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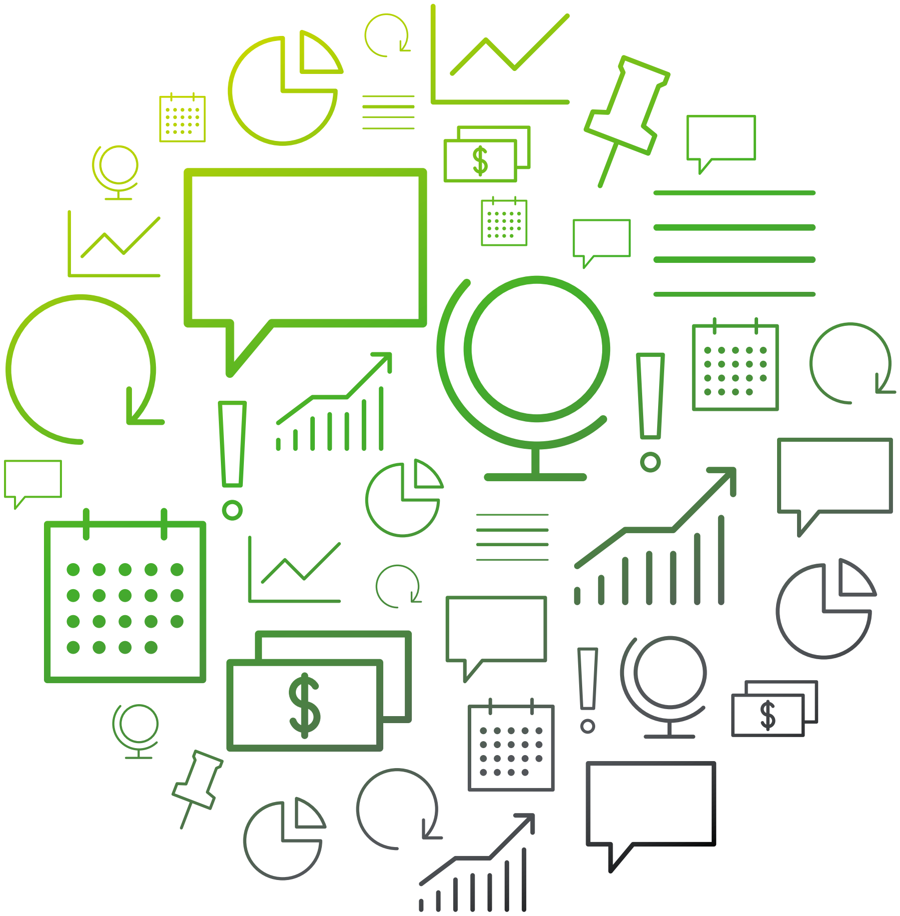

On the board's agenda | US

Governing through the pandemic

Introduction

It is too soon to know whether, how, and to what extent the COVID-19 pandemic will lead to permanent changes—the "next normal"—in how companies are governed or if, post-pandemic, we will go back to the way things were just a few short months ago. In the meantime, governing through the pandemic and the post-pandemic recovery raises a host of new challenges, while also offering potential opportunities. The purpose of this *On the board's agenda* is to consider some ways in which boards may get through the pandemic and to contemplate the future of governance in a post-COVID-19 world.[1]

An agile approach to long- and short-term focus

In the recent past, boards have been urged to take a long-term approach to areas like strategic planning, rather than focusing on short-term concerns such as the current or next quarter's earnings per share. The very concept of "sustainability" implies a longer view. However, COVID-19 has forced boards to focus quickly and intensely on many short-term issues, ranging from the health and well-being of the workforce; ruptured supply chains; and immediate and severe drops in revenues, liquidity, and cashflows, to overseeing difficult decisions on such issues as laying off or furloughing employees,

1. Punit Renjen, *The heart of resilient leadership: Responding to COVID-19*, Deloitte Insights, March 16, 2020, https://www2.deloitte.com/us/en/insights/economy/covid-19/heart-of-resilient-leadership-responding-to-covid-19.html

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shutting down facilities, and in some cases closing the business permanently. Boards may also need medium-term and long-term perspectives for the recovery and beyond, asking management key questions focused on workforce strategies, including the safety and well-being of the employees.

