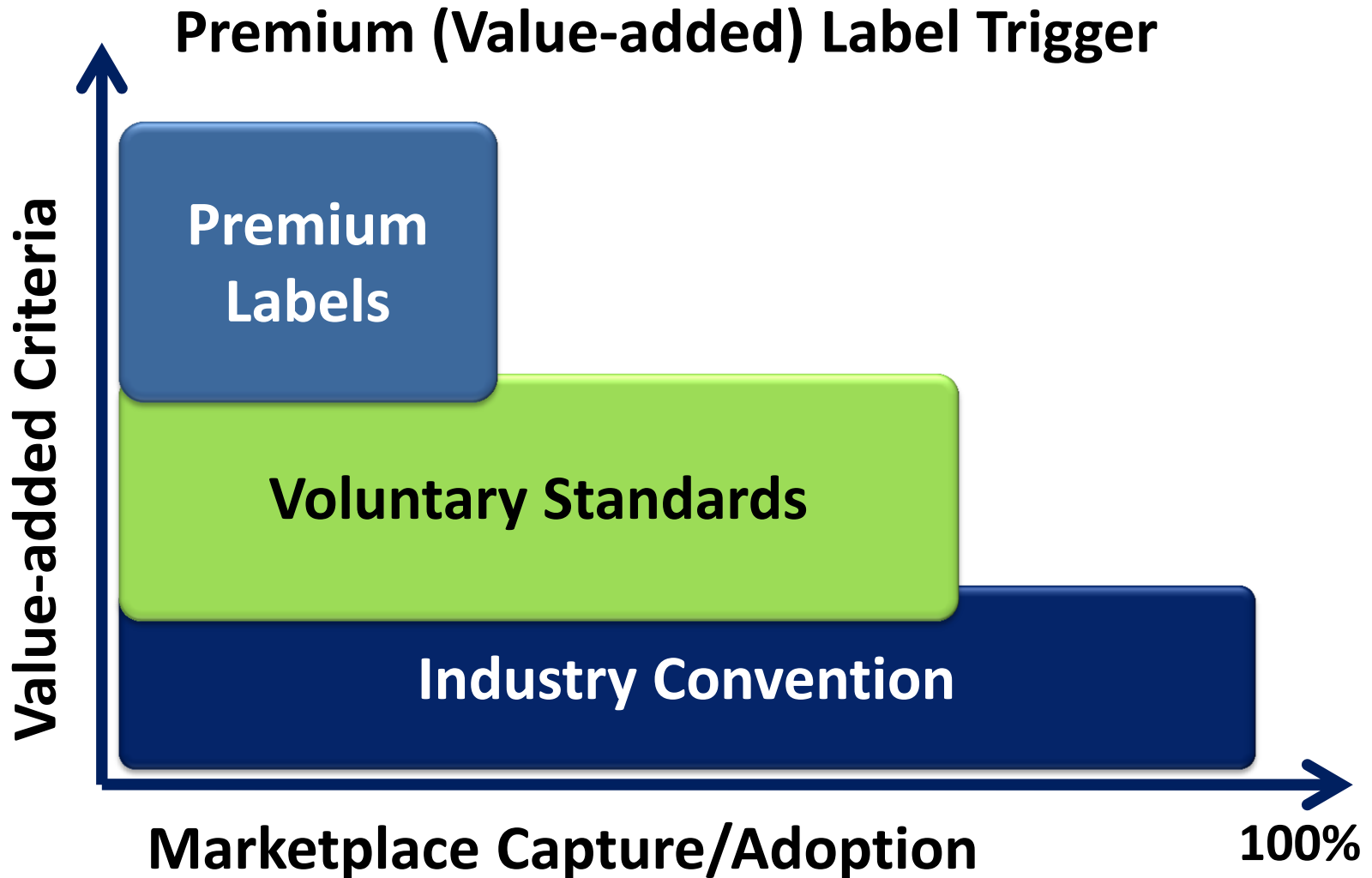
or — The Vessel of the Constitution, steered clear of the Rock of Democracy, and the Whirlpool of Arbitrary Power.



