

Boardroom INSIDER

MAY
2020

The online resource for better boards and better directors

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CRISIS GOVERNANCE = BETTER GOVERNANCE?

Your world has changed radically since the last issue of *Boardroom INSIDER*, with lockdowns, economic turmoil, spiking unemployment, and genuine fear for the future in everyone's minds. Yet you're muddling through, working from home if you can, venturing out if you must, and getting used to wearing a face mask.

In coping with the management and governance issues of your companies, you're muddling through too. Shutdowns, sick or unavailable employees, suppliers and customers with their own crises, sharp cutbacks, uncertainty... yet you and your board must find a way through.

With the immediate crisis settling down into long-term trench warfare against disease and depression, we should take a look at the lessons our boards have learned. All the disruption, urgency and traumas no doubt make governance more challenging. But if we're truthful with ourselves, we're learning governance lessons that actually make our boards better.

■ You're focusing more on the essentials. There isn't time or bandwidth for all of the PowerPoints and presentations of a few months ago. It's tough enough to get your directors all online or on the phone as it is now, so they have no time to waste. You're trimming fluff and filler from the agenda to make time for more crucial board business – and discovering your governance is all the better for it.

■ Since online conference time is tough to schedule for everyone, your board members are working harder *offline*. They're calling each other and managers between meetings for discussions, info and updates. Locked down, they put more time into reviewing board materials and doing their own research. Board meetings now are less of single event in their schedules, and more of an ongoing process -- members don't need to come back up to speed on the company every few months. Relationships between directors and managers may be more distant now, but also more regular, open and productive.

■ Related to this, board members are pitching in to make themselves more helpful to the company. Younger and venture firms have always asked directors to help with introductions, research, pitches and special projects. In the current crisis, companies of all sizes are asking board members to roll up their sleeves and help management meet immediate needs.

■ Finally, though directors are putting in far more time, with more stress, they're gaining a clearer view on what their role really is. Governance is no longer running through an agenda, ticking off the boxes, and moving on. Today, it's urgent oversight of literal life and death matters for people, companies, investors, stakeholders, and employees. And directors are stepping up.

-- **RDW**

BOARD PAY SHAKEUPS DURING CRISIS

The global COVID-19 panic hitting business might finally be the trigger that brings action on pay inequality concerns. With massive worldwide layoffs and business closings, top execs feel prodded into tightening their belts as well. In the U.S., CEOs at major airlines, Disney, GE, Fiat-Chrysler, Marriott, Fox Live Nation are among the many cutting or deferring compensation, and the chiefs of global giants including BT, Santander, Singtel, and Temasek Holdings are doing likewise.

No doubt you've received many emails from comp consultants over the past few weeks on how the crisis is shifting executive team incentives and performance targets.

So... now, what about boards?

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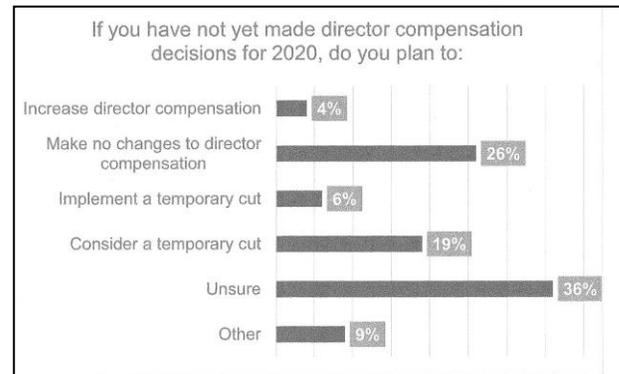
Q&A: Does Our Board
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■ Some companies, especially larger public firms, are already trimming director pay, but it's still too early to see solid patterns. An April survey by Pearl Meyer & Partners (*see below*) found just 6% of 315 U.S. firms surveyed had cut board comp -- but many more are considering it. "Lots of boards are talking about it, but only a handful have taken action so far," observes Dan Laddin, of Compensation Advisory Partners. Yet the spirit of the times see "some boards taking action on their own, voluntarily giving back their own compensation," notes Gregg Passin, a senior partner with Mercer. An April survey by the Pay Governance firm found the amount of these givebacks varies all over the place, from 10 to 50% of board fees, but Passin sees 25% typical at present.



