GOVERNANCE CHALLENGES — 2012 AND BEYOND

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Heidrick & Struggles International, Inc.

KPMG's Audit Committee Institute

Marsh & McLennan Companies

NASDAQ OMX

Pearl Meyer & Partners

Weil, Gotshal & Manges LLP

NACD
NATIONAL ASSOCIATION OF CORPORATE DIRECTORS

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Introduction

CORPORATE GOVERNANCE has seen significant changes in recent years. Legislators, regulators, and shareholders have had greater influence on the boardroom than ever before. These unprecedented changes have challenged boards and directors to stay ahead of the curve.

This compendium provides insights and practical guidance from the nation's leading boardroom experts—NACD's strategic content partners—each recognized as a thought-leader in their respective fields of corporate governance.

The National Association of Corporate Directors (NACD) is the only membership organization focused exclusively on advancing exemplary board leadership. Based on 35 years of experience, NACD identifies, interprets and provides insights and information that corporate board members rely upon to make sound strategic decisions, confidently confront complex business challenges and enhance shareowner value. With more than 12,000 corporate director members, NACD provides world-class director education, director training and proprietary research about leading boardroom and corporate governance practices to promote director professionalism and bolster investor confidence. Furthermore, to create more effective and efficient corporate boards, NACD provides independent board evaluations and custom-tailored in-boardroom education and training programs, as well as director-led conferences, forums and peer-exchange learning opportunities to share ideas about current and emerging issues. Fostering collaboration among directors and governance stakeholders, NACD is shaping the future of board leadership. To learn more about NACD, visit www.NACDonline.org. To join, please contact Kelly Dodd at kkdodd@nacdonline.org or 202-380-1891.

Corporate Governance: Five Mandates for a Complicated Era

By Heidrick & Struggles

Directors can be forgiven for feeling bruised, even though the global economy shows slight signs of recovery. Consumer confidence appears to be picking up as jobless numbers ease, according to the latest figures from The Conference Board.[1] And, chief executive officers seem less anxious about their organizations' future prospects.[2]

But directors themselves are far more guarded. NACD's latest Board Confidence Index shows that directors' confidence in continued growth in the U.S. economy has dropped. In fact, directors who last year characterized their outlook for general economic conditions as moderately positive now see little or no change for the future.[3]

There is no way for directors to magically boost global demand or pull macroeconomic levers. But there are factors they certainly can control that will, over time, substantially improve the operations of the companies on whose boards they sit—not least because those factors will free the board and management team to focus on performance. Heidrick & Struggles identifies five issues that merit immediate and consistent attention.

1. **Improving communications with shareholders.** Do a quick Google search for "shareholder communication with directors" and up come all sorts of boilerplate assurances touting open lines of communication between boards and investors. But in many cases, the fine print betrays just how difficult it can be for shareholders to make themselves heard by directors.

   Here's one example that clearly demonstrates just how out of touch boards can often be in our Facebook and Twitter age: "Any shareholder who wishes to send communications to the Board of Directors should mail them addressed to the intended recipient by name or position in care of: Corporate Secretary [company name and address follows]. Upon receipt of any such communications, the Corporate Secretary will determine the identity of the intended recipient and whether the communication is an appropriate shareholder communication." Translation: Please don't bother—we are not open to input.

   Increasingly, shareholders want—indeed, demand—more immediate access to the board. It's not to circumvent proxy voting mechanisms or to subvert established whistleblower channels; it is simply to have more of a voice in issues that shareholders care about—and to know that directors are listening.

   Given the well-publicized CEO succession snafus we have seen in recent years—and given the rise of shareholder activism in general—it is easy to see why shareholders are anxious for a real dialogue with the head of the nominating committee, for example. In an era in which corporate reputations can rise and fall with the ebb and flow of social media messages, it is necessary for directors to think anew about how their roles are perceived by investors.

   We're not saying every boardroom debate is up for public consumption or that every director should have a mandate to speak freely and candidly to anyone who asks—media, analyst, or shareholder. It is crucial that when directors speak, they speak with a unified voice.[4]

   But there are smart ways to be open. We believe that board openness starts with meetings with select institutional investors—and will soon become a hallmark of best-performing boards. As such, it will set the bar of expectation for shareholders everywhere. The Pfizer board is taking a more proactive approach to fostering open board and shareholder communications. It is sending out a press release announcing a board-shareholder meeting and later sending some of the materials distributed at the meeting between the board and 16 of its major shareholders.[5] The reactions to this move are proving positive.

NACD has included "shareholder communications" as one of its 10 "Key Agreed Principles" to strengthen governance for public U.S. companies and made available a raft of materials for detailed discussion—from webinars to books to reports.[6] Others eloquently support the case for improved communication with investors.[7]

2. **Mastering CEO succession planning.** The old story about corner-office succession planning is that the CEO would keep an envelope tucked away in his or her desk drawer naming the future successor.

   The story isn't so far from the truth. The shock of it is that here, in 2012, CEO succession planning is still done so poorly—when it's done at all. In recent years—naming no names—there have been some staggeringly awful succession gaffes by companies quite established enough to have known better.

   The statistics are not encouraging. NACD's 2009 research shows that 44 percent of corporations did not have a formal CEO succession plan in place. Although most had some basic process for replacing the CEO in an emergency, many had not planned for succession over a three-to-five year period.[8] A 2010 study by Heidrick & Struggles and The Rock Center for Corporate Governance at Stanford University found that on average, boards spend only two hours a year on CEO succession planning, and only 50 percent have a written document detailing the skills required for the next CEO.[9] Furthermore, in our 2011 Board of Directors survey, we found that only two-thirds of U.S. directors said their boards had vetted at least one viable candidate who could immediately step in as CEO if necessary.[10]

   The SEC is on the case. In October 2009, its Division of Corporate Finance issued new guidelines that support shareholders who want boards to provide more transparency about the process.[11] The document pulls no punches: "We now recognize that CEO succession planning raises a significant policy issue regarding the governance of the corporation that transcends the day-to-day business matter of managing the workforce."

   Yet the benefits of thorough succession planning are not hard to find. Heidrick & Struggles' research shows that merely announcing who your next CEO is can move the market value of your company by 5 percent or more.[12] McDonald's is the high-water mark for how to do succession planning right. When CEO Jim Cantalupo died unexpectedly in 2004, the board was quick to name veteran Charlie Bell—then president and chief operating officer—as Cantalupo's successor. But shortly thereafter, Bell learned that he had cancer. The directors had a plan: Their continual preparation and development of a *years-long leadership pipeline* meant they did not have to go outside the company to replace Bell.