What actions will need to be taken to enhance resiliency for the duration of the pandemic and after it recedes? Does the organization have sufficient "bench strength" in senior management and other key functions for the foreseeable future, or does it need new talent and/or new types of talent? How can the company establish more secure supply chains? Does the enterprise's pre-pandemic strategic plan make sense in a post-pandemic environment? And so on.

An agile approach would seem to allow boards and management to shift back and forth among short-, medium-, and long-term issues as a changing environment may require. Particularly once the crisis is receding or in the past, boards will need to oversee the long-term scenario planning[2] and recovery of their companies, as well as the companies' futures, to thrive in a post-pandemic world.

A new take on "overboarding"

Directors who serve on multiple boards can bring significant value to the boards on which they serve, including the ability to share insights and experiences. However, with the support of investors, many companies impose limits on the number of boards on which their directors can serve, to avoid concerns arising out of "overboarding"—in essence, being spread too thin given the significant responsibilities of directors. With the increased fiduciary responsibilities of boards during the COVID-19 crisis, many directors may now be considered "overboarded," as every company in every industry is having to address the issues facing their companies. Depending upon the duration of the crisis and its impact on the companies of which they are executives and/or on whose boards they serve, directors may need to consider resigning from some boards in order to execute their executive and fiduciary responsibilities effectively.

It remains to be seen whether similar concerns will impact board composition in the post-coronavirus world, but it seems reasonable that nominating and governance committees will need to consider how various types of crises might result in a director's ability to fulfill their fiduciary responsibilities.

Succession planning

CEO succession is a critical issue for boards and may be the most important role of the board. The board is ultimately responsible for CEO succession and should discuss strategies for supporting the health and safety of leaders, including both board and management, as well as succession risks associated with key positions. The board will want to understand the plan to fill in for anyone who contracts COVID-19, as well as plans to disclose a management or board illness.

In this environment, many boards have ramped up their succession oversight to a higher level. They are focusing significantly on the health and safely of all their leaders and the board. Working with management, boards are now taking succession considerations to a level below the chief executive officer by putting together succession plans for key roles in the c-suite and other mission-critical roles. In the finance team, as companies go through their first-quarter close, the board is looking at key finance roles to make certain there are individuals who can step in as needed if a team member or a family member becomes ill or unable to fulfill his or her responsibilities. In some cases, they have asked different leaders to take on new roles and responsibilities, which can be a great way to see whether and how different leaders step up during these very challenging times.

A new definition of oversight

Boards are constantly reminded that their role is oversight rather than managing day-to-day matters, with phrases such as "noses in, fingers out." Boards have had to lean in when existential threats have arisen, such as the unanticipated departure or death of a CEO, the commencement of a "bet-the-company" litigation or government prosecution, or a knock on the door by an unwanted acquiror.

COVID-19 is such an existential threat; moreover, it is far broader, because it impacts many more areas. To address those areas, boards will likely have to lean in far more than has been the case. How and when they lean in will also be very uncertain and may depend upon the company, its industry, its culture, and other factors. Boards should be cognizant of where and when they need to be more engaged with management. At a minimum, directors should consider how they can help, based upon their qualifications and experience. For example, a director with extensive experience in banking or financial services may need to actively assist the company to address liquidity challenges arising from COVID-19, or a board member with a background in human capital may be called upon to assist management in addressing workforce challenges.

2. Andrew Blau, Peter Schwartz, et al., *The world remade by COVID-19; Scenarios for resilient leaders | 3–5 years,* April 6, 2020, https://www2.deloitte.com/global/en/pages/about-deloitte/articles/covid-19/covid-19-scenarios-and-impacts-for-business-and-society-world-remade.html.

At the same time, there are likely to be areas where boards need to back off and let management handle things on its own, even where a director may have expertise in a particular area. Among other things, the extensive demands on management's time during the crisis suggest that directors are being very careful and selective about the information requested from management, so as not to overwhelm them with requests that may not be critical.