■ So what's being cut? Cash retainers are the overwhelming target. With meeting fees largely superseded by retainers in recent years, the quickest way to tighten belts is on annual board retainers. As of late April PayGovernance had tracked 125 public companies announcing retainer cuts. A common approach they've seen is to just suspend the current retainer payment. Since many board pay board retainers quarterly, this fits in with the 25% average cited above.

■ Equity has become a much bigger aspect of director pay over the past decade or so, and here cutting back is more complicated. "Most companies haven't taken any action yet on [board] equity pay," notes Passin. Even trickier are director stock ownership and holding requirements. Two months ago, a director may have met a board rule to hold \$500,000 in company stock. Now, with market turmoil, that might be only come up to \$300,000 in stock. Other boards may set director equity holdings as a multiple of the annual cash retainer... as in that retainer you just trimmed. And a board member may need to cash out some of those shares at the moment, which surely doesn't look good.

■ Equity coping strategies? Most observers see companies putting their overall board stock plans on hold for the moment, not enforcing holding requirements, not paying out more, and surely not trying to make directors whole. "Most seem to be grandfathering their plans at the time," says Laddin. "The view seems to be that, for better or for worse, you're in the same boat as our shareholders."

■ Going forward, companies appear to be taking this indefinite approach to shaking up board pay overall. Most of the retainer cuts announced have been one-offs, but others extend to the end of 2020. With annual meeting season underway in most of the Western economies, companies have enough on their plates at the moment without a major re-fit of their board comp. *One final note* – Keep careful track of cuts and changes made in board pay this year to assure proper disclosure in 2021.

VIRTUAL BOARD MEETINGS – SECURITY, SECURITY

Company staff will tell you that corporate board materials (and board members themselves) are always a source for info security leakages. Usually these are inadvertent – board books lost, insecure conversations, misdirected emails and such. But now that the world's corporate boards have been forced to take their meetings into the virtual, online world, the security risks spike.

We've all heard about videoconference hacking over the past few weeks ("Zoombombing" of Zoom meetings is a new hot term). But the stakes are even greater for virtual board meetings. The discussion, materials and decisions of your board are at the absolute apex of sensitivity, with all the company's financials, plans, strategies (and weaknesses) on full display. Every board meeting includes info that bad guys would love to get their hands on.

Further, regulators and lawyers can always demand that you reveal board minutes and discussion down the road. Most videoconferencing platforms leave an electronic discoverability trail that you don't anticipate (until too late). So what can you do to keep your virtual board meetings secure?

■ Closely control access from the start. Password protecting the meetings seems obvious, but even this step can be bungled. Zoom, for example, creates a default client password that stays the same for all future meetings, an obvious long-term security gap. Generate a new password/ID for each board session, share just with the directors attending, and assure that related info is sent securely. Also, set Zoom meetings so that no one is able to join before the chair/meeting host to better monitor who gets in. Then, arrange a virtual "waiting

room” function as a final ID check.

- Most videoconference programs allow the moderator to control and limit screen and file sharing among participants. Use this. Board members should only be able to share information with others in the meeting, and then only with those the moderator/chair approves. Assure no shuffling of files between directors’ other (often insecure) devices, and no access to other tabs directors may have open on their desktops.

- We talk about how board members need to build “Chinese walls” between their various boards and other duties. Today, this applies to *everything* visible in the director’s office (or back bedroom, or whatever). There may be confidential data, spreadsheets, diagrams, jotted passwords, notes or similar clues from the board member’s other affairs on full display. As a director, be sure to tidy up your desk and background in advance, or use one of those clever video [background blocking apps](#) available.