LEGAL RISK CONTINUUM



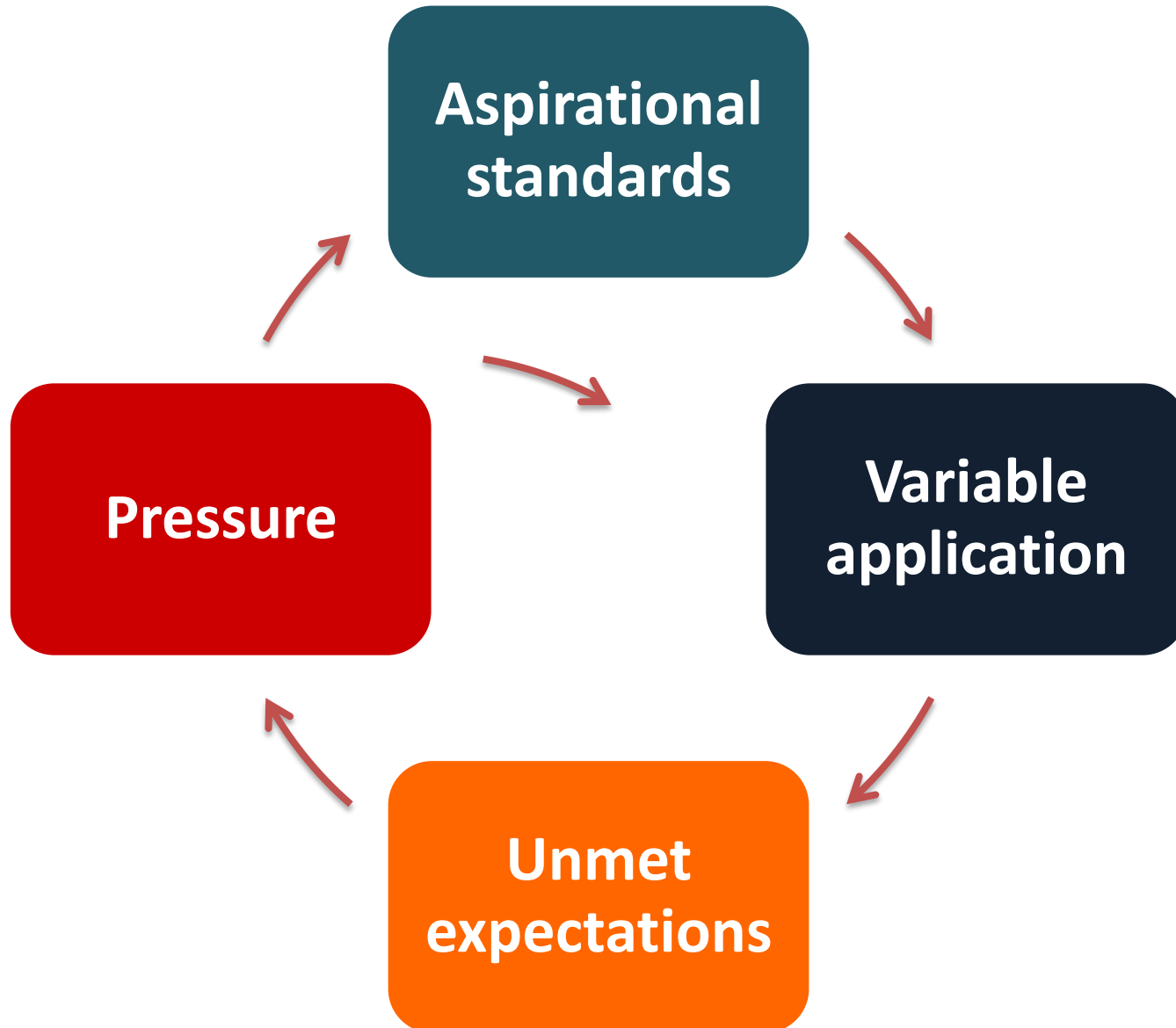
RISKS IN BUSINESS APPROACHES



