



Thoughts on the Business Roundtable's Principles of Corporate Governance

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In an important governance development, on August 3 the influential Business Roundtable ("BRT") released [a 2016 edition of its well-known "Governance Principles"](#) monograph. The new BRT Principles follows closely on the heels of the July 21 release of the ["Commonsense Principles of Corporate Governance"](#) ("the Commonsense Principles"), by a diverse, twelve-member coalition of executives of major corporations, asset managers and one shareholder activist. The 2016 edition of the BRT Principles is an important contribution to governance discourse and, together with the Commonsense Principles, is valuable fodder for consideration by the board's governance committee.

Business Roundtable is an association of chief executive officers of leading U.S. companies, the purpose of which is ["to promote sound public policy and a thriving U.S. economy"](#). Its fundamental business model is to apply the capabilities of its chief executive officer members to addressing (through research and advocacy) major economic and competition issues facing the nation. BRT has long maintained a close interest in corporate governance, and the August release is the latest in a series of editions of the Governance Principles (most recently, in [2012](#)).

The Commonsense Principles are essentially a "one off," concise articulation of 8 basic recommendations and guidelines concerning the roles and responsibilities of boards, companies and shareholders. In contrast, the BRT Principles are a more comprehensive treatment of key principles of governance, and also fundamental governance issues such as board responsibilities, roles of key corporate actors, committee responsibilities and other, elemental, governance concerns historically treated by the organization. These include board composition, director responsibilities, shareholder rights, public reporting, board leadership, management succession planning, and compensation of management. Many of these topics are also addressed by the Commonsense Principles, but not to the extent as in the BRT Principles.

It is that level of detail that has made the BRT Principles a valuable resource for officers, directors and counsel of public, private and nonprofit corporations over the years. Thus, a comprehensive revision of the BRT Principles—as the 2016 version is—should attract close attention from corporate directors and their advisors.

The 2016 edition of the BRT Principles reflects those issues and trends its CEO members perceive as driving governance today. Key among those is an increasingly complex external

environment for public companies, including the imposition of greater regulatory burdens on companies that have added cost and complexity to corporate operations. Another is the change in the level of shareholder engagement, manifested not only by the proactive engagement of companies, and higher expectations of shareholders. The following governance themes are thus emphasized:

Long Term Value Sustainability. One of the most prominent themes expressed throughout the 2016 Principles is the board's role in adopting strategies and taking other actions intended to build sustainable long term value. This theme of long term value creation is directly incorporated into five of the eight "Guiding Principles of Corporate Governance", which is the featured element of the Principles. These include Guiding Principles addressing the board's role in oversight of management, strategic planning, executive compensation, shareholder engagement and engagement with corporate constituents. References to long term value creation also appear throughout the main body of the Principles, in sections dealing with major corporate actors, board composition, committee roles and succession planning (among others).

Shareholder Engagement. Consistent with the focus on long term value is a unique emphasis on shareholder engagement. The BRT Principles reflect the view that shareholder responsibility includes not only transparency (i.e., the nature of its identity and ownership) but also some accountability for long term value creation for all shareholders. In other words, shareholder empowerment carries with it an obligation to be responsive to the needs of long term shareholders. Along the same lines, the BRT Principles caution against shareholders using their investments in U.S. public companies for inappropriate purposes (e.g., the advancement of personal or social agendas unrelated and/or immaterial to the strategy of the company). The expectation is that matters of shareholder responsibility and accountability will become a leading aspect of governance discourse for the coming years.

Board Diversity. A notable and leading theme of the BRT Principles is an enhanced focus on diversity in the board nomination process. This reflects BRT's perspective that more diverse boards—including directors who represent the broad range of society—will strengthen board performance and contribute to the fundamental goal of creating long term shareholder value. To that end, BRT recommends that boards ["develop a framework for identifying appropriately diverse candidates that allows the nominating/governance committee to consider women, minorities and others with diverse backgrounds as candidates for each open board seat."](#)

It is a theme which has been particularly emphasized by BRT in its external promotion of the Principles. In this regard, the BRT Principles take the diversity commitment to a degree beyond those of many other governance compilations, and track recent related comments of SEC Chairperson Mary Jo White. The BRT Principles do not "take sides" in the external debate on whether increased racial and gender diversity correlates to improved corporate financial performance. Rather, they support the broader concept that corporate decision-making, and talent acquisition, benefits from an environment that is supportive of diversity in backgrounds and perspectives.

