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On the board's agenda | US

The 2021 boardroom agenda: Never let a good crisis go to waste (and more)

Introduction: A year of consequence

It seems likely that 2020 will be viewed as one of the most consequential years in recent memory. In addition to dealing with an ongoing global pandemic and the massive economic and social dislocations it caused, the United States has had to address natural disasters such as major hurricanes and wildfires, racial unrest, and a lengthy and challenging political campaign, among other things. While the challenges of any year often influence boardroom agendas for the following year, the impact of 2020 on 2021 board agendas will almost certainly be extraordinary. At the same time, boards will need to deal with many perennial areas of board oversight, including strategy, financial reporting, compliance, and culture.

This *On the board's agenda* discusses some of the many issues, old and new, that boards will likely have to contend with in the coming year.

Risk: Crisis management, disruption, and business continuity

Crisis management, disruption, and business continuity have long been key elements of risk management and related board oversight. However, the meanings of these terms and the severity of the challenges they posed in 2020 entail a much broader range of considerations. For example, the issues contemplated by the term "crisis management" have often been short-term and/or relatively limited in scope, such as the sudden death or incapacity of an executive or damage to a production facility.

In contrast, the global COVID-19 pandemic began in the first quarter of 2020, has continued, and seems likely to remain a challenge through a significant portion of 2021. Both the severity and duration of the pandemic have caused many businesses to suffer drastic downturns and, in some cases, to fold. In addition, those developments, coupled with the sudden, dramatic, and long-term switch to remote work, have had chain reactions, affecting supply chains, oil prices, and commercial real estate, among other things. The pandemic has also exacerbated traditional areas of risk oversight; for example, it has led to increased incidences of cyberattacks and other cyber risks.[1]

As a result, boardroom agendas in 2021 are likely to include a renewed focus on how to survive a crisis. This focus may include looking backward by conducting postmortems to assess how the business addressed the pandemic, as well as looking forward to determine where existing plans need improvement, updating playbooks to address a broader variety of crises, and engaging in wargaming exercises.

As part of this process, boards should consider evaluating how they performed during the crisis: Was the board engaged in the pandemic response and related challenges? Did directors provide the necessary levels of support for management? Did they become too engaged in day-to-day crisis management rather than oversight? Are additional skill sets needed on the board?

Workforce strategies and well-being

Driven by a number of factors, ranging from the pandemic and its threat to workplace health and safety, to the growing investor and regulatory focus on human capital management, workforce strategies will remain spotlighted on 2021 boardroom agendas.

One major area of board oversight flowing from the pandemic will be whether, when, and how the workforce can return to offices and other facilities. Some companies have announced that all or major segments of the workforce will continue to work remotely indefinitely; others have started to bring some members of the workforce back into company facilities, in some cases on a rotating basis, so that social distancing can be maintained; and still others appear to be adopting a hybrid approach or deferring decisions for the time being. Interestingly, this area has not been one over which boards have exercised much, if any, oversight in the past; decisions as to which employees work where have been appropriately left to management. However, in the wake of the pandemic, two expected topics on the board's agenda are (1) As virtual work appears here to stay to some extent, how do we help our workforce stay connected? and (2) How does the workforce safely return to the workplace, and in what type of office or facility configuration? Focusing on these and related topics can demonstrate that boards are concerned about the health and well-being of the workforce.

The health and well-being of the workforce, including the C-suite, is a new challenge arising from the pandemic. Prolonged uncertainty regarding the efficacy, safety, and availability of a COVID-19 vaccine, continued isolation, the economic downturn and job insecurity, ongoing social unrest, and environmental emergencies continue to test the mental and emotional health and well-being of workers. Studies show that the average American workday increased 40% during COVID-19,[2] as work and home life blend together. Fourteen percent of women and 11% of men are considering job resignations due to COVID-19–related work-family conflicts,[3] and adult anxiety and depressive disorders reported have increased by 300%.[4] Boards are likely to consider a longer-term focus on whether their businesses are enabling or facilitating workforce health, both physical and mental, since the start of the pandemic. This includes board oversight of company measurements illustrating both value creation and risk mitigation, such as the ROI from workplace mental health programs, and the financial impact of improved attrition rates.[5]

