

GOVERNANCE AMID CRISIS

How 2020 changed the boardroom. By George Casey and Doreen Lilienfeld

IN RECENT YEARS, corporate boards and institutional shareholders have increased their focus on environmental, social and governance (ESG) issues. Some have gone as far as revisiting the purpose of a corporation, calling for a shift from the longstanding shareholder primacy model to one where corporations share a commitment to all “stakeholders,” including employees, customers, suppliers and communities, in addition to shareholders.

This year’s unprecedented events—the most devastating by far being the Covid-19 pandemic and its negative impact on people, businesses and the global economy as a whole—have presented unique challenges for boards. Boards have been working around the clock, trying to protect and create a safe environment for their employees, steady the course of their companies, in some cases save their businesses from extinction, and in others, rapidly change their companies’ business models, all in an effort to find ways to stay competitive, save the business for the post-pandemic era, all while staying true to their long-term values, including commitment to ESG matters.

When the pandemic first appeared, boards had to focus on quickly establishing a plan to navigate the shutdown of the economy and the sudden market volatility resulting from it, face shareholder activism and opportunistic stock accumulation and communicate their strategy to shareholders.

The main issues boards and management have been addressing during the pandemic, include:

- Reassessing their company’s business plan in a rapidly changing environment.
- Ensuring sufficient liquidity to enable the company to continue to operate in a crisis.
- Creating safe working conditions for their employees, designing ways for people to work remotely and addressing technology and connectivity issues so that the business could continue uninterrupted.
- For people on the front lines and in the businesses deemed essential, providing people with personal protective equipment and reconfiguring the workflow to keep the most exposed employees safe.



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- Developing new or improved ways to receive updates from the management to stay abreast of new risks or material weaknesses that arise as a result of the pandemic and updating their communication strategy to ensure timely flow of information to shareholders.
- Considering the potential for shareholder activism and dealing with attempts at opportunistic stock accumulation during the market gyrations in the early days of the pandemic. Shareholder activism had been a fixture of the corporate landscape for years, but Covid-19 had a significant impact on that activity as well. With director nomination deadlines for many companies falling in the first quarter of the year and annual meetings falling in the second quarter, many activists that would have spent the first half of 2020 nominating directors and launching proxy contests opted not to do so. At the same time, some activist shareholders increased pressure and launched new campaigns. Some companies had to react to opportunistic stock accumulation by adopting defensive measures and adopting

shareholder rights plans or “poison pills.”

- Adjusting executive compensation and modifying related disclosures during the pandemic. The pandemic has directly affected executive compensation issues, with the Securities and Exchange Commission (SEC) providing new guidance on the disclosure of perquisites and other personal benefits related to Covid-19.

As the pandemic continues unabated many months after it started, long-term corporate values and ESG, along with broader stakeholder responsibilities, have continued to be a key topic of discussion among boards and shareholders. Some of the issues boards have been considering include:

- Considering and adopting ESG strategy
- Establishing oversight of ESG risks
- Revising governance structures and priorities
- Focusing on board and executive management diversity and inclusion
- Instituting human capital development programs
- Engaging with shareholders on key ESG issues
- Considering how ESG metrics should be included in incentive plans

Overall, most companies have weathered the pandemic well so far and, if anything, will come out stronger, with a more focused sense of purpose, better understanding of their values and a stronger alignment with their stakeholders.



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