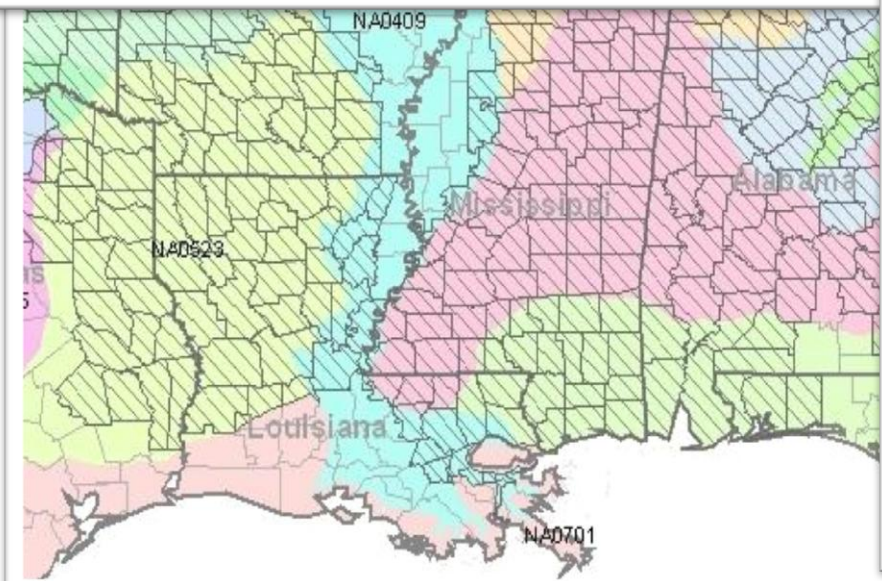
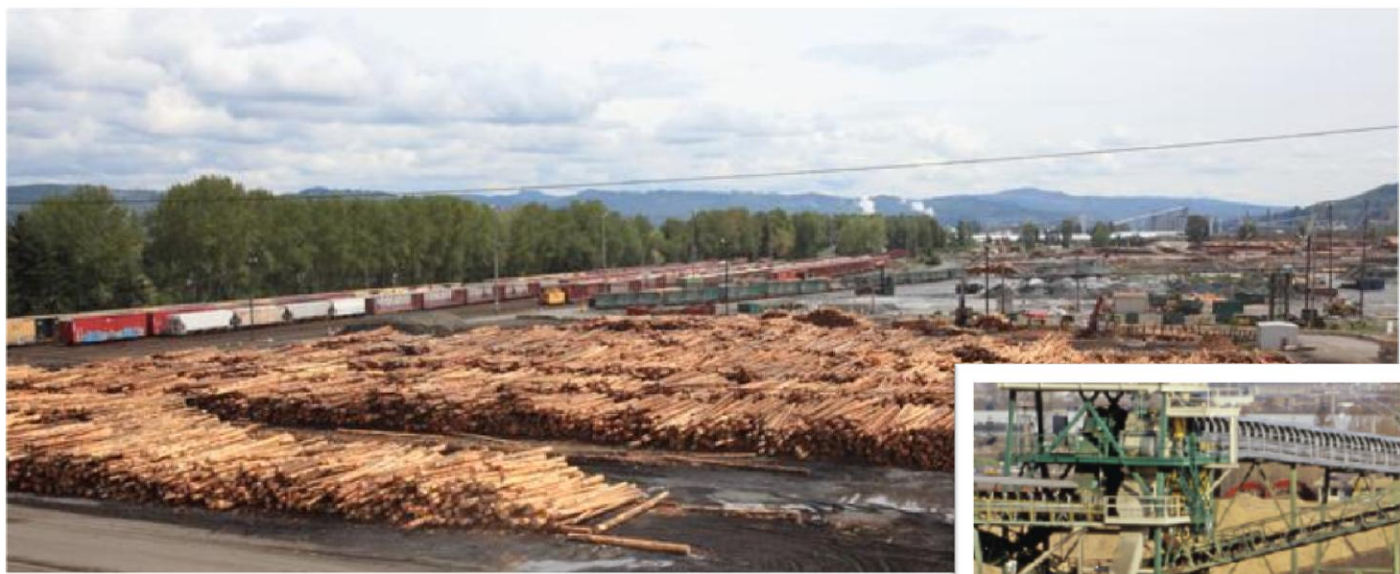
Source: Consumers Union 2009



