

# CG NEWS UPDATE

## NACD ADVISORY COUNCIL DISCUSSES THE BOARD'S ROLE IN CRISIS PREPARATION

July 9, 2019 By Leah Rozin

In today's world of real-time communications, companies are now expected to respond immediately to emerging crises, and boards are feeling more pressure to ensure that their companies can navigate effectively through challenging crisis moments. Peter Gleason, NACD president and CEO, explains, "Boards have always provided oversight of crisis response plans, but the key difference today . . . is

[that] with the advent of social media, the window for response time has all but disappeared. It's critical for directors to engage with management on a regular basis to discuss the outline of the crisis response plan."

The 2019 NACD Public and Private Company Governance Surveys find that less than a third of companies have delineated roles for the board and management in their crisis preparation plans, while fewer than 20 percent indicated that they've assessed the effectiveness of early-warning capabilities—a critical aspect of crisis preparedness.

### Board Actions Related to the Oversight of Crisis Preparedness Taken Over the Past Year



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While each crisis is unique, there are leading practices boards can adopt to improve their governance of crisis readiness. To help directors prepare for this issue, 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. The meeting was held using a modified version of the Chatham House Rule, under which participants' quotes (*italicized*) are not attributed to those individuals or their organizations, with the exception of cohosts.

Participants identified three important benefits of effective board-management dialogue on crisis planning and preparation:

- Effective crisis planning identifies skill gaps within the executive team.
- Thoughtful crisis planning exposes potential risks related to information flows to the board.
- Nominating and governance committees can use insights from crisis planning to inform their reviews of board structure and composition.

## **Effective crisis planning identifies skill gaps within the senior management team.**

Crisis planning offers more benefits than just a routine hygiene check. As one director noted, “When you are doing a good job as a board overseeing crisis preparation, issues are going to rise to the top that you need to address.” These issues can take many forms, including identifying potential disconnects in the assignment of roles and responsibilities. Ted Dysart, Vice Chair at Heidrick & Struggles, noted “Crises can accelerate to a point where senior leadership is no longer equipped to serve in some roles—for example, acting as a spokesperson for the organization. As part of the crisis planning process, the board can discuss whether any skill gaps have been identified, and how they will be addressed with training or other support.”

Delegates discussed that the right candidate isn't always the most obvious one. One participant noted, “We need to ask the questions about whether the CEO is fully prepared if a crisis arises, but it goes beyond that. Some crisis response roles should be assigned according to skills, not necessarily titles, so the board needs to know who else in the management team is crisis ready.”

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## **Thoughtful crisis planning exposes potential risks related to information flows to the board.**

While it's important to have a process around what information is escalated to the board, judgment is often more important than process. One delegate commented, "At one of my companies we had an issue with a senior leader that never reached the board. The reporting process was part of the roadblock. What worries me most [are the gaps in information.] What does the organization know, [that] the board does not?" Another participant noted, "The [glaring] crises that are acute and major are easier to prepare for. It's the under-the-radar ones that result from a series of seemingly insignificant activities that can be more difficult to detect, and they're often the ones that the board is most accountable for."

Some council participants indicated that their boards use the latest news stories as a mechanism to evaluate the effectiveness of their crisis readiness. One director noted, "In the aftermath of some of the recent headlines related to culture and #MeToo, we've had discussions with management about when the board will receive information about issues that may not be financially material, but could be culturally significant."

The relationship between the board and the general counsel (GC) also emerged as a critical component of effective crisis planning. A delegate said, "I have a conversation with the GC monthly. [This practice] started when I was new to the [nominating and governance committee chair] role, and was an opportunity to set up a trusted relationship, that has strengthened over time." Another director shared a similar approach: "Before every committee meeting, I sit with the GC and review the agenda. Then we have an open conversation about anything else on the GC's mind. The regular rhythm of these conversations helps me stay informed about potential challenges."

## **Nominating and governance committees can use insights from crisis planning to inform their reviews of board structure and composition.**

Delegates discussed benefits outside those traditionally associated with crisis preparation, zeroing in on board structure. Sara Spiering, principal at Heidrick & Struggles, commented, "In our board search work, we're seeing clients asking questions about prospective directors' past experiences with turnarounds or other challenging situations. One of the [qualities] boards are starting to [recruit for] is confidence and calmness in high-pressure situations."

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Directors are also using these insights to weigh the merits of changing committee structure. One participant explained, “We had a situation on one board that required establishing a special committee. Luckily, [the board] had enough independent directors with the [requisite] capacity and skills— [that is,] the ability to get into the details [and] ask tough questions, [as well as] the time commitment and energy to take on the [additional] workload. As nominating and governance committee chairs, we have to factor this into board succession planning.” The boards of companies in heavily regulated industries often align committee structure with risk management and crisis planning.

One director remarked, “I’m on several boards with a separate safety committee. Other industries have compliance or regulatory affairs committees; some are [establishing separate] cybersecurity committees. In all cases, it sends a strong signal about the importance of the issues and the level of oversight. On our safety committee, we’re looking at [granular] information—if a truck hits a ditch on Christmas morning, [the committee] hears about it.”

## Conclusion

As Benjamin Franklin pointed out, “By failing to prepare, you are

preparing to fail.” In light of growing public scrutiny, board and management preparation for crises is likely to remain a priority for nominating and governance committees. When confronting these complex and unpredictable events, Holly Gregory, partner and co-chair of the Global Corporate Governance & Executive Compensation Practice at Sidley Austin, advised directors to closely monitor corporate culture, noting, “Periods of crisis are when the cracks in an organization’s, and a board’s, culture really show up. If there’s been a tendency to avoid difficult conversations, if relationships with management are strained, if there are skill gaps or factions within the board, these things will all make a bad situation worse.”

As directors scan the horizon for potential risks, they should not lose sight of seemingly insignificant, but persistent, problems. As a delegate framed the issue, “Major crises don’t come along very often. We can learn not only from crisis planning, but [also] from more minor issues. Both of these can help the board identify underlying tensions and open up important conversations about the skills and processes needed to weather a serious crisis.”

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## Questions directors should consider:

- Is there a crisis-response plan in place? How often is it revised? How often is crisis planning discussed in board meetings?
- Is there a common understanding among management, the board, and board committees about their respective roles, responsibilities, and accountabilities for crisis management?
- Have we identified which crises the company is most likely to face? What steps can be taken to mitigate the risks that would lead to those crises?
- Have we achieved a common understanding of what circumstances trigger bringing an issue to the board's attention? Has our management team identified key indicators that offer early warnings about increased risk exposure that could lead to a crisis? What is the threshold, and the process, for reporting to the board about sudden changes to the company's risk profile?
- Does the organization's culture support a level of trust between a) the board and the executive team and b) the executive team and middle management that encourages candid discussions about risks? How willing are employees to speak up about problems that can cause a crisis for the organization?

Ref:

<https://blog.nacdonline.org/posts/advisory-council-crisis-preparation>