The Deloitte *2021 Global Human Capital Trends* survey found a continuing disconnect between executives and workers when it comes to prioritizing well-being in work transformation efforts. Both executives and individual workers answered the same question: "What are the most important outcomes you hope to achieve in your work transformation efforts in the next one to three years?" Workers told us that the top three objectives should be 1) improving quality, 2) increasing innovation, and 3) improving worker well-being. Improving well-being was the second-to-last outcome identified by executives, with only "increasing social impact" receiving fewer votes.[6]

1. *On the board's agenda*, "Cyber: New challenges in a COVID-19–disrupted world," November 2020, https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/us-otba-oct-cyber-v7.pdf.
2. *Business Facilities*, "U.S. Employees Working More Hours During COVID-19 Pandemic," March 23, 2020.
3. *HBR*, "The Pandemic Has Exposed the Fallacy of the 'Ideal Worker,'" May 11, 2020.
4. US Centers for Disease Control and Prevention (CDC), "Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic," June 24–30, 2020.
5. How CFOs Can Bridge Value Creation and Employee Well-being," https://deloitte.wsj.com/cfo/2020/08/14/how-cfos-can-bridge-value-creation-and-employee-well-being.
6. *2021 Global Human Capital Trends* survey, December 2020, https://www2.deloitte.com/us/en/insights/focus/human-capital-trends.html?id=us:2em:3na:4di6935:5awa:6di:011221&ctr=PIcta3&sfid=0033000001NIj1zAAD

The Securities and Exchange Commission (SEC) adopted new rules in 2020 that, for the first time, will require companies to provide disclosures on human capital management. In the past, changes in disclosure requirements have often generated new areas of board focus; there is reason to believe the same phenomenon will occur here as the board determines if the board or a committee will review the required disclosures and underlying data about employees, contractors, and others.

Diversity, equity, and inclusion

Concerns about racial justice constituted another major disruptor in 2020, increasingly resulting in calls for American society, including its business community, to acknowledge and address systemic racism. And it appears that businesses are responding. A September 2020 survey published by Deloitte and the Society for Corporate Governance noted that "most companies and/or their boards have taken, or intend to take, actions in response to recent events surrounding racial inequality and inequity; 71% of public companies and 65% of private companies answered this question affirmatively."[7]

One significant area of the focus on racial justice is the board itself—i.e., whether specific racial and/or ethnic groups are underrepresented on America's boards of directors. For example, in September 2020, the *New York Times* reported as follows on an analysis performed by Institutional Shareholder Services:

> "The boards of the 3,000 largest publicly traded companies remain overwhelmingly white. Underrepresented ethnic and racial groups make up 40 percent of the U.S. population but just 12.5 percent of board directors, up from 10 percent in 2015…
>
> "Black directors make up just 4 percent of the total, up from 3 percent in 2015, while Black women make up just 1.5 percent of the more than 20,000 directors included in the analysis, which goes beyond other surveys that included only the 500 largest public companies."[8]

In response to similar studies and reports, many companies have ramped up their efforts to increase racial diversity on their boards, including pledges to add board members from underrepresented communities. In addition, California has enacted a law requiring California-based companies to add directors from underrepresented communities,[9] similar to the law regarding gender diversity adopted by California a few years ago, and Nasdaq has filed a proposal with the SEC that would require listed companies to have at least one director who self-identifies as female and one director who self-identifies as Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, two or more races or ethnicities, or LGBTQ+.[10] The California bill impacts over 600 companies; if adopted, the Nasdaq proposal would impact over 3,000 companies.