   We have worked with a company that has pursued an exemplary board practice: It has run mock board meetings to identify a CEO successor in case of a sudden event like that which befell McDonald's. The mock meeting was tasked to a specific committee, and individual directors had clear responsibilities for roles such as communicating to the executive team, to investment analysts, and others. That is the kind of initiative we have to see more often.

3. **Aligning executive compensation with performance.** This has long been a heated issue for boards, and it never seems to be resolved to the satisfaction of shareholders. Now, more than ever, it is the board's responsibility to cool down the debate over executive pay.

   The Occupy Wall Street movement is the least of directors' concerns. Much more pressing are the increasingly shrill calls for fair play when CEOs are awarded epic sums for negative performance (and there were some jaw-dropping examples in 2011)[13]—or in quite a few cases, for no performance, in the form of "golden hello" handouts when a new CEO signs on. In some instances, the "hello" envelopes have been downright incendiary for some shareholders—and for the media—whether or not the sums have been inducements or "make whole" compensation for monies the executive may have left on the table at the previous employer.

Dodd-Frank, enacted in mid-2010, now gives shareholders some say on pay via non-binding votes on executive compensation and golden parachutes. But we contend that all too many directors—especially the members of compensation committees—are tone-deaf to the hard connection between performance and pay. We fully expect that institutional heavyweights such as CalPERS will, with Dodd-Frank behind them, wade more forcefully into compensation affairs. And we expect to hear a lot more from longtime activist investors such as Carl Icahn, Relational Investors, and others.

That said, we know plenty of directors who are frustrated by the compensation excesses they see all around them. They are more than happy to reward CEOs handsomely when those executives knock corporate performance out of the park, but they find themselves competing with decisions from directors at other companies who listen far too closely to what the compensation consultants have to say.

In their hearts, directors know that not all executives are somehow "above average." Now they must confront this realization head-on.

4. **Ensuring more diverse boards.** Over the last three or four years, it is fair to say that diversity in boardrooms took something of a backseat. There is an excuse, of course: the economic downturn focused everyone's attention on performance. But now it's time to return to the admittedly hard job of building boards that represent the rich diversity found on any city street in the United States or in most offices and factory floors.

   The pressure is on: There's a striking example in the letter that CalSTRS earlier this year wrote to Facebook, urging that the company strengthen its corporate governance and increase the diversity of its board.[14] The European Union is forging ahead with plans for quotas (always a controversial topic) to increase the percentage of women on boards.[15] And we fully expect that organizations such as Catalyst—and increasingly influential efforts like Stanford University Graduate School of Business's Stanford Women on Boards Initiative—will increase the drumbeat to appoint more female directors.[16]

   The calls for ethnic diversity may be less strident right now, but they are not likely to be mute for long. The rise of sovereign wealth funds, surging middle classes in emerging markets, and the growth of global markets are just some of the factors that are converging to pressure boards into mirroring the make-up of their shareholders worldwide.

   Of course, it is one thing to be willing to build a more diverse board and quite another to do so. Heidrick & Struggles' surveys show that nearly two-thirds of directors find it tough to hire well-qualified ethnic minorities, and more than half say it's hard to hire qualified women directors. Nor is there widespread trust in the mechanisms for fostering diversity: Among men on boards, only 13 percent support quotas compared with 41 percent of women directors.[17]

   But those diverse hires have to happen. For a start, nominating committees have got to expand their director searches beyond their usual Rolodexes (86 percent of directors rely on their own contacts when looking for new directors, according to our research). Directors also have to proactively seek out and use the cornucopia of tools available to help accelerate diversity efforts—from the Diverse Director DataSource set up in April 2011 by CalPERS and CalSTRS to the wealth of board-succession planning tools offered by NACD.[18]

   Put simply: boards ignore the diversity issue at their peril.

5. **Getting ahead of proxy access.** Directors must begin taking this issue seriously. Even though a federal appeals court last year overturned the SEC's interpretation of shareholders' rights to nominate their own directors, most boards still have to get their arms around what the final rulings entail.

We agree with the experts that the SEC's market-wide proxy access rule won't much affect the 2012 proxy season. However, a wild card is now in play. Following the court's ruling, what we are left with is the very real prospect of "private ordering" whereby irate shareholders can bring forward all manner of their own proposals to push proxy access in forms that they can determine, and whatever their intentions.

There is no telling how widespread such responses might be. But it is our bet that there will be a flurry of alarming though disparate assaults on individual companies. So it is incumbent on boards to get ahead of the proxy-access issue, possibly by developing their own rules and gauging the limits of those rules against likely shareholder advocacy.

As the Boy Scouts say, "It's always better to be prepared."

We don't pretend that the five points made here represent the entirety of what should be on the board's future agenda. But in our experience, the boards that adhere to the tenets we have outlined stand a far better chance of ensuring that their companies outrun and outlast their competitors.

KPMG's Ten To-Do's for Audit Committees

By KPMG's Audit Committee Institute

Recognizing the sizeable challenges that audit committees and boards face, KPMG's Audit Committee Institute (ACI) has issued its annual message to directors. "Ten To-Do's for Audit Committees" highlights key issues that should be top of mind as audit committees think through their agendas for the future.

1. **Stay focused on the audit committee's top priority: financial reporting and related internal control risk.** Ensuring that the audit committee's agenda focuses on the issues that require its attention will be a significant undertaking. The challenges of ongoing economic uncertainty and volatility coupled with the impact of cost-reductions, major public policy initiatives, and an uncertain—yet clearly more-complex—regulatory environment will require the attention of every audit committee. Meeting this workload challenge will require focused (yet flexible) agendas, with an eye on the company's key financial reporting and related internal control risks. As-needed updates from management between regular audit committee meetings can be invaluable.

2. **Continue to monitor accounting judgments and estimates, and prepare for accounting changes.** Monitor fair value estimates, impairments, and management's assumptions underlying critical accounting estimates. Recognize that the company's greatest financial reporting risks are often in areas where there is a range of possible outcomes, and management is called upon to make difficult judgments and estimates. Understand management's framework for making accounting judgments and estimates (was the framework in the "Pozen report" considered?[19]), make sure management has appropriate controls in place, and ask for the external auditor's views. Also, understand how major accounting changes on the horizon may impact the company, including implementation/resources and IT systems requirements. The SEC continues to explore what role IFRS will play in U.S. financial reporting, with a decision expected in 2012; and key FASB/IASB joint projects on revenue recognition, leases, financial instruments, and insurance are moving forward. Stay close to where these projects are headed and the timeline.

