C-SUITE

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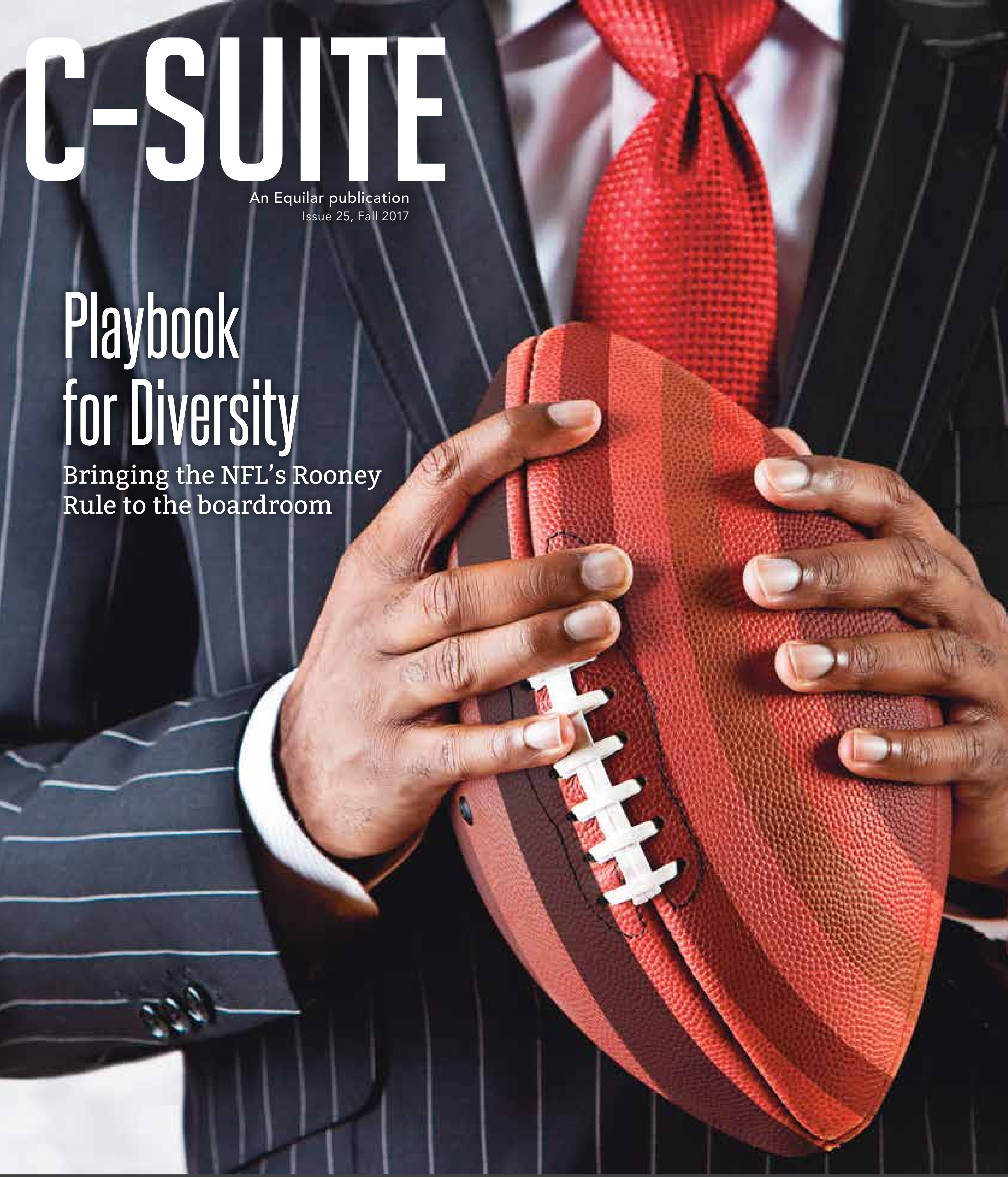
Issue 25, Fall 2017



Playbook for Diversity

Bringing the NFL's Rooney Rule to the boardroom

- Is diversity disclosure making a difference?
- Important risk issues for 2018
- Vetting boards for better performance
- Risk oversight questions boards should ask
- Interview with Luis A. Aguilar, former SEC Commissioner and current board member

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C-SUITE Contents

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Paul Tagliabue, Capricia Penavic Marshall, Jim Rooney and Robert Gulliver discussed the "Rooney Rule" at Equilar and Nasdaq's Board Leadership Forum.

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Board Leadership Forum

February 6, 2018 | San Francisco, CA

April 17, 2018 | Chicago, IL

October 17, 2018 | New York, NY

Today's boards face a seemingly never-ending set of risks, governance decisions and strategic initiatives as a result of investors' growing emphasis on board transparency, accountability and independence. The goal of the Board Leadership Forum, co-hosted by Equilar and Nasdaq, is to help participants build higher-performing boards through improved processes, strengthened director evaluations and recruitment efforts, and more effective shareholder engagement.

Compensation Committee Forum

March 20, 2018 | New York, NY

November 13, 2018 | San Francisco, CA

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June 4-6, 2018 | San Francisco, CA

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Critical Issues Facing Boards as We Move Forward

As we approach the end of 2017, this edition of *C-Suite* reflects upon the critical issues facing executives and boards. At one of our recent Board Leadership Forums, the chief investment stewardship officer at one of the largest institutional investors noted that board composition and structure, executive compensation, and board oversight of risk have been the key issues on their agenda this year. On cue, our feature stories reflect these topics directly.

First, we were honored to host the architects of the National Football League's Rooney Rule on a panel in New York City this fall. For those of you unfamiliar with the rule, Former NFL Commissioner Paul Tagliabue and Dan Rooney, the owner of the Pittsburgh Steelers, joined together in 2002 to lead an initiative that mandated teams to interview at least one minority candidate for vacant head coaching and front office positions. Several years ago, current Commissioner Roger Goodell extended the rule to interviewing women for positions at the League offices.

The success stories from the NFL are amazing, and many in corporate governance have discussed implementing a similar rule for board elections. It wouldn't surprise me to see that become a reality in the near future. Along with Commissioner Tagliabue himself, Jim Rooney, Dan's son, Robert Gulliver, the CHRO at the NFL, and Capricia Penavic Marshall, Former Chief of Protocol of the United States during the Obama administration, are featured in an exclusive *C-Suite* interview that serves as our cover story.

In addition, our editor-in-chief Dan Marcec sat down for an exclusive interview with Luis A. Aguilar, a former SEC Commissioner who served from 2008 to 2015—an "interesting" time in the agency's history, as the two discuss. However, in addition to implementing Dodd-Frank and tackling a host of other problems, Aguilar also spearheaded the first-ever SEC Cybersecurity Roundtable. Now a director on three public boards, he spoke about this important topic and its critical role in governance.

As always, please enjoy this issue and feel free to reach out to me directly with any feedback.

David Chun
CEO and Founder, Equilar
dchun@equilar.com

David has led Equilar from a pure start-up in 2000 to one of the most respected and trusted names in corporate governance.

Highlights from the Equilar Institute

The Equilar Institute provides in-depth research and analysis on boards of directors, shareholder engagement, executive compensation and other issues affecting the world of corporate governance. Below are some key highlights from the last quarter that showcase the in-depth information available in public filings via the Equilar database.

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*Visit **www.equilar.com/institute** or **www.equilar.com/blog** to read these articles in full as well as many, many more.*

The Interconnected Business of Corporate Boards

The public company universe is intertwined in more ways than one may think through the people who serve on boards of directors. A recent Equilar blog, "Uber Adds 81 Corporate Connections With New CEO Khoshrowshahi," looked at how the currently private company increased its influence in the public markets as it pushes toward an IPO with its new chief. The article also examined the corporate networks of other candidates in the CEO search.

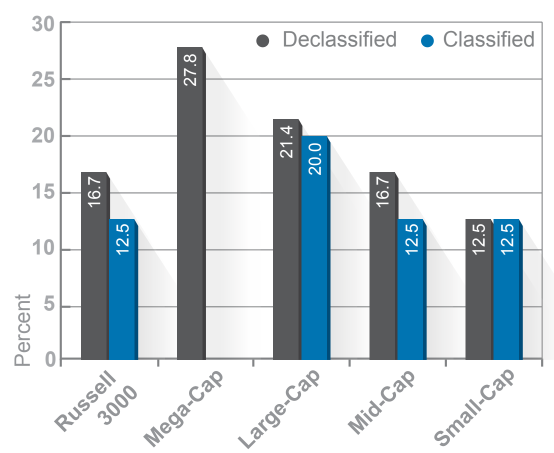
Following the news that President Trump's CEO Councils disbanded, Equilar found the defected CEOs had a combined 1,800 connections to other executives and board members. Losing the corporate connections via CEO councils may be downplayed in the White House, and indeed it may have little real impact on business as usual in Washington and across corporate America. But the ripple effect that passes through thousands of individuals and companies in these corporate networks based on these events is undeniable.

