Panera Bread CEO and Cofounder Ron Shaich Resigns to Join the Conscious Capitalism Movement

Ron Shaich, co-founder of Panera, is moving on from the helm of the popular bakery chain to help infuse a long-term focus into the capital markets.

Jay Coen Gilbert , CONTRIBUTOR
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Ron Shaich, long-time CEO of Panera Bread Company, recently announced his resignation from the company he helped co-found. Shaich had led Panera through successful growth as a public company since 1991 and recently closed on a $7.5 billion sale of the now 2,000-storefront chain to JAB. Shaich called the deal "bittersweet," and stated in his announcement that he plans to pursue personal causes with "particular focus on working to reduce the pervasive short-term thinking in capital markets and national debate."

Ron Shaich, co-founder of Panera, is moving on from the helm of the popular bakery chain to help infuse a long-term focus into the capital markets. Photo courtesy of Panera Bread

Panera has been one of the most successful restaurant companies in history, growing from one 400-square-foot store to a system with more than 2,000 stores, approximately $5 billion in sales, and more than 100,000 associates. What's more, Panera was the best-performing restaurant stock over the past 20 years, delivering a total shareholder return up 86-fold from July 18, 1997, to July 18, 2017, when Panera became a private company. That compared to a less than two-fold increase for the S&P 500 during the same period.

According to Shaich, Panera's success comes from the ability to undertake long-term transformations that deliver for all stakeholders, including customers, team members, suppliers and the communities in which Panera operates. The company has worked to select more humanely raised meats and eggs, and launched the Day-End Dough-Nation program where any remaining unsold food at the end of each day is given to local nonprofits and homeless shelters. Given his track record, it is not surprising that Shaich has been a regular speaker at Conscious Capitalism events, including as a keynote of this year's CEO Summit.

Shaich isn't alone among the leaders of Conscious Capitalism in denouncing the dangers—both to companies and to society—of short-termism.

In October, at the annual B Corp Champions Retreat, Whole Foods Market CEO and Conscious Capitalism co-founder John Mackey expressed his concerns that short-termism is a threat to more than just individual companies like Whole Foods and other "conscious capitalists." His statements were given in an interview I conducted, held fresh on the heels of the announcement of Whole Foods being acquired by Amazon:

"I know the part of capitalism that is the most diseased. It's the financial sector. It's almost lost its gyroscope of values, it has become just about money and profits.

When we had shareholder activists, that was really hammered home for me. None of the other values of Whole Foods Market mattered, just how could [they] get a few more dollars out of that stock price? And do whatever it takes to get that. Destroy the company—at 90,000 jobs, $16 billion in sales? 'Who cares. If we can make a couple hundred million dollars, throw it all away.' That's a very sick part of capitalism.

I think B Corps and benefit corporations [the B Corp legal structure] are a tip of a reform movement that capitalism needs as a whole, but particularly the financial sector needs it."

John Mackey, Whole Foods CEO and co-founder of Conscious Capitalism, recognizes that benefit corporation legal structure and B Corp Certification could be powerful tools in mission-focused-founders' toolbox. Photo courtesy of Whole Foods Market

Perhaps, in this last statement, Mackey has struck upon a tool that could help him, Shaich and others in the fight against short-termism. Mackey noted his previous skepticism of the legal component of the B Corp idea:

"I always thought B Corps were a good idea . . . I saw it as a fellow traveler with Conscious Capitalism, but I really didn't think it was necessary. You know, you have this stakeholder model, you take care of your stakeholders, what do you need this legal form for?" he said. "We had activists come into our stock. … They wanted to take over our company; they wanted to force us into a sale. … Boy oh boy oh boy, did I wish we were a B Corp. … I would have loved to have tested the idea of shareholder activists versus the legal form of a B Corp."

Mackey believes Whole Foods dodged a bullet when they landed with Amazon, whom most acknowledge has been unusually successful at playing the long game with Wall Street. I hope he is right.