Risk oversight will be one overarching reason boards focus on diversity, equity, and inclusion (DEI) in 2021. Stakeholders, including investors, workers, and customers, continue to demand attention to DEI to address both reputational and cultural risk for the company and its workforce. Value creation is a second reason boards may address DEI this coming year. Workers are asking if the company they work for is performing on the issues that they care about, which can keep the employee engaged for the long term. Finally, metrics or key performance indicators will likely be the focus of the board; 55% of the respondents of a recent *Board Practices Quarterly* survey said they have already established metrics to support diversity and inclusion strategy, performance, and execution, and 45% indicated they intend to take similar action.[11] Given these trends, diversity, equity, and inclusion efforts and outcomes at all levels are likely to be critical items on board agendas throughout and beyond 2021.

Actions for the board to consider:

- Build capabilities around DEI, including inclusive leadership capabilities to govern more inclusively.
- Infuse DEI into every committee in order to model how the organizations can manage all business practices through lenses of diversity, equity, and inclusion.
- Mitigate risk in terms of championing mitigations and interventions to inequities that exist today and have resulted in bias and inequitable outcomes for some facets of the workforce.

7. Deloitte Center for Board Effectiveness, "Diversity, Equity, and Inclusion," https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/diversity-equity-and-inclusion.html.
8. "Diversity Push Barely Budges Corporate Boards to 12.5%, Survey Finds," *New York Times*, https://www.nytimes.com/2020/09/15/business/economy/corporate-boards-black-hispanic-directors.html?referringSource=articleShare. Prior studies have shown that the level of board diversity varies inversely with market capitalization. See https://www.corporatesecretary.com/articles/boardroom/31526/small-cap-board-diversity-lags-sp-500-morningstar-says.
9. AB979, *Los Angeles Times*, September 30, 2020.
10. *Wall Street Journal*, https://www.wsj.com/articles/nasdaq-proposes-board-diversity-rule-for-listed-companies-11606829244.
11. Deloitte Center for Board Effectiveness, "Diversity, Equity, and Inclusion."

Liquidity

Without diminishing the importance of diversity, equity, and inclusion or the other matters discussed above, they can be rendered less relevant or even meaningless if a company has to furlough or lay off employees, or possibly shut down, due to liquidity concerns. As the pandemic continues to rage, many businesses, and in some cases entire industries, have been forced to take these and other actions as revenues slowed down to a trickle or dried up entirely, reviving the saying "cash is king."

The range of actions taken by companies has included conserving cash by delaying or eliminating planned expenditures; stretching out required payments; seeking to renegotiate leases and other contractual obligations, as well as credit lines and other borrowing arrangements; and, in some cases, simply defaulting. On the other hand, many companies have been able to take advantage of loans available under the Paycheck Protection Program provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and/or have been able to modify existing loan agreements or enter into new ones, given the current low-interest-rate environment. This view on liquidity and cash preservation has unduly impacted certain companies' dividend strategies.

As the pandemic seems likely to extend into at least the early part of 2021, boards are almost certain to remain vigilant about overseeing management actions to preserve and, where possible, increase liquidity.

Culture

Corporate culture is a perennial topic on the boardroom agenda; it is a core matter that impacts all aspects of a business. Indeed, it encompasses many of the areas discussed above, such as workforce strategies; well-being; and diversity, equity, and inclusion. Culture also has a major impact on business disruption and continuity; a culture that does not encourage agility, adaptability, and resilience may make it much harder for a company to rebound from a disruption than a culture that fosters those qualities.

As great a challenge as it may be for boards to help managements develop, maintain, and enhance a strong, positive culture in "normal" times, an event such as the pandemic makes that challenge far greater. How can a company maintain its culture when all or a significant portion of its workforce is working remotely? The challenge of personal human connection to support the culture of the workforce is a key component of job satisfaction and engagement. Can a workforce remain cohesive when, at least until a major portion of the workforce is vaccinated and immunized, some employees must come to a company facility, risking exposure to COVID-19, while others are able to remain sheltered by working remotely? Even as, hopefully, the pandemic subsides, having the board understand the sentiment of the workforce and how management is leading will be more important than ever; boards will need to remain sensitive to the importance of, and challenges associated with, maintaining, a strong culture.