Boards Aim to Add Diversity

The concept of diversity is defined a number of different ways, whether by age, gender, demographics or "diversity of thought," which typically refers to the variety of skill sets on a board of directors. As cybersecurity becomes more integral to boardroom operations, Equilar looked at how diversity manifests when it comes to these experts on the board in "Analyzing Board Cybersecurity Expertise by Age, Tenure and Gender."

In addition, "Declassified Boards Are Much More Likely to Be Diverse" analyzed the differences between boards that have annual elections vs. those who elect directors in "classes" every several years. The Equilar data showed that annual elections produce more diverse boards (see below).

Median Percentage of Female Directors Classified vs. Declassified, by Market Cap



Creativity in Compensation Design

While many executive compensation observers charge that pay packages have become homogenous in order to placate proxy advisors, "Four Ways to Use Discretion in Annual Incentive Plans" examined how many companies are still being creative and offering solutions that are a best fit with their unique circumstances.

at-a-glance

CFOs on Boards

Higher Pay, Lower Performance

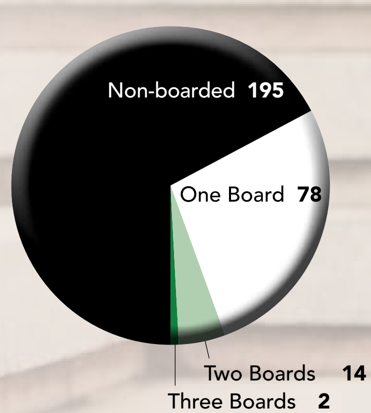
Equilar recently undertook a study of chief financial officers (CFOs) at large-cap companies over the past three years to identify how many also serve on other public company boards of directors.

The study had two key findings:

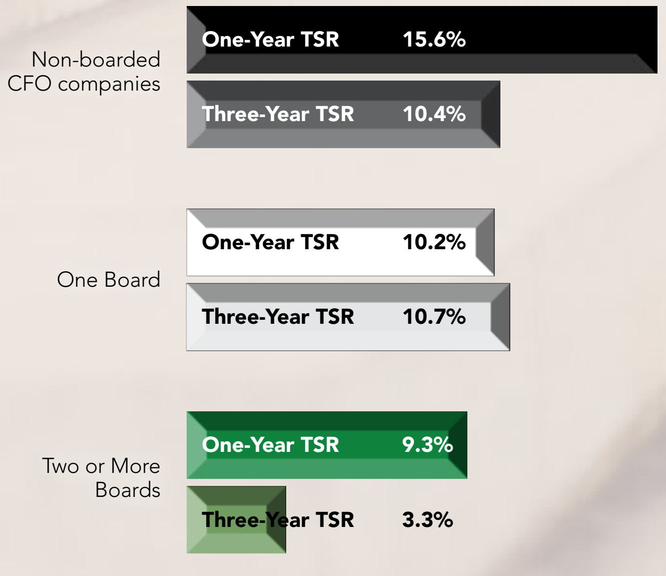
1. CFOs that served on boards of directors outside their own companies were awarded higher pay than their counterparts in the most recent fiscal year, and the gap was much wider among those who served on two or more outside boards.
2. Companies with CFOs serving on outside boards saw lower performance when it came to total shareholder return (TSR), revenue and net income, which was amplified for companies where CFOs served on two or more outside boards.

It's important to note that pay and performance in this study represent correlations, not causation. Nonetheless, the study represents an analysis of CFOs who have served their companies for three consecutive years, whether or not they were on another board of directors, and notes differences in pay and performance for those groups of executives. The findings raise important questions for investors and companies when evaluating executive board commitments, and what risks that may pose.

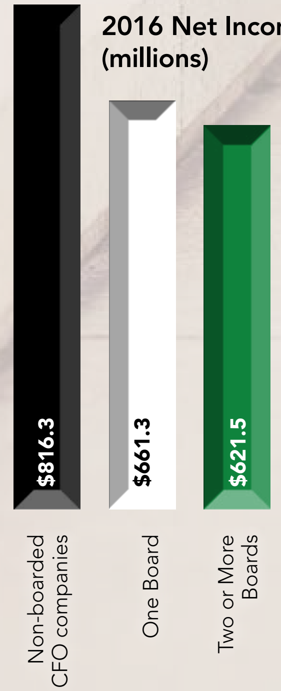
Number of CFOs Surveyed

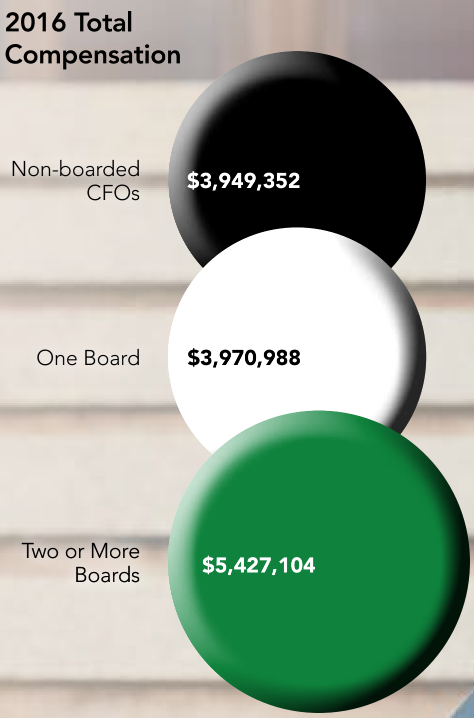


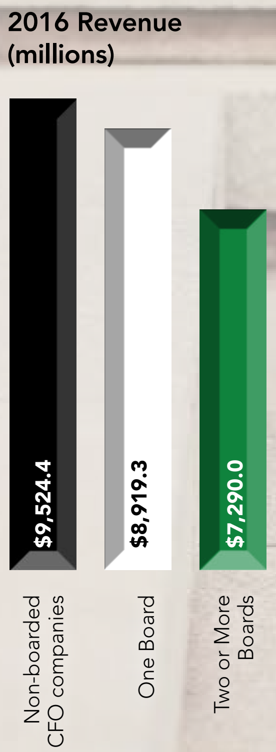
One-Year vs. Three-Year TSR



2016 Net Income (millions)







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To read the full report, please visit ***equilar.com/reports/51-cfos-on-boards-higher-pay-lower-performance.html***.

Source: Equilar

Playbook for Diversity

How the National Football League's "Rooney Rule" has revolutionized diversity hiring—and how boards can learn from it.

By Dan Marcec

2017 will be remembered for many reasons, including but not limited to an unprecedented political climate, a particularly active hurricane season and multiple reminders that cybersecurity will continue to be the No. 1 risk in the public and private sectors.

In corporate governance specifically, however, 2017 will be remembered as the year some of the largest institutional investors took a stand on board diversity. In March, State Street Global Advisors made a loud-and-clear statement with its "Fearless Girl" statue, representing the fund's dedication to ensuring that its portfolio companies are committed to gender diversity. Less publicly, but equally effectively, BlackRock noted in its mid-year investment stewardship report that the investor had supported a handful of shareholder proposals requesting policies on board diversity.

Both firms put their mouths where their money is by voting against directors on boards that were not actively addressing diversity. While these two are certainly not the only large investors to make these kinds of statements, they engaged in representative actions, sending signals to the corporate governance world.

The question is where boards go from here. There are countless research reports that point to the fact that diversity drives better business results. There are countless excuses as to why there is not more diversity on boards, the most popular being that there aren't enough qualified candidates available to fill seats. So how can boards tap into the various pipelines for diverse directors that are being built and, possibly more of a challenge, how can candidates access the right pipelines that will provide avenues to the opportunities they're seeking?

