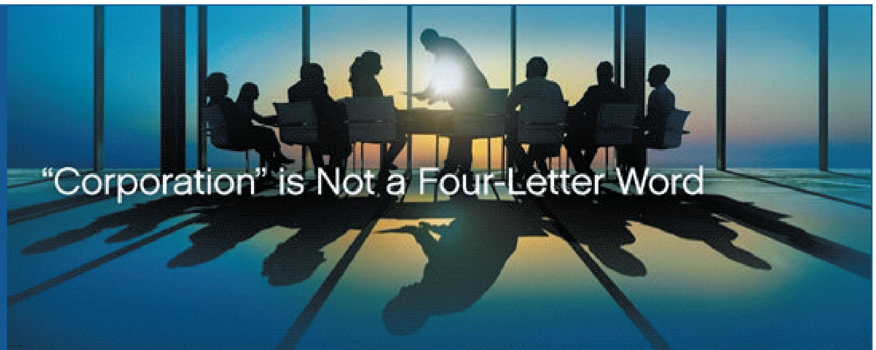
JONES DAY

GOVERNANCE PERSPECTIVES

JANUARY 2018



IN SHORT

The Situation: BlackRock, the world's largest money management firm, has issued a new call to corporate America: Take a leadership role in responding to broader social issues, including sustainability, diversity and economic growth.

The Plan: BlackRock's letter to CEOs this year, titled "A Sense of Purpose," asks corporate leaders to focus not only on shareholder returns and financial performance, but also on making positive contributions to society as a whole.

Looking Ahead: We urge companies to view the BlackRock letter as an opportunity, not a threat. In a country made exceptional, at least in substantial part, by leadership and innovation driven by capitalism, U.S. companies are uniquely positioned to pursue societal aspirations that make sense for their businesses, stakeholders and communities. With the support of investors like BlackRock, these goals should be viewed as supporting long-term shareholder value, not sacrificing it.

In his annual letter, Larry Fink often asks the CEOs of U.S. public companies to accept new responsibilities or rise to new challenges. In recent years, Mr. Fink has urged CEOs to increase the board's role in strategic planning, to articulate long-term strategic goals more clearly, to engage more effectively with shareholders, and to help develop a more secure retirement system for all workers. This year, BlackRock's letter takes a bolder turn—it observes that many governments are failing to prepare for the future on key issues like infrastructure development, automation, and worker retraining, and then asks CEOs to lead the private sector in addressing and responding to broader societal challenges.

Some may view BlackRock's request with caution—on its face, the request not only blurs the line between the public and private sectors, but seems to be at odds with the basic tenet that corporations should be managed to maximize long-term value for shareholders. When viewed in light of recent seismic changes in corporate governance, however, the BlackRock missive can be seen as a natural—albeit forward-leaning—progression in the evolution of shareholder engagement. The modern era of governance has been shaped by many trends—including proxy advisor "withhold vote" policies, the "in-housing" of governance functions at key private funds, "say-on-pay" votes, the rise of shareholder activism, and the realization of year-round, real-time, proactive shareholder engagement. If past is prologue, the last decade certainly laid a solid foundation—or at least plenty of foreshadowing—for a call for the private sector to address key social issues.

"When viewed in light of recent seismic changes in corporate governance, however, the BlackRock missive can be seen as a natural—albeit forward-leaning—progression in the evolution of shareholder engagement."

Of course, the issue of whether—and how—companies should address broad social issues can be as hotly debated as the issues themselves. Time will tell whether the BlackRock letter will spur meaningful discussion on those topics, despite the current polarized political climate. But for directors and management, now is the time to consider action. Your companies have the power to effect change. How would you change the world, if you could?

The reality is that corporate America is well-positioned to embrace this opportunity; the U.S. regulatory framework and securities markets give public companies not only the freedom to pursue profits but also the flexibility to pursue social aims—and to select those that align with the interests of their shareholders, employees, and communities. Just as "corporation" is not a four-letter word, the term "good corporate citizen" is not an oxymoron.

Moreover, the goal of maximizing shareholder value is not opposed to the public good—shareholder wealth fuels economic growth, and broad social goals are more easily met in times of sustained, long-term macroeconomic growth. Mr. Fink's suggestion is, at bottom, predicated on a perspective that is long-term and not zero-sum as between shareholder and other interests.

Of course, as our clients know, we cannot let an opportunity to voice our views on the importance of a long-term outlook in matters of corporate strategy and governance slip. We anticipate that as asset managers and other investors focus on social objectives and long-term corporate responsibility, short-termism and its misplaced focus on quarterly results and earnings forecasts may continue to erode.

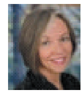
In closing, the BlackRock letter also raises an important point about the critical role of index funds in today's markets, as well as an important paradox posed by those funds. Individual and institutional investors have in recent years poured massive amounts of assets into indexed funds, which are generally not actively managed, and accordingly have low costs and appeal to a wide range of investors. As Mr. Fink points out, however, investments in these funds are not only long-term, but largely permanent—generally, a fund manager cannot sell its holdings in a particular company as long as the company remains in the relevant index, which aligns with the long-term orientation of individual inventors, who invest (directly or through plans) primarily to fund their retirement or children's educations.

Most companies have environmental, social, and governance ("ESG") policies and practices—they do many things to support their employees and communities, think strategically about the future of their business (sustainability), and have extensive policies, practices, and guidelines to ensure compliance with environmental, safety, and other requirements. But not many companies think about or disclose ESG policies holistically. We strongly encourage companies to inventory their policies and practices in this area and begin to disclose them on an organized basis.

THREE KEY TAKEAWAYS

1. BlackRock has urged corporate America to take a leadership role in responding to broader social issues, including sustainability, diversity, and economic growth.
2. The BlackRock letter presents an opportunity that corporate America is well-positioned to embrace.
3. We urge companies to take a holistic approach when considering and disclosing their environmental, social, and governance policies and practices.

GOVERNANCE TEAM LEADERS



Lizanne Thomas
Atlanta
Chair, Global Governance Practice

Lyle G. Ganske
Cleveland
M&A Practice Leader

Robert A. Profusek
New York
Global Chair, M&A

YOU MIGHT BE INTERESTED IN: Go To All Recommendations >>

NYC Pension Funds Set Their Sights on Board Diversity

Shareholder Activism Dealt a Blow in Australia's Federal Court

Red Light for New Activist Strategy

SUBSCRIBE SUBSCRIBE TO RSS

Jones Day is a global law firm with more than 2,500 lawyers on five continents. We are One Firm Worldwide℠.