3. **Consider whether the financial statements and disclosures tell the company's story.** Given the importance of transparency to the investor community, as well as the SEC's ongoing focus on disclosures, consider how disclosures can be improved—perhaps going beyond what's "required"— to better address expectations. Enlist management's disclosure committee in this effort, and consider the findings of the recent FEI/KPMG study on disclosures, *Disclosure Overload and Complexity: Hidden in Plain Sight.* Understand the process management uses to calculate any non-GAAP measures that are used in SEC filings to ensure their relevance and reasonableness. At the end of the day, do the financial statements and disclosures tell the company's story?

4. **Focus on the company's plans to grow and innovate.** Growth, strategy, and innovation will be front-and-center as companies search for top-line growth and look forward, beyond the recessionary environment. A key challenge will be monitoring and calibrating growth plans to appropriately balance risk and reward. (Remember: good risk management enables innovation and growth.) Does lack of innovation pose a threat to the company? Make sure risk and strategy are discussed together—each hinges on the other. Given historically low valuations and high levels of corporate cash on hand, understand the company's position in the M&A "ecosystem" (as a potential acquirer or target). Is there a robust M&A process in place in the event an offer or opportunity arises? What is the role of the audit committee versus the full board?

5. **Reassess the company's vulnerability to business interruption and its crisis readiness.** As illustrated by the earthquake in Japan, the European debt crisis, and other systemic disruptions over the past 24 months, the global interconnectedness of businesses, markets, and risk poses challenges for virtually every company. Ensure that management is weighing a broad spectrum of "what-if" scenarios—from supply chain links and the financial health of vendors to geopolitical issues, natural disasters, and cyber threats. Is the company's crisis response plan robust and ready to go? Is the plan actively tested or war-gamedz—and updated as needed?

6. **Understand how technology change and innovation are transforming the business landscape—and impacting the company.** IT risk discussions should be moving (rapidly) beyond "defensive" issues (compliance, data privacy, system implementations) to address the critical challenge today: understanding the transformational implications of IT and emerging technologies—cloud computing, social media, mobile technologies, and data—and the strategic issues they present. The audit committee can help the organization get its arms around IT by insisting on more frequent and robust communications with the CIO; elevating IT discussions to a senior management/full-board level (beyond the "IT shop"); helping to frame the big picture view of the company's IT governance efforts (on data and social media); clarifying the oversight role(s) of the board, audit committee, and other committees; and strengthening the board's understanding of IT (by bringing IT expertise onto the board and/or through education). A comprehensive IT risk assessment is essential, and support from internal audit can be invaluable. Review the SEC's October 2011 guidance on cyber security disclosures, which may highlight IT issues requiring greater attention by the company and the board.

7. **Focus on asymmetric information risk and seek out dissenting views.** Is the audit committee hearing views from those below and beyond senior management—e.g., from middle management and business unit leaders, sell-side analysts and critics, and other third parties—about the risks and challenges facing the company? Does the information provided by management, internal audit, and external auditors tell a consistent story? What is being said about the company by customers, employees, and others on social media networks? Make time to visit company facilities and attend employee functions. Key goals here are to recognize when asymmetric information risk—the over-reliance on senior management's information and perspective—is too high, and to promote a culture of candor and constructive skepticism, where raising red flags and challenging information are welcomed.

8. **Consider the impact of the regulatory environment on compliance programs and business plans.** The increasing complexity of the global regulatory environment—including compliance challenges posed by the Foreign Corrupt Practices Act and the UK Bribery Act, the SEC's whistleblower bounty program, and Dodd-Frank provisions on conflict minerals and compensation clawbacks—will require continued attention. The right tone at the top and throughout the organization is critical. From a broader business perspective, consider the potential impact of regulatory compliance developments on the business planning process, particularly when growth strategies include international expansion. Do the company's regulatory compliance and monitoring programs align with its business plans?

9. **Understand the company's significant tax risks and how they are being managed and modeled.** Prospects for business tax reform; ongoing assessment of uncertain tax positions; increased state, federal, and global enforcement activities; and the continued complexity of operating globally in different tax regimes all pose significant compliance and financial risks. To stay abreast of critical tax risks—including internal control, compliance, and disclosure issues—establish a clear communications protocol for management to update the audit committee on the status of its tax risk management activities. Ensure the tax function is monitoring the federal tax reform debate and "testing" the impact of various tax legislative scenarios (e.g., on R&D, capital investments, cash flow, hiring, etc.) and possible remedial steps as the proposals become more specific. Are leading risk management practices (such as scenario planning) being leveraged to manage significant tax risks?

10. **Monitor the PCAOB's initiatives on auditor independence and transparency, and consider the implications for the audit committee.** PCAOB initiatives designed to promote auditor independence, objectivity, and professional skepticism have potentially significant implications for the audit process and the role of the audit committee. Set clear expectations with management and auditors for staying apprised of these projects and communicating their potential impact on the audit and the audit committee's oversight (the PCAOB is seeking input from all stakeholders, including audit committee members). Consider how the audit committee currently reinforces auditor independence and skepticism. Would a more robust audit committee report be beneficial to investors?

A Board-Building View

By Marsh & McLennan Companies

Corporate boards are dynamic social systems. While each board is unique, there are similar challenges that boards face as a natural consequence of being teams, composed of individuals charged with doing important work in a very specific legal, economic, and social context. Effective boards, similar to effective teams, need to be built and maintained over time. In our work with boards, we have found that board effectiveness is shaped by a number of key factors including:

- Clarity of the role of the board—the work it needs to perform and how it adds value.
- Backgrounds of the individual directors (their knowledge, experience, skills, and diverse perspectives), and their ability to work effectively with others.
- Content of the board's agenda, driven by the potential value added of the board.
- Quality of the information the board receives about the company.
- Dynamics that develop among directors as they work together as a whole, with other directors separately, and with members of management.
- Leadership that enables and supports all of the above.

None of these elements is static. Effective boards are always assessing themselves and engaged in what we call "board building"—working on the factors that drive board effectiveness.

Board Challenges

With that perspective, some of the most critical issues that many boards will need to address in 2012 and beyond include the following:

1. **The board's role in strategy.** Surveys continue to indicate that directors consider engagement with management around corporate strategy as one of the most valuable elements of their role. Yet directors repeatedly report that they are not satisfied with how that process occurs today. Boards and management need to design ways to effectively engage directors in the development of strategic direction and key strategic decision-making in a way that adds to, but does not interfere with, the role of management. This is critical to the core questions: What is the role of the board, what is the role of management, and how does the board add value? In our view, strategic work at the board level needs to move beyond the "concurrence" model, where management proposes a strategy and the board is simply left with a choice of concurring with or rejecting the proposal.