Equilar had the opportunity to host the architects of a program in the National Football League that has seen success in this regard. In 2002, the NFL introduced a mandatory policy that all its 32 organizations were required to interview minority candidates for open head coaching and front office positions. Also known as the "Rooney Rule"—named for former Pittsburgh Steelers owner Dan Rooney—the policy has become well-known and cited as a successful mechanism to increase the pipeline of diverse professionals in business.

At the Board Leadership Forum in New York City, co-hosted by Nasdaq, Equilar was joined by Jim Rooney, son of the late Dan Rooney and Founder of FirstLink Research Analytics, Paul Tagliabue, former NFL Commissioner (1989–2006), Robert Gulliver, Chief Human Resources Officer for the NFL, and Capricia Penavic Marshall, Ambassador-in-Residence, Adrienne Arsht Latin America Center, and Former Chief of Protocol of the United States during the Obama administration (2009–2013).

The responses below are based on the event's formal discussion and an exclusive interview with *C-Suite* following the panel.

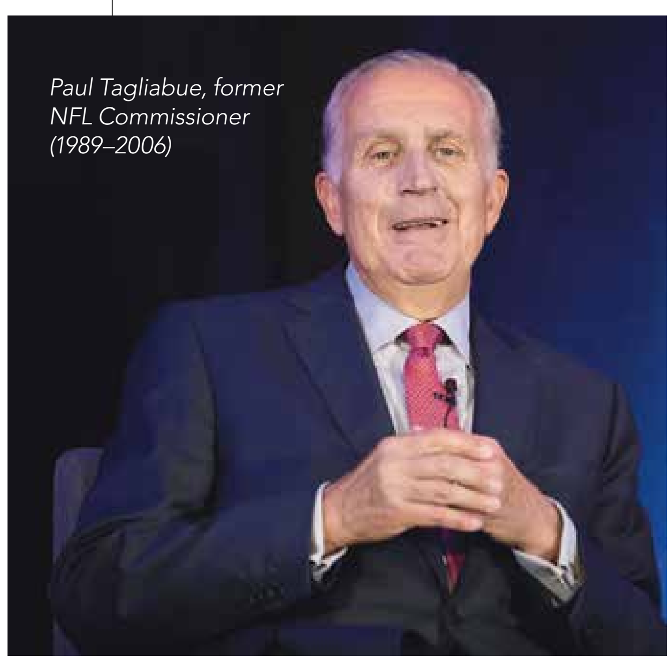
Equilar: What was the genesis of the "Rooney Rule," and what led to its implementation?

Commissioner Paul Tagliabue: By 1996, there had been just four head coaches of color in the NFL, and three of those coaches were on teams with new owners. That prompted me to ask whether there was an unhealthy cultural issue in the league, as these new owners' view of talent transcended the NFL. They had brought in outside executives as well as three African-American head coaches, both of which were rare at the time.

Dan Marcec is the editor-in-chief of C-Suite and the director of content at Equilar. He can be reached at ***dmarcec@equilar.com****.*

1997 became a landmark year for the NFL's diversity policies. This was all happening parallel to the growth of the league. In 1970, total revenue was $130 million, which had grown to $900 million by the time I started in 1989. By 2006, when I left, it was $6 billion. So we were in this period of tremendous growth, and looking at it in context with the total business environment, we were looking at how we fit into the larger corporate universe, where the mantra was globalization, innovation and talent. I took that to heart. We recognized that diversity had to be a part of that. Discussions intensified in 1996 and 1997 as we gathered together all the owners to try and do something about this, and by 2002 we were not making the progress with head coaches, assistant coaches and front office staff, so I decided we had to do something mandatory.

In the NFL, the Commissioner has no power if he's not persuasive, and ultimately I had to have the owners approve. Dan Rooney was the obvious person to me to help build consensus as a leader in talent development, organizational development and diversity.



Paul Tagliabue, former NFL Commissioner (1989–2006)

Jim, what can you tell us about your father's legacy and why Commissioner Tagliabue thought to reach out to him?

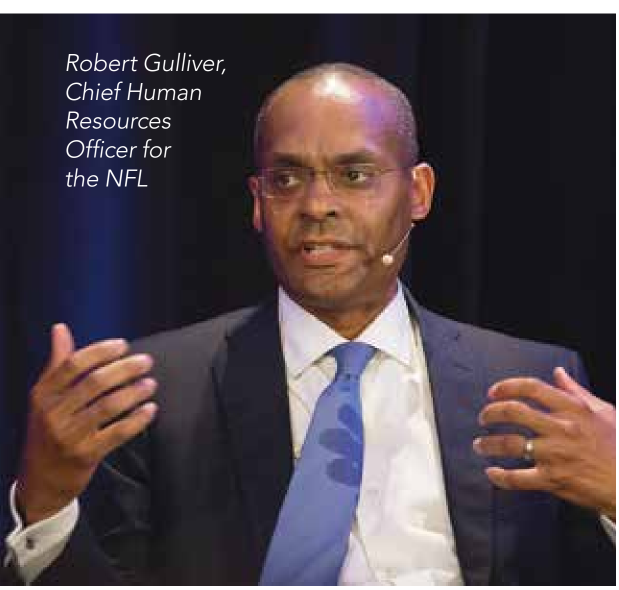
Jim Rooney: The Steelers are the only major sports franchise to have three straight coaches in that position for a minimum of 10 years. That's just one aspect of the organization's culture that reflects its overall philosophy. As another example, in the 1960s, the team hired Bill Nunn to scout the historically black colleges, which led to bringing on some of the best players of their era in the 1970s. Chuck Knoll, our head coach who shared Dan Rooney's vision and values, started Joe Gilliam in 1974 at quarterback, the first African-American to start in the NFL at that position. That built a level of trust between the players and the organization. The team gained a true competitive advantage because of a commitment to inclusion, and all of that laid the foundation for the Rooney Rule.

> "[The Steelers] gained a true competitive advantage because of a commitment to inclusion, and all of that laid the foundation for the Rooney Rule."
>
> Jim Rooney, son of the late Dan Rooney and Founder of FirstLink Research Analytics

Since the Rooney Rule has been in effect, what has been its influence, and what do you see as its future?

Robert Gulliver: The Rooney Rule has been the NFL's most significant export besides the game itself. When Commissioner Tagilabue was framing this 15 years ago, much of the dialogue was how to develop a process for stewardship and how to take the success and build on it.

In that context there are three questions to ask: Is this still working, is it still relevant, and how can we make it better? The stats tell us it is working. While there is still an underrepresentation of minority head coaches, there had been six in the modern era before the Rooney Rule. Since 2002, there have been 17.



Robert Gulliver, Chief Human Resources Officer for the NFL

The question of whether it's still relevant can be answered with a resounding yes—I'd argue that it's more relevant than ever. Internally, it's become core to the NFL and our culture, but we're also seeing it extend to other not-for-profits adopting their own versions.

Answering the question of how to make it better and build upon its success is dependent on the pipeline. It's one thing to say that you have to interview a certain type of candidate, but it's another to have a critical mass of candidates at the ready. So we're focused on helping identify the next generation of diverse talent.

Tagliabue: When we adopted this, we got pushback and objections saying it would lead to hiring less qualified people. We had to address that, because no owner of a sports team—NFL or otherwise—wants to take someone who is not the best for the position. The Rooney Rule doesn't require you to hire anyone, but it does require you to create a competitive framework for evaluating multiple people based on merit. That's the key. In surveying teams before adopting the rule, we found that the system existing before was not a merit-based system—it involved recycling talent that had not fully succeeded. So new talent could not get into this old boys' network at any level. I'll emphasize that aspect of it. The Rooney Rule doesn't impose quotas, but it requires you to interview a lot of people and broaden your perspective of the candidate pool.

Capricia Penavic Marshall: The crux of the Rooney Rule is that there are certain frailties within our societal structure, and it's imperative our leadership address those issues. There is a sense that the government is not following those rules. When we engage with delegations all over the world, we have to understand differences and appreciate them and we need to understand different ways to engage to be effective. There is a synergy in what I did as Chief of Protocol and the Rooney Rule in that we were working to influence a behavioral change and provide guidance, advice and structure around that.

Companies who have chosen to address these issues gain a competitive edge by having diverse perspectives. You can get behind if you don't address these issues that are happening at a societal level. The population is 51% women, African-Americans represent about 14%, and Latinos account for around 18%. Having people within your industries who understand those perspectives and how to effectively engage those audiences is smart business.