As noted previously with respect to short- versus medium- and long- term focus, when the crisis is in the past, boards and their members may need to pivot back and forth between a focus on more traditional long-term oversight where appropriate while leaning in to help the company manage through the necessary rebuilding of the company.

Dealing with investor concerns

Investors have been the driving force of governance reforms since the passage of the Dodd-Frank Act in 2010. Many of the governance structures and processes companies have implemented during that period have been based not on law or SEC regulations, but rather in response to pressures from large institutional investors. Even in the face of the pandemic, some investors continue to be demanding that boards focus on matters such as conducting in-person (vs. virtual) shareholder meetings post-crisis[3] and prioritizing the needs of the workforce.[4] How should directors respond to these demands in the midst of so many other matters and the severe constraints on financial and other resources during the crisis? Boards will likely need to focus on the most urgent matters arising from the crisis, including communicating with the stakeholders. Compensation is one area where boards may want to engage with investors as the company reviews compensation plan changes going forward, particularly if changes include a more discretionary framework. Boards should also consider providing leverage and support to management during a critical time for investor engagement on other topics.

Some investors have stated that companies with leading ESG—environmental, social, and governance—practices are likely to fare better in crises and other adverse conditions. Going forward, boards will need to determine whether and the extent to which such practices will, in fact, enhance their resiliency and thus the likelihood of their survival and growth post-pandemic.

Social purpose and stakeholder governance during and after the pandemic

The recent debates over whether and to what extent a corporation should have a social purpose, or have fiduciary-like duties to employees, communities and other stakeholders in addition to stockholders, is likely to intensify and morph as the COVID-19 crisis continues. These concerns impacted companies across a wide range of industries even before the pandemic. Since the onset of the pandemic, many companies have demonstrated their commitment to social purpose and their employees and communities by keeping people on the payroll, extending benefits post-termination or during furloughs, refocusing assets to become part of the needed supply chain, retrofitting plants to manufacture medical supplies, or not shutting off customers' power for nonpayment as the coronavirus continues to disrupt daily life.[5] It is likely that some companies will be unable to continue these actions indefinitely. Some companies may feel compelled to limit their activities to those necessary to survive and thus be unable to devote resources to social purpose or other external matters at this time.[6] And others are reviewing the impact on brand and reputational risk associated with decisions and communications to communities and other key stakeholders.

It is too soon to know whether the crisis will have a broad impact on companies' pursuit of social purpose or stakeholder governance post-pandemic, or what either of these concepts may look like at that time. However, it seems reasonable to ask questions such as these: Will the pandemic cause a reordering of US business priorities? Will considerations regarding social purpose be impacted by continued market declines? Will the pandemic increase or decrease the focus on diversity, equity, and inclusion? Will shareholder value come back as being the primary priority? Whatever the answers to these questions may be, social purpose may be positively impacted by companies that communicate with stakeholders clearly through change in a transparent and responsible manner.

Are boards up to the challenge?

The pressures on boards during the pandemic are intense and are likely to remain so for a long time. As a result, boards may have to make fundamental, substantive choices to satisfy their fiduciary duties—to distinguish between what may be "nice to have" versus what the company "must have" to survive. Governance during and after a pandemic may entail considerations in the areas discussed previously—board oversight, social purpose, board composition, investor concerns—and many others. Hopefully, most boards will be up to the challenge.

3. DealBook, "After the Market's Worst Day in Decades, Where Do We Go From Here?", *New York Times,* March 13, 2020, https://www.nytimes.com/2020/03/13/business/dealbook/coronavirus-markets-stocks.html.
4. Domini, *Investor Statement on Coronavirus Response,* https://www.domini.com/uploads/files/INVESTOR-STATEMENT-ON-CORONAVIRUS-RESPONSE-final.pdf
5. Nigel Duara and Jackie Botts, "Can't pay your power bill? Don't worry, you're safe for now as California utilities suspend shutoffs," March 13, 2020, https://calmatters.org/california-divide/2020/03/utilities-wont-shut-off-power-coronavirus/.
6. Anecdotally, before the onset of the pandemic, some in the governance community had expressed the view that social purpose is all well and good at the peak of a bull market, but that even advocates of social purpose may have different views when a recession or depression occurs.

