NACD

NACD Nominating and Governance Committee Chair Advisory Council

Communicating in Times of Crisis: Insights From Fortune 500 Committee Chairs

Corporate crises continue to dominate headlines, exacting a significant cost on businesses and often exposing breakdowns in how companies respond to and effectively communicate with their stakeholders.

To help boards enhance their crisis communication plans, NACD, Heidrick & Struggles, and Sidley Austin LLP cohosted a meeting of the NACD Nominating and Governance Committee Chair Advisory Council—comprising Fortune 500 company nominating and governance committee chairs and lead directors—on April 24, 2019, in Washington, DC. Council delegates were joined by guests from Sard Verbinnen & Co. and Strategic Governance Advisors for a portion of the meeting.

The meeting was held using a modified version of the Chatham House Rule, under which participants' quotes (italicized below) are not attributed to those individuals or their organizations, with the exception of cohosts. A list of attendees' names is available on page 6.

The Council's discussion identified several takeaways to inform board oversight of crisis communications:

- Find the *North Star* in the organization's message.
- Clarify roles and responsibilities for communications.
- Keep employee communications balanced.
- Manage the tension between mitigating liability and getting the firm's message out.
- Invest in communication with investors during "peacetime."

Find the *North Star* in the organization's message.

Since every crisis is unique, it's critical for the organization's leaders to work with internal and external legal and communications professionals to develop a response that is appropriately tailored to a given situation. Aligning the company's message and action with a set of guiding principles, or a North Star, emerged as a key feature of effective crisis communications. *"It's important to slow down for a second during a crisis and really think through what do we want to have happen as a result of this crisis? What's our story? Many boards and management teams just immediately react to the crisis rather than thinking through it strategically,"* noted one participant. Liz Zale, managing director at Sard Verbinnen & Co., echoed this sentiment: "If you know where you're trying to get to, you can do a risk benefit analysis of liability exposure against quick communication. This is where we engage 80 percent of the [time]—thinking through the ultimate business goal and using that clarity to understand the risks you are willing to take to achieve [that] goal.

"It's important to slow down for a second during a crisis and really think through what do we want to have happen as a result of this crisis? What's our story? Many boards and management teams just immediately react to the crisis rather than thinking through it strategically"

The business goal is the ultimate *North Star*." One director recalled, *"Our* North Star *in a recent crisis was improving customer service. After we established what we wanted to focus on, all of our communications and actions were centered around demonstrating that focus on the customer experience."*

The *North Star* extends not just to what is being communicated but also considers the who. Holly Gregory, partner and cochair of the Global Corporate Governance & Executive Compensation Practice at Sidley Austin, remarked, "As you think about your communications it's important to recognize who you are communicating to. Who is your audience, and what is the key message you are trying to convey?"

Clarify roles and responsibilities for communications.

Recovering from a crisis requires an organization to expend significant effort and resources; however, during crisis situations corporate leaders should avoid inadvertently prioritizing the crisis response and recovery over company performance. Boards should ensure management is maintaining the right balance, so as not to jeopardize the company's survival. As one delegate commented, *"There is a time-honored technique [which] splits the management team [between] people running the [core of the] business and those dealing with the crisis."* Another meeting attendee underscored the importance of establishing a clear division of labor prior to the onset of a crisis, adding, *"A fundamental part of good crisis preparation is identifying who's in charge and who'll be fielding the questions from different stakeholders. That design is critical, especially in large organizations where there could be some distance between headquarters and the location where the crisis has hit. Management and the board need to reassess this on a regular basis as people move around and roles change."*

To pressure test management readiness, Sara Spiering, principal at Heidrick & Struggles, advised boards to "ask about the level of alignment between the legal and communications teams, including external advisors. How well do they work together? Does the organization have the [necessary] skills and resources?"

The board can potentially play a direct role in messaging to external stakeholders—however, delegates noted that it's not the role of the board to be the first responder. Directors should help management to evaluate and pressure test the potential risks and opportunities of their message. Ted Dysart, vice chair at Heidrick & Struggles, counseled, "Board members should fight the gut reaction to respond. We advise boards to not click on the articles [or] go off and respond on their own. It's important to have a cohesive voice as a company."

