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Recruiting Post-Bankruptcy Board Directors in the Pandemic Aftermath

March 26, 2021 / By Steven Seiden - President, Seiden Krieger Recruiters

How to Develop Board Committees Equipped for a New Landscape

As Covid induced bankruptcies proliferate, creditors who become stockholders will need to focus not only on the future financial health of the reorganized company, but also on its overall governance. The new post-pandemic landscape will be revolutionary, not evolutionary. It will demand new owners and advisors to construct a multi-talented board, capable not only of reacting quickly and intelligently to dislocations and threats, but more importantly, to crafting a strategy that positions the new company as a leader in its industry.

In this Darwinian environment, laggards will quickly succumb to intensified competition, let alone hostile acquirers and activists.

At the outset, a company emerging from bankruptcy will need to redefine its mission with the enlightened boardroom and management talent to do so successfully. The confluence of new equity holders in a post-Covid world affords precisely that opportunity!

Building a Board of Directors (and Company) Observant of ESG Standards

Even before the crisis, the pressure was building to populate boards with directors whose backgrounds satisfy ESG (Environmental, Social, Governance) standards rather than focused solely on profitability.

What do ESG standards entail?

- **Environmental**—How a company and its board of directors are scored on policies and practices affecting climate change, sustainability, water and energy usage, pollution, conservation, and nature in general.

- **Social**—How a company, guided by its board, communicates with stakeholders (i.e., shareowners, employees, suppliers, and regulators) and manages all internal and external relationships. Both boardroom and company should embrace diversity and inclusivity of all ethnic and gender identities. Policies relating to human rights, animal welfare, and other consumer safeguards are also regarded.

- **Governance**—How the board conducts its responsibilities according to democratic principles. Constituents are expected to be treated with fairness and impartiality. Compensation and power balance along the management structure are also explored.

In short, every company and organization needs to be politically correct in terms of ESG…now so more than ever!

Important Board Committees and Their Roles

That aside, the pandemic will be the catalyst for tectonic upheavals affecting every strata of the business landscape. Not only will companies emerging from Chapter 11 need to focus on their own financial survival, but also how to compete successfully.

Members of the major board committees—Audit, Compensation, and Nominating/Governance—will require uncommon skills and relevant experience as described in the following:

Audit Committee

Besides meeting the Audit Chair's special Sarbanes-Oxley requirements (as differentiated from those of the committee at large) he/she will need to have had multiple experiences in a variety of financial roles in order to cope with complexities of a post Covid world. This includes navigating the cross currents of asset allocation in the wake of capital disruptions brought about by Government intervention and its ripple effects on various segments of the private and public sectors.

Audit committee members going forward should have had considerable experience dealing with the vagaries of financial unrest. Examples include investment bankers and/or corporate treasurers—particularly those who've weathered liquidity storms and are astute risk managers. Experienced restructuring/workout/turnaround types should also be considered. An Audit Chair who has experience with complex balance sheets is key to judging the soundness of a company's financial underpinnings. The pandemic has taught that unpredictable major shocks can dislocate an entire economy. An audit committee must therefore assume a broader role in astutely guiding the board as a whole in turbulent times.

Indeed the audit committee needs to attract farsighted professionals with the awareness to recommend remedial action when something goes off the drawing board of historical experience. Such individuals ideally should possess track records emerging successfully from a threatening circumstance.

Compensation Committee

In this environment, the board should consider charging this committee with the mandate of an over-arching Human Resource Committee. That said, compensation at all levels must be aligned not only with long term bottom line objectives, but also retaining, incenting, and attracting the requisite cadre in what will be an ensuing race for world class talent.

Board committee members ought to be well schooled not only in the basics of HR management, of which compensation and benefits are only a subset, but in talent evaluation across multiple functionalities. Other desirable HR committee skills include career pathing, organizational development and transformation, and navigating workspace in a virtual environment. This includes the technological aspects of maximizing total manpower. Confronting the HR committee will be such concepts as job crafting and re-skilling, in which top executives will be encouraged to redesign their own jobs as the workplace is transformed at ever accelerating speed.

The psychological toll of the pandemic will be a chronic issue which must be proactively addressed. HR committees should be populated by professionals equipped to advise the board on dealing with it.