Toolkit of questions for board members

Deloitte's Center for Board Effectiveness hosted two peer-to-peer exchanges for board members across all industries in April 2020, focusing on current topics on the board's agenda. The questions below represent questions board members can ask of management and other board members both during and after the pandemic:

Financial and downturn planning

- What is the company's current cash position? How long can the company maintain "normal" operations based upon that position?
- What credit facilities does the company currently have in place? Can it draw upon them easily, or must it satisfy any conditions to draw on those facilities? If so, how difficult will it be for the company to satisfy those conditions?
- Is the company able to obtain additional sources of cash or credit? If so, on what terms, and are they acceptable?
- Can the company seek accommodations from its trade creditors, for example by extending payment terms, so as to reduce the risk of a cash crunch?
- Is the company's supply chain at risk due to the current or anticipated cash crunch?
- Has the company provided disclosure about its financial position? What can or should the company disclose?

Workforce strategies

- What actions has the company taken with respect to its workforce in the wake of the pandemic in areas such as wellbeing? Are any further actions anticipated? If so, what actions are planned, and what is the anticipated timing?
- If the company has furloughed or laid off employees, is the remaining workforce capable of sustaining "normal" or critical operations?
- How Is the company communicating with its workforce regarding the pandemic?
- What actions can or should the company take to avoid losing critical employees during this crisis?
- Does the company have a plan to bring its workforce back to its facilities? Does the company need to make any changes to those facilities to enable or encourage employees to return? Does the company think that part of our workforce can or should continue to work remotely?
- What type of compensation strategies are needed moving forward?

Strategic and operating plans

- What short-, medium-, and long-term changes are being considered in the company's strategic plans?
- How is management making these decisions? Does management have a task force or other group helping to make these decisions deliberately and on the basis of appropriate information?
- Are there any capital or other projects that need to be completed? Abandoned? In both cases, why, and what are the costs and consequences? Can any projects be put on hold, at least temporarily?
- Does the possible abandonment or "freezing" of any projects make it possible, advisable, or necessary to furlough or terminate employees? At what levels?
- How will any changes in the company's strategic plans impact its future growth and profitability?
- How does the company plan to communicate any changes in strategic or operating plans to stockholders and other stakeholders? Is management making sure that their communications are consistent across the board (for example, so that the company is not saying one thing to investors and another thing to employees or the communities in which the company operates)?

Succession planning

- How has management performed in the crisis? Has it indicated that there are "weak links" that may call for changes?
- How do possible layoffs impact the existing management succession plans?
- What is the impact of layoffs on the "bench strength" if the company has to fill key positions should the need arise?
- Does our experience in the pandemic suggest that we need to change the skill sets we have been seeking in our management succession plans?
- What about board succession plans?
- Do we need to consider any structural changes in our executive compensation plans as a result of the crisis?

Supply chain risk management

- Has the pandemic made management aware of any strengths or vulnerabilities in the company's supply chain management?
- What actions can or should the company take to remedy those weaknesses or further strengthen the areas in question?
- Does the company's supply chain experience during the crisis suggest the need for any reorganizations in how the supply chain is managed?
- What does management expect the company's supply chains to look like in the future—six months? A year? Five years?
- Depending upon the anticipated changes in the company's supply chain, what related changes does management need to consider in manufacturing processes?
- What resources does management need to make available to assist the company in making the supply chains more "crisis-resistant"?
- Has management identified third-party risk management weaknesses during the crisis?
- What challenges does the company need to manage for the company's third-party vendors when returning to the worksite?

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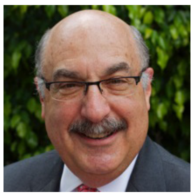

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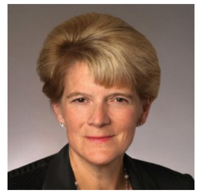

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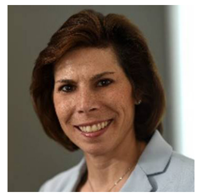

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