Keep employee communications balanced.

When confronting a crisis, companies should keep in mind their many audiences; this can include regulators, shareholders, customers, and employees. Recognizing that the company workforce is an important stakeholder, directors and executives should carefully consider employee communications— particularly, who is communicating with this group and how much information is being divulged. Companies should aim to avoid creating an internal crisis by overcommunicating. One participant shared, *"During a crisis, the board sent an all-staff bulletin letting them know what was going on and how [it was being] handled. We thought this was a great idea to communicate with employees, but didn't consider that [these disclosures were] so outside of the ordinary course of everyday business that it would raise flags and actually do the opposite of what we intended."* Zale noted, "There can be a disconnect between what's top of mind for the C-suite, and [for] the broader employee base. The board can be a calming mechanism . . . [to] encourage management to think through what's actually important to employees and [anticipate] what their concerns are likely to be, in order to communicate with the right level of detail and context."

Additionally, companies should be judicious about using board members for employee communications. One meeting participant observed, *"There are some situations where direct communication from a board member to the staff is necessary, but it's important to clarify who the director is and what their role is, in order to avoid confusion."*

> *"It's important to have good communications established within the team to ensure that the long-term impact is being considered when communicating. Think through what you message now, [so] that [it] won't come back to haunt you in the future."*
>
> **Julia Mirabella**
> *Associate at Sidley Austin LLP*

Manage the tension between mitigating liability and getting the firm's message out.

While company leaders may stress increased transparency and communications, corporate counsel is likely to be cautious about the potential for litigation risks stemming from a company's statements. Directors and senior executives should work closely with their internal and external counsel to determine how best to manage this tension.

Directors should consider the following when managing this tension:

- **Concerns from internal and external counsel around communications getting ahead of what the company and the board actually know**. As Gregory noted, "Statements like, 'the board is fully behind the CEO,' in situations where there are allegations that have not been fully investigated, can do more harm than good if the board has to step away when more details [emerge]. Management and the board should be open about what they know, and state that there is a process underway to find out more. This preserves their ability to make decisions about messaging as more information becomes available."

- **The need for the board and management team to discuss what level of risk in communications is acceptable prior to making a final decision**. Zale asked directors to consider whether "management [had] thought about how key business partners, clients, and customers [may] be affected by the crisis," adding that "the risk of losing those relationships should be factored into decisions about outreach to these stakeholders and how much information to share."
- **The importance of directors acknowledging that they may not have all the answers, but remain committed to transparency**. *"There is a tension between transparency and litigation. Lawyers are often concerned about premature statements. These can do more harm than good and can be difficult for the board to come back from. It's better to say that you don't know,"* cautioned one director.

Invest in communications with investors during 'peacetime.'

The best defense is often a good offense. Proactive communications through the proxy statement and other channels can help to reinforce investors' confidence in the board, which can serve as an important asset in difficult times. On participant commented, *"At one company, several new directors were appointed over a period of time, but the communications about the appointments were treated as one-offs. It was a missed opportunity for the nominating and governance committee to tell a story about how these new directors' skills fit with the firm's long-term strategic plan."* Another attendee added, *"Investors want informative disclosure. We're starting to look at the proxy statement and the governance page on our website as strategic marketing documents, and—where possible—[minimizing] the boilerplate language and legal [jargon]."*

Communication is a two-way street. As one participant said, *"It's important for directors to have visibility into the feedback loop between the company and its shareholders. The board can get that information from the investor relations team and corporate secretary, as well as directly from* *investors."* A director shared the approach he took: *"At one company, the board felt that the dynamic with shareholders was not positive. I asked investor relations to speak to the top 10 investors to hear their priorities and concerns, including about governance issues. That allowed [the board] to work with the CEO to implement changes to our governance policies. Now, we regularly go out to shareholders with specific questions. We do it off cycle—not during proxy season. It gives us rich information and also has improved the relationships overall."*

Conclusion

Effective communication during a crisis can be the difference between successfully handling or unintentionally exacerbating the situation. As boards prepare their crisis communication plans, it's important to direct all communications toward the company's *North Star* and not to give in to the pressure to prematurely respond. As one director thoughtfully noted, *"It's easy to get caught up in the response aspect. Response and recovery go together hand in hand. The way you respond [to a crisis] affects the way you can recover. Too often, people focus on the response but not the recovery."*

