Boards Should Leave Shareholder Engagement to CEO

Management is in the best position to speak for the company

by Peter Browning

Peter Browning is the lead director of **Acuity Brands** and also serves on the boards of **Nucor**, **ScanSource** and **Enpro**. He is the managing partner at **Peter Browning Partners**, a governance consultancy.

Boards are under growing pressure from some corners to engage shareholders in direct communication. But amid this movement for greater transparency, directors must ask an important question: Why not management?

To be sure, directors face many compelling reasons to communicate with investors. In some cases, the push is aggressive; activist shareholders are pushing for strategic changes at companies.

Other times, it can be slow and steady, stemming from regulatory measures intended to fix Enron-era governance failures, such as the Sarbanes-Oxley Act and the significant changes to board governance stemming from the stock exchange listing requirement of 2002.

Finally, in this era of say on pay, boards are compelled, in some cases, to reach out to shareholders when votes sink below 50% levels.

And don't forget the increasing role of asset managers in the shareholder engagement process. At a recent conference, the governance heads of **BlackRock** and **Vanguard** said they met with 600 companies last year, and directors attended 10% of those meetings.

But using these forces as a reason to meet face-to-face or via conference call with key shareholders should be the exception, not the rule.

Lest we forget, boards of directors, no matter how often they meet, cannot run the company. Boards have delegated such responsibilities to the CEOs and their team. Due to their operational responsibilities, the C-suite team is the most fully informed about the current status of the company, the competitive environment and the strategy and its implementation.

So, in many cases, the board is not really qualified to address the key concerns of these shareholders, regardless of their intent. It is the management team that conducts the quarterly earnings conference calls, not the board; it is management that presents at the multiple investment conferences during the year, not the board. And ultimately it is management that has the most capacity to meet directly with various important shareholders during the year, not board members who may be scattered around the globe.

Finally, as a consequence of good governance, virtually every company's governance guidelines designate the CEO as the spokesperson for the company on directors' behalf.

Are there exceptions? Yes, of course.

With my 25 years of experience serving on boards of 13 publicly traded companies, I witnessed a few occasions in which the boards of those companies engaged directly with shareholders. In one case, the non-executive chairman met on several occasions with a dissident shareholder, ultimately helping to craft an agreement that included onboarding a mutually agreed-upon candidate.

In another example, as a lead director, accompanied by a fellow director, I met with a dissident shareholder. We reached an accord that resulted in the shareholder's joining the board.

Finally, in the midst of a contested bank merger, **ISS** asked to hear from the board on which I served. With a fellow director beside me, we answered questions from the proxy advisor about the strength of the board's due diligence on the deal. In the end, the proxy advisor supported the board's recommendation to merge the banks.

Whenever the board meets with shareholders or proxy advisors, it is preferable for two board members to participate in these meetings. Using that approach, the board can ensure that the shareholder perspective and views are fully understood, while the board's views are also clearly communicated.

Overall, in this time of renewed shareholder activism, many companies will find themselves engaged in conversations with either activists or dissident shareholder groups. In most situations, boards should refrain from conversing directly with those shareholders.

Certainly the board needs to discuss the best, most appropriate way to respond and who should do it — the board or the management team. But in most instances, the management team is in the best position to speak for the company.

Will exceptions come up? Yes.

But as a general rule, the CEO and their team remain best positioned to meet and engage with the investment community. ■