2. **Understanding the drivers of the business.** In our observations, boards frequently do not understand the drivers of the business—the core causal factors that drive profitable growth, create competitive advantage and can result in unexpected volatility in earnings. Without that understanding, it becomes difficult (if not impossible) for a board to engage on strategy and to understand key risks that must be managed for the business to succeed. Critical to the understanding and knowledge of the business is a steady stream of useful information. Ultimately, it requires forward-looking (vs. backward-looking) information that helps the board to understand performance patterns and trends. Too often, boards are inundated with data about what the performance of the company has been. Not often enough are boards given information that can provide insight into the trajectory of the enterprise.

3. **Enterprise risk management.** More than a decade after the concept of risk-return management became popular with the rise of enterprise risk management, or ERM, few companies include risk management in their financial and strategic decision-making. Yet, most of the critical variables that companies consider in their strategic planning process have become more unpredictable. As outlined in the yearly report of the World Economic Forum—the Global Risks Report—in which Marsh & McLennan Companies participates, the pace and scale of events introducing uncertainty into corporate earnings is increasing. Far too often, however, a firm's underlying risk management process has little connection to the firm's strategic or financial management. Risk management needs to be integrated into the strategic thinking of the company supported by a top-down, strategic examination addressing the drivers and core material risks of the organization. This approach enables management to examine the impact of different scenarios involving multiple risks on financial statements easily, quickly and accurately, and to keep the board informed of how critical emerging events, such as the recent Greece crisis and associated effects on the European economy could affect the company's financials. The NACD Blue Ribbon Commission Report on Risk Governance, published several years ago, provides a useful blueprint for effective engagement of the board in understanding risk and ensuring the effective management of risk.

4. **Board succession.** While management succession continues to be an evergreen challenge, there is another succession issue that many boards face. With the extension of age limits, many boards are aging. In the short term, this is mostly positive—boards have been able to benefit from the wisdom and perspective of experienced people. However, we see a bit of a demographic time bomb ahead as boards will need to replace and replenish their ranks with talent over the coming years. Given the evolving role of boards and the complexity of the problems that companies face today, thought needs to be given to the type of director that is needed. Clearly, diversity is critical—gender, racial ethnic, and geographic. But there is also a need for a diversity of skill sets and experiences. Planning for director succession needs to become more strategic.

5. **Board leadership succession.** A related but separate issue is how boards plan for the succession of their own leadership. The age of independent board leadership has arrived, whether in the form of independent non-executive chairmen or lead directors. These roles are very real and very critical. How the independent leader of the board fulfills his/her role, relates to fellow directors, and shapes the relationship with management can all have a tremendous impact on the functioning and effectiveness of a board. Given how critical the role is, boards can no longer just hope that an effective leader will emerge once the current leader retires or leaves the role. Boards will need to understand the requirements for independent board leadership. Based on those requirements, recruitment and succession planning will be needed to ensure that the right candidates are available and being developed.

6. **Surfacing and managing conflict.** As social systems and teams, the dynamics of boards are as important as the mechanics, and perhaps more so. A recurring problem for boards is related to raising and resolving conflicts. Many boards have not created a culture, an environment, and a process for surfacing disagreements. When disagreements do arise (whether they be around strategic issues, quality of management, or how directors work together) boards do not have the processes in place to constructively work through and resolve conflicts. Issues frequently simmer beneath the surface and either never get raised or boil up to the point of a painful and destructive conflict. Board leaders, senior management, and individual directors need to become more comfortable with raising issues and working them through in a constructive manner.

Building Boards That Are Prepared for the Future

The underlying theme of our list of issues is board preparedness. The future is, by definition, uncertain, and increasingly more so. Boards need to prepare to face that future by having the right agenda, the right people, the right processes, and the right leadership to deal with what may come down the road. Good leadership underlies the obligation that boards have to their long-term shareholders and other stakeholders of the corporation.

Governance Challenges Today and Tomorrow

By NASDAQ OMX

This report highlights several pressing issues that NASDAQ OMX views as urgent for consideration during 2012 and beyond.

Job Creation and Access to Capital

- Capital formation and job creation are in NASDAQ OMX's DNA. Forty years ago NASDAQ introduced the world to electronic markets, which are now the standard for markets worldwide. The creation of NASDAQ grew an ecosystem of analysts, brokers, investors, and entrepreneurs, allowing growth companies to raise capital that was not previously available to them. Companies like Apple, Microsoft, Oracle, Google, and Intel, all of which are listed on the NASDAQ Stock Market, use the capital they raised to make the cutting edge products that are now integral to our daily lives. As they've grown, these companies have created millions of jobs along the way.
- The business community, U.S. government, and individuals around the country are still struggling to understand how to make job creation a reality. At NASDAQ OMX, we believe certain regulatory reforms will significantly facilitate permanent jobs and benefit the U.S. economy, like re-evaluating Sarbanes-Oxley. Additionally, we need to do more to fix structural problems that hamper the development of small- and medium-sized companies, which have historically done the most to create jobs. Increasing the number of H-1B visas and creating venues for small companies to receive resources and capital, like NASDAQ OMX proposed BX Venture Market, are a start to encouraging job growth.
- NASDAQ OMX has blazed a trail for entrepreneurs to achieve the pinnacle of business when they take their companies public. Venture-backed and other growth phase companies face numerous challenges as they attempt to access capital. Sarbanes-Oxley, other regulations, and the U.S. litigation system represent palpable costs. But with meaningful regulatory and structural changes, as well as innovative platforms like the BX Market, we will make our companies and economy stronger and spur job creation.

Sarbanes-Oxley 404

- NASDAQ OMX fully recognizes and supports increased financial transparency. Section 404 of Sarbanes-Oxley requires costly external audits in addition to the traditional audits of a company's financial statements. At NASDAQ OMX, we believe it is the most visible sign of overregulation in this country, and the primary excuse for foreign companies and smaller domestic companies to forgo a U.S. public listing.
- Working with the Biotechnology Industry Association (BIO), the technology industry and others that were members of a broad coalition of businesses, NASDAQ OMX supported provisions to provide a complete exemption from SOX 404(b) for smaller companies. NASDAQ OMX was the first exchange to support an amendment authored by Reps. Scott Garrett (R-NJ) and John Adler (D-NJ) during House Financial Services Committee consideration of the bill. The final version of the legislation provides the exemption for companies under $75 million in market capitalization from SOX 404(b).

- At NASDAQ OMX, we believe that expanding this exemption to include companies with a $700 million market cap will significantly reduce the cost of going public for many firms. We also believe that companies who receive a clean bill of health should only receive a biennial 404 audit.