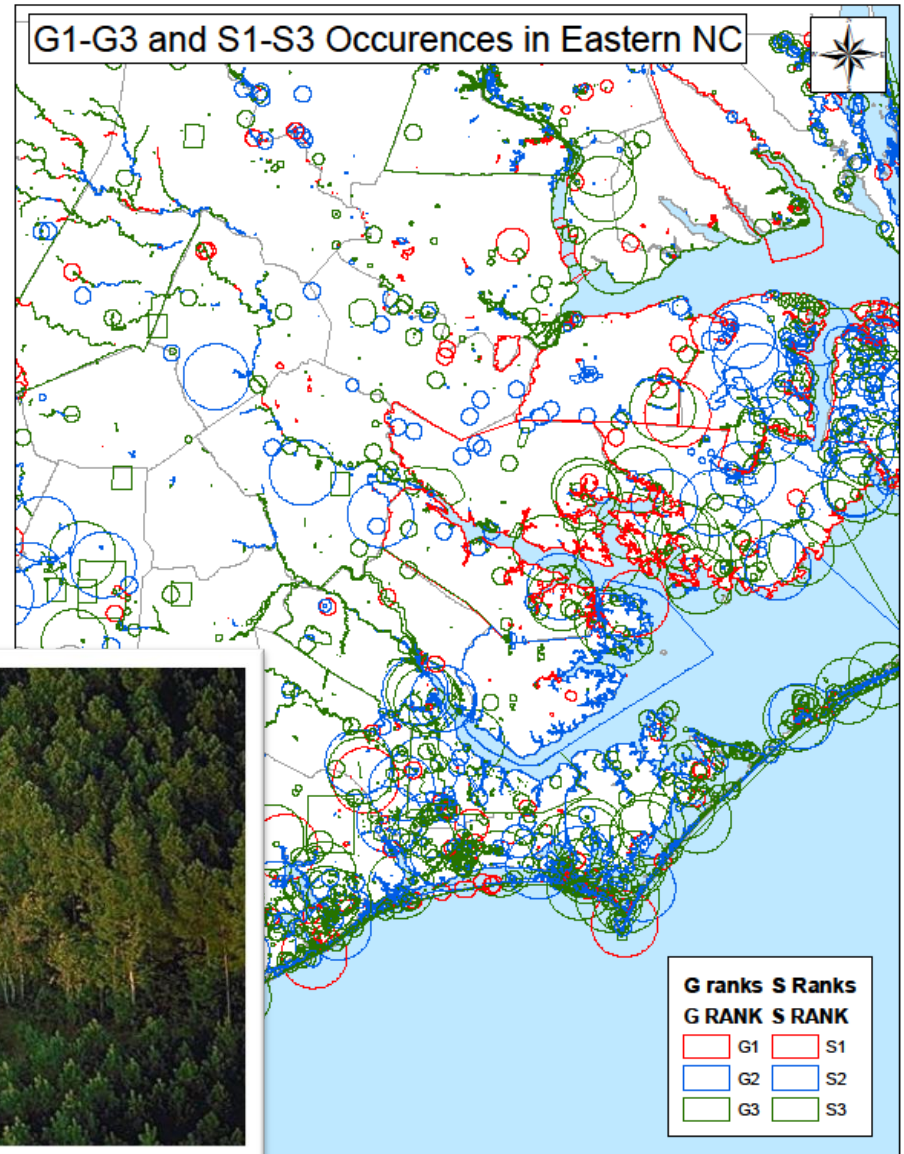
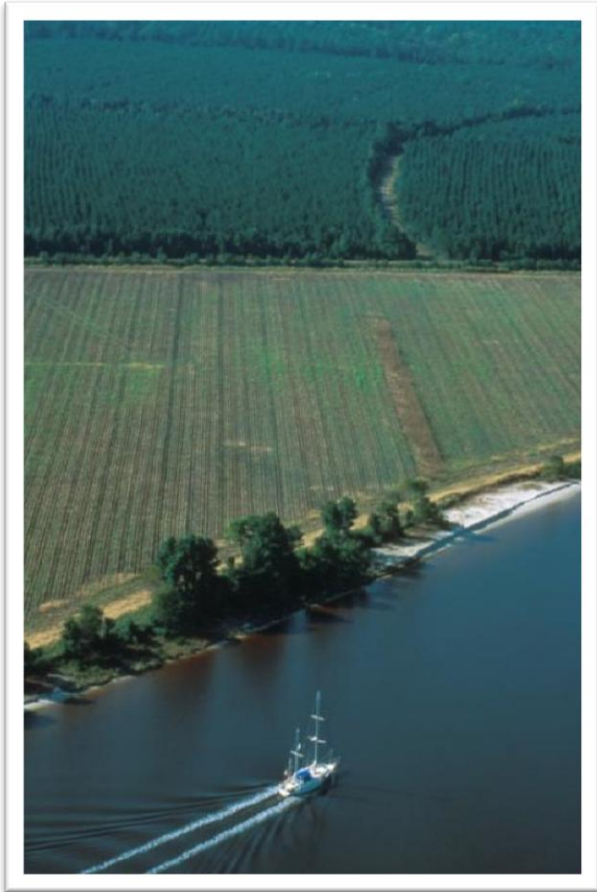
RISKS IN STAKEHOLDER APPROACHES



