




THE BRT LETTER:
**A Watershed
Moment for
Stakeholder
Capitalism?**



More than two years after Business Roundtable CEOs famously signed a letter advocating greater corporate responsibility to stakeholders instead of shareholder primacy, experts debate the future of this movement.

BY GINA VEAZEY

In August 2019, CEOs representing nearly 30% of total U.S. market capitalization committed to lead their companies for the benefit of all stakeholders. The Business Roundtable (BRT) CEOs said their revised Statement on the Purpose of a Corporation marked a shift from the long-ascribed principle of shareholder primacy.

“This new statement better reflects the way corporations can and should operate today,” said Alex Gorsky, Chairman of the Board and Chief Executive Officer of Johnson & Johnson and Chair of the BRT Corporate Governance Committee. “It affirms the essential role corporations can play in improving our society when CEOs are truly committed to meeting the needs of all stakeholders.”

Many in the media and elsewhere hailed the new statement as a watershed moment for society and corporate governance. The *Wall Street Journal* said it was “a major philosophical shift.” *The New York Times* called it a statement that “broke with decades of long-held corporate orthodoxy.” *Forbes* said it was a “revolutionary moment in business.”

Others, like shareholder rights activist Nell Minow, were more skeptical. NIRI Fellow Maureen Wolff, CEO of Sharon Merrill Associates, remembered Minow, who is Vice Chair of ValueEdge Advisors, as an outspoken critic on the heels of the BRT announcement.

Minow observed that the BRT had previously leveraged stakeholder rhetoric when it sought to entrench executives in the 1980s era of hostile takeovers. She wrote, “The CEOs who signed this [BRT] statement knew that accountability to everyone is accountability to no one.”

More than two years later, the revised BRT statement continues to inspire debate, including one moderated by Wolff as part of the 2021 NIRI Big I Forum. She was joined by Roberto Tallarita, Associate Director of the program on corporate governance at Harvard Law School, and Bill Savitt, a Partner and the co-chair of the Litigation Department of Wachtell, Lipton, Rosen & Katz. Tallarita and Savitt debated the BRT commitment and responded to questions from online participants.

The More Things Change...

Tallarita, who is also co-author of a paper examining how companies whose CEOs signed on to the 2019 BRT statement responded to it, opened the conversation with a provocative summary of that research. After quoting from major news outlet coverage of the BRT statement in 2019, he said, "Judging from these very emphatic comments, the Business Roundtable statement does seem to be a big deal."

Then he went back in time to quote from a 1997 statement of the BRT:

"It is in the long-term interests of stockholders for a corporation to treat its employees well, to serve its customers well, to encourage its suppliers to continue to supply it, to honor its debts, and to have a reputation for civic responsibility. Thus, to manage the corporation in the long-term interests of the stockholders, management and the board of directors must take into account the interests of the corporation's other stakeholders."

"This is from 1997, not 2019," he noted. "What's going on here? Have we witnessed a revolutionary moment in business, or was it always the same thing?"

Tallarita laid out two possible explanations. In the first scenario, the 2019 statement was, in fact, a big deal with an important distinction from the 1997 statement. In this scenario, he posited, "the 1997 statement meant to say that companies must treat stakeholders well as a means to improve stock value. Stock value continues to be the ultimate goal, while stakeholder welfare is just a means to that end."

Further, he observed that the 2019 statement in this scenario is saying, "Companies have different independent goals, not just the stock price, the value, but also employee welfare, climate change mitigation, the diversity of employees, and so on. This would be a big deal."

In the second scenario, Tallarita observed, "The 2019 statement is, more or less, the same thing as the 1997 statement, and all of this emphasis around this major shift was a very successful marketing move. But we can't really expect much from it. We can't expect that companies will change the way they do business, the way they treat their stakeholders."

An academic, Tallarita and his colleague, Lucian Bebchuk, set out to study which of these two scenarios was correct. "If this were a major philosophical shift, a revolutionary moment, we would expect to find some evidence," recalled Tallarita. He and Bebchuk looked at hundreds of corporate documents from the companies that signed the BRT statements.