Legal Immigration Reform

- To be the best, companies need the ability to recruit the best workers. Global competition means global access to human capital. NASDAQ OMX supports comprehensive highly skilled immigration reform. We must increase the number of H-1B visas available and reform the employment-based green card process. These issues should not be tied, in policy or debate, to the illegal immigration issue.
- One-quarter of America's technology startups led by foreign born individuals generate $52 billion and employ 450,000 workers. As of February 2012, university-level foreign-born students were receiving the highest number of engineering degrees in the United States and lead one-quarter of America's science and technology start-ups: think Google, Intel, eBay, and Yahoo.
- It's clear we can no longer ignore the immigration issue. Without increases in H-1B visas and reform of the employment-based green-card process we will continue to educate the world's brightest individuals and then watch them spur job growth, gross domestic production and innovation abroad.

Venture Capital Markets

- In our markets, the number one source of job creation is entrepreneurship. Just as business incubators nurture small companies until they are ready to leave the security of that environment and operate independently, there should be a space for incubating small companies until they are ready to graduate to a national listing. The United States must create a space for these companies just as our foreign competitors have successfully done.
- Many innovative businesses around the world possess the innovation and fortitude needed to thrive in the public markets but lack the capital and resources to do so. NASDAQ OMX is addressing this need with its recently approved proposal to create the BX Venture Market.
- The BX Venture Market is an investment in the global economy. There are a lot of great ideas and well-thought out business models that simply lack the funding and resources necessary to get off the ground. Some of the most successful and game-changing start-ups of our time arose through venture capital backing—Microsoft, Google, Apple, Cisco.
- In addition to our proposal for the BX Venture Market, we remain proactive in our commitment to supporting programs that propel developing companies. Recently, we contributed a $730,000 grant to the Edward Lowe Foundation to fund the Institute for Exceptional Growth Companies, a new research and education institute focusing on job growth and capital access for developing companies in the United States

Executive Compensation

- In 2011, the expanded availability of say-on-pay proposals provided investors an alternative avenue to express their views on corporate pay programs, and we anticipate this to continue.

- NASDAQ OMX worked with a broad coalition to ensure that corporate governance provisions of the Dodd-Frank Act were workable and did not tip the balance between shareholder, management, and directors' influence. A requirement that directors be elected by majority vote was eliminated from the final bill. The bill grants shareholders the right to a non-binding vote on executive pay and benefits. The bill does not mandate a proxy access regime but gives the SEC authority to engage in a rule-making, open to public comment, to determine any changes in this area. Because of U.S. Chamber and Business Roundtable legal threats, the SEC has postponed action on proxy access.

Corporate Political Spending

- For the protection of investors, NASDAQ OMX believes in setting stringent standards for a company's employees, officers and directors. Implicit in this philosophy is the importance of sound corporate governance.
- As a listing venue for public companies, NASDAQ OMX is committed to helping board members of our listed companies understand their governance responsibilities. We are partnering with experts to provide opportunities for directors to receive relevant continuing education. One such initiative is an alliance with the National Association of Corporate Directors to provide corporate governance educational services to NASDAQ OMX companies.
- NASDAQ OMX actively works with policy makers and business associations to support corporate governance policies that encourage exceptional standards without hindering the legitimate management of a company, the process of capital formation and does not unduly open companies to frivolous lawsuits or special interests. The needs of both short-term and long-term shareholders should be balanced by all policy decisions in this area.

Compensation: Back to Basics

By Pearl Meyer & Partners

Compensation committees continue to find themselves at the center of the executive compensation firestorm, subject to intense public scrutiny and skepticism. Despite a fledgling economic recovery, unemployment remains stubbornly high, fueling resentment over the compensation levels of the 1 percent. Added to that, the regulatory environment grows ever more complex, threatening to overwhelm committees in a sea of expanding compliance requirements. Notwithstanding the crowded agenda facing members in the months ahead, we think compensation committees are best served by taking a step back and asking three fundamental questions around executive pay programs.

How does *your* company define pay for performance?

The focus on pay for performance by investors and boards alike is not new. There is virtually no public company that does not espouse the concept of aligning executive pay with sustained shareholder value in the Compensation Discussion & Analysis (CD&A) section of their proxy. However, Institutional Shareholder Services (ISS) upped the pay-for-performance ante late in 2011 by rolling out a new methodology for evaluating CEO pay as disclosed in 2012 proxy statements. While we believe there are methodological flaws to the new review[20], it is nevertheless critical that companies understand how their programs will hold up under the analyses and how their investors are likely to react to ISS's ratings.

Beyond simply reacting to ISS's analyses, companies should *proactively* communicate their pay-for-performance structure and alignment to their internal and external stakeholders. Communication begins with providing a clear and detailed rationale for choosing performance metrics other than total shareholder return (TSR), given that ISS has deemed TSR to be the best measure of performance from the perspective of shareholders.

In practice, however, TSR often fails to capture the motivational objectives of incentive plan design. To be sure, ultimately pay outcomes should create a reasonable alignment between the financial well-being of executives and shareholders. But incentive plans are not designed to serve as a "reward" for good results. Rather, they are intended as a tool for prioritizing executives' attention and driving good decision-making that will promote the organization's most important strategic needs. Put another way, TSR is an outcome—i.e., the market's referendum on the company's performance. The job of management is to generate performance levels (i.e., the input) that warrant a favorable TSR outcome. As such, management should be held accountable and be paid on the basis of performance that leads to positive TSR outcomes, as well as for the positive TSR outcome itself. The committee's task is therefore to ensure programs are based on incentive metrics that are right for its needs and, over the long term, will be demonstrably tied to shareholder value creation.

Historically, incentive measure selection/calibration affected only short-term incentive design for most companies, since long-term performance plans were fairly rare. And, for most senior executives, the annual bonus target award value was dwarfed by the opportunities represented by long-term time-vested equity awards. However, a recent PM&P study[21] indicates that long-term performance plans have quickly increased in both prevalence and target value. Committees therefore need to ensure they are devoting adequate time and attention to considering the selection and validation of plan metrics.

Ideally, incentive performance measures should be:

- Central to the company's business strategy and market differentiation;
- Strongly and demonstrably correlated to shareholder value creation;
- Influenced by management actions in an appropriate timeframe (i.e., short-cycle metrics for annual incentive plans, longer-developing metrics for long-term incentives);
- Complementary to one another; and
- Able to be accurately measured and monitored.

Selecting the appropriate short- and long-term incentive metrics is only the first step—equally important is the process of goal-setting. The determination of target performance should incorporate multiple factors, including the company's annual budget, historical performance, peer performance, and analyst expectations. The range of performance between threshold and maximum should be wide enough to justify the pay differential. At the same time, the threshold level of performance should not be so low that it will be perceived as a "give away" by shareholders, nor should the maximum be so high so as to be viewed as unachievable by participants without taking undue risks.

