TOP TAKEAWAYS

Board's Involvement in Crisis Response

These are the top takeaways from the **Board's Involvement in Crisis Response** roundtable moderated by Foley Partner John K. Wilson on November 17, 2011 as part of the NDI Executive Exchange, a segment of Foley's National Directors Institute. Featured participants in the roundtable were F.J. (Jack) Buri of Alliant Energy Corporation, Michael Pace from FTI Consulting, Dr. Ulwyn Pierre of Pierre & Associates, Inc. and Latham Williams from Hudson Highland Group, Inc.

1. **Establish Crisis Response Team.** An entity should identify and have in place a crisis response team, including both internal (CEO, Board leaders, legal, financial, public relations, etc.) and external (legal counsel, accounting firm, etc.) members. In addition to having the team in place, an entity should ensure that the Board and management have access to up-to- date contact information, including a calling tree.

2. **Risk Assessment.** Crisis planning should start with a broad-based risk assessment plan to identify potential areas of vulnerability, including through the use and fine- tuning of the entity's enterprise risk management system. Once areas of vulnerability have been identified, the Board should oversee the implementation of a business continuity plan for the entity as a whole and individual plans for each business unit, including planning for appropriate staffing of crisis response teams. Although no monitoring system can inoculate an entity from the possibility of a crisis occurring, an appropriately targeted use of technology can lessen risk. In particular, technologies for continuous transaction monitoring combined with the collection and application of analytics to such transactions are effective in decreasing certain risks associated with entity-wide financial fraud and corruption in foreign business operations.

3. **Crisis Training and Prevention.** In an era of tight budgets, entities should not overlook the value of rigorous risk assessment and crisis-prevention training. While having plans and policies in place is a good start, testing risk management policies and business continuity plans through drills of various crisis scenarios will allow the Board to assess the effectiveness of an entity's planning prior to the occurrence of an actual crisis.

4. **Reduce the Likelihood of Crises.** A consistent interpretation of an entity's foundational elements (vision, mission and core values) between the Board and management can help to minimize the occurrences of crises stemming from miscommunication. Director on-site meetings and conferences with local management personnel and clients and customers assist in narrowing the gap between Board perceptions of risk and personalities and business reality.

5. **Initial Board Involvement in a Crisis.** Management must deliver timely and complete information to the Board in the event of a crisis. The directors involved at the onset of a crisis may vary depending on the type and severity of the particular situation (*e.g.*, lead independent director, chair of a particular committee or the entire Board).

6. **Board Response in the Event of Management Misconduct.** In the event of the suspected occurrence of management misconduct (*e.g.*, fraud by management), the Board should determine initially whether management or the Board itself should lead the investigation. Such a determination is often made based on the level of independence necessary and the seniority level of management involved in the misconduct.

7. **Resolving the Crisis at Hand.** After determining that a crisis has occurred, the most immediate task for the Board is to "stop the bleeding" and protect the entity's brand. All portions of the entity must coordinate to address the root causes of a crisis and not only the "tip of the iceberg." Defining the scope of the issue and setting clear objectives and timetables should be among the first tasks completed once the Board has identified the crisis and its causes.

8. **External Advisors During a Crisis.** In meeting crisis response objectives and timetables, the Board should identify the appropriate advisors (lawyers, accountants, external and internal public relations, etc.) to implement the Board's response plan. In selecting advisors, the Board should consider the need for attorney-client privilege for certain communications. The Board should understand how an entity's advisors can assist during a crisis, including by assessing the various skill sets of each and the manner in which advisors may work together to implement crisis solutions. The Board should be prepared to engage independent advisors in those situations which warrant additional independence (*e.g.*, accounting fraud).

9. **Management Working with the Board.** Given that most, if not all, crises will likely be identified and triaged by management, the Board should ensure that management has guidance prior to the occurrence of a crisis as to what stage of a crisis management should alert the Board. Once management has brought the Board into a crisis situation, the Board should seek to identify the management personnel most appropriate for working with the Board during a particular crisis.

10. **Communications in a Crisis.** Communications to regulators, investors, employees and management during a crisis require coordination such that messaging is consistent and timely, including across time zones, and in accordance with legal and regulatory requirements. The Board should also consider the use of alternative communication delivery methods, including social media.

For more information
For more information on the Board's Involvement in Crisis Response roundtable session, please feel free to contact the moderator directly:

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