

# PUBLICATION

---

## Being a Trusted Advisor in a Re-imagined Role for Business

Authors: Thomas H. Barnard

October 11, 2022

In a recent program at the Harvard Business School Campus on September 15, 2022, more than 1,000 business leaders and stakeholders in various industry and advocacy groups participated in a forum designed to raise awareness, encourage collaboration, and address key questions regarding the growing acceptance of Environmental, Social, and Governance (ESG) metrics as new tools for business leadership. The speakers and panels comprised some of the most important leaders from across the globe, including the chairperson of the SEC; CEO of the London Stock Exchange; CEO and chair of Microsoft; president of the Environmental Defense Fund; president and director-counsel emeritus of NAACP Legal Defense Fund; and CEO of Business Roundtable — the list goes on and on.

To the lawyers in attendance, several inescapable conclusions came from both the plenary sessions and focused, thematic working groups that occurred throughout the day.

First, the "new era" of corporate leadership faces a spectrum of complicated questions that stray from the pure traditional "profit"-based fiduciary duties. These questions require trusted advisors to help guide leaders through legal requirements when they are prepared to find creative legal solutions to help businesses serve the interests of a broader community.

Second, the legal community is lagging behind in adapting its own traditional legal structures and firm models to provide broader, strategic-level advice on topics like global sustainability and formally account for ESG factors for compliance, good-will, and social justice.

Third, business and legal communities in Europe and other parts of the world have embraced this reimagined role, and such acceptance and influence on the global markets make change in the United States almost inevitable.

Fourth, significant debate remains about the role of government with regard to these factors. The emergence of the SEC's role and development of its ESG Task force, as discussed in this recent article, "[The SEC's Climate and ESG Task Force; What it Means for Public Companies](#)," is one example of how the government's role may unfold. However, in the historically free nature of a capitalist market like the United States, there is a competing thought about letting consumer and community demand shape this behavior over time, rather than through government mandates. This debate and ultimate balancing act is sure to go on for the foreseeable future, and there is a continued need for trusted advisors to businesses for both legal and public policy interests.

Lastly, like any growing area, there are risks with entities abusing the system and taking advantage of the good intentions of other businesses, consumers, and advocacy groups for their own political or economic ends. Businesses have to be able to rely on trusted advisors as watchdogs to avoid risks while continuing to meet their obligations.

As these new realities make clear, businesses need more than a "break-glass-in-case-of-emergency" lawyer to help navigate this emerging legal landscape. To be effective as trusted advisors, lawyers need to be prepared

to advise on a wider spectrum of concerns than "lawful or not" and develop an appreciation for the broader goals that ESG metrics are designed to encourage.

If you have any questions about ESG metrics as new tools for business leadership, please contact [Thomas Barnard](#).