"We tried to find some of this evidence, but we didn't. Was

this major shift discussed and approved by the boards of directors, as any major corporate decision should? No. It wasn't. Did these companies revise their corporate governance guidelines to acknowledge this major transformation? No. Most of them still have shareholder-centered language in their guidelines. Did the companies announce this major transformation, their proxy statement, to their shareholders? Most companies didn't even mention their signing of the Business Roundtable statement in the annual proxy statement. Did these companies change the way directors are paid, in order to incentivize them to care about stakeholders? No. Directors still get paid in cash and stock."

In the end, Tallarita said the case for scenario one, the watershed story, is not convincing. Instead, the premise that a successful marketing campaign resulted in the 2019 BRT statement being characterized as transformational seems much more credible.

"There are serious concerns about the environment, diversity, employee rights, and human rights in foreign countries with which companies do business. These are very serious problems," said Tallarita. "We cannot expect companies will spontaneously fix these problems just by announcing that they now care about stakeholders. We need serious, careful policy responses, not just marketing."

A Broken System

Savitt, who represents corporations and directors in litigation involving corporate governance disputes and class actions related to allegations of breach of fiduciary duty, among other things, agreed with Tallarita on some points. Although, in Savitt's view, even though the 2019 BRT statement was an "important development," it was "rather more evidence of a rising tide of stakeholder governance, than the cause of it."

"This should be the golden age of shareholder primacy," said Savitt, noting that the law had moved in this direction as had several important trends. For example, he observed that proxy advisory firms often "bang the table for stockholder value" and that changing stock ownership models have given rise to activist investors. He also pointed to "an enormously influential and well-capitalized plaintiffs' bar, which makes it its life's work to superintend, safeguard and promote shareholder interests as opposed to stakeholder interest."

Nonetheless, the results of shareholder primacy have been dubious at best, leaving corporations operating under this paradigm open to being held responsible for vast social problems, including environmental degradation, climate change and

social equity. “Even though [corporations] have been enormous generators of financial and commercial growth, they are not seen as doing what they need to do for society, and ultimately that can’t hold,” said Savitt.

The idea of corporate accountability to stakeholders isn’t a new one. Fundamentally, corporations exist to make society a better place. Savitt explained that state corporation laws were written for the benefit of society, not for investors. “The Business Roundtable statement is a recognition that to realign the purpose of a corporation with the social interest requires a more flexible form of director discretion. That is the promise of stakeholder governance,” said Savitt.

What does that flexibility look like? According to Savitt, the 2019 BRT statement may have been a step in the right direction. “Will it solve every problem? It sure won’t. Is [Tallarita] right that we can’t look to corporations to miraculously, overnight, solve every problem? Sure is. But that doesn’t say it’s not a step in the right direction. That doesn’t say that permitting, or requiring, directors to take into account the interests of a broader universe of stakeholders—employees, the environment, society at large—won’t make the world an incrementally better place—and potentially a very seriously incrementally better place.”

“Opposing stakeholder governance reminds me of the story of King Canute, who commanded the tide to recede,” observed Savitt. “This isn’t a debate about what the right rule is. Society will decide, and it is deciding that that stakeholder governance is the right rule. Eventually the law will catch up.”

Finally, Savitt addressed Tallarita’s conclusion about the BRT statement, defending the use of marketing language to put the news in context for readers. “Is there some marketing in the Business Roundtable statement? Maybe there is, but ‘marketing’ shouldn’t be a bad word,” said Savitt. “Marketing is a form of communication and leadership. Corporations are communicating effectively, they are leading by taking this position, and they are following by taking this position—leading from the front, leading from behind, bringing investors along. It’s going to be a long process, but not only is it a salutary one, from my perspective, it’s inevitable.”

Shared Aspirations

Having agreed that there are serious problems, some of which corporations have had a hand in creating and may also play a central role in solving, Tallarita’s rebuttal turned to operational considerations.

Is it fair to ask CEOs and directors to think about the world

Corporations can be socially useful, stakeholder-facing entities when empowered within narrow limits.

around them as context for their decisions? “The aspiration that corporations should think about society as a whole is a shared aspiration,” said Tallarita, “but the real question is how we get there. I believe that relying on the discretionary judgment of CEOs and directors is not the right way to do this—and not because they do not share our same aspiration—but because they have another job.”