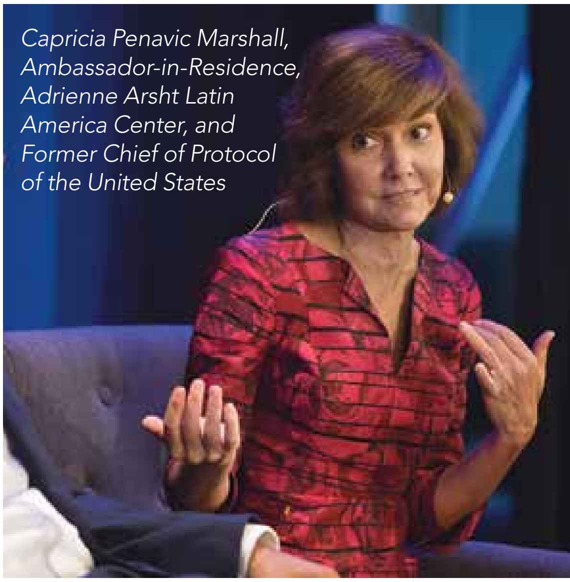
Those are all excellent points, as the Rooney Rule is not only about increasing diversity at head coaching and front office positions in a vacuum, but also about the pipeline, and I think that's one of the most salient topics that relates to the boardroom. When you look at board diversity, it's not only a problem of board diversity, it's a problem of diversity coming all the way up the ladder. People say there are not enough qualified female candidates, but that's possibly because they're only looking at CEOs and CFOs and there are not a lot of females in those positions.

Robert, turning the conversation to the NFL as an organization, how have you implemented this internally, specifically with regards to gender diversity? That's an interesting aspect that a lot of people may not think about considering the NFL's players are exclusively male, and at this point, its head coaches are as well.

Gulliver: Since 45% of our fans are women, it only makes natural business sense for us to be very focused on the importance of gender diversity. Two Super Bowls ago, Commissioner Goodell took the step to formally expand the Rooney Rule to include gender diversity for executive level positions at the league office. That created an additional element of urgency relevant to our efforts, and we're very pleased with the results. We have several key roles in our revenue-generating businesses run by women, including our media business and our sponsorship and consumer products business. The Rooney Rule is great in its simplicity in that there are no expectations for outcomes. By doing the reps, you get better.

> "The Rooney Rule doesn't require you to hire anyone, but it does require you to create a competitive framework for evaluating multiple people based on merit."
>
> Paul Tagliabue, former NFL Commissioner (1989–2006)

I like that you started with that statistic, because it's one of the key things diversity advocates in corporate governance champion as well. Shareholders, customers and employees are diverse groups of people, and companies that represent those constituents perform better. Capricia, I'm sure you saw that in your government work as well. How have you seen effective pipelines for diverse talent built?



Capricia Penavic Marshall, Ambassador-in-Residence, Adrienne Arsht Latin America Center, and Former Chief of Protocol of the United States

Penavic Marshall: As a young woman, I felt privileged to be mentored by a boss that invested in women—in teaching certain talents, how to create your own network and how to be heard within the boardroom. Even the White House, which we felt had advanced on diversity issues, was still far behind. Oftentimes I'd be the only woman sitting in a meeting.

Any rule you create has to incorporate a larger process that helps women and minorities access the pipeline. And then you have to understand how that translates to the corporate world. Having tools to address this is critical.

The Rooney Rule has an amazing legacy and is clearly successful in the NFL, but how does this relate to boards, and how can they implement such a process for themselves?

Tagliabue: The board has to work with the CEO and the senior team to do a self-evaluation, and the committee on directors has to pinpoint whether they have board members who can really add value, assess issues and create policies to address those issues. When you work within a closed network, you end up overrating an existing talent pool and missing the rest of the talent pool. You have to redefine the metrics, clearly define the skill sets that go into success and then factor that into the decision making process. That allows you to identify talent on the basis of merit and performance, not on anything else.

Penavic Marshall: You have to have diverse tool sets. People come in with a different perspective, and whether it's on a board in a corporation or as a head coach, the ability to see multiple perspectives makes you relateable. It enriches the process and then you can address a larger audience.

Gulliver: It all goes back to the business case for diversity—in our case the diversity of our fan base—and being able to come up with new ideas to meet the needs of your customers. You have to have diverse thinking represented at all levels of the business.

Paul Tagliabue, Capricia Penavic Marshall, Jim Rooney and Robert Gulliver

If you're trying to implement something, it's inevitable that you're going to get pushback. What are some strategies on finding those advocates—like Dan Rooney—to help you push forward?

Tagliabue: You have to recognize as the CEO you can't do everything yourself, and you have to be very clear about what you are going to do and what you are going to trust others to do. That includes senior executives, the board and its committees. At the NFL, I chose owners to serve on board committees and found if I made the right choices, I was able to address the issues that arose. And you'll also be able to address policy changes in the recommendations that come forth to those committees. That's important.

Building consensus means asking a lot of questions and understanding why there are different points of view and why there may be disagreements on any particular issues. You have to understand why someone is against something in order to try to reach an agreement.

In league meetings, you need 24 votes (out of 32) in favor of anything. On most issues we'd start with 23. Three would be opposed for one reason, three for the opposite, and three for no reason. We were always one short of getting something done. It might take an hour, it might take three days, but we always needed that last vote. It involves leveraging not only your own relationships but also those that the others have.

Rooney: As I'm recognizing and remembering my father, I'm thinking of what he would like about this panel and what he would advocate to boards based on this panel. I initially had some vision of it, but how it worked represented that even better than I could imagine.

He was a big-picture guy, but he loved the process and always talked about the process. He'd say this is where we're going and lay out how we were going to get there. Capricia talked about cultural diplomacy and global thinking, and that was core to his philosophy. It was never just about the Steelers making money, or even winning. He never talked about winning, but he talked about us being great, and that winning would be an outcome of being great.

So that global perspective applies to asking the question: What do you want on your board? A board helps your organization do what they need to do, whether it's aligning with innovation or taking care of the bottom line in some way. And diversity allows you to do that better because it allows you to relate to your constituents in a meaningful way. CS

> "In surveying teams before adopting the rule, we found that the system existing before was not a merit-based system—it involved recycling talent that had not fully succeeded."
>
> Paul Tagliabue, former NFL Commissioner (1989–2006)

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Displaying Diversity

More companies are disclosing diversity policies, but are they making progress?

By Dan Marcec

Board diversity has become an increasingly hot-button issue in the past several years, an observation that will come as no surprise for anyone following corporate governance. A few years ago, advocacy groups and pension funds started building initiatives around board diversity, which progressed to more overt discussion around the critical influence of board composition on shareholder evaluations from the largest institutional investors. In 2017, this has culminated with explicit guidelines and voting behaviors from the world's largest asset managers.

Dan Marcec is the editor-in-chief of C-Suite and the director of content at Equilar. He can be reached at ***dmarcec@equilar.com****.*

Coupled with the fact that research has repeatedly shown that companies with diverse boards perform better, qualitatively a variety of perspectives opens conversation and brings in additional viewpoints that expand the ways of thinking from the top down at an organization. Despite these trends, progress continues to be slow.

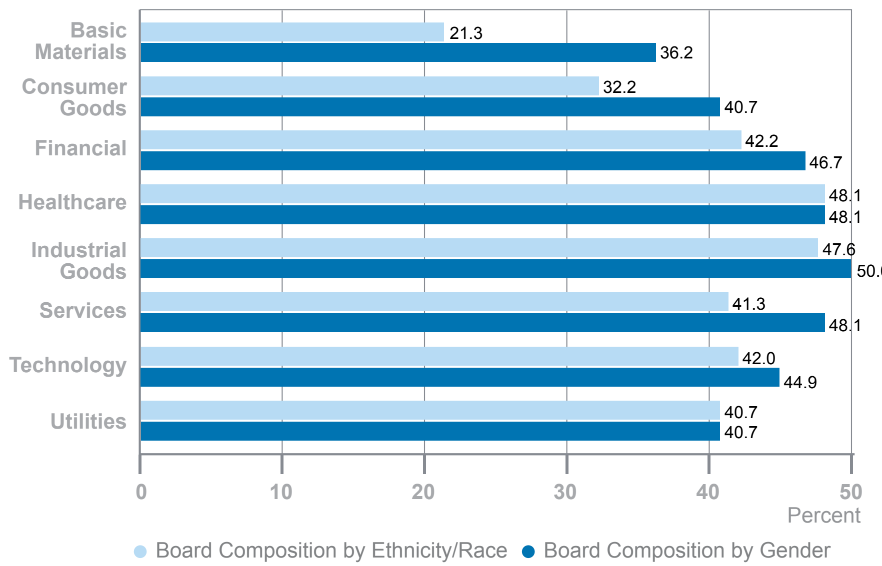
In response to these market factors, as well as in an effort to represent a diversifying base of shareholders, employees and customers, many companies are making the effort to disclose the diverse backgrounds and experiences of their board.