Corporate purpose

Corporate purpose may not have appeared on many boardroom agendas until 2019, when the Business Roundtable published its "Statement on the Purpose of a Corporation,"[12] in which the CEOs of 181 companies agreed that companies should act for the benefit of all stakeholders rather than only stockholders. Despite the ensuing debate between advocates of "stakeholder" versus "stockholder" primacy and the uncertainty surrounding the viability of the Statement under various state corporation laws, it has gained sufficient traction so as to legitimize a new term—"purpose-driven strategy"—representing an evolution of corporate strategy rather than an implication that purpose and strategy are separate matters.

As a result, boards are increasingly considering integrating purpose into core business strategy and subscribing to stakeholder capitalism by considering all of a company's constituencies, or stakeholders (i.e., workers, customers, suppliers, and regulators in addition to shareholders) when making decisions, even when no one constituency may control a decision or when stockholder concerns generally prevail. In fact, the presence on the boardroom

12. https://opportunity.businessroundtable.org/ourcommitment.

agenda of issues such as workforce well-being; diversity, equity, and inclusion; and "enhanced" environmental, social, and corporate governance (ESG) (discussed below) seems to confirm that "purpose-driven strategy" may be here to stay.

The COVID-19 pandemic has arguably influenced this evolution. For example, for various reasons, including branding and reputation concerns driven by the confluence of unprecedented social, economic, and global health disruption and accelerating stakeholder expectations for the role of business in society, many companies have felt the need to demonstrate that their employees are, in fact, their greatest assets by actions such as continuing to provide benefits for furloughed workers or taking pay cuts at the senior level so that more people can remain employed. Some companies have adopted an activist stance on social purpose mission and values, including providing opportunities for shareholders and investors "to provide a clear statement of intent to the company about the importance of sticking to its plans…"[13]

Environmental, social, and governance (ESG)

Many boards have addressed ESG concerns for years. Companies have published reports on how they address environmental and social issues, and annual proxy statements have increasingly discussed not only the company's governance structure and practices (the "G" in ESG), but also how the board oversees "E" and "S."

As 2021 approaches, ESG is entering new areas of board consideration, most notably in the development and application of ESG-based compensation metrics, designed to incentivize management to improve performance in areas ranging from diversity, equity, and inclusion to reductions in greenhouse gas and other emissions. At the present time, many of these metrics may be rudimentary—for example, achieving a specified increase in the number or percentage of underrepresented communities' employees at the managerial level, or reducing carbon emissions by a specified amount. However, it is likely that, over time, the metrics will become more nuanced, for example by comparing a company's performance in an area against that of its peers. The use of these metrics requires oversight by the board, as well as the compensation committee, to determine whether the metrics are appropriate for business as well as compensation purposes and whether their achievement can properly be viewed by investors and others as "stretch" goals rather than low bars.

As the use of ESG metrics in executive compensation increases, investors and others are seeking to obtain assurance that performance against these arguably less mature metrics has been accurately determined and disclosed. Like the underlying use of metrics, assurance with respect to these metrics is in its infancy, but increasingly more important as a tool to promote quality and credibility with respect to the measurement and reporting of key metrics used to incentivize corporate behavior. Consequently, boards and committees are likely to monitor them carefully in the coming year.

Conclusion: A robust agenda

As noted at the beginning of this *On the board's agenda*, the above is a discussion of just some of the items expected to appear on the 2021 boardroom agenda. There are many more, both old and new, including oversight of strategy; cyber; changes in financial reporting and disclosure; compliance; addressing geopolitical challenges; potential regulatory changes in light of 2020 election results; and other areas of risk management, including extending existing enterprise risk management processes to include third parties. To be sure, 2021 is likely to be a very interesting year, with a robust board agenda.

13. Unilever Allows Climate Input: Company first to give shareholders a say on emissions plan, through advisory vote; Wall Street Journal December 15, 2020, Section B page 5

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