Nominating and Governance Committee

A refreshed post-bankruptcy board in the wake of the pandemic must, of course, include the aforementioned ESG qualified members. Beyond populating the three major board committees, companies must establish essential and universal qualifications for all board members. It is incumbent on the Nominating and Governance Committee to keep the board relevant on an ongoing basis. It is important to point out that the responsibility of choosing directors immediately subsequent to emergence lies solely with the new equity holders.

Director Qualifications

So what are those universal board qualifications? In this new environment, maintaining and improving quality will be a defining issue for manufacturing and service businesses alike. All directors will be called upon to reinforce the quality imperative. One in-demand board member held the title of Chief Quality Officer in addition to being CEO.

Inherent in quality control and improvement is supply chain management. One Covid lesson is that accessibility to alternate supply sources is indispensable, particularly to JIT (just in time) manufacturing. Directors from that discipline will be coveted, especially as US foreign policy, including trade, becomes more insular.

Related to the above is international and political experience. Board members having such backgrounds will be increasingly valuable as the pandemic creates worldwide dislocations in capital, commodities and intellectual property.

As customers/clients become more selective in the new age of technology-driven disruptive business models, directors (preferably innovators themselves) will need to lead the board dialog on business model transformation.

The pandemic has already created an explosion in e-commerce, software as a service (Saas), and artificial intelligence (AI). With that will arrive the next generation of quantum computers. They will have the capacity to solve multi-variable problems of great magnitude at unprecedented speed. Cybersecurity will be an even greater imperative than presently. Directors who aren't technologically literate won't be able to participate in the boardroom dialog necessary to make informed judgments.

In this challenging environment, the bar will need to be set high regarding the skill set and experiential breadth of all directors and board committees.

Continuous re-validation of company business plans and its very mission will require consummate thought leadership by directors with exceptional track records.

Where to Recruit Board Directors

Where and how to find them? The old "rent-a-director" method won't necessarily surface the kind of enlightened board member described in the foregoing. Those who show up on dozens of post-bankruptcy slates usually don't possess the aforementioned requisite specializations.

Board recruitment in this pandemic will require judgment, resourcefulness, and speed. The new owners need to form a highly productive and industrious search committee in order to identify and attract directors conforming to the qualities enumerated heretofore.

What sources are out there? Though former and sitting CEOs and CFOs are often prime targets, they are not necessarily the most advantageous. In many cases they simply don't have sufficient time to devote to a company recovering from bankruptcy. Over boarded directors are useless. So look elsewhere, and do so persistently as there's usually a time factor. Unlikely venues sometimes yield quite valuable director candidates, particularly given the requisite expertise.

Often overlooked are highly competent executives who aren't/weren't in the C-suite. Prior or current board experience, while sometimes appropriate, isn't always as valuable as might be imagined, particularly if a candidate has an outstanding reputation for leadership in other group settings. Such "newbies" have become outstanding directors.

Age should be eliminated as a determinant. Many above the traditional 72 ceiling have more than proven their worth. Indeed, there are numerous directors over

80, as well as those under 30, with outstanding boardroom reputations. Heads of complex not-for-profit organizations with demanding constituencies can be every bit as talented as their corporate counterparts. The same holds true of certain military, governmental, legal, and academic types.

Advisers including accountants, lawyers, management consultants, and executive search firms can identify valuable board members. In short, consider proven talent wherever it may exist.

Stakeholders for the long term deserve nothing less!

About Steven A. Seiden

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Steven Seiden is experienced in recruiting directors and top executives for corporations in transition, including those emerging from bankruptcy and reorganization: Pacific Gas & Electric, Reader's Digest, Financial Guaranty Insurance, Dairy Holdings, F&W Media, Longview Power.

He has been a panelist at the New York City Bar Association as well as at other business conferences. A Yale University graduate, Steven is a member of the Turnaround Management Association, American Bankruptcy Institute, and an Associate Member of the American Bar Association.

Before founding Seiden Krieger Associates, Steven spent 17 years on Wall Street as Co-President of a successful financial services and investment banking organization.

His articles have appeared in Business Week, Bankruptcy Professional, Directors & Boards, The Journal of Corporate Renewal, The Congressional Record, The Wall Street Journal, Barron's, The Corporate Board, Business Law Today, Harvard Law School Forum on Corporate Governance, 13-D Monitor, Director's Monthly, and M&A Lawyer.

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