Data on board diversity is scant, given that there is no requirement to disclose this information about directors. Former SEC Chairwoman Mary Jo White brought this issue to the forefront during her tenure, suggesting that rules be set to provide more information about executives and board members. But those regulations never made it to the proposal stage, and with the current Commission focused on other regulatory issues, it does not seem likely to be on the agenda for some time again.

Meanwhile, U.S. House of Representatives Congresswoman Carolyn Maloney from the state

Figures 1 & 2
Companies Disclosing Diversity

Figure 3
Board Diversity Disclosures, Equilar 500 Companies by Sector



Source: Equilar

of New York proposed a bill in March 2017 called the "Gender Diversity in Corporate Leadership Act." According to Maloney's announcement, "the new legislation [is] modeled on policies in Canada and Australia [and] would instruct the SEC to recommend strategies for increasing women's representation on corporate boards. The bill also requires companies to report their policies to encourage the nomination of women for board seats as well, as the proportion of women on their board and in senior executive leadership."

With no official movement on these initiatives, the investor community and the public at large is left with what companies voluntarily share about the composition of their boards. The good news is that more than 40% of companies in the Equilar 500—a group of companies comprising the largest U.S.-listed public companies by revenue, weighted by industry sector to resemble similar large-cap indices—disclose some level of diversity on their boards of directors. Just over 45% of companies disclose composition with respect to gender, and 39.8% of companies disclose diversity in terms of ethnicity or race (Figures 1 & 2).

These disclosures can vary widely, but they all explicitly included information that pointed to the number or percentage of directors that have a diverse background in these categories.

For example, disclosures such as UPS specifically included the background of individual directors:

"Our 12 director nominees include a diverse range of individuals, including three women, one African-American, two nominees who are European and a nominee who spent his entire career in Asia. We also have a great degree of age diversity among our nominees, with our directors' ages ranging between 46 and 71 years." (Proxy statement filed 3/13/17, p.13)

Meanwhile, others had a more general overview, such as Johnson & Johnson: "Diverse Identities = 50% Women, Hispanic, and African-American Nominees" (Proxy filed 3/15/17, p.15)

Regardless, these types of disclosures—while not yet a majority—have become relatively common.

"Study after study has demonstrated an association between business results and boards that include women, and investors are actively engaging with companies on gender diversity in light of this research," said Susan Angele, Senior Advisor, Board Governance, KPMG's Board Leadership Center.

When broken down by industry sector, the results varied. The industrial goods sector was unique in the fact that half of companies disclosed gender diversity in board composition. Industrial goods companies were also the second-most prevalent to disclose ethnic and racial diversity, trailing healthcare by a small margin. Meanwhile, the basic materials sector—which includes energy and oil and gas companies—was the least likely to disclose any form of diversity. Notably, fewer than one-third of consumer goods companies disclosed racial or ethnic diversity on their boards, the only other sector besides basic materials to be lower than the overall index average (Figure 3).

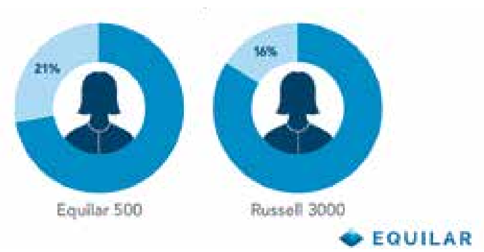
One criticism that has been levied by shareholders is that many companies don't include pictures of their directors, which, while not sufficient for discerning a person's background or diversity profile, helps visually represent who the individuals are and provides yet another piece of information. Since shareholders are not in the boardroom, they are interested in as much detail about board candidates as possible. Among the Equilar 500, 57.1% of companies included images of their directors, which again varied by sector.

"If it once was a check-the-box exercise, board diversity is now a business priority," said Blair Jones, Managing Director at Semler Brossy Consulting Group. "Boards understand the importance of diversity in fostering better conversations, better representing employee and customer perspectives and driving better results. Boards want the benefit of diverse experiences, and are becoming more open to sourcing them from less traditional backgrounds."

Reaction and Inaction

Regardless of how boards are reacting to their investors' calls for transparency, the question remains with respect to results. At least in terms of gender diversity, there has been progress. In 2017, 20.9% of board seats were occupied by women at the largest U.S. companies by revenue, compared to 16.5% five years earlier. For the Russell 3000 as a whole, that figure stands at 16%, up from about 12% in 2013 (Figure 4).

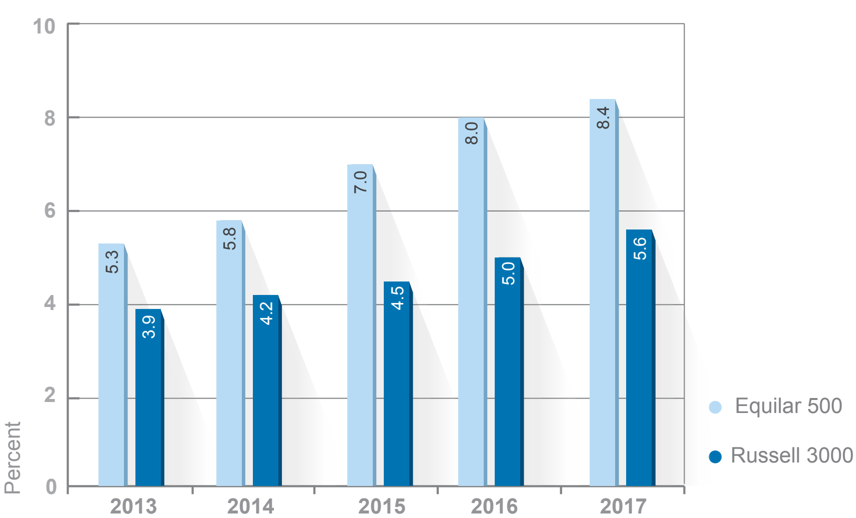
Figure 4
Women on Corporate Boards



"There was a time when getting 20% of women on boards might have seemed an audacious goal, but now that goal has been reached for Equilar 500 boards overall and seems in sight for the Russell 3000—that achievement should be celebrated," said Jones. "At the same time, it is not time for boards to rest on their laurels, as gender parity is the ultimate goal, and the current pace of change has that milestone still quite a ways away."

However, digging slightly deeper into the data, women are far less likely to be in leadership positions. Just 8.4% of the top roles on corporate boards at large-cap companies were female, and only 5.6% at all Russell 3000 companies (Figure 5).

Figure 5
Women In Board Leadership Positions



Source: Equilar

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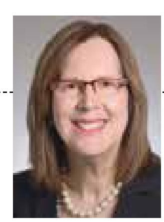
For more details on the recent Board Composition and Director Recruiting Trends report, featuring commentary from KPMG's Board Leadership Center and Semler Brossy Consulting Group, please visit ***www.equilar.com/reports.html****.*

While more women are being added to boards, oftentimes lead director and non-executive chair positions go to directors who have a long history and tenure with the company. This makes logical sense, and as women become more entrenched in board positions, over the years we should expect these trends to accelerate. But in the meantime, boards have the opportunity to lay groundwork and close this gap by making sure their pipeline of diverse candidates is full. By grooming new directors on the board and providing the opportunity to serve committee or other leadership positions, that may open more doors for more diverse leadership.

