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# Stakeholder Governance—Some Legal Points

Recently, a number of questions have been raised about the **legal** responsibilities of directors in pursuing long-term sustainable business strategies and taking into account ESG (environmental, social, governance) factors and the interests of all the stakeholders in the corporation. The following are key parts of the answers we have been giving.

1. The purpose of a corporation is long-term business success and long-term increase in the corporation's value.

2. Shareholders elect the directors of a corporation and thereby have the power to determine the composition of the board of directors.

3. The directors of a corporation have a fiduciary duty to the corporation to use their business judgment to promote its long-term business success and increase in value.

4. The means and time horizon for achieving corporate goals is confided to the business judgment of the directors.

5. In their oversight of the management of the corporation, directors must use due care to ensure that the corporation has procedures reasonably designed to identify and mitigate the material risks faced by the corporation. Sustainability and ESG factors may be material risks.

6. The directors have a fiduciary duty to use their business judgment to seek to avoid or mitigate any risk that would reasonably be expected to materially affect the long-term success or value of the corporation.

7. The directors do not have a fiduciary duty to maximize the value of the corporation in the short term. The directors may use their business judgment to reject an offer to acquire the corporation at a premium to the current market price or a demand by a shareholder to take an action for the purpose of increasing the short-term market price of the corporation's stock.

8. In addition to the shareholders, the stakeholders in the corporation include, among others, employees, customers, suppliers, creditors and communities.

9. A director's fiduciary duty to the shareholders or other specific stakeholders does not require her to act other than to promote the corporation's long-term business success and increase in value.

10. Directors may exercise their independent business judgment to allocate value to stakeholders other than shareholders to the extent the directors believe that doing so will contribute to the long-term business success and value of the corporation.

11. It is within the business judgment of the directors to recognize that the purpose of the corporation is long-term business success and increase in the value of the corporation and to manage the corporation and the interests of the corporation's stakeholders to achieve that purpose.

12. As long as the directors fulfill their duties of due care and loyalty in allocating corporate value and resources among stakeholders, the business judgment rule protects them from liability.

13. It is appropriate for the directors to consider such factors as reputation of the corporation, potential for adverse legislation or regulation, the value of well trained and incentivized employees, avoidance of material risks and any other matter that could affect the business success or value of the corporation.

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