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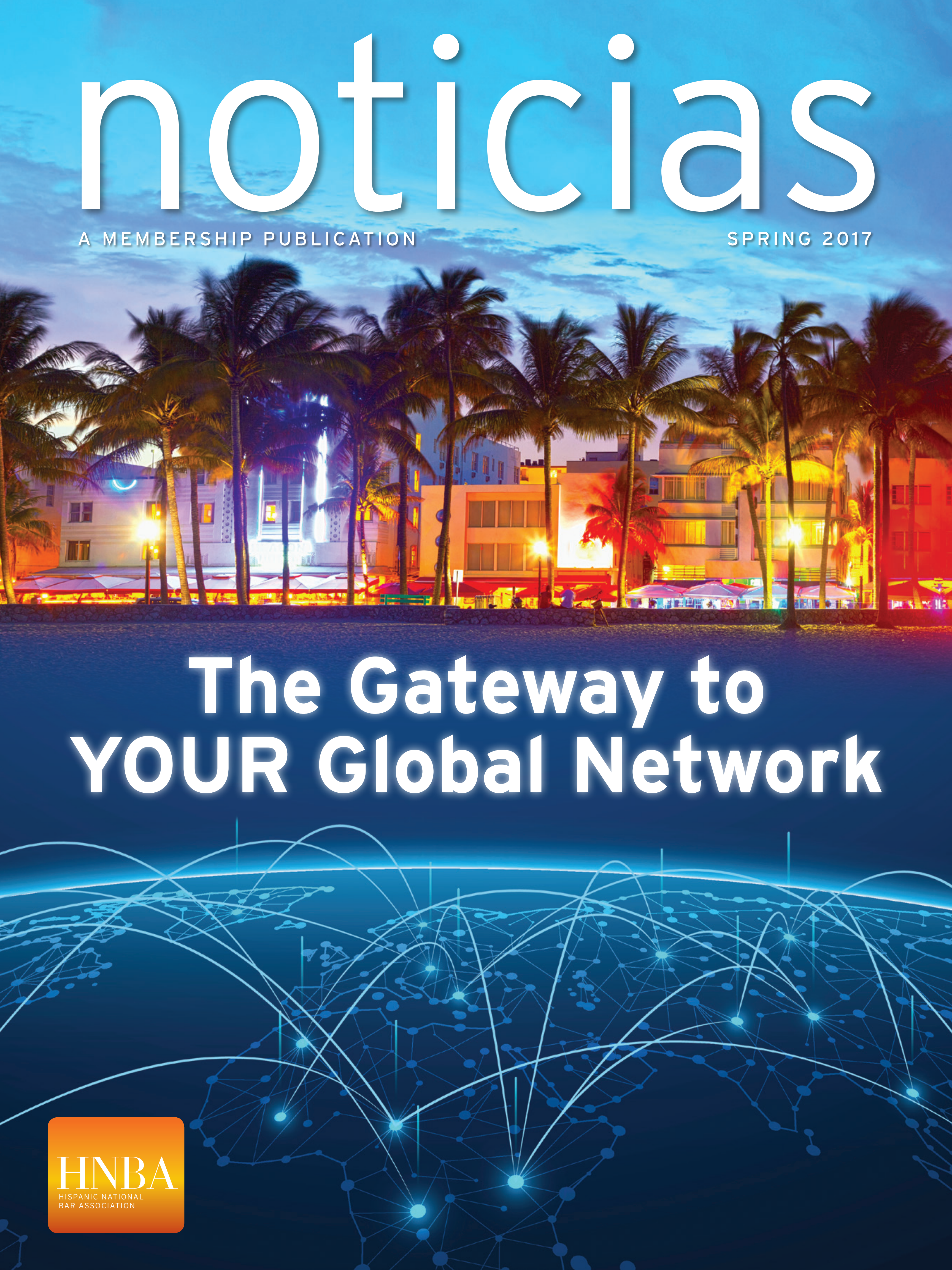
A MEMBERSHIP PUBLICATION

SPRING 2017



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Getting Products to Market in the Global Marketplace: The Rise of Product Stewardship Requirements

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If your company produces consumer products for global distribution, you may have encountered an increase in "product stewardship" measures that affect your access to markets around the world. Product stewardship refers to an array of initiatives intended to reduce a product's environmental impact-for example, by imposing recyclability or other sustainable design criteria, banning or restricting the use of toxic substances, requiring energy efficiency labeling and certification, or obligating those who sell a product to recover it at the end of its useful life. Although we may think of the United States as having the most developed environmental regulatory regime, many other countries outpace the U.S. in some areas of product regulation. Consequently, emerging product stewardship requirements may be unfamiliar to U.S.-trained attorneys with international compliance responsibilities.