EXAMPLE: TRACEABILITY



EXAMPLE: "GREENLINING"



SIX MOST COMMON MYTHS

Anticompetitive standards are ok if:	<i>But see:</i>
<ul style="list-style-type: none">• They're for a good cause / they're ancillary restraints	<i>Board of Regents v. Nat'l College Athletic Ass'n (1984); FTC v. Superior Court Trial Lawyers Ass'n (1990)</i>
<ul style="list-style-type: none">• They're voluntary	<i>Monsanto Co. v. Spray-Rite Svc. Corp (1984)</i>
<ul style="list-style-type: none">• They're adopted by non-profits	<i>American Society for Professional Engineers, Inc. v. Hydrolevel Corp. (1982); K&S Associates, Inc. v. American Assoc. of Physicists in Medicine (2012)</i>
<ul style="list-style-type: none">• They're adopted by government	<i>Allied Tube & Conduit Corp. v. Indian Head, Inc. (1988); FTC v Phoebe Putney Health Systems, Inc. (2012)</i>
<ul style="list-style-type: none">• They only cause a little harm ("it's just one point")	<i>Radiant Burners Inc. v. People's Gas, Light, and Coke, Co. (1961)</i>
<ul style="list-style-type: none">• They avoid too many labels confusing consumers / they're leadership standards / they stop a race to the bottom	<i>National Society of Engineers v. U.S. (1978); FTC v. Indiana Federation of Dentists (1986)</i>

SUPPLIER BILL OF RIGHTS

1. **Don't regulate without due process**: ensure suppliers have a meaningful seat at the table when setting supply chain standards or requirements
2. **Promote competition**: limit requirements to those *necessary* to accomplish legitimate ends and use the least restrictive means; be biased towards encouraging competing products and standards
3. **Be fair**: treat suppliers equally and provide objective specifications; beware the biases of interested parties who want your forum to endorse their products or their preferred brands; ensure auditors are independent
4. **Be truthful**: set standards that are specific and practical enough to be consistently applied and audited; test each one against FTC standards for substantiation of claims: express, implied, comparative
5. **Be efficient**: leverage the controls in place: regulations, other standards and programs, consultants; don't make us check the checkers
6. **Don't indulge gossip**: if a supplier is the target of complaints, provide a forum for the supplier to address them fairly and objectively, against a clear standard of review



THANK YOU