Finally, the committee should review actual pay relative to actual performance as part of its annual executive compensation analysis. The analysis should be more robust than the standards relied upon by ISS, using other performance measures in addition to TSR and including other named executive officers. Further, the calculation of actual pay should use the period-ending market value of equity grants, rather than the grant date value—this is particularly critical for option valuation. Importantly, the committee should then use the results of the actual pay-for-performance review to help refine the goal-setting process in the coming year.

How are you rewarding and retaining your stars?

The lackluster economy took retention concerns off the radar screen for many companies in recent years. That said, many committees[22] continue to see succession planning as one of their most important tasks and biggest concerns. Corporate reality suggests that the retention of key next-generation talent cannot be left to chance—merit budget increases are firmly stuck at 2 percent – 4 percent for the foreseeable future and a slow economic recovery will limit the promotional opportunities for high performers at many companies. Furthermore, widespread attention to lists of defined governance "best practices" has pushed some companies too far in the direction of formulaic, "numbers driven" incentive structures.

Committees can play an important role by making sure their senior management has the tools and retains the flexibility to adequately differentiate high performers. They can ask the following questions:

- Does the annual incentive plan include individual objectives and/or the ability to exercise both positive and negative discretion?
- Do annual equity grant guidelines have ranges or flexibility to differentiate grants among individuals at the same level?
- Does the company have other long-term retention-oriented compensation and benefits programs (e.g., non-qualified deferred compensation plans)?
- Are there sufficient non-compensatory rewards for high performers (e.g., a positive culture, mentor programs, career development/training, etc.)?

With all the focus on pay for performance it is important that Committees not lose sight of the importance and the value of a stable executive team. Unwanted turnover can cause disruption on a number of fronts; and the organizational costs associated with external hiring of key executives can be substantial. Notwithstanding the importance of having a strongly performance-based compensation structure, companies must also make sure there are adequate retention elements to the compensation and benefits programs to ensure that key next-generation leaders are motivated to stay and perform.

When was the last time you really looked at your compensation philosophy and structure?

While this "to do" may not seem very interesting or "new," the timing here is important. Many companies reacted to the economic volatility of the past two years by making temporary changes to their compensation programs such as adjusting bonus payout curves and modifying equity grant levels. As companies and the economy settle into a "new normal," committees should take the opportunity to step back and reassess their compensation philosophy and structure, rather than simply reverting to their old ways.

Start with a review of how changes to the company's business expectations might drive changes to pay structure. For example, more modest future growth expectations might suggest a need to revisit the mix of options and full-value shares. Likewise, a change to the company's cash position or debt structure may highlight the need to rethink incentive measures and weightings.

Next, consider changes to competitive practices. Have peers made changes to their pay programs that affect your company's competitive positioning? Most notably, changes in pay mix (fixed vs. variable pay/cash vs. equity) or changes in incentive leverage (increase or decrease in thresholds and maximums) can change the competitive pay-for-performance landscape and may require changes to company programs to keep pace.

Finally, consider your approach to accepted "best practices" in compensation and benefits design. Public scrutiny and the influence of shareholder activists and governance watchdogs have made certain historical practices "unacceptable" by current standards (e.g., tax gross-ups), while other practices have become majority practice (e.g., stock ownership guidelines).

We do not advocate taking a purely "prevalence-based" approach to compensation philosophy and structure, nor do we believe companies should blindly adopt so-called "best practices" simply to satisfy ISS. Rather, we think companies should conduct a comprehensive, holistic review of their own current philosophy and structure. The objectives are to make sure, first and foremost, that they continue to support the company's current business goals and objectives; that they provide competitive opportunity for competitive performance; and they are consistent with a culture of good governance and shareholder value creation.

In summary, we recognize that compensation committees need to spend a certain amount of time and attention on "current" compensation issues (regulatory compliance, responding to rating agency findings, etc.) But the urgent should not displace the important on committee agendas. Effective compensation committees should be making time in their annual calendar for strategic review and discussion of the design and structure of their executive compensation programs. Specifically, the three areas of review we've outlined above are focused on creating programs that stand the test of time, and deliver on the objectives of creating a strong, stable management team to deliver long-term value to shareholders.

Board Challenge: Preparing for Crisis

By Weil, Gotshal and Manges, LLP

An integrity lapse by a key executive, an environmental disaster, a compromise of confidential information, a product taint: companies expend significant resources on risk management and internal procedures to avoid such failures. But as important as crisis prevention is, companies must also be prepared to contain and manage crisis situations when they do occur. The board plays an essential role in this preparation. The board needs not only to assure that senior executives are well positioned for crisis management, but must also consider the board's own preparedness and capacity for addressing crisis. A board should develop a plan that ensures both (1) the strength of its own culture to withstand the stresses that crisis brings, and (2) its ability to effectively manage both the corporation's business interests and possible litigation consequences when making decisions in crisis-mode.

Crisis Readiness

By its very nature, crisis involves the unexpected, but a board can and must anticipate the occurrence of crisis. Times of crisis frequently create the risk of significant impairment of a company's operational, financial, or reputational integrity, as well as the risk of related litigation. By the time a particular risk materializes, the board should already have adopted general procedures and policies that prepare it to coordinate with management to address the problem and minimize negative effects. The board should identify a crisis-management team and assign defined roles and create processes for problem analysis, decision-making and communication. In formulating this team and these procedures, the board should keep in mind the effect its action may have in future litigation, which is often brewing in the background during times of crisis. The board must be particularly tuned into issues related to attorney-client privilege. Adopting a comprehensive crisis-readiness plan will enable the board to decide issues with dispatch and in a manner that conveys appropriate concern resolve and credibility, while minimizing future-litigation risks.

Recognizing Crisis

The board and management need to be attuned to the most common and likely causes of corporate crisis. While crisis comes in many forms and the likelihood varies based on industry and other company specific factors, common causes of crisis include:

- Concerns regarding management credibility or integrity
- SEC or other government investigation or regulatory action
- Financial reporting issues, financial restatement
- Poor operating results (over multiple periods)
- Information security or confidentiality breach
- Liquidity issues
- Failing labor relations
- Systemic ethical issues
- Loss of a key executive
- Significant litigation
- Allegations of fraud
- Product failure
- Environmental disaster
- Default on covenants
- Failing shareholder relations
- Contest for corporate control

Boards should consider coordination with management to conduct crisis response simulations from time to time. This can be in the form of a discussion of several hypothetical scenarios involving issues that the board and management believe could arise and create significant problems for the company. Where appropriate, the board should consider involving legal counsel, either internal or external, in this exercise, to help the board to identify litigation-control measures that should be adopted in particular types of crises.

