

THE CORPORATE GOVERNANCE ALLIANCE DIGEST

August 18, 2010

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Keywords: succession planning, Occidental, H-P, Sara Lee, Lockheed Martin, Dell, audit committee, executive compensation, shareholder relations, unemployment, joblessness, health care

Is Your Board an August Board?

By Eleanor Bloxham

August is a month for light beach reading; it's the month many in Europe take off. In that spirit, this Digest edition is lighter - in volume- than normal.

August is also an adjective meaning dignified and noble according to Thesaurus.com. Some of the synonyms when it is used in its best sense (which is what I want to do here) include brilliant, eminent, exalted, high-minded, honorable, impressive, magnificent, stately, superb and venerable. Its antonym is *undignified*.

August is the month the New York psychiatrists go on vacation leaving people to fend for themselves. And some boards find out if they can fend for themselves and whether they are august or not when the crisis hits and they are no longer shielded – but must step into the limelight.

At these times, the augustness of boards is tested under what can be intense scrutiny.

Could your boards' practices withstand the scrutiny? Are the practices honorable, impressive, and venerable? Would your directors be shown to be brilliant, high-minded and eminent? Would your board get through the crisis with the reputation of the board and its dignity in-tact?

August has shown ways boards can mis-step and no longer be held in high esteem. Here are some lessons from August news.

1. Don't just call it Succession Planning – have a real meaningful succession plan and process.

You've heard it come up over and over this month – so what's holding you back? At Occidental, they only held one executive session without the CEO present. That can limit free and open discussion on CEO succession with the independent members in charge. (*Oxy 10: reasons the proxy fight at Occidental isn't accidental*, Eleanor Bloxham, Fortune/CNNMoney, August 11)

Does the independent chair or lead director (if you don't have an independent chair) regularly put CEO coaching and succession on the executive session agenda?

Failure to address is a prime way to bring a negative focus to a board's reputation. Succession and coaching issues can catch you unawares -- think Sara Lee and HP. (*Sara Lee's CEO Resigns Amid Medical Problems*, Anjali Cordeiro and Ilan Brat, The Wall Street Journal, August 10), (*HP chief Hurd quits after sexual harassment claim*, Colin Barr, Fortune/CNNMoney, August 6), (*Live-Blogging H-P's Announcement to Investors*, WSJ Digits, August 6), (*H-P Curse: One Departure After Another*, Scott Thurm and Cari Tuna, The Wall

Street Journal, August 7) and (*HP's next act: How the board, company and investors can recover from the Hurd scandal*, Eleanor Bloxham, Fortune/CNNMoney August 10)

2. Do more than invoke the law – address the issue.

“Today, the defense contractor estimates it will take 50 years to clean the mess... The future is so bleak, deeply rooted homeowners are desperate to get out, pressing Lockheed Martin to pay to move them to a community uncluttered by fear, pollution, and dying property values. Lockheed Martin refuses to relocate them, and those who would leave on their own can't. No one's buying in a town swimming in pollution... For its part, Lockheed Martin said it notified the state, as required by law. “We followed Lockheed Martin's standard practice of conforming to applicable regulations and associated requirements for notification,” said Cambre.” (Propublica highlighted the story: *Tiny toxic Florida town takes on a corporate Goliath*, Ronnie Greene, The Miami Herald, August 15) and another Lockheed clean up story (*Airport officials want cleanup costs covered*, Bill Kisliuk, Glendale News-Press, July 15)

“We did what we had to according to the law” is not a reputation enhancer. When confronted with an issue, the public expects more (and the public owns stock).

3. If there are major issues in disclosure, address the role of the board.

It always looks bad when there are major mistakes in disclosure.

- **Does the audit committee need a revamp?**
- **Has the board set expectations that should be altered?**
- **Are incentives properly aligned?**

These are questions every board needs to ask and answer on an ongoing basis.

Dell and Citigroup are recent examples. Dell's finance staff searched for cookie jar reserves to make quarterly earnings.

“One of the things to watch for is when a company -- like Dell -- says it has met or exceeded analyst forecasts for 16 quarters in a row, and calls attention to that,” the FSD Group's Schilit said.

Other companies mentioned in the article include Trident Microsystems, Symbol Technologies and General Electric. (*Dell case serves as cautionary tale*, Marc Ferranti, Bloomberg Businessweek, July 29.)