Sustainability. The BRT Principles also acknowledge the growing emphasis on sustainability; i.e., the expectation that "good corporate citizenship" includes conducting corporate operations "with meaningful regard for environmental, health, safety and other sustainability issues relevant to its operations." The board is thus expected to be attentive to developments relating to

economic, social and environmental sustainability issues, and to acknowledge the relationship of such issues to the company's business, the shareholders' interests and the board's overall agenda. BRT's emphasis of citizenship and sustainability considerations may serve as a "prompt" to those boards heretofore reluctant to fully embrace those concepts as part of their agenda.

Committee Practices. Several noteworthy comments are offered on the committee practices of corporate boards. There is a specific suggestion to consider limiting the service of audit committee members on other public company audit committees, given the significant responsibilities associated with such service. This is consistent with several general references to concerns with director/committee member refreshment.

In addition, the governance and nominating committee is encouraged to annually review the composition of the full board (including an assessment of the mix of director skillsets and experience); an evaluation of whether the board "has the necessary tools to effectively perform its oversight function in a productive, collegial fashion;" and the identification of the qualifications and expertise that the board may need in the future. Not surprisingly, the compensation committee is encouraged not only to assure alignment of interests of executive leadership, the company and the shareholders, but also to foster long term corporate value creation.

Related to the nomination process is a recommendation that, given the risk of conflict of interest, directors and director nominees not be a party to any compensation-related agreement with any third party that relates to their board service or director candidacy with the company (except for traditional expense reimbursement arrangements relating to director candidacy).

Succession Matters. The BRT Principles include a strong emphasis on CEO and senior management succession planning, for both traditional and emergency circumstances. The board is also encouraged to support talent development practices for management team members below the most senior ranks, in order to "build a bench of future candidates for senior management roles."

The BRT Principles are characterized as representing "current practical and effective corporate practice" (i.e., not quite reaching "best practices" level as the concept is strictly defined.) As with the Commonsense Principles, there is no suggestion that the BRT Principles are intended to be a "one size fits all approach," or absolute. Rather, the BRT Principles are intended to be used as a guide in developing the structures, practices and processes that are "appropriate" given the unique perspectives of individual corporations.

Yet the BRT Principles are also noteworthy for what they do not say—or at least, what they no longer emphasize. In order to update the Guidelines and place the proper emphasis on the new themes (above), many provisions from the 2012 edition appear to have been streamlined or reduced in content. This includes many of the provisions which dealt with important considerations of ethics, compliance and corporate responsibility.

While there is no suggestion that this streamlining reflects an intentional effort to reduce emphasis on those critical considerations, some readers may nevertheless infer as such. Other, more mischievous readers may take it to the next level: arguing that this streamlining indeed was intentional; an effort by the BRT to "tone down" the level of board and management focus on legal compliance matters. That would be an unfortunate interpretation, as it is unlikely the drafters'

actual intent. (Note that the Commonsense Principles were similarly “light” on legal compliance and corporate responsibility themes).

The release of the BRT Principles is a noteworthy event for boards, their governance committees and their advisors. When viewed together with the Commonsense Principles, it can be seen as a particularly consequential development. The governance committee should “take the lead” in providing analysis; for it is typically charged with monitoring governance trends and best practices, and recommending changes to board governance structures and practices as appropriate.

With respect to each of these new commentaries, governance committees should be asking: “What prompted their release?”; “What’s new and different?”; “What’s relevant to this board?” and “What options are available to implement key recommendations?”

The general counsel, in her roles as technical legal expert and as board adviser, is well positioned to digest the commentaries and advise the governance committee on their relevance to the board. After all, both sets of principles reflect basic concerns with shareholder dialogue and engagement, and both are grounded in corporate law and concepts of corporate responsibility. In this regard, the general counsel may wish to “team” with the board’s other valued advisers in presenting a coordinated educational approach.

But whatever the presentation and whatever the style, the board and more particularly the governance committee, should understand the “who, what and why” of this “Governance Principles Summer.”