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Top 10 Topics for Directors in 2019: Corporate Social Responsibility

Jan 25, 2019

Reading Time : **3 min**

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Increasingly, there is a recognition that CSR efforts have impacts well beyond reputational concerns and that they can, and do, impact bottom lines. Moreover, several non-U.S. jurisdictions have enacted legislation, for instance, mandating reporting on CSR-related considerations. The private sector, meanwhile, is organizing its actions in the absence of U.S. federal regulations in the environmental space, particularly with regard to addressing climate change. Across issues, shareholders, investors and limited partners are demanding action, often requiring policies and programs that engage with these issues.

The January 2018 "Letter to CEOs" from the chairman and CEO of BlackRock, Inc., Larry Fink, represents a crucial milestone where these trends are concerned. In this letter, Fink describes the fiduciary responsibility that BlackRock undertakes as including global stewardship concerns. He states affirmatively that Blackrock portfolio companies must be able to articulate their "strategic framework for long-term value creation," which explicitly includes integrating the management of environmental, social and governance matters into the investment process. As noted elsewhere in this publication, BlackRock's own voting and asset management strategies have already implemented these principles.

Topics raised in the Fink Letter have already had tangible impacts in 2018. For example, U.S. and international pension funds, in particular, have responded to pressures specifically related to gun control and immigration issues, with shareholder and investor pressure, in some cases, resulting in divestments by those funds from entities involved in those contentious debates. While issues such as a company's efforts to address diversity and inclusion, including in the context of the #MeToo movement, have not yet produced the same effects, institutional investors are likely to seek information regarding such efforts in the context of their decisions going forward, as Larry Fink hints in his letter. Of course, as noted in more detail above, the very real reputational concerns engendered by failures to address diversity and anti-harassment issues remain at the forefront of the public mind.

The trend is towards greater efforts to address CSR issues, including from legal and regulatory perspectives outside the United States. 2018 saw the first round of reporting under the EU Non-Financial Reporting Directive for companies subject to those laws. Disclosures related to companies' risks and opportunities in the context of climate change are already required for some companies in the United Kingdom, and other jurisdictions such as Canada and Australia are considering measures to mandate certain disclosures in response to efforts through the G-20.

U.S. stakeholders, including state treasury officials, are advocating for the SEC to adopt a framework for mandatory reporting on environmental, social and governance issues, to build on and standardize what companies are already doing voluntarily. Legislation passed in Australia at the end of November 2018 requires reporting on human rights issues in an entity's supply chain, similar to the law passed in the United Kingdom in 2016. With regard to the U.K. law, civil society has consistently pushed for greater detail in reporting from those obligated to do so, as well as suggested that the law be enhanced to include requirements that companies take proactive steps to address human rights issues, rather than merely report on their efforts.

It remains to be seen whether such efforts result in legislative changes, as well as whether penalties associated with these laws are enforced, but their presence sends a clear signal that regulators all over the world are taking CSR concerns seriously. Prudent boards will take proactive steps to develop or revise policies and programs that strengthen measures to address these hot-button issues, including those described in greater detail throughout this publication.

View the full report here.

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