Corporate CEOs and directors have good reason to be shareholder friendly. With their pay tied to stock value, they are heavily incentivized to maximize shareholder value. Also, as Tallarita reminded participants in the Zoom session, “The market of corporate control, the takeover market, is there to remind [corporate directors and CEOs] that if they stop paying attention to profits, they will lose their jobs.”

“Giving more discretion to CEOs and directors, given their incentives, will not get us more solutions, more answers for the environment, or other things we care about as a society. That will just give directors and CEOs more power, more discretion, potentially more slack, less accountability to shareholders, and these are all bad things that do not help anyone, neither shareholders nor stakeholders.”

Finding Flexibility in the Pandemic

Transitioning to the Q&A portion of the session, Wolff asked how the COVID-19 pandemic may have accelerated a transition giving corporate leaders greater flexibility to make decisions in the interest of all stakeholders. “Obviously, for management teams and boards, their number-one priority was making sure that their employees were safe. And that sometimes meant that they were sending everyone home and manufacturing plants weren’t running,” she said. “Do you believe that we have

moved a little bit further along in the whole idea of looking at the stakeholders as really being the number-one priority versus only the shareholders?”

Indeed, Savitt indicated that the COVID-19 pandemic had been an incubator for corporate governance. Not unlike the experiences of other professions, corporate governance evolved rapidly during the extraordinary circumstances of COVID-19. “Stakeholder governance, in an important sense, was rewarded and succeeded,” reported Savitt, “We saw the ability of corporations, from a variety of perspectives, to address a variety of imperatives, respond in many ways that were highly, highly socially desirable, and in ways that wouldn’t be achievable on a strict stockholder maximization theory.”

Although the results are yet to be fully known, Savitt observed, “Many companies performed splendidly—and some not. The ones that performed splendidly did so with an eye towards a broad universe of concerns and constituencies; the ones that performed less well, the contrary.”

The important takeaway here, according to Savitt, is that corporations can be socially useful, stakeholder-facing entities when empowered within narrow limits. “It will not solve every problem, but that doesn’t mean that it won’t improve matters and get us in the right direction. It will.”

Finally, Savitt addressed Tallarita’s prior comment about “slack,” saying it “rings hollow” given corporate directors are reelected annually. The litigator also noted the serious accountability measures through the process of litigation and stockholder accountability.

The Middle Road

Whether an act of social solidarity or enlightened self-interest, many firms helped their workforce to the extent they could during the COVID-19 pandemic. “There have been millions of jobs lost, too. Many businesses couldn’t face the challenge of the pandemic and couldn’t keep their employees happy,” said Tallarita. “I don’t see that as an indictment of this theory. It is just the economic reality.”

The imperative, Tallarita says, is to pay attention to what actually happens. “There is the risk that we get distracted by all this stakeholder talk, instead of focusing on what really could help these problems.”

Whose Time Horizon Is It?

Wolff, sharing a question from the online audience, asked Tallarita and Savitt to comment on the issue of time horizon, where a shareholder is much more focused on short-term profit and a

stakeholder is much more focused on long-term value creation.

Jumping in with perspective on the question, Tallarita said time horizon concepts are often a source of confusion. Sometimes, short-term concerns can come at the expense of long-term value. “Whether under shareholder value maximization or under stakeholder governance, if you sacrifice the long-term sustainability of your business to get some quick bucks in the next quarter, this is a bad business decision anyways.”

But, there are situations in which time horizon doesn’t change anything. That is, “some things are bad for profit, long term and short term, but could help society in some way,” Tallarita said. “If Exxon decided to cut its emissions by 20%, out of concern for climate change, it would be a great thing for society. But shareholders would not be happy—neither long term, nor short term, nor medium term, not any kind of term, because that’s an oil and gas company. And yes, it can change its business and start doing renewable energies or other stuff, but it will be a different business at that point. The sad reality is that many times, we must decide whether we want to fix a social problem. And then we need some kind of outside intervention, some kind of regulation, some kind of environmental restrictions, some carbon tax to get us there, not just the spontaneous generosity of corporate leaders.”