Internal Controls, Risk Management & Corporate Governance

The foundation of effective crisis management is a well-developed system of internal controls, risk management processes and corporate governance practices. Periodically, the board and management team should assess the strength of that foundation by, for example:

- Reviewing corporate policies and controls such as specific prohibitions on unethical and illegal conduct, confidentiality requirements and communication policies to ensure that they:

  a. address appropriately and thereby decrease the likelihood of the types of behaviors that could raise significant risks, and

  b. are aligned with ethical (and regulatory) expectations so as to foster the support and understanding of the public and regulators should a crisis occur;

- Identifying and periodically reviewing significant risks to business operations, financial condition and reputation and considering how crisis might materialize and be addressed in relation to such risks;
- Evaluating the governance culture and considering ways to continuously improve upon it; and
- Monitoring ongoing litigation and considering patterns of litigation risk.

Crisis Team

Effective crisis management also requires that the board identify a crisis-response team in advance. This is the team that will activate as soon as the potential crisis has been identified. The function of this team is to provide early assessment, response and litigation-risk management. One misstep companies frequently make during times of crisis is underestimating the seriousness of the problem, including the potential impact for negative public reaction and regulatory action or litigation. A frequent and related mistake is overestimating the company's capacity to address the problem at the departmental level and without outside expertise. The crisis team should be designed to include a variety of expertise to help quickly determine what else may be needed. The company should identify:

- **An internal crisis team:** This should include senior executive officers (the CEO, CFO, COO, General Counsel), representatives of key operational departments and the heads of compliance, internal audit, human resources, corporate communications/PR, and sales/marketing. It should also include the appropriate board-level contact point, which may vary depending on the situation but likely will include the independent board leader and/or the audit committee chair. When a specific situation arises, the identity of the crisis team may need to be adjusted based on needs and on recusal of anyone whose integrity or behavior may be at issue. At times the full board may need to become involved.

- **A team of external advisors:** This should include external legal advisors and communications experts. Having established relations with professionals who get to know the company and the key members of the board and management before crisis occurs can pay dividends when the company must react quickly. The board should also understand under what circumstances the board may need to rely on independent advisors—primarily when the integrity or performance of the CEO or other executive officer is at issue or when management is otherwise conflicted. When coordinating with legal advisors, the board should be particularly aware of issues related to attorney-client privilege and develop procedures to avoid waving it.

Communications Plan

Well before any bad news materializes, the board needs to communicate its expectation to the CEO and key members of the management team (at minimum, the CFO, the general counsel, and the internal auditor) that bad news should be delivered promptly and directly. Everyone should understand that the board wants early warning and does not want to be "surprised" by hearing bad news from another source—especially a public source—because management thought it could manage its way out of a problem and failed to inform the board early.

The board and management should develop an agreed, workable and well understood crisis communications plan. A crisis communications plan should be thought of as a protocol for both internal and external communications in a crisis situation. Since actual communications must relate to the particular circumstances, the crisis communications plan should focus primarily on ensuring that the right people can be called together quickly to determine how to move forward and communicate, together with guidance for ensuring that the company speaks with one voice and confidentiality is maintained until the company has decided to speak. Key elements include the following:

- The plan should call for early communication of the known facts to the identified crisis team and the board for early analysis and response planning.
- Once the right people and expertise are involved, they can decide the time frame and message for communications with regulators, employees, shareholders, customers, suppliers, creditors, insurers, and the media.
- In most situations, the CEO or other members of the management team will be tasked as the spokesperson for both internal and external communications. However, any issues that involve concerns about the actions or integrity of the CEO will require board involvement in communications. In certain circumstances this may extend to situations involving other executive officers.
- Special attention should be given to monitoring social media given the speed with which information and misinformation can be transmitted and to having capacity to come up with strategies for using social media effectively in a crisis.

Note that sensitivity to how information flows in crisis response efforts is important in determining who to get involved and at what point. Even when at first blush an emerging crisis may not appear to have a legal issue at its heart, consideration should be given to whether and at what point there is benefit to having an attorney involved in coordinating the efforts of other advisors to help preserve the ability to assert the attorney-client privilege of certain communications.

Companies with operations and markets in non-U.S. jurisdictions should make sure that there crisis management efforts are sensitive to how different cultures react, so that they can manage accordingly, including by involving relevant experts who can assist not only with tailoring communications to different cultures but who also understand the political, regulatory, and legal environment.

Special Considerations Regarding Social Media and Preparedness for Crisis

Given the speed with which news, rumor, and innuendo can be disseminated through social media and the tendency for social media to be treated as an informal means of communication, it is particularly important that the company has in place and has educated its employees about policies related to the use of social media. When formulating social media policies and thinking about the risks of social media, it is important to differentiate between its uses since the type and degree of risks are distinct depending on how social media is being used:

- Social media can be a significant tool for listening to what customers, shareholders and others have to say about the company and in this respect can serve as an early indicator of issues that may be arising. Much of the risk related to observation or "listening" may be controlled through clear policies about mining public information in legitimate and transparent ways. Companies also need to prepare in advance for a negative message that is broadly repeated. Since the context will drive the appropriate response, and the response will need to be determined in real time, the company should have an understanding about who the crisis communication team is
- Social media can also be a powerful means of spreading a message—but it is in the effort to influence viewpoints where much of the risk lies. Corporations need to have very clear policies about who can speak on behalf of the corporation through social media (and any other media). These policies need to be accompanied by education for those who are restricted from speaking on the company's behalf as well as for those who are empowered to speak. In addition, policies should address expectations about how employees refer to the company in their personal use of social media. Clearly, there needs to be a system for vetting official company messages as well, just as for other media. However, since much of the value in social media is its real time and targeted nature, consideration needs to be given to the balance between these benefits and the degree of prudent internal control. Directors should use the same rules for social media that they use for contacts with shareholders and potential investors. Directors should avoid at all costs any ad hoc communication about the company. Only official and coordinated communication is appropriate.

Because of the complicated and constantly developing legal issues surrounding online communications, a company's social media policy should be carefully reviewed by legal counsel and updated as necessary.

Crisis Assessment, Investigation, and Mitigation

When a crisis hits, the crisis team—internal and external as appropriate—will have to quickly assess the situation to define the scope of the further investigation and analysis that will need to be undertaken and to fine-tune the team: How serious might the problem be and how widespread? How much is known and what is known now and what needs to be determined? What is the likely impact on liquidity, on customers, key employees, suppliers, and relations with regulators? What is the risk of related litigation or other potential for interrelated problems?