"While racial and ethnic diversity are equally important to strong business results, there have historically been challenges to similar research due to smaller sample sizes and lack of disclosure," said Angele. "As an additional measure of diversity, sexual orientation has even less visibility. The research does show that diverse teams tend to perform better overall, and as disclosure of these facets of diversity becomes more common, the amount of research confirming the association between board diversity and long-term value is likely to increase." CS

CONTRIBUTORS



SUSAN ANGELE
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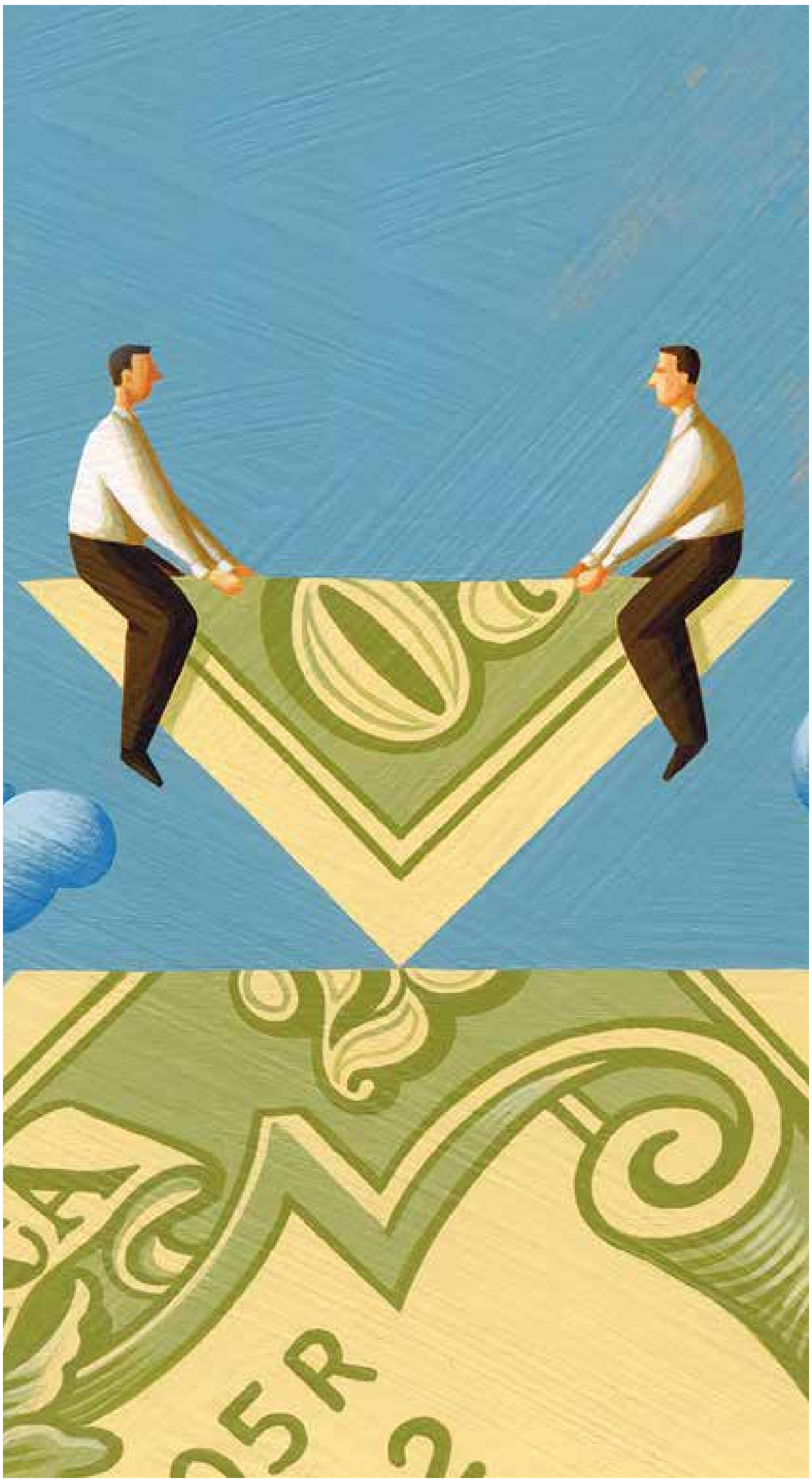
Pay for Performance 2.0

Boards look beyond total shareholder return to diversify incentive plans

By Matthew Goforth



Equity-based compensation in the form of stock options and restricted stock grants remains a popular means of diversifying employee pay packages. For CEOs and other named executive officers (NEOs), equity awards commonly account for the majority of total compensation, while rank-and-file managers typically realize a smaller proportion of total pay in equity. Nevertheless, the multitude of equity vehicles, vesting schedules and performance conditions allow companies to take a dynamic approach to cost and talent management as well as alignment of equity incentives with shareholder interest.

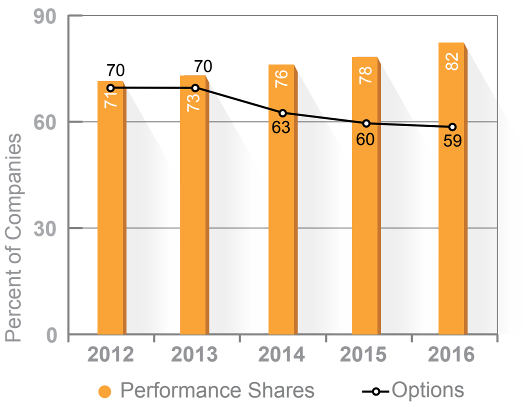
Performance Shares Dominate the Equity Mix

At a broad level, the prevalence of options grants declined over the last decade due to expensing requirements and investor concerns. Because proxy advisors do not consider options to be performance-based, and that options make a greater contribution to share dilution than restricted stock, some companies have shifted away from awarding options with an eye toward strong Say on Pay and equity plan support from shareholders.

Although options are dependent on stock-price appreciation, they are not inherently goal-based, and restricted stock grants made contingent on hitting performance targets have incrementally taken their place for senior managers. Performance stock grants have largely become a "check-the-box" exercise for large-cap boards. More than 80% of the 500 largest (by revenue) public companies in the United States (Equilar 500*) granted performance-based awards to their NEOs in fiscal 2016, according to the Equilar report *Equity Compensation Trends*, published with commentary partner E*TRADE Financial Corporate Services, Inc. (Graph 1).

There may be other factors at play in the trend away from options and toward restricted stock and performance awards.

Graph 1
Equilar 500 Prevalence of Options and Performance Shares



Source: Equilar

"Stock options offer the potential for higher returns than restricted stock, but they can also wind up worthless in down markets, potentially for extended periods of time as stock prices recover," noted E*TRADE in its commentary for the report. "A tumultuous 2015 for many sectors, perhaps due in part to political uncertainty and the potential impact on overall market performance in 2016, may have had some compensation committees rethinking their granting strategies. For example, in the highly competitive technology sector, where attracting, retaining, and motivating employees is a continuous effort, some companies may have elected to increase the grant value of restricted stock and decrease option grants."

Long-Term Incentives Value Also Shifts to Performance-Based

Once the compensation committee commits to granting stock-based awards contingent on hitting predetermined goals, determining the ideal overall pay mix may remain a challenge. About 65% of the average Equilar 500 CEO's total compensation was granted as equity in fiscal 2016, though the mix of equity, or long-term incentives (LTI), shifted since 2012. In 2016, 60% of CEOs received over half of LTI value in performance awards, a 17 percentage point increase in just a four year period (Graph 2).

The remaining portion of the LTI mix remains highly variable, with about an equal number of companies pairing performance LTI with options, restricted stock or both. With proxy advisory firms preferring that companies grant at least half of LTI in the form of performance awards to their CEOs, the market has largely responded in favor of such practice, even as the grant-date value of equity awards outpaces the growth of annual cash awards. The median base salary for Equilar 500 CEOs climbed 10.6% between 2012 and 2016, when stock awards increased 43.5% in value at the median.

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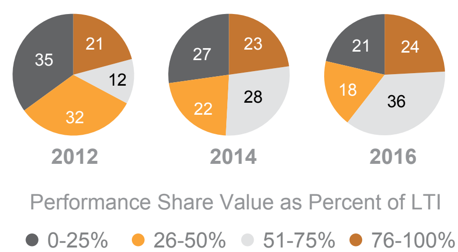
The shift in LTI mix is true for mid- and small-cap companies as well.

"Based on our proprietary data, the gradual increase of perfomance-based equity began soon after the passage of the Dodd-Frank Act in 2010, which, among other things, provided shareholders with more transparency into executive pay," wrote E*TRADE. "While adoption of this type of equity compensation began slowly, it continues to increase year over year for mid- and large-cap companies and at measurable rates for small-cap companies. Our proprietary data show increases of 28% in large cap, 26% in mid cap, and 31% in small cap."

Graph 2
CEO Performance Awards as Percent of Total LTI



Source: Equilar

Total Shareholder Return Remains Dominant

The decision to award performance LTI and its overall standing in the total compensation mix only serves to trigger the often complex process of designing the specific award structures. Boards must understand the performance areas that will drive company strategy, goals and shareholder value.