Freedom to Make Good Decisions

Savitt agreed, a decision taken for short-term benefit that had adverse long-term consequences would be a bad decision. “The ‘however’ is that many of the structures we have in place to drive decision making on a shareholder primacy basis lead to such bad decisions. And I’m thinking directly on the way many, many executives are compensated, which, although changing, has been very focused on relatively near-term performance. And indeed, the extraordinarily rapid turnover of stock that we now see amongst major investors, that is a new phenomenon, that likewise encourages short-termism.”

Continuing to make the case for greater flexibility, Savitt said, “If directors felt free to truly manage for the long term, to truly take into account the sustainability of an enterprise—which isn’t just about permanent capital stockholders, it’s also about the environment, it’s also about the workforce, it’s also about the communities in which they operate—you would see much of the tension between stakeholders and stockholders evaporate.”

In addition to this, Savitt suggested that this type of messaging could be useful to professionals trying to bring investors along. “What we’re talking about here isn’t a digression from focusing on building the long-term value of a company, it’s a way to do it. I think that in the vast majority of instances will be the case.”

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Freedom From Making Bad Decisions

Savitt's calls to address systemic problems were welcomed enthusiastically by Tallarita, yet there was less agreement about how to move forward. "I agree a lot with the call to do something about all these problems we are concerned about, but I think we can choose," said Tallarita. "Our time, our resources as a society, our financial resources, our energies, our enthusiasm are limited."

Advocating for a more structured approach, Tallarita observed, "The optimists of the BRT statement say we should invest our resources into the discretion of CEOs and directors, and they will take care of these things. I think that we will be better off investing in some careful policy response that leaves managers with greater freedom to do what they think is right. It would be a good thing if they eventually chose to do the right thing, but we don't know what they're going to do. Some will have their own views about how to tackle these issues. Some others will have other views. But all of them will have the powerful incentives coming from their stock options, coming from the market pressure, coming from the way corporations are structured."

Complexity is one important reason why Tallarita said CEO and director discretion isn't up to the challenge of tackling big problems like climate change and social injustice: "Corporations have been an incredible source of wealth and transformation and innovation in our society. It's an important engine for growth and wellbeing. But it has some profound structures, profound mechanisms. It

cannot simply be transformed into an engine for climate solutions, or for other social solution overnight just because we give CEOs the freedom to do it. It's much more complicated than that."

The ESG Bandwagon

In a final lightning round question, Wolff gave Savitt and Tallarita each 60 seconds to comment on investors pushing companies to focus on ESG. "This includes the largest shareholders and activist investors jumping on the bandwagon and using ESG as a way of getting other shareholders involved to go after a company, even if that's not ultimately what they really care about," she said. "If the investor is jumping on this as well, they're already saying it's not just me that you should be focusing on; you should be focusing on the stakeholders."

For Savitt, ESG success is a matter of sincerity and leadership. He said, "There's a point of view that the BRT statement is just eyewash, that investors pushing companies in this direction, there's more eyewash, it's all marketing. We'll see. I don't think so. I think people — everyone — CEOs, investors, they get up every day, they work in this field, and they want to make the corporation an engine, not just for growth, but for good. And I think we are seeing a tremendous groundswell of enthusiasm to ensure that corporations invest in a way that is sustainable, fair, and decent. And I think the role is fundamental. If the investor community is sincere, we will succeed here, if they won't, because of the deep structures that Roberto has focused on, ultimately, we may not bring the investors along. Leading them from the front and leading them from behind is the most important thing folks in corporations can do."

On the other hand, Tallarita said Washington, DC is the place to invest for people who want to see their money have a direct effect on policy. "Tariq Fancy, a former Chief Investment Officer at BlackRock, recently said to *The Guardian*, 'if people asked me to address these problems, climate change, economic inequality, what should I do? Should I call my congressperson? Or should I put my money into an ESG ETF in ESG funds?' And he said, 'Well, I will certainly tell this person to call their congressperson, not to put their money in their ESG ETF. I totally agree with this. If I had to give advice to a friend or family or someone, they want to change things, and we should change things, and I hope we will succeed. And I'm sure we'll figure out something before our children and grandchildren have to deal with the threat of climate change.'" [QR](#)

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