

## FURTHER ON THE PURPOSE OF THE CORPORATION

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In recent years, the concept of “corporate purpose” has been invoked as a shorthand to address a corporation’s commitment to include stakeholder governance—and with it commitments to sustainability, diversity, inclusion, social responsibility and other ESG issues—as part of a corporate strategy that achieves sustainable long-term growth and creates long-term value for the benefit of all stakeholders.

Recognizing the importance of corporate purpose in helping guide efforts to build back better following the pandemic, a distinguished group of academics at Oxford University formed the “Enactment of Purpose Initiative.” The Initiative seeks to encourage the elemental constituencies of a corporation—directors, management, asset owners and managers, and other internal and external stakeholders—to collaborate to articulate an actional principle of purpose, which, when applied to the special circumstances of each corporation, will orient the firm towards mission-driven growth that delivers both profit and social responsibility.

The principles of the Initiative echo our long-standing support for stakeholder governance. The debate between shareholder and stakeholder primacy dates back to the famous law-review ex-

change between Merrick Dodd<sup>1</sup> and Adolf Berle<sup>2</sup> in 1932. In our 1979 law review article, “Takeover Bids in the Target’s Boardroom,”<sup>3</sup> we argued that corporations could take into account the interests of all stakeholders, including communities, in rejecting a takeover bid.

The debate has raged ever since. But following the 2008 financial crisis, increasing evidence in the irrationality of markets, and the growing recognition that our incumbent corporate governance regime is inadequately addressing the systemic risk of climate change, corporate purpose has taken on increasingly greater significance. Today, the imperative of a society-facing purpose beyond a singular pursuit of profit has been embraced by leading asset owners and asset managers as integral to their stewardship obligations. Confirming the momentum towards stakeholder governance are the Business Roundtable’s August 2019 Statement of Purpose,<sup>4</sup> The New Paradigm (issued by the World Economic Forum in 2016),<sup>5</sup> and the 2020 Davos Manifesto.<sup>6</sup>

We have described corporate purpose in this way<sup>7</sup>: The objective and the purpose of a corporation is to conduct a lawful, ethical, profitable and sustainable business in order to ensure its success and grow its value over the long term. This requires consideration of, and regular engagement with, all the stakeholders that are critical to its success (shareholders, employees, customers, suppliers and communities), as determined by the corporation and its board of directors using their business judgment.

Implementing this vision of corporate purpose is consistent with—and, we would argue, in many instances required by—the fiduciary duties of directors and stewardship obligations of asset managers. This definition of “purpose” is broad enough to ap-

ply generally to corporations and stakeholders. At the same time, it provides actionable guideposts for corporate and fiduciary conduct. The objective of sustainable profitability recognizes that the fundamental purpose of a for-profit corporation must include value-creation. Importantly, the concept of “communities” broadly comprises society and the environment at large—the same concerns and constituencies encompassed by ESG investing. To achieve the balancing of interests and choices inherent in a stakeholder-centered model—to manage for sustainable long-term value creation—directors must exercise their independent business judgment, always acting in the corporate interest and to advance the corporate purpose. Finally, the requirement of regular engagement acknowledges the responsibility of all stakeholders—and, most critically, the investors who have put their capital to work across the economy—to pursue collectively sustainable long-term growth and corporate profitability.

The “Enacting Purpose Initiative” is found here: <https://enactingpurpose.org>. It amplifies, in many respects, our definition of “Purpose” and is a further salutary vision of a corporate governance that harmonizes the need to manage for profit with the need to manage toward the social good.

#### ENDNOTES:

<sup>1</sup> [http://www.wlrk.com/docs/For\\_Whom\\_are\\_Corporate\\_Managers\\_Trustees.pdf](http://www.wlrk.com/docs/For_Whom_are_Corporate_Managers_Trustees.pdf).

<sup>2</sup> [http://www.wlrk.com/docs/For\\_Whom\\_are\\_Corporate\\_Managers\\_Trustees\\_A\\_Note.pdf](http://www.wlrk.com/docs/For_Whom_are_Corporate_Managers_Trustees_A_Note.pdf).

<sup>3</sup> <http://www.wlrk.com/webdocs/wlrknew/AttorneyPubs/WLRK.14259.79.pdf>.

<sup>4</sup> <https://s3.amazonaws.com/brt.org/BRT-State-mentonthePurposeofaCorporationJuly2021.pdf>.

<sup>5</sup> <http://www.wlrk.com/webdocs/wlrknew/AttorneyPubs/WLRK.25960.16.pdf>.

<sup>6</sup> <https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/>.

<sup>7</sup> <https://www.wlrk.com/webdocs/wlrknew/WLRKMemos/WLRK/WLRK.26961.20.pdf>.