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The Board's Role in Managing Reputational Risk

Presented by:
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Crisis Averted: The Board's Role in Managing Reputational Risk



Crisis Averted: The Board's Role in Managing Reputational Risk

Presenters:

- **Allan Grafman, CEO, All Media Ventures and Managing Director, Oberon Securities**
- **Holly J. Gregory, Partner & Co-Chair, Corporate Governance & Executive Compensation, Sidley Austin LLP**
- **Davia B. Temin, President & CEO of Temin and Company, Inc.**

Objectives for This Session

- Discuss how reputational risk has become an important aspect of the board's responsibility for oversight of risk management.
- Identify how the board should go about overseeing management's handling of reputation, and how they should help make sure that management is prepared for situations that may arise which involve reputational risk.
- Discuss how inside and outside legal counsel should advise management and boards regarding reputational risk

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The "gold standard"?

In 1982, "Johnson & Johnson recalled 31 million bottles of Extra-Strength Tylenol after the deaths of at least seven people in the Chicago area were linked to cyanide-laced caplets purchased in local drugstores..."

"[T]he company did such a masterful job of managing the crisis that it realized both positive intangible benefits (reputational opportunity) and tangible (financial upside) results. The crisis turned into an "enhancement event" when J&J was able to demonstrate through its proactive warnings to consumers to toss or return purchased Tylenol products and its subsequent product recall that it took corporate responsibility (CR) for its customers' health and safety very seriously. Tamper-resistant product packaging was among the outcomes..." *NACD Directorship*

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Cautionary tales... How well-prepared were management and the board?

One cannot open the paper or listen to the TV or radio news without hearing about the latest example of a company suddenly finding itself at the center of unwanted attention.

No industry is immune – banking, airlines, retail chains, coffee shops...the list is endless!

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A contrast?

Starbucks: 4/17/18 "Two black men walked into a Starbucks in downtown Philadelphia on Thursday afternoon and sat down. Officials said they had asked to use the restroom but because they had not bought anything, an employee refused the request. They were eventually asked to leave, and when they declined, an employee called the police. Some of what happened next was recorded in a video that has been viewed more than eight million times on Twitter and was described by the chief executive of Starbucks as "very hard to watch..." *NY Times*

"Starbucks will close all its company-owned coffee shops in the U.S. and its corporate offices during the afternoon of May 29 to conduct racial-bias training for employees following the arrest of two African-American men at one of its locations in Philadelphia last week." *USA Today*

5/21/18 "Starbucks revises its policies: After a flap in Phila., the chain says guests don't have to buy." *Philadelphia Inquirer*

Had Starbucks' management and board prepared for a reputation crisis, or was it a product of its company culture (or both)?

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Overview of Reputational Risk

- The value of a company's reputation may not appear on its balance sheet, but it may be its most valuable asset and a key to its ability to grow and be profitable.
 - This might implicate the company's brand, its attractiveness as an investment, its suitability as a vendor, customer or contract partner, or all of the above.
- The instantaneousness of social media and Internet news, together with the ubiquity of smartphone cameras, provide little or no time for companies to formulate a response when issues arise that threaten a company's reputation.
- Therefore, companies must prepare well in advance by identifying how reputational issues might arise, and preparing well for them.
- Given the stakes involved, the board's fiduciary duty of care, which includes oversight of risk management, requires directors to pay proper attention to this area.
- Inside and outside legal counsel have an important role to play in advising management and boards as they fulfill their duties regarding reputational risk.

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So how do you prepare for all this?

- Identify risks:
 - Top-to bottom risk review
 - Certain factors = more risk: handling consumer data, maintaining a consumer brand, being in the healthcare industry, etc. (But no industry or company is immune!)
 - Recognize that not all potential situations can be foreseen, but thinking of situations in categories may be helpful in extrapolating to the unforeseen.
- Create plans:
 - Identify who will be spokespersons – and a “crisis team”, and provide back-ups in case of unavailability.
 - Line up outside advisors (legal, PR, etc.), educate them about the company, and include them in preparations.
- Immediacy of response
 - An incident requires a response. Fill the void, or your competitors/critics/enemies will do it for you.
- The message is key:
 - Clear, concise and accountable.
 - Consistent with company strategy and brand image.
 - Plan sample messages in advance, by category of situation, e.g., workplace-related, customer-related, public safety, regulatory, etc.
- Monitor social media
- “The games are won in practice!”
 - Run drills and simulations.
 - Engage an outside advisor to evaluate and assist in preparedness.

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Responding to a Crisis:

A Checklist of Do's and Don'ts

DO

- | | |
|---|--|
| <input type="checkbox"/> Become the trusted voice in the crisis. | <input type="checkbox"/> Understand the scope of the issues and assess the critical decisions. |
| <input type="checkbox"/> Give the crisis your full attention. | <input type="checkbox"/> Issue a "holding statement" ASAP. |
| <input type="checkbox"/> Pull the trigger on your crisis plan. | <input type="checkbox"/> Think through every word. |
| <input type="checkbox"/> Assess what you can do yourself and what you can delegate. | <input type="checkbox"/> Put people first. |
| <input type="checkbox"/> Find out the facts and connect with authorities. | <input type="checkbox"/> Correct any errors of fact that are already public. |
| <input type="checkbox"/> Monitor social and traditional media closely. | <input type="checkbox"/> Contact your key audiences (employees, board, shareholders). |



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Responding to a Crisis:

A Checklist of Do's and Don'ts

DON'T

- | | |
|---|--|
| <input type="checkbox"/> Lie. | <input type="checkbox"/> Say "we are taking the matter seriously." |
| <input type="checkbox"/> Disappear. | <input type="checkbox"/> Repeat the problem or accusation in your statement. |
| <input type="checkbox"/> Issue a denial until you have all the facts. | <input type="checkbox"/> Let your fears of liability trump your humanity. |
| <input type="checkbox"/> Minimize the situation. | <input type="checkbox"/> Speculate until you understand the facts. |
| <input type="checkbox"/> Make a joke about the crisis. | <input type="checkbox"/> Be only inwardly-focused. |



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The Role of the Board

- **Oversee management's preparations.**
- **Challenge assumptions and ask tough questions.**
- **Consider engaging an outside advisor to evaluate the level of preparedness and assist in preparation.**

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The Role of Counsel

- **Legal counsel will understandably want to wait for more information, and have management avoid doing or saying anything that might be considered an admission in subsequent litigation. However, the reality of today's instant-news environment simply does not allow such a "wait-and-see" approach.**
- **Instead, counsel should be part of the preparation process, and help prepare for legal and/or regulatory implications given that the company's response will need to be as immediate as possible.**
- **Following such an immediate response will need to be concrete steps for possible remediation, compliance, and recovery. Counsel has an important role to play throughout the process.**

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Questions?

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