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Business Roundtable Broadens Scope of a Corporation's Purpose to Include Other Stakeholders

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On August 19, 2019, the Business Roundtable (BRT) released a new Statement on the Purpose of a Corporation (the Statement), superseding previous BRT statements and outlining a modern standard for corporate responsibility. The Statement, which was signed by the CEOs of nearly 200 U.S. companies (BRT companies), reflects a commitment to lead companies for the benefit of all stakeholders – customers, employees, suppliers, communities and shareholders.

For over thirty years, the BRT has endorsed the principle of shareholder primacy. In 2012, the BRT's *Principles of Corporate Governance* observed, "Corporations are often said to have obligations to shareholders and other constituencies, including employees, the communities in which they do business and government, but these obligations are best viewed as part of ***the paramount duty to optimize long-term shareholder value***" (emphasis added).

The CEOs who signed the Statement committed, on behalf of their companies, to:

- deliver value to their ***customers***;
- invest in their ***employees***;
- deal fairly and ethically with their ***suppliers***;
- support the ***communities*** in which they work; and
- generate long-term value for ***shareholders***.

The Statement clearly shifts away from the Milton Friedman-inspired view that corporations exist primarily to maximize shareholder value in favor of principles that espouse greater corporate responsibility to serving the interests of customers, employees, suppliers and communities, not just shareholders.

Some detractors, such as the Council of Institutional Investors, have expressed concerns that the Statement "undercuts notions of managerial accountability to shareholders."[1] On the other hand, the Statement's proponents believe that their commitment to all corporate stakeholders will contribute to long-term value creation for shareholders.

Importantly, the Statement does not alter or change a director's fiduciary duties. Thus, at least for companies that are incorporated under Delaware law, which does not have an "other constituencies" provision, nothing has changed.[2] As Chief Justice Strine has observed, "[w]hen the corporation is not engaging in a sale of control transaction, the directors have wide leeway to pursue the best interests of stockholders as they perceive them, and need not put any specific weight on maximizing current share value. As a means to the end of increasing stockholder welfare, directors may consider the

[1] *See* Press Release, Council of Institutional Investors, Council of Institutional Investors Responds to Business Roundtable Statement on Corporate Purpose (Aug. 19, 2019) (available here).

[2] While Delaware does not have a permissive constituency statute, Delaware adopted a "public benefit corporation" (PBC) statute in August 2013. Delaware's PBC statute requires the directors of a PBC to consider its stockholders' pecuniary interests, the best interests of those materially affected by its conduct, and the specific public benefit or benefits set forth in the PBC's certificate of incorporation. The business judgment rule will apply to a board's decision-making when balancing these interests.

interests of other constituencies, such as the corporation's employees, but only as a means, and not as an end."[3] Taking the impact of other constituencies into account can be part of focusing on long-term shareholder value, consistent with fiduciary duties.

It remains to be seen whether the BRT companies' commitments to greater corporate responsibility will translate into further substantive action, since most large companies already have robust sustainability commitments that take into account the stakeholder constituencies enumerated in the Statement.

However, we expect the Statement will cause other public companies to echo similar statements of purpose, and in the first few days since the release of the Statement, there is already some movement in this direction. In addition, we expect that over time the Statement will have an impact on public company sustainability disclosures and relevant policies. The Statement also is likely to accelerate the trend toward more frequent and granular engagement with investors and other constituencies on sustainability issues.

Unfortunately for companies, we expect the Statement will do little to stem the tide of regulatory proposals, both at the U.S. federal and state level and moreover globally, governing a myriad of different corporate social responsibility issues. We continue to expect to see more disclosure- and diligence-based regulation adopted over the medium term, as we have written about in many other Alerts over the last few years. Furthermore, we would not be surprised if the Statement adds more fuel to environmental and social shareholder proposals.

Investors who are subject to restrictions or limits on their ability to make investments based on ESG factors should pay close attention to the Statement and to any changes in behavior that it motivates, to ensure that future investment activities comply with applicable rules or requirements.

[3] Leo E. Strine, Jr., *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law,* 50 Wake Forest L. Rev. 761, 773 (2015).