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The CLO's 'Purposeful' Conversation With the Board

By *Michael W. Peregrine*

Board members should be briefed on Larry Fink's latest perspectives on corporate purpose, social responsibility and governance, and the chief legal officer (CLO) is the logical corporate officer to conduct that briefing.

Mr. Fink, the influential chair of the asset management firm BlackRock, has for the last several years issued an open letter to corporate CEOs as a means of advancing his views on both the value of a long-term strategic vision, and on the social responsibilities of corporations. Collectively, these letters combine a persistent advocacy on behalf of corporate social responsibility with calls for more engaged governance and greater board diversity. These letters have become popular fodder for board-level discussion at public, private and nonprofit companies across industry sectors, not just those in which BlackRock holds a position.

In his January 2019 letter Mr. Fink expands his focus on what he perceives as the "inextricable link" between purpose and profit. This, perhaps, in response to skepticism from some corners of the financial sector of his long-held view that social



purpose is directly related to financial performance.

The new Fink letter describes purpose as "not the sole pursuit of profits but the animating force for achieving them." According to Fink, a company which truly understands and expresses its corporate purpose is more likely to function with the discipline that will produce long term profitability. He also describes purpose as a unifying factor between a company and its internal and external stakeholders, and as supporting ethical behavior.

It is this overarching emphasis on corporate purpose—"a company's

fundamental reason for being"—which makes the 2019 letter particularly instructive to governance, given the board's fiduciary obligation to exercise oversight of organizational purpose and mission. This is a key reason why the CLO, as the primary legal advisor to the board, should consider interfacing with leadership on the Fink letter.

The 2019 Fink letter also carries forth themes from prior years' letters, regarding the need for corporate leadership to commit to addressing the needs of the countries, regions and communities in which they operate,

particularly as political and social divisions deepen.

Along those lines, Mr. Fink identifies in novel form several other areas that are affected by purpose. For example, he argues that companies now have a greater responsibility to assist workers in preparing for retirement, given greater longevity, and concerns with how to pay for it. He also suggests that a “clear expression of purpose” will help the company in its talent development efforts, and may help mitigate the corporate purposes concerns of employees, some of which were the cause of several significant workforce disruptions in 2018.

Also noteworthy is Mr. Fink’s reference to the shift in wealth (the growing transfer of wealth from the baby boomer class to the millennial class) and the resulting change in investment preferences. In his view, this shift will ultimately make environmental, social and governance matters more prominent in corporate valuations.

These are all significant themes, which are likely to become part of ongoing governance discourse on a broad scale. Boards will benefit from close consideration of Mr. Fink’s focus on both purpose and the perceived linkage between the company’s ability to manage environmental, social and governance matters, and its ability to achieve sustainable financial growth.

While perhaps controversial in nature, an awareness of these themes is essential to effective and informed board oversight. They implicate a broad cross section of corporate affairs: finance, strategy, governance, stakeholder relationships and management. They envision a significantly

more engaged and diverse board leading the company towards long term growth. They argue for greater attention to talent development and workforce retirement preparation. And they are grounded in a renewed emphasis on corporate purpose.

The timeliness of the social purpose discussion is underscored by recent decisions of companies such as Microsoft and Facebook to contribute significant funding towards the development of affordable housing in Seattle and San Francisco, respectively.

The CLO, in her dual role as legal advisor to both board and corporation, and as a business partner to management, is particularly well suited to conduct this important briefing. As a technical expert, she can advise leadership on the governance, compliance, ethical, corporate/securities and other legal implications of Mr. Fink’s recommendations. She can also take the lead in developing stakeholder communications that discuss how the company’s long term strategy is being affected by social responsibility considerations.

As a valued business partner, the CLO can help leadership consider the broader institutional, economic, political and reputational impact of those recommendations. Her multiple competencies and internal constituencies well-position her as an impartial facilitator of this important discussion.

This significant aspect of the CLO’s role is consistent with what the Association of Corporate Counsel calls “the Age of the Chief Legal Officer.” The latest ACC survey confirms that CLOs are assuming more powerful and influential positions within their own

companies and are pursuing tasks beyond those of just a technical legal advisor. Notably, the ACC attributes this in part to the need for organizations to address environmental, social and governance issues.

Larry Fink’s 2019 open letter to CEOs places matters of social purpose and more engaged governance squarely on the corporate leadership agenda. It raises fundamental questions about the company’s ability to articulate and pursue its purpose, as well as its willingness to expand that purpose to more clearly make a positive contribution to society.

BlackRock’s willingness to enforce Mr. Fink’s vision underscores its relevance to the broader corporate community. The CLO’s unique profile makes her well suited to guide a full-some leadership-level discussion of the open letter and its controversial contents. Such a discussion is particularly timely as progressive views of the role of corporations in American society become part of the political agenda.

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