The crisis team and the board and management generally should assume that things are worse (or may get worse) than they appear, and bring a healthy skepticism to bear without overreacting. Based on its initial assessment of the situation, the crisis team will need to determine who the appropriate team is to lead the investigation and the response. This should include conferring with both inside and outside counsel about the plan, paying particular attention to attorney-client privilege issues at this stage.

The level of board involvement will depend on the nature and scope of the problem, including the extent to which members of the senior executive team are implicated. In most crises, the current CEO and key members of her team will be best positioned to provide the crisis management required. In such circumstances, the board should be fully and regularly advised and should provide guidance with sensitivity to the need for management to focus on the issue at hand. However, if the issue relates to, or could potentially implicate, senior management's credibility or integrity, the outside and independent directors may need to oversee the crisis response including potential investigation with assistance from independent counsel. Is a special board committee needed to look to investigate allegations of wrongful conduct? Is independent outside counsel required? Is forensic expertise required? The board will also need to assess whether there are specific additional resources and expertise needed to help guide the company through the problem.

When company management has lost credibility with external constituents, the board may need to assess who is best positioned to give regulators, investors, creditors, customers, employees, and the public comfort that the board and management are engaged and focused on protecting the corporation's assets.

The board also must be mindful its own public perception. In some instances, for example, where the issues raise concerns about whether the board was appropriately engaged, governance reforms or even changes in board composition may be helpful or necessary to send the right message to key constituents and investors.

Effective Board Culture

An effective board culture is essential to effective crisis management. A strong board culture will prevent the board from wasting time getting its own house in order when it should instead be taking decisive action.

The board culture to strive for is one in which confidentiality is protected and independent viewpoints are respected and valued, but consensus can be readily achieved after opportunity for full and informed discussion. Well-functioning boards usually are able to achieve a consensus that all directors can support, with only rare resort to a majority position that a minority of directors oppose. A corporation should embrace governance structures that support this type of culture.

A board's ability to achieve consensus in an efficient manner is a function of its success in developing trust and mutual respect among members, creating shared expectations of how individual members should behave and contribute, and adopting a common understanding of the what is in the company's best interest. A healthy board culture is one in which directors understand one another's styles and strengths. Effective boards agree on the rules of engagement and accepted behaviors while valuing distinct opinions. Directors trust and rely on one another and at times defer to one another's judgment. Well-performing boards reach consensus without significant conflict or tension. Dissent and disagreement are expressed and resolved.

A particular challenge for the board as a team is that it is charged with overseeing management but must at the same time rely on management for information and to otherwise support the work of the board. The board must be mindful of its relationship with management and should seek a "constructive tension" that balances attentive oversight and a critical review of management's strategy and performance with support and guidance for management.

Board Strategies for Avoiding/Addressing Potential Problem Behaviors

- Discuss and agree on the role of the board and management, clarifying as necessary the extent of delegated authority and expectations about board information needs and board involvement in decision- making.
- Emphasize the value and the limits of "constructive tension" in board/management relationship.
- Discuss and agree on valued behaviors—behaviors that are consistent with an environment in which "constructive tension" can thrive:
  - Respect for fellow directors' and managements' expertise and viewpoints
  - Constructive skepticism in questions directed to management
  - Opportunity for, and ease of, open discussion and debate
  - Commitment to achieving consensus after engaging in an informed and deliberative process
  - Commitment by all participants to listen and to self-control (not everyone needs to be heard on every issue)
  - Trust among directors and between directors and management
  - Protection of confidences
  - Attention to schedule, but in a manner that ensures time for important discussions
- Periodically evaluate board culture along the lines outlined immediately above
- Remind directors of confidentiality requirements and privilege issues.

Note that boardroom confidentiality is critical if a board is to create and maintain an atmosphere in which full and frank discussion can thrive, and consensus can ultimately be reached. A failure of board confidentiality can undermine the ability of a board to make timely and deliberated decisions. It also may signal more significant difficulties within a board. And it may exacerbate or even lead to crisis situations.

Confidentiality: Excerpts From *ABA Directors Guidebook,* 6th Edition (2011)

A director must keep confidential all matters involving the corporation that have not been disclosed to the public. Directors must be aware of the corporation's confidentiality, insider trading, and disclosure policies and comply with them. Although a public company director may receive inquiries from major shareholders, media, analysts, or friends to comment on sensitive issues, individual directors should avoid responding to such inquiries, particularly when confidential or market-sensitive information is involved. Instead, they should refer requests for information to the CEO or other designated spokesperson.

A director who improperly discloses non-public information to persons outside the corporation can, for example, harm the corporation's competitive position or damage investor relations and, if the information is material, incur personal liability as a tipper of inside information or cause the corporation to violate federal securities laws. Equally important, unauthorized director disclosure of non-public information can damage the bond of trust between and among directors and management, discourage candid discussions, and jeopardize boardroom effectiveness and director collaboration.

Every company is susceptible to a crisis—whether from a single event or from a confluence of circumstances. The board plays a key role in positioning the company to weather crisis by acting to prevent the crisis from spiraling out of control and by establishing credibility with key constituents. The board also plays a critical role in positioning the company to deal with any litigation that may arise out of a crisis situation. To do so effectively requires both crisis preparedness and the development of a board culture of cohesion, respect and confidentiality.

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Appendix:
Strategic Content Partner Descriptions

HEIDRICK & STRUGGLES

Heidrick & Struggles is the leadership advisory firm providing executive search and leadership consulting services. For almost 60 years, Heidrick & Struggles has built relationships with the world's most talented individuals on behalf of the world's most successful companies. Through the strategic acquisition, development, and retention of talent Heidrick & Struggles helps their clients—from established market giants to new market disruptors—build winning leadership teams. For more information, please contact Ted Dysart at tdysart@heidrick.com.

KPMG cutting through complexity

KPMG's Audit Committee Institute (ACI) provides information, resources, and knowledge-sharing opportunities—both online and through a variety of forums—to help audit committee members, directors, and senior management enhance the effectiveness, integrity, and oversight of the financial reporting process. Learn more about ACI at auditcommitteeinstitute.com, 1-877-KPMG-ACI, or auditcommittee@kpmg.com.

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Marsh & McLennan Companies is the premier global professional services firm providing advice and solutions in risk, strategy and human capital. Through our market leading brands, colleagues in more than 100 countries help clients identify, plan for and respond to critical business issues and risks. For more information, please contact Alex Wittenberg at alex.wittenberg@oliverwyman.com and Lucy Nottingham at lucy.nottingham@oliverwyman.com.

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