- If your meeting platform allows side text chats during the meeting, remember that these are logged and preserved. Not only could this later be used as evidence of anything a hostile lawyer wants to make of it, it can prove *very* awkward. If you’re Director X, don’t type a chat message to Director Y that you can’t believe Director Z said such a dumb thing (unless you want the world to find out).

- Assuming that virtual board meetings will be with us for awhile, it pays for the company to upgrade some of the directors’ at home tech capabilities. Your director may have limited home bandwidth (and is now forced to share that with kids’ online gaming). Their at-home computers might be a generation out of date, or operating system and software need updating. This is particularly bad if security utilities are stale. It may be worth the modest investment to give directors a stipend for needed access and tech upgrades. Further, see if your company IT staff can remotely scan their system for intrusions, wi-fi hacking, malware, “internet of things” bugs, or other mischief. *Plus*, have IT keep close watch on whether your online conferencing accounts are ever compromised. A recent dark web scan found a hacker offering IDs, passwords, emails for 350 Zoom accounts.

- Finally, realize that running your board meetings online not only exposes them to outside breaches, but *inside* ones. You may button up all of your tech procedures and hardware, but if your inside IT people are helping to moderate or manage the conference, they’ll have access to everything the board does. Make sure this internal access is limited and carefully controlled.

6 WAYS AUDIT COMMITTEES CAN COPE NOW

The coronavirus crisis is forcing the world’s corporate boards into overtime schedules, and that includes their audit committees. You’ve no doubt received audit firm [briefings](#) and [updates](#) on the accounting, finance, disclosure and risk management tasks your committee is facing now. But with all this added, emergency workload (and online meetings), how does your audit committee *itself* cope?

- Audit committees now should *rethink their agendas*. Audit agendas are driven by the company’s accounting and legal year, with much set far in advance. But now, “look at that framework just before the meeting, and assess what is really critical now,” counsels Krista Parsons, managing director of Deloitte’s Center for Board Effectiveness. “Look at required things, but also how you can reprioritize on topics.” Charter reviews, independence checks, reapprovals of auditors and other busywork can often be pushed off until emergency matters are covered.

- *However*, a quick committee *charter review* might be just what you need at this busy time, especially given the way audit committees have grown overloaded with new tasks (risk assessment, compliance, etc.) Late-breaking audit, disclosure and finance items alone will likely keep your committee swamped. Take a look at your charter to see if some peripheral tasks can be seconded to another committee, or the full board.

- Audit committee “meetings” are *breaking out of the meeting structure* itself. Parsons sees members getting more written updates in advance, with discussion saved for the actual meetings. Schedules are adapting to current realities, too. Online committee “meetings” may need to be held late in the evening after the kids have gone to bed. Indeed, group sessions are shifting to a series of ongoing one-on-one calls between members of the committee, internal audit, engagement partners, and so on. (Still, assure good minuting of formal committee meetings, resolutions and votes).

- As part of this, *audit committee chairs* are shouldering an even heavier burden as they try to be the financial expert herding a panel of distracted digital cats. “I see more phone calls between chairs, audit engagement partners, and audit staff now,” notes Amy Rojik, a partner in the national assurance office for BDO. This communication has gone beyond pre-meeting catch up, and is now real-time, ongoing dialogue. “There are

many more calls now to just touch base.” With so many formal controls and audit structures now handled remotely, committee chairs are substituting personal assurance and chats to stay on top of things. Rojik says this is driving audit chairs to improve their verbal and relationship skills to backstop the turmoil in standard audit data.

- Audit committees were always expected to review the quality of the *internal controls and disclosures* that they rely on, but this needs to move up on the agenda now. With staff working from home, auditors auditing remotely, and everyone communicating through a patchwork of online devices and networks, quality assurance can be erratic. Strong IT security on company nets is little good if an internal audit staffer never bothered to change the password on his home router. See the article on online security tools in this issue, and assure that everyone touching company numbers has updated security software and access control. Add this online quality vetting to the committee’s overall assurance.

- Finally, your board’s audit committee has never functioned in a vacuum, and its “*assurance*” function has now become very literal. Make time for contact with stakeholders, lenders, regulators, employees and others who could use a reassuring, knowledgeable voice about now. Also, the audit committee should take the lead on “leaning in” to offer their contacts, savvy and support to aid management during the turmoil. “Ask how else you can contribute at this time,” advises Parsons.

YOUR NEW D&O LIABILITY DANGERS

The world’s COVID-19 crisis has seen all of us pitching in and working together to make our way through the turmoil... but how long will this camaraderie last? Companies face sharp stock price drops, personnel and process disruptions and melting revenues -- and their boards are presiding over the whole meltdown. We may say that all businesses are in the same boat, but history tells us that activist investors and regulators will soon find ways to claim some companies (and their boards) should have seen it all coming.

Most of you are taking an urgent look at your company’s property, casualty, and general liability coverage today. But what about you *personally* – as in your directors and officers (D&O) liability? What should you be looking out for now on your D&O policy (and what should you watch for on renewals)?

- Give a close look to the wording of current D&O policies. The policy and its exclusions may allow endless insurer quibbling over losses or actions related to the viral crisis. Language excluding coverage for claims on injury, property damage, acts of God, or so on are often tucked into D&O boilerplate, and could be used to dismiss a claim under today’s unimagined conditions. Give your policy a good vetting by legal counsel and your broker to gauge how well it deals with possible COVID claims, and prepare to make solid counterarguments.

- Dealing with uncertainty. At the moment, companies are facing a huge number of unknowns on virus vulnerabilities and damages... but still must offer best-guess disclosures to investors and regulators. Brokers will “take a careful look at your public disclosures on preparations and risk factors,” notes Lynda Bennett, a partner in the insurance recovery group of Lowenstein Sandler. As factors change, modify any past disclosures as needed quickly.

- Future fallout from the Coronavirus crisis is likewise uncertain, meaning coverage for a loss or action under your current D&O policy may be costly, or even unavailable, when renewal time comes around. A “claim of circumstances” can be made now for possible future claims, which locks in coverage under current terms. If, for example, you believe an investor will sue claiming that the board mishandled its virus response, causing losses, a notice to your insurer keeps coverage under present policies in place. This is sort of strong action to take however, so discuss circumstances carefully with counsel (also, assume that your company will need to provide lots of solid evidence on any pending claim).

- This is a moment when you’ll be glad the company invested in added “[Side-A](#)” policies that specifically cover and reimburse directors and other officers. “There’s going to be a scramble to keep Side A excess coverage in place,” notes Bennett. If you *don’t* have this added lifeboat coverage for officers (or the limits haven’t kept up with litigation costs), hurry to add this “personal” protection. Prices may be headed up, so now is the moment to act.

- Speaking of buying insurance, prepare for surprises and battles when renewing your D&O policies. “There will be no more rote renewals,” Bennett observes. Terms will tighten, and broader exclusions for dangers like the COVID crisis will doubtless show up. Assume premiums will increase, and that there will be fewer providers bidding for your business. Expect more questions on your preparedness for pandemic losses

(including the loss of key talents), and a closer look at your disclosures. If renewal time is near, it could be wise to just seek an extension of your current policies. This gives you time to sort out the impact of the present crisis, better assess pending claims, and avoid battles over new policy terms when you're already overstressed.

Q&A: Does Our Board Need a “Crisis Committee?”

Q: *Our company has been in crisis mode for the past couple of months, with our team managing lots of day-by-day decisions on production, people, cash flow and so on. One problem we've seen is keeping our board of directors looped in – we have an active board that contributes a great deal, but they're now dispersed and access is difficult. The “virtual” board meeting tips you publish help, but often we need immediate, targeted input that focuses on current crisis response. Should we try forming a dedicated board “crisis committee,” or do you have any other ideas?*

A: There are several approaches boards can take to meet the need for fast board action when most members are far away. Forming a special “crisis” committee of the board could make your governance more nimble. This could include the board chair and chief executive (if the roles aren't combined), perhaps the other committee chairs, and possibly your chief legal officer, head of HR, or other leaders who can meet your specific needs. At the moment, accessibility may be more important than specific skills.

“One advantage of a special committee is that it can bring tactical oversight right now, and can meet frequently,” notes Steven Haas, a mergers and acquisitions partner with the Hunton Andrews Kurth law firm.”

Beyond its membership, focus on the powers and tasks of any ad hoc crisis committee. The mandate would include business continuity (including talent succession), emergency operations, revenues, short-term finance, and other “lifeboat” matters. Its authority to act in lieu of the full board will often be limited by law, so avoid big fundamental topics like capitalization, ownership, or major structural changes

Charter a crisis committee to address issues like how long the committee should exist (you can always extend its mandate), what powers it has in relation to the full board (and how it reports back to the board), committee leadership, and the role of the CEO on the committee.

Most folks who've been in boardrooms for awhile will notice that this special “crisis” committee sounds a lot like the traditional board *executive committee* – a subgroup of the board and company leadership that can act in an emergency. Though executive committees have fallen out of favor with good governance advocates in recent years, they're still found at [36% of S&P 500](#) corporations. Given the current emergency needs, it may be more expedient to either form an exec committee, or re-invigorate the one you have. Most of the membership would be the same, and by definition the executive committee would be a group able to act quickly. (Sample [charters](#) for board executive committees are plentiful [online](#)).

BI ONLINE FINDS – 5/20

- We've had many requests for the April special issue of *BI* on making virtual board meetings work. If you or someone you know would like a free copy, just [send me a note](#).
- Speaking of audit committees during the COVID crisis (*see article above*), the Center for Audit Quality offers a great [online directory](#) of committee-specific crisis resources from the major accounting firms.
- You've already announced that your company's 2020 annual meeting will be held online – but now how do you do it right? Software company OpenWater offers a helpful [online guide and video](#) to help you make your virtual annual meeting both legal and effective.
- Crises can bring out the best in companies as well as people, as seen by the many providers of corporate governance services and products who are offering discounts and freebies at the moment. LexisNexis' Law360 website is offering [free access](#) to its handy coronavirus corporate action updates. Global Governance Advisors is temporarily providing their Empower board portal platform at no charge (send them a [query](#)). [Board Intelligence](#) in the UK is likewise offering their portal platform free through the end of June.

COMING IN BOARDROOM INSIDER --

- BOARD TIPS FROM EXECUTIVE ASSISTANTS
 - THE IDEAL BOARD MEETING DECK
 - CORPORATE GOVERNANCE FOR PARTNERSHIPS
-

Ralph Ward's upcoming Boardroom Masterclass and speaking engagements:

The global COVID-19 crisis has delayed several spring Boardroom Masterclass programs. Stay tuned for rescheduled dates for the [**Boardroom Excellence Masterclass**](#) for AnyGlobal in Dubai, and a repeat of my successful four-day training for [**Quest on the Frontier**](#) in the Middle East.

ALSO, remote [webinar](#) versions of my board trainings are now available. [Write me](#) for details.

Visit the [speaker](#) page on the *Boardroom INSIDER* site for links to keynote speech videos, and also my listing on the [eSpeakers](#) site.



Ralph Ward is author of the books *BOARD SEEKER*, *BOARDROOM Q&A*, *THE NEW BOARDROOM LEADERS*, *SAVING THE CORPORATE BOARD*, *IMPROVING THE CORPORATE BOARD* and *21st CENTURY CORPORATE BOARD*, and a speaker on corporate board issues.

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