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Board Lessons: Succeeding with Investors in a Crisis

Each year, a small number of companies confront crisis-level events that draw high-profile scrutiny from a range of stakeholders. A well-executed emergency response plan can help limit the immediate fallout from a negative incident. However, in recent years, the companies that have been the most successful in managing the longer-term effects of a crisis have paid an increasing amount of attention to the viewpoints and concerns of investors. Though each situation presents a unique fact pattern, companies that have invested in building relationships with shareholders over time have been able to leverage those relationships to achieve better outcomes when a crisis hits. Below we outline the importance of relationship-building, effective ways to address investor engagement during a crisis and the importance of transparency and board leadership in maintaining credibility with investors over the long-term.

Building investor relationships before a crisis hits

From an investor perspective, crisis preparation begins months and years before an event occurs. Companies that dedicate resources to building strong relationships with their investors through a robust engagement plan are taking the necessary steps to generate a reservoir of credibility and trust which can be drawn upon in the face of a difficult event. There are a few main reasons why building relationships over time is so important:

> First, making contact with an investor outside of the context of a difficult situation allows companies to establish a working relationship and open dialogue. Discussions in the context of a voting issue may feel transactional for investors; seeking investor views when there is not an immediate vote at stake demonstrates the company's genuine interest in obtaining and integrating investor feedback on important topics.
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> Second, tracking investor perceptions of the company's board, compensation and governance practices can inform the board's discussion of potential changes and facilitate the adoption of practices that are viewed as responsive to investor concerns.
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> Third, understanding the nuance of how to most effectively communicate with specific individuals and teams within each organization can enable companies to more effectively interpret subtle shifts in tone or behavior during a crisis situation and ultimately spot and address investor issues in advance of a vote.

Having a plan when a crisis occurs

After a negative event becomes public, companies should anticipate that investor concerns will necessitate an action plan and messaging that speaks to the longer-term. Companies are likely to have engagement discussions with anywhere from 20 to 40 institutional investors, depending on the shareholder base. That will include large investors with a significant economic stake as well as smaller investors who engage in governance activism and see a crisis as an opportunity to press for change on issues that may only be marginally related to the problem facing the company. Crises often create turbulence in the shareholder register: while index investors are permanent holders, active managers may be moving in and out of a stock as events unfold.

Companies that have taken time to build relationships with their investors will know instinctively in a crisis how to prioritize which investors to speak with as well as the most effective way to approach engagement discussions. For instance, previous meetings may make clear that a certain group of investors have been skeptical of management's direction or the board's oversight while others may have been trying to deliver a message by not engaging at all in the past. Some investors may have the ability to quickly marshal other shareholders to run a noisy campaign against directors or executive compensation. A company's ability to track and operationalize this knowledge with respect to the specific investor base is invaluable in shaping market sentiment and investor opinion in the days and weeks after a crisis event and is often key to a company's success in getting to a good outcome in the near term.

Putting the plan in action

In engagement, investors will be looking for issuers to take decisive action to address substantive issues while also being responsive to a broader set of concerns. Many questions will be asked about accountability around oversight mechanisms, whether the issues at hand are isolated or systemic and the board's role in the lead-up to the crisis. Investors will also expect new and enhanced disclosure around engagement, feedback received, and actions taken. It is common for those who make proxy voting decisions to measure the overall responsiveness of a company to a crisis situation by taking into account not only the changes that the investor explicitly requested but also additional actions that are initiated by the company, such as developing new firm-wide training or enhancing governance policies. Those companies with strong investor relationships are better positioned to get to the heart of what is required to quickly regain investor confidence and support.

The role of directors

In evaluating a company's response to a challenging situation, shareholders will be focused on the role of independent directors both before and after a crisis. Because investors lack visibility into what transpires in the boardroom, they depend on fulsome disclosure of processes that are indicative of independence and effective oversight. That may include enhanced disclosure of existing reporting structures as well as new policies implemented following the event.

A crisis will often thrust the board into a significantly more public posture. Companies should ensure that a director, and preferably one in a leadership role or with oversight of the subject matter, is prepared to engage with investors and the public more broadly, including the media. Directors should also determine whether it is necessary to form an independent special committee, with independent counsel and advisors. The board may be expected to produce a report or provide other robust disclosure and share those findings with investors. Ensuring that the results of that exercise include all relevant facts and details will demonstrate to investors that the board has embraced its own responsibility for situations where oversight mechanisms proved inadequate.

Focusing on the investor perspective

As the first annual meeting after a crisis approaches, all of the proposals on the company's ballot, from directors to compensation and any shareholder resolutions, will be subject to greater scrutiny. Having individuals at investors and proxy advisors who can attest to the good faith and responsiveness of the company is among the most powerful tools companies can deploy to achieve success at the ballot box and in coming years. That valuable resource is most readily available to those boards and management teams that have built meaningful relationships with their key investor constituencies over time.

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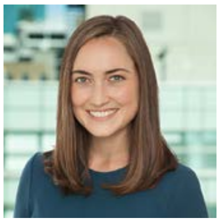 Kathryn Hembree Night is a Principal at CamberView Partners. Before joining CamberView, Ms. Night was an Associate in the Mergers and Acquisitions Group at Goldman Sachs and an analyst in the firm's Special Execution Group.

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