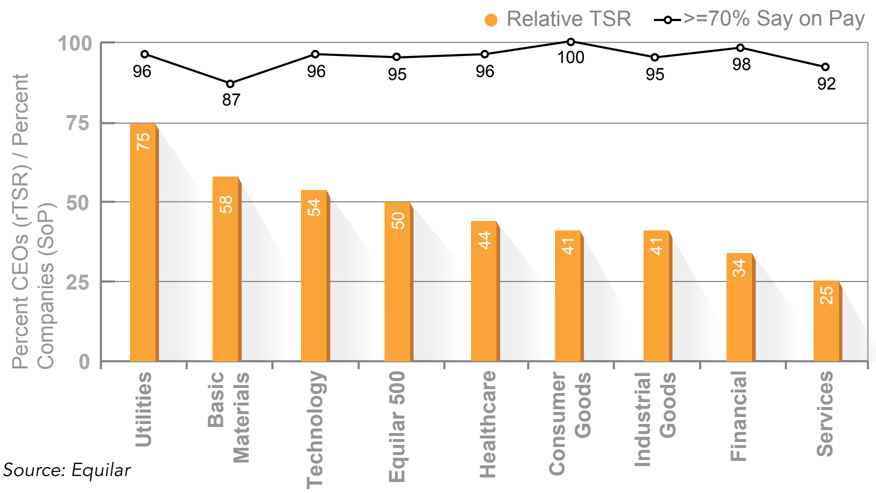
Ultimately, shareholders have the right to voice a non-binding opinion on the overall structure of the company's executive compensation program at the annual shareholder meeting in the form of Say on Pay votes. Say on Pay and the influence of proxy advisors has largely been credited with driving the usage of relative total shareholder return (rTSR) as a metric. RTSR comes with benefits and challenges. On the one hand, goal setting is simplified to pegging payout opportunities to percentile rankings within a peer group. On the other hand, rTSR suffers from "line of sight" challenges, whereby executives may lack the ability to directly influence stock price and dividends over a three-year period.

Nonetheless, half of CEOs at Equilar 500 companies who received performance awards in 2016 saw rTSR tied to their award's payout—up from 43% in 2012. Leveraging rTSR in LTI awards displays wide variability across sectors, where three-quarters of CEOs at utilities companies received an rTSR award—most of any sector—compared to one-quarter of CEOs at services companies. Despite disparate practices in rTSR use, greater than 92% of companies in every sector received at least 70% support for their most recent Say on Pay proposals, excepting basic materials companies (Graph 3).

The 70% mark is viewed as a "bright line" test, due to additional scrutiny from proxy advisors and investors should support dip into the 60s

**Equilar 500 comprises the 500 largest U.S. public companies (by revenue), and is weighted by sector.*

Graph 3
Relative TSR (CEO Awards) and 2017 Say on Pay Support



Source: Equilar

or below. It should be noted that most compensation committees view Say on Pay support less than 90% as a warning from shareholders to reevaluate the pay and performance alignment resulting from executive compensation packages.

Performance Pay Matures as Companies Add More Metrics

Although rTSR grew to prominence since Say on Pay votes began in 2011, the prevalence of use flattened at around 50% between 2015 and 2016 as compensation committees looked to other metrics to both provide line of sight to executives and drive strategy and value. This rethinking of TSR meant alternative choices were increasingly valid. Case in point, the second most common LTI metric, return on capital (ROC)—inclusive of return on invested capital (ROIC) and return on equity (ROE)—increased in prevalence by seven percentage points since 2012 to reach 35% of Equilar 500 companies in fiscal 2016. The ability of senior management to ensure returns on capital exceed the costs reflects their skills to execute strategically over longer time horizons. Research by Rivel Research Group and the Stanford Graduate School of Business indicates the investor view that ROC is a superior metric to link CEO pay and long-term company performance. Use of ROC, like rTSR, varies by sector, with financial firms leading all others at 55% prevalence when measured by inclusion of all LTI awards to any named executive officer (Graph 4).

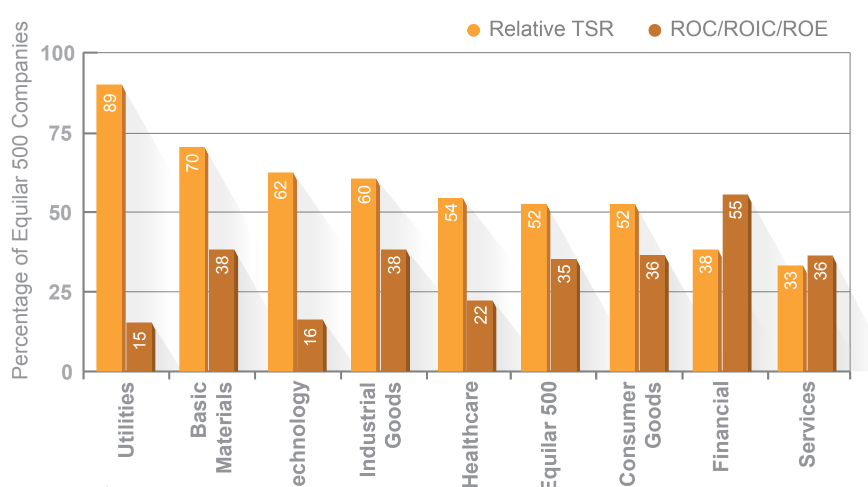
Still, individual companies may reject the market trends as inapplicable, instead focusing on internal metrics. Boards that have difficulty setting longer-term goals with the necessary rigor often choose yearly goal-setting for financial metrics included in executive LTI awards.

Solutions on a case-by-case basis vary, and E*TRADE noted that "based on our proprietary data, non-financial business goals remain the highest performance-based metric type at 72% for mid- and large-cap companies, followed by TSR at 36%, and earnings at 32%.[1] TSR use increased with companies administered by E*TRADE from year-end 2016 to June 2017, but many companies are designing plans that implement a secondary metric, evaluated annually, to drive specific business line performance. (In 2017, the average number of metrics used by companies administered by E*TRADE is just over two.)

"From this data, it is clear that compensation committees remain focused on setting transparent and realistic metrics that are aligned with shareholders values while motivating executives to produce results on business-critical goals."

Since 2011, Say on Pay, proxy advisors and shareholders drove boards to link more LTI awards to predetermined goals and increasingly so as measured by rTSR. As the prevalence of rTSR flattens due to concerns that managers require more direct control over performance measures, alternatives such as ROC have come to the fore for a great many companies. With Say on Pay support at an all-time high in 2017, expect the focus on metric selection and rigor in goal-setting to sharpen. CS

Graph 4
Performance Metric Prevalence, All NEOs



Source: Equilar

*1. Data collected from the E*TRADE Financial Corporate Services, Inc. Equity Edge Online® platform as of June 30, 2017.*

A Change in Control

How shareholders are influencing executive exit pay

By Charlie Pontrelli and Dan Marcec

Charlie Pontrelli is a project manager with Equilar. Dan Marcec is the editor-in-chief of C-Suite magazine and the director of content at Equilar.

Investors have more input into executive compensation practices than ever, and this feedback has led to more transparency. In particular, change-in-control (CIC) provisions—i.e., severance payouts in connection with mergers and acquisitions—are facets of executive compensation often surrounded by criticism, according to a new report from the Executive Compensation Practice of Alvarez & Marsal, which analyzed disclosures on change-in-control agreements for the top 200 publicly traded companies in the U.S.

Since the firm's previous study, disclosed change-in-control benefits for CEOs at these companies actually decreased in value, down from \$30.3 million in 2015 to \$27.9 million in 2017. The average benefit for all other named executive officers (NEOs) also decreased slightly, from \$12.3 million to \$11.1 million (Figure 1).

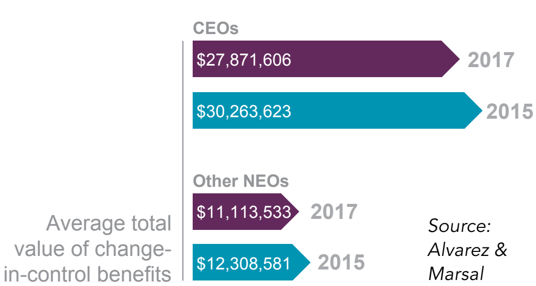
One of the driving factors in this decline is actually a decrease of long-term incentives (LTI) as a portion of change-in-control benefits. The fact that LTI values have moderately decreased from the previous survey is surprising given the increasing prominence of equity awards in recent years. Larger grants combined with increasing stock prices should have a positive effect on the value of LTI awards in the potential payments table.

