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NATIONAL DIRECTORS INSTITUTE

BREAKOUT SESSION

The Board's Role in Crisis Management – Lessons Learned in 2020

PANELISTS



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COVID-related Board Issues

- **Ensure Board is sufficiently & frequently engaged and informed to satisfy its fiduciary duties – and support management**
 - Is Board changing frequency and manner of its Board/committee meetings to allow for enhanced communication?
 - Consider new committees to promote rapid-response decision-making
 - New internal/external resources to keep board informed: Board update calls, additional reliance on experts
 - With new technology and remote meetings, keep eye on protecting legal privilege and confidentiality
 - However, Board should not distract management from its tasks
- **Review and update Board/management continuity and disaster/crisis – planning especially for unexpected illness**
 - Temporary succession planning for key leaders
 - Consider emergency bylaws and ensure process for delivery of notices

COVID-related Board Issues (cont.)

- **Review near-term budget and long-term corporate strategy in light of disruptions and opportunities**
- **Evaluate liquidity, financing alternatives and ongoing opportunities to strengthen balance sheet and liquidity position**
 - Evaluate continuation, reduction or suspension of dividend
 - Evaluate stock buyback program
- **Review insider trading policy to ensure appropriateness of blackout policy and windows based on rapidly changing and fluid nature of operations and financial outlook**
 - SEC focused on insider trading protections
- **Assess takeover defense preparedness and analyze opportunities to strengthen protections**
- **Evaluate executive compensation structure – plan targets, metrics, mix of compensation elements, perquisites – in light of new financial situation and changes in competitive environment**

COVID-related Board Issues (cont.)

- **Review relationships with key customers and suppliers**
 - Force majeure?
 - Inability of either you or the other company to perform its responsibilities under the contract?
 - Alternative sources?
- **M&A – opportunistic/strategic buys may be available; continue to monitor hostile activity in the industry**

COVID-related Board Issues (cont.)

- **Reassess risks and review mitigation plans for newly-identified risks as a result of COVID and its implications**
 - Ensure appropriate Board/committee oversight of any new key risks
 - SEC focused on disclosure of risks specific to companies; beginning with March 2020 guidance and supported with June 2020 guidance – risks should be specific and not generic
 - Various categories of risk relating to COVID could include, among many others:
 - **L&E risks:** Ensure changes in travel policies, reductions in salary, work-from-home policies and expectations comply with employment laws, impacts on culture and workplace dynamics (short-term and long-term)
 - **Finance/liquidity risks:** Enhanced risks relating to debt facilities and covenants; consider changes to stock buybacks and cash management
 - **Cybersecurity/data breach or cybercrime risks:** Additional work-from-home provides new opportunities for breach of systems; consider increased IT systems capacity and integrity

COVID-related Board Issues (cont.)

- Various categories of risk relating to COVID could include these (cont'd):
 - **Supply chain risks:** Inability of various supply chain partners to supply adequate product on a timely basis
 - **Consumer demand:** Changes in consumer spending pattern
 - **Insurance risks:** Risks related to business interruption
 - Others including overall impacts on capital markets and business operations worldwide

COVID-related Public Disclosures

- **Review public disclosures with a fresh eye each quarter to identify changes due to COVID and changes in business**
- **In March 2020, SEC Chairman Jay Clayton called on companies to be as transparent to investors as possible**
- **On June 24, 2020, the SEC's Division of Corp Fin enforced the need to "proactively revise and update disclosures as facts and circumstances change," which may include the following:**
 - *Operational changes or challenges (disclose in MD&A):* including supply chain adjustments, implementation of work-from-home policies, operational hardships, work stoppages/ business continuity & labor challenges, demand for products and services
 - *Liquidity (also in MD&A):* including terms of new financing arrangements; dealing with short- and long-term liquidity and funding risks in the current economic environment; identify any government aid received

COVID-related Public Disclosures (cont.)

- **Additional areas of focus:**
 - Consider updates in both periodic reports and earnings materials; the SEC is focused on all public disclosures
 - Review non-GAAP guidance from SEC on adjustments relating to COVID
 - Carefully consider guidance and any need to withdraw
- **SEC's Chief Accountant has emphasized need for 'high quality financial reporting'**
 - Auditors will remain sensitive to matters such as subsequent events, ICFR, going concern
- **Always be mindful of Reg. FD!**
 - Rapidly changing environment may require additional public reporting – press release or Item 7.01 Form 8-K – to allow senior management to speak at conferences or investors without concern of selective disclosure

Racial and Social Justice-related Board Issues

- **Consider involving Board in discussions relating to racial and social justice issues, including:**
 - Human capital management including policies, culture, tone at the top, hiring, succession, Board composition
 - Potential operational impacts
 - Internal and external communications including public disclosures, investor engagement

Thank You



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