

## The Business Roundtable Statement on Corporate Purpose

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The Business Roundtable has endorsed stakeholder capitalism in its highly publicized Statement on the Purpose of a Corporation. The Statement of Purpose breaks from what has long been the dominant model in the United States, which conceptualizes a corporation's sole or primary purpose to be that of maximizing shareholder value. A handful of BRT members declined to sign the Statement of Purpose. Under the Statement of Purpose, each signatory commits to (1) delivering value to its **customers**, (2) investing in its **employees**, (3) dealing fairly and ethically with its **suppliers**, (4) supporting the **communities** in which it works, and (5) generating long-term **shareholder** value.

The Statement of Purpose, available [here](#), at just under a page in length, incorporates some of the environmental, social and governance, or ESG, concepts that have taken root, first in Europe and more recently in the United States. It includes the concept of a "social license to operate," or the need for acceptance of a corporation's business practices and operations by customers, employees, suppliers and the general public, in addition to shareholders. The Statement of Purpose is for the moment mainly symbolic since legislatures and courts, not trade associations, define the scope of a director's fiduciary duties.

A great deal of media attention has focused on the political implications of the Statement of Purpose, but less so on the legal implications. We note two below.

**Fiduciary Duty Claims.** The Statement of Purpose does not change the business judgment rule, which provides directors broad discretion in discharging their duty of care to the corporation and its shareholders. So long as in their decision making directors are acting in good faith, on a fully informed basis, and not grossly negligent, directors should be protected under the business judgment rule. Directors also owe a duty of loyalty to the corporation and its shareholders which is not shielded by the business judgment rule. It remains to be seen whether, in time, through legislation or otherwise, the concepts in the Statement of Purpose will lead to an evolution of the duty of care or the duty of loyalty, or to a new separate duty, that would encompass a requirement to balance duties to the corporation and its shareholders, as well as the interests of other stakeholders.

**ESG Disclosures.** The Statement of Purpose delves into several ESG topics with respect to which some investors have been agitating for more disclosure, including through corporate engagement, shareholder proposals and petitions to the SEC. These topics include: (1) human capital and employee attraction, development and retention, diversity and inclusion and gender pay disparity; (2) supply chain management; (3) human rights; (4) political lobbying and spending; and (5) climate change. Many corporations during this past proxy season have secured withdrawals of shareholder proposals on these topics by agreeing to provide additional ESG disclosures. The SEC itself proposed a rule two weeks ago which if adopted would require additional human capital management disclosures. The Statement of Purpose, supported by a large and powerful group of CEOs, is likely to fuel expectations of various shareholder and activist groups for increased ESG disclosures.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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