Without hypothesizing about the future for Whole Foods as part of Amazon, could the B Corp legal structure have kept Whole Foods independent, preventing it from being forced into a sale by short-term activist hedge funds? The truth is, the test is yet to come, but according to Rick Alexander, one of the most highly regarded corporate governance lawyers worldwide and current head of legal policy at B Lab:

“If someone is looking to take shares in a corporation and work as an activist shareholder, then whether the company is a benefit corporation would likely factor into the decision. It’s harder to wrestle with this company than one that hasn’t declared its purpose outside of increasing share price. It should be a powerful deterrent; a CEO with a long-term plan to include sustainability would mean the legal argument an activist shareholder would be making wouldn’t resonate. That has to carry some weight.”

At least one Wall Street analyst agrees: Earlier this year, the CEO of Fortune 500 food company, Danone (BN:EN) announced at his 2017 shareholder meeting that Danone was committed to pursuing B Corp Certification (which includes meeting a legal requirement by adopting a corporate governance structure like the benefit corporation), and that Danone’s $6 billion North American subsidiary, DanoneWave, had already adopted the benefit corporation legal structure. A Credit Suisse analyst pointed to Danone’s commitment and its legal ramifications as one reason Danone was unlikely to be forced to accept a recent unwanted takeover offer from 3G/Kraft-Heinz.

Perhaps most importantly, it appears that the highest court in the U.S. likely to decide any litigation around this issue also agrees: The Chief Justice of the Supreme Court of Delaware, Leo E. Strine Jr., wrote the following in “The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by Delaware General Corporation Law”:

“There is now a tendency among those who believe that corporations should be more socially responsible to pretend that corporate directors do not have an obligation under Delaware corporate law to make stockholder welfare the sole end of corporate governance within the limits of their legal discretion. … But, the problem with that argument is that it is inconsistent with both judge-made common law of corporations in Delaware and the design of the Delaware General Corporation Law (‘DGCL’).

“Lecturing others to do the right thing without acknowledging the rules that apply to their behavior and the power dynamics to which they are subject is not a responsible path to social progress. Rather, it provides an excuse to avoid tougher policy challenges, such as advocating for stronger externality regulation and encouraging institutional investors to exercise their power as stockholders responsibly. Those challenges must be confronted if we are to ensure that for-profit corporations are vehicles for responsible, sustainable, long-term wealth creation.

“If we believe that other constituencies should be given more protection within corporation law itself, then statutes should be adopted giving them enforceable

rights that they can wield. The benefit corporation is a modest, but genuine, example of that kind of step forward."

While activist shareholders and mergers and acquisitions can play a vital role in an efficient capital market, and without debating the merits of "stronger externality regulation" or hoping that institutional investors will"exercise their power as stockholders responsibly," adopting the benefit corporation structure can help ensure that board decisions made in these contexts are done so with a long-term stakeholder orientation.

Business leaders wishing to build a world-changing business are best served when they embed those intentions in their corporate structure; otherwise the world may change their business. Failing to embed purpose into their legal DNA may threaten their mission or independence, especially in the public markets under the continuous pressure of short-termism.

As Mackey alluded to when we spoke, public companies have unique challenges in pursuing adoption of the benefit corporation legal structure. However, in general, global institutional investors have already accepted the benefit corporation structure for public companies. Prior to Danone's actions, Laureate Education (NASDAQ:LAUR) raised $490 million in an initial public offering earlier this year using the benefit corporation structure. Prior still, an existing multibillion-dollar, publicly traded company in Brazil, Natura (BVMF:NATU3), amended its governing documents to the same effect, and later acquired U.K.-headquartered The Body Shop for roughly $1 billion. In addition, more than 5,000 private companies have adopted the benefit corporation structure, many with significant venture capital and private equity investors, from Andreesen Horowitz to Mark Zuckerberg, who expect a public exit. (Read more on "How Investors Really Feel About B Corps.")

Conscious capitalists like Shaich and Mackey seek to "Unleash the heroic spirit of business." If we are to put that spirit to the test, boy oh boy oh boy, the benefit corporation governance structure seems like one concrete and useful tool to do so.