What types of measures are you likely to see?

Some current examples from Latin America, a hub for these measures in recent years, include newly proposed chemical regulations, extended producer responsibility for end-of-life products, and mandatory energy efficiency testing, certification, and labeling.

Regulation of Chemicals. Existing and proposed substance bans and restrictions under global environmental agreements impact the chemical, agricultural, and electronics industries. Brazil's government is working on the first law in Latin America to establish a registry of chemical production and imports, a risk assessment process, and a risk management program authorized to regulate uses of substances in products. It recently sought public comments on its draft bill, and is expected to introduce the revised bill in Congress this year. Colombian legislators are considering two proposals that would establish hazardous substance inventories, and Peru recently adopted a framework for regulating so-called "specialty chemicals," an undefined but potentially broad category of materials now subject to further regulation.

Producer Responsibility for Product Wastes. Extended producer responsibility regimes are intended to incentivize environmentally friendly design by transferring the costs of collecting and managing end-of-life products to the producer. Such requirements can range from making collection bins publicly available to stricter buy-back or take-back programs. In most cases, manufacturers, importers, and sometimes distributors are required to establish and operate waste management programs that prioritize reuse and recycling, allowing for disposal only upon a showing that no other option is feasible. Brazil, Chile, Costa Rica, Ecuador, Mexico and Peru have all enacted general waste laws that establish extended producer responsibility as a principle to be implemented for a wide array of products, including batteries, electronics, lamps, medicines, and various types of packaging. Each of these countries is moving along its own path at its own pace to establish enforceable obligations for particular product categories, creating a complex and dynamic patchwork of requirements across the region. Major cities in several countries, including Argentina, Brazil, Colombia and Mexico, have adopted plastic bag bans, a vanguard waste issue in Latin America, and a likely precursor to widespread restrictions on packaging.

Energy Efficiency Requirements. Heightened public awareness of climate change, impending international commitments to curtail carbon intensity, and strained electrical grids are driving energy efficiency requirements around the world. Some of these include specific efficiency requirements for products, while others focus on energy use by sector that may increase demand for energy efficient products. Chile and Mexico continue to expand the sets of products subject to energy efficiency standards, imposing unique testing, certification and labeling requirements. In most cases, country-specific requirements have no impact on the efficiency of products manufactured for a global market, but merely add to the administrative burden. Colombia has published a new draft action plan that would establish energy savings goals for the transport, industrial, service, and residential sectors, and calls for equipment standards that regulate standby modes.

Non-Regulatory Social and Environmental Responsibility Pressures. Even in jurisdictions without product stewardship regulation, pressures from corporate responsibility, environmental, and human rights interest groups, or disclosure requirements encourage companies to take more active roles in improving their sustainability profiles. Concerns over reputational risks and brand loyalty are prompting companies to re-examine how they can best manage social and environmental impacts across the life cycles of their products. Disclosure requirements promoting transparency in supply chains specific to labor or human trafficking have been proposed or enacted in various jurisdictions around the world. For example, California's Transparency in Supply Chains Act requires large manufacturers and retailers to publicly disclose efforts to address human trafficking in the supply chain and the UK's Modern Slavery Act requires certain organizations doing business in the UK to produce an annual "slavery and human trafficking statement."

Shareholder resolutions relating to environmental, social, and governance issues that require companies to publish annual reports or tie executive compensation to particular metrics are cropping up as well. Likewise, non-governmental organizations have targeted specific companies and industries with campaigns focusing on the labor and environmental practices in the supply chains behind their products. Companies doing business around the globe can face daunting legal and cultural challenges in developing consistent, cost-effective stewardship programs that enable them to retain the value and marketability of their products. Some companies seeking to go "beyond compliance" have discovered unanticipated competitive or confidentiality costs or have become targets for interest groups seeking more aggressive measures despite their efforts.

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What does this mean for you?

Tracking regulatory developments in the markets in which you operate becomes increasingly important as producer responsibility concepts spread across regions, along with disclosure requirements and non-regulatory pressures. It is also important to keep in mind that strict rules on paper sometimes reflect high aspirations that do not always reach full implementation in some jurisdictions. There may be a breakdown between the good intentions of a law expressing the attitudes and desires of the citizenry and the practical reality of achieving the goal. Familiarity with enforcement and implementation challenges across jurisdictions can help your company tailor its compliance program to evolving legal requirements. The rise of disclosure rules and corporate responsibility policies may lead to situations in which compliant activities in one jurisdiction trigger disclosure requirements or an inconsistent advocacy position elsewhere. Consulting knowledgeable counsel who track these developments up front could save on compliance and other costs down the line.



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