

NACD Event Highlights
May 10, 2011 Breakfast Event
The Board in Time of Crisis

Event Overview

Serving on a board is nothing less than stimulating and demanding under normal circumstances, but the stakes and stress levels quickly escalate in times of corporate crisis:

- A single unexpected phone call can radically change the next year or more of a director's life;
- An annual board calendar with five meeting days can explode to 57 days;
- The public respect engendered by a glowing corporate reputation can turn to cold contempt;
- Enduring bonds of trust with key executives can break down in an instant;
- And not least, the small print in the board's D&O policy immediately takes on greater personal significance.

Telling war stories and sharing lessons learned from their own experiences, the panelists at the NACD New England Chapter's May 10, 2011 Breakfast Event provided members and guests with practical insights for directors eager to learn how to prepare for corporate crises.

Key take-aways from the discussion were a) the crucial role played by independent directors in responding to and resolving unexpected emergencies, and b) the benefits of openly sharing information with corporate stakeholders as part of the resolution process – despite the risk of violating securities disclosure regulations or negatively affecting the company's legal position.

Panelists

Introducing the panelists and setting the stage for discussion was Stephen M. Honig, partner with the law firm of Duane Morris LLP. The panel featured two experienced directors and a senior federal securities regulator:

John T. Dugan oversees all of the U.S. Securities and Exchange Commission's enforcement functions in the six New England states as associate regional director for enforcement. He has initial responsibility for review of all possible enforcement matters called to the attention of the SEC's Boston District Office. John has been with the Commission since 1999, prior to which he enforced anti-trust, consumer protection and trade regulation statutes as an attorney with the Federal Trade Commission.

Willow Shire is an executive consultant focused on corporate governance, leadership development and organizational change. She has served on retail and high-tech boards of directors, and currently serves as a director for the TJX Companies as a member of the Executive Compensation Committee and as chair of the Corporate Governance and Nominating Committee. Prior to consulting, Willow spent 20 years in the computer industry, including as an officer at Digital Equipment Corp.

Frank Stasiowski is president, CEO and a director of PSMJ Resources, Inc., an international consulting firm to the architectural/engineering industry. An international speaker and author of 12 books on effective management, he is an independent director of Group GSA, PTY., LTD., and has served as an independent director at PBSJ Corporation and as a director of Rogers Consulting Corporation and Cornoyer Hedrick.

Panel Discussion Highlights

Frank Stasiowski kicked off the discussion by recounting his experiences as a newly appointed independent director of the PBSJ Corporation, where he spearheaded the implementation of SOX-compliant internal financial control procedures. Within months the Audit Committee uncovered a history of executive embezzlement totaling more than \$36 million over 13 years.

The ensuing FBI, SEC and Department of Justice investigations resulted not only in \$24 million in forensic accounting and legal fee expense for the company, but a \$122 million customer reimbursement to the federal government for erroneous billings, as well as multiple years of jail time for three individuals.

Stasiowski highlighted the role of the company's three independent Audit Committee members as objective and credible outsiders leading the effort to resolve the crisis. They commissioned a team of external forensic accountants and attorneys to independently investigate and report publicly on the fraud. Perhaps even more importantly, they went on to crisscross the country in an extensive series of meetings with the company's investors, sharing the information available at the time and answering shareholder questions.

Willow Shire then talked about life as a director of the TJX Companies after the discovery of a massive IT security breach late in 2006 that has cost the enterprise more than \$200 million. She highlighted four key lessons learned from the crisis, which only recently resulted in a five-year prison sentence for the perpetrator.

The first of these lessons, according to Shire, is to view a corporate crisis as an opportunity – in this case, an opportunity to transform the company's IT security infrastructure and provide added value to its millions of customers in the process. "Shareholders and customers will forgive a company the first time there is an intrusion," she said, " but they will not be forgiving if it happens a second time."

Echoing Staskowski, Shire cited the value of the board conducting an independent investigation and communicating with investors separately from management as the second and third lessons learned. Working at arm's length from management was difficult at first, but it proved to be essential in resolving the crisis as expeditiously as possible, she said. As the fourth lesson, Shire pointed to the value of honesty and cooperation with the government agencies responsible for addressing the crisis.

John Dugan reinforced the importance of board independence, transparency and cooperativeness in resolving corporate crises that involve violations of federal securities law. It is not unusual for companies that discover wrongdoing to conduct an internal investigation and then provide the findings to the SEC, he said. He emphasized, however, that regulators find such investigations more credible when they are commissioned and managed by independent directors and conducted by outside accountants and

attorneys. This is key to the spirit of cooperation the SEC takes into account when considering potential law enforcement actions against a company, Dugan said.

Dugan concluded his remarks, paving the way for the question-and-answer session, by discussing precautions corporate directors should take to avoid inadvertently being targeted in an insider trading case. “This happens more than most board members realize,” he said.

Questions from Participants

The event concluded with a series of attendee questions from the floor covering topics including:

- Board-Shareholder communications – how to structure and conduct meetings; frequently asked questions and how to answer them; how to avoid inadvertent nonpublic disclosure of material corporate information; importance of simply “being there to listen” versus outbound messaging;
- Proactively preparing for crises – key steps in advance planning; value of scheduling routine meetings of independent directors separate from other board activities before crises emerge; best practices for independent director meetings, including policies regarding keeping and retaining meeting minutes;
- Board communications with employees and key customers – how to structure and conduct director outreach to these key constituencies during a crisis; how to avoid nonpublic disclosure of material information as these communications take place;
- Cyber security – board responsibility for preventing IT intrusion; director relationships with chief information officers;
- Director and officer liability insurance – adequacy of coverage for board members involved in corporate crises.

Upcoming NACDNE Breakfast Event

NACD New England Chapter President Bill Earon closed the May 10th session by reminding the audience about the Chapter’s next breakfast event: *NACD Presents: Board Succession – The Who, What, When, Where and How’s*. The event is scheduled for Tuesday, June 14th at the Newton Marriott Hotel.