As a result of the SEC fraud allegations at Dell, “25.1 per cent of shares voted at the company's annual meeting last week withheld their support for Mr Dell's reappointment as a director.” (*Dell shareholders in protest vote over chairman*, Richard Waters, Financial Times, August 18)

Citigroup failed to disclose nearly \$40 billion in subprime mortgage exposure. “Judge Ellen S. Huvelle of the U.S. District Court for the District of Columbia [has] ... asked why company shareholders must ultimately bear the price of the sanction, and why the agency charged only two executives with wrongdoing.” (*Judge balks at SEC's settlement with Citigroup*, Zachary A. Goldfarb, The Washington Post, August 17. See also, *Citigroup's Paltry Debt*

Penalty, David Reilly, The Wall Street Journal, August 17.)

Take preventive action – and if there are lapses in disclosure, don't get defensive – take action. There *is* something you can do.

4. Shareholder engagement is on the upswing – make sure the board is up to the challenge.

Shareholders today are savvy to potential rebuttals from boards. “Neil Woodford, head of investment at Invesco Perpetual, says that many company directors do not listen to the opinion of leading shareholders”...“A tactic of companies facing shareholder pressure, Mr Woodford says, is to ‘divide and rule’, whereby the inactivity of some investors is used by management to justify ignoring complaints from others. ‘The response typically we get is: ‘You are an important shareholder, we obviously are interested in your views, but we have all these other shareholders and they're not saying the same thing’.” Shareholders are savvy and that isn't going to pass muster. (*Investors told: speak up or be ignored*, FT, August 13)

(See *Funds Seek Occidental Seats*, Joann S. Lublin, The Wall Street Journal, August 2 and *Relational and Calstrs' Letter to Occidental*, DealBook, The New York Times, August 3)

5. Executive Compensation is your top worry – so take action – do something differently.

Research by Boardmember.com and FTI shows that directors rank executive compensation as their top concern – with 41% saying it is a major concern. However, a transposition of that % i.e. only 14% of directors said that they feel the need to change their current practices and philosophies with respect to executive compensation in light of the SEC adopting expanded executive compensation disclosure rules.

(Feeling the Heat: The 2010 Corporate Board Member / FTI Consulting Legal Study, BoardMember.com)

Maybe this decade we can move executive compensation off the “worry” to-do list. To do so, requires not talk – but action.

These are 5 (not so simple) ways to make your Board an “August Board”.

If you are a bank director, please join me in Charleston, SC in September where I'll be discussing bank *enterprise risk management* and *board evaluations* – for banks. Follow this link for more details: (http://www.thevaluealliance.com/PDF/swgsb_assembly_bank_directors.pdf)

Footnote One:

Conflicts of interest in academia make it prudent to be wary of academic research – trust, but verify.

“Many advisers, meanwhile, are just as concerned about the research they're not seeing. Many firms require sponsored researchers to sign confidentiality agreements, a practice that can keep negative findings from getting publicized. It also puts authors in a thorny dilemma:.. sponsored research needs more transparency. Most business schools say they require professors to fill out conflict-disclosure forms, but critics say they'd like to see those forms made public.” (*Beware of ‘Independent’ Investing Research*, Neil Parmar, The Wall Street Journal, August 15, 2010)

Footnote Two:

Reality check: The people costs of the ongoing recession will never be repaid.

A new NBER study shows that in the US, a large % - 26.5% – “reported reducing their use of routine medical care since the start of the global economic crisis in 2007”.

This compares to less than half that in France at 12% -- and even less in Britain (7.6%) and Canada (5.3%). Conditions should improve in the US in nine years when the health care reform legislation takes effect. (*Economy Led to Cuts in Use of Health Care*, Robert Pear, The New York Times, August 16)

Save Jobs, Save Lives.

Deaths attributable to unemployment: “In rural Elkhart County, Ind., where the unemployment rate is 13.7 percent, there were nearly 40 percent more suicides in 2009 than in a normal year.”

Unemployment [Richard Dunn of Texas A&M University and Timothy Classen of Loyola University Chicago] found, does increase the risk of suicide. And not just once, but twice: First, just after the factory shuts down, and then again, about six months later, when unemployment insurance ends... “We don't expect all 4,000 people to remain unemployed in month six,” Dunn continues. “It is probably 2,000 or 1,000 people who are. So the research suggests that the impact of losing your unemployment benefits is actually stronger than the impact of losing your job. How much stronger? We don't know. But twice as strong, three times as strong. Some significant difference.”

One voice writes: “I have tried everything I know to get help. DHS won't help. Salvation Army won't help.

211 won't help. I have no idea as to where to go from here.” (The Washington Post Workbook highlights; *Death and Joblessness*, Annie Lowrey, The Washington Independent, August 17)

What is your perspective on the impact of job loss? Watch this video here: http://www.thevaluealliance.com/video/pages/bloxham_uchitelle.htm, part of a library of videos described here http://www.thevaluealliance.com/bridge_of_trust.htm, as Lou Uchitelle, author of *The Disposable American*, discusses the severity of the issue – Before the great recession.