Questions for Directors to Ask

1. Is there a crisis communication response plan in place? How often is it revised? How often is crisis planning discussed in board meetings?
2. Does the board understand the communication role it will play in the various potential crisis situations?
3. How could a crisis affect the relationship dynamics between the board and senior management? What emotions may flare up that could undermine the effectiveness of our response to a crisis?
4. What assets most need protecting to ensure effective business continuity?
5. How do your companies and boards balance transparency and potential exposure to litigation risk when deciding what and how much to disclose during and after crisis situations? What questions should the board ask the general counsel and/or external counsel when considering potential communications?
6. What is the current forum for communicating with employees about ongoing crisis? Should the board participate in employee communications?

Related Resources

- "Governing Through Disruption: A Boardroom Guide for 2018," Holly Gregory, Sidley Austin
- "Responding to a Cybersecurity Breach: Crisis Communications Considerations"
- "How Boards Can Swiftly Rise to the Challenge of Overseeing a Crisis"

Advisory Council Meeting Participants*

Sandra L. Beach Lin
WESCO International Inc.

Patricia Bedient
Alaska Air Group Inc.

P. George Benson
ACGO Corp.

Rhys J. Best
Commercial Metals Co., MRC Global Inc.

William Bolinder
Genworth Financial Inc.

Jeannie H. Diefenderfer
Windstream Holdings Inc.

David Dorman
CVS Health Corp.

Margaret M. Foran
Occidental Petroleum Corp.

Raymond Gilmartin
National Association of Corporate Directors

Jane Henney
AmerisourceBergen Corp.

Anastasia D. Kelly
Huntington Ingalls Industries Inc.
Owens-Illinois Inc.

Stuart R. Levine
Broadridge Financial Solutions Inc.

Ulice Payne
ManpowerGroup Inc.

Liane J. Pelletier
Expeditors International of Washington Inc.

Stephen Roddenberry
World Fuel Services Corp.

Shivan Subramaniam
Citizens Financial Group Inc.

Kathy Victor
Best Buy Co. Inc.

Jane L. Warner
Brunswick Corp.
Regal-Beloit Corp.
Tenneco Inc.

Dona Young
Foot Locker Inc.

National Association of Corporate Directors

Robyn Bew
Peter R. Gleason
Stessy Mezeu
Friso van der Oord
Leah Rozin
Steve Walker

* This list includes delegates, partners, stakeholders, and guests who participated in all or part of the meeting on April 24, 2019, and/or in a related teleconference on May 3, 2019.

About the Nominating and Governance Committee Chair Advisory Council

In support of a sustainable, profitable, and thriving corporate America, the National Association of Corporate Directors (NACD) created the Nominating and Governance Committee Chair Advisory Council. Since 2010 this council has brought experienced nominating and governance committee chairs from Fortune 500 companies together with key shareholder representatives, regulators, and other stakeholders to discuss ways to strengthen corporate governance in general and the work of the nominating and governance committee in particular. Heidrick & Struggles and Sidley Austin LLP collaborate with NACD in convening and leading this council.

Delegates of the council have the opportunity to engage in frank, informal discussions regarding their expectations for nominating and governance practices, processes, and communications, and to share observations and insights on the changing business and regulatory environment. The council's purpose is threefold:

- to improve communication and build trust between the board leaders of corporate America and key governance stakeholders;
- to give directors engaged in the nominating and governance arena a voice and a forum in which to exchange perspectives with regulators, standard-setters, investors, and other important constituents on committee-related matters; and
- to identify ways to take nominating and governance committee practices to the next level.

NACD believes that the open dialogue facilitated by this advisory council is vital to advancing the shared, overarching goal of all boards, investors, and regulators: to build a strong, vibrant capital market and business environment that will continue to earn the trust and confidence of all stakeholders.

National Association of Corporate Directors
1515 N. Courthouse Road, Suite 1200
Arlington, VA 22201
571-367-3700
NACDonline.org