However, one possible reason for the decline may be the decreasing prevalence of option grants. Since the stock market is high and option grants tend to encompass a larger number of shares than stock grants, there could have been a large amount of highly in-the-money options that vested between 2015 and 2017, which would have brought the LTI value down.

An Equilar study of actual CIC payments taken from golden parachute tables in 54 mergers occurring between 2013 and 2015 found consistent results with the information in the Alvarez & Marsal report. For example, 2015 CEO long-term incentive (LTI) compensation accounted for 70% of the potential payments and 67.5% in 2017. Comparatively, Equilar found that CEO LTI compensation accounted for 69.1% of actual golden parachute payments (Figure 2).

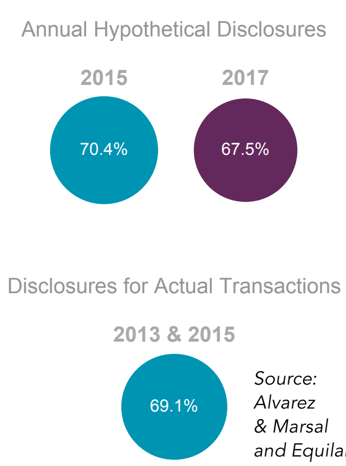
The numbers for severance to outgoing executives in connection with a merger or acquisition are often eye-popping, and as a result are a popular target for scrutiny not only from investors, but also from the media and general public when they arise. However, change-in-control payouts are reflections of executive compensation design, as the report shows, and they exist to incentivize company leaders to act in the best interest of the organization when potential opportunities arise to sell or combine a company. Investor votes for compensation plans via Say on Pay or other shareholder proposals around equity and incentive plans ultimately determine the outcome of these exit packages. If there are concerns around executive payouts, they should arise well before the final hour when the company is sold or merged. CS

Figure 1
Average Total Value for Change-in-Control Benefits



Source: Alvarez & Marsal

Figure 2
Change-in-Control Values vs. Actual Payouts



Source: Alvarez & Marsal and Equilar

Protecting Board Integrity

Reputation is often a forgotten predictor of director performance

By Joelle Scott and Miriam Wishnick

CORPORATE RESOLUTIONS INC.

Brain light / Alamy Stock Photo

The board sets the tone for the direction of the company and how company stakeholders interact. Selecting directors whose past experiences, ethics and values are best suited to the company is a critical step in good corporate governance. It is difficult, if not impossible, to do this without a deep and independent understanding of your new board member's background, public reputation and rapport among associates.

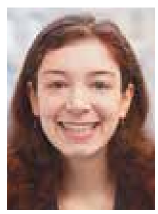
Companies are constantly assessing the best ways to promote board performance. Whether this is measured by shareholder value or diversity, boards are always striving to improve all aspects of the company's conduct and operations.

How does gathering information on board members protect my company?

Many public companies already run background checks on board candidates to confirm educational credentials and check for criminal history. This is necessary to help ensure that the new board member's credentials are accurately represented in public disclosures and protect the company's shareholders against reckless conduct. However, while often viewed as a check-the-box compliance requirement, a background investigation is also an opportunity to more thoroughly explore the person's character and ability to serve.

This process should have multiple components to ensure there are no surprises once the nominee makes it to the board. For starters, contacting current and former business associates of a given candidate is one of the easiest, yet most often overlooked, sources of information. These interviews yield information about a person that are often not revealed through public record sources, such as demeanor in groups, behavior among peers and subordinates, and communication skills.

Joelle Scott is a senior vice president with Corporate Resolutions Inc. Scott can be reached at ***jscott@corporateresolutions.com****.*



Miriam Wishnick is an investigative analyst with Corporate Resolutions Inc. Wishnick can be reached at ***mwishnick@corporateresolutions.com****.*

Information reported in an SEC bio does not make it fact. There have been numerous instances where board members and/or officers of a company have lied about their undergraduate or graduate degrees, professional licenses, and other credentials. The reputational damage from such an event can immensely influence shareholder, investor and public perception. However, this loss can be prevented.

To gain a better understanding of the candidate, the background investigation should undoubtedly confirm the nominee's credentials and ensure there is no history of criminal behavior or unsavory conduct. Equally important is ensuring board members have not had any regulatory problems in the past, or, more common in 2017, own any suspect domain registrations or portray themselves unprofessionally on social media.

Knowing about a person's business interests is also fundamental. The board member should not possess any conflicts of interest through private ownership in other companies or have had any lawsuits resulting from poor leadership or discrimination at a prior company. Reviewing a person's business interests also alerts you to any of the "shady LLCs" that, while often legitimate, can also be hidden vehicles to evade taxes or launder money. We learned from The Panama Papers incident that these undisclosed interests can raise unnecessary questions or investigation.

How can this help protect my board from shareholder activism?

Equilar reported that in 2016, 41% of activist campaigns were focused on the company's board. Shareholder activism is on the rise as investors seek increasing transparency about the direction of a company, the goals of the board and, of course, the bottom line. As boards struggle to meet these demands, the easiest and most cost-efficient way to increase shareholder engagement is to share the company's rigorous due diligence endeavors. It's the classic "show don't tell" adage: Telling your investors you care about board composition and performance is not nearly as strong as showing them you do.

> Telling your investors you care about board composition and performance is not nearly as strong as showing them you do.

In addition to gaining shareholder's support, background research also allows you to protect the board against public campaigns that are initiated by activists. Activists will air the board's dirty laundry to effect change. If you have already thoroughly vetted your board, then you have mitigated the damage from activist tactics.

Directors are often encouraged to "think like an activist." Thoroughly exploring your board candidate's background, integrity and reputation before elected is your earliest and most effective chance to do just that. Information is always powerful—whether used to safeguard your board from predatory activists or increase transparency with shareholders, demonstrating your diligence achieves both. CS

Keeping Pace on Risk Oversight

Investor stewardship has heightened focus on traditional and emerging risks

By Ron Schneider

DONNELLEY FINANCIAL SOLUTIONS

Through their investment and subsequent stewardship activities (e.g., engagement and proxy voting), shareholders continue to focus on traditional as well as emerging sources of risk. Traditional risk elements include business strategy and its execution, competition, litigation, fraud, regulatory change and other risks specific to particular industries or business models. Emerging risks include intensifying focus on cybersecurity, technological change, environmental and corporate sustainability, and human capital management including gender diversity and pay equity.

This sharpened focus on a host of new issues is increasingly being articulated and implemented by the largest indexed investors, who collectively own—and vote—a growing percentage of the equity of corporate America. For example, in its January 2017 letter to directors of its portfolio companies, State Street Global Advisors' CEO Ron O'Hanley discussed his company's increasing focus on climate change risk:

> "Since 2014, climate change has been a priority engagement issue for us because of its potential to impact long-term results. Last year we created a framework to help boards capture and evaluate different kinds

of physical, regulatory and economic risks associated with climate change within specific sectors. We have provided detailed guidance as to how we assess a company's evaluation of climate risk and its preparedness for addressing it. We have also sought to ensure that our voting record aligns with the priorities we have communicated to our portfolio companies."

Companies increasingly seem to get the message. It is generally accepted that company management has the primary responsibility to manage risk, with the board having the responsibility to oversee management's efforts. Unless investors have specific conversations with companies and their boards on this topic, the company's proxy statement is investors' primary source of information on board oversight of risk. Investor views on the degree to which risks to the company—and to the value of their investment—are being safeguarded will be significantly influenced by the quality and clarity of these disclosures.

Proxies typically discuss board oversight of risk in one of three fashions:

1. General or boilerplate narrative discussion
2. Thoughtful, company-specific narrative discussion, often discussing roles of the full board, key committees and senior management
3. The above, enhanced by visual images that draw the reader's eye and convey key messages memorably and impactfully

Over time, companies are shifting from approach 1 to 2, and now more than ever, 3.

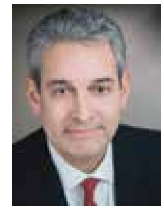
For example, HCP, Inc., in its most recent (2017) proxy statement, used a combination of text and visual elements to explain their board risk oversight