

Coronavirus/COVID-19 Update

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Thoughts for Boards of Directors on the COVID-19 Crisis

Although different in some important respects and rapidly evolving, the global pandemic shares many of the characteristics of other broadscale crisis situations that prior boards of directors have confronted and managed through. That said, most current directors, and a majority of boards, have not faced a crisis of this order of magnitude on the company, industry, national and global fronts. COVID-19 will test the oversight skills of boards of directors of literally thousands of companies, of every size, in every business and in every location on the globe. The new normal for an indeterminate period will, for most companies, present a set of difficult issues and serious risks that would have been unimaginable at the turn of the decade.

How can directors cope with this ongoing high-stress, high-threat environment? Begin with the basics: Be calm. Be alert. Be engaged. Be informed. Be advised. Be thoughtful. Be decisive.

And always be human. Corporate America has a poor reputation these days in the minds of many, including large segments of the public and in the halls of government. COVID-19 is causing massive challenges to the safety and well-being of almost everyone — family, friends, colleagues, community members and strangers. When the dust settles — and it will — those people will look back at how key elements of the country acted to combat this major human dislocation. Corporate America has a real opportunity to step up in a variety of ways to protect, cushion and assist people. Directors across the spectrum of companies will serve their companies' interests by clearly and conscientiously embracing this need.

One of the hallmarks of any corporate crisis situation is the need to communicate rapidly on a coordinated basis across multiple corporate constituencies and to make decisions at a time when critical information is unknown and unknowable.

In this circumstance, boards of directors should exercise their core oversight and risk management responsibility to assure that management is looking around the corners to assess short- and long-term risks, as well as opportunities; taking appropriate action to assure business continuity and to activate contingency plans; and communicating appropriately.

These are management tasks. But, by asking appropriate questions of management and testing underlying assumptions, a well-functioning board can assure that the company is making thoughtful, fact-based decisions in responding to the crisis and serving as a port

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of calm amid the storm of rapid-fire communications and actions that need to take place during a crisis.

At a time when appropriate to do so, boards of directors should hear from the management team about how it is addressing the COVID-19 crisis and its impacts — both short- and long-term — on the company and its various constituencies and stakeholders, as well as about the company's plans going forward.

Questions Boards May Ask

Although they will vary dramatically by industry and company, some questions that boards periodically may ask, and management teams should be prepared to answer, include those set forth below. They broadly fall into both financial and operational concerns, with overlap between them.

Financial Impacts

What are the short- and long-term financial impacts on our business as best we can ascertain at this time? What are the most significant “known unknowns” that affect our forecasts? What is the assessment of our capital resources and liquidity position? Is our balance sheet strong enough to weather the storm? What is the sensitivity analysis around that? Are there lines of credit we can and should draw upon now? Should we consider whether it is appropriate to think about the possibility of pulling back or deferring declared dividends, or suspending or reducing dividends, going forward to preserve our cash position? If we have vulnerability from a capital resources and liquidity perspective, what is our plan for dealing with that? Conversely, if we have a strong position, should we consider expanding our share repurchase program? Is that an appropriate use of capital, among competing uses and considerations, in the current environment?

Employees and Facilities

What is the status of our workforce and facilities? Have we had employees who have reported that they have tested positive? Are we shuttering facilities and/or closing operations? Are we getting expert health care advice — from internal or external experts — as we make these decisions? Are we considering layoffs or furloughs? What are the short- and long-term financial ramifications? Are there teams that are working remotely and those that remain at our facilities? What have we done to assure connectivity with our employees? Are we experiencing stresses on the infrastructure support we have put in place, such as IT or videoconferencing capabilities? Are there arrangements we have considered or need to consider to provide IT infrastructure support for employees working remotely or temporary changes regarding overtime and other workforce policies? How are we managing our non-exempt employees working from home (espe-

cially those who now have child-care responsibilities) who are regulated by time clocks and mandatory break periods in order to comply with law? Do we need to adjust or delay executive compensation decisions to ensure our compensation programs are aligned with the current environment? Do we have contingency plans in place in the event that one or more of our key employees is taken ill? What have we done to assure employees and provide for their well-being? What arrangements are we putting in place with contractors? What has been the feedback we have received from employees, and how do we assess and measure whether, where possible, our workforce continues to be engaged and productive?

Customers

What has been the impact on our relationship with customers? Are we able to continue to perform our contractual obligations to them? How are we treating *force majeure* issues across the company? Have we communicated with them how we are responding to the crisis and how we are continuing to serve their needs? How have our most significant customers themselves been impacted by this? How are we staying engaged with our customers? Are there things we have done or can do to help them through this crisis?

Supply Chain

What has been the impact on our supply chain? Can we help our critical suppliers through this crisis, or does that become an unmanageable conflict? Are we facing shortages or increased pricing? Do we have alternatives? Do we need to, and can we, terminate or reduce supplier commitments? Should we reevaluate our supply chain construct to mitigate future risk?

Shareholders

Should we consider whether it is appropriate to withdraw guidance before our next quarterly earnings release? Do we have other communications planned with investors, either through mandated SEC filings or otherwise, prior to the next earnings release? What is our strategy for communicating with investors and analysts about what we know, what we're doing and what we don't know?

Communications

How are we coordinating messages across multiple constituencies so that we are providing consistent messaging? Who are our principal spokespersons for each constituency, and how are we assuring coordination among them? What are our core messages that we are trying to get across? Are we following best practices — communicating quickly, empathetically, accurately and candidly about what we know and don't know? Are we providing

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assurance about what we are doing, and that we are proactively addressing issues, without overcommitting or providing false comfort (and thereby damaging our credibility)? What feedback have we been getting for our communications efforts?

Security and Cybersecurity

Recognizing that disruption caused by business responses to COVID-19 creates vulnerability to criminal activity, what steps have we taken to assure the security of our facilities in a remote working environment? What steps should we take/have we taken to buttress our cybersecurity protocols, including training for employees who may not be accustomed to working remotely? How are we dealing with security and retention of confidential information with employees and documents in a globally disbursed organization? Do we need outside expertise to assist with this task?

Governmental Assistance

Are there potential governmental assistance programs that we may be able to participate in or help shape? How are we keeping abreast of these in each jurisdiction in which we operate?

Activism and Takeover Preparedness

Do we think we have increased vulnerability to activism pressures or takeover proposals aiming to take advantage of the current situation? Do we have advisers and contingency plans in place should that happen? Do we have a stock-watch program up and running, and are they on alert? Do we have a “pill on the shelf” that can be activated quickly should circumstances warrant?

Conclusion

Board duties in a crisis situation, even in the unprecedented environment occasioned by the global COVID-19 pandemic, remain unchanged under widely applicable Delaware law. An unconflicted, independent board that is appropriately discharging its fiduciary responsibility by exercising its oversight function through understanding the facts on the ground, testing assumptions and exercising thoughtful, fact-based decision-making in the best interests of the company and shareholders should be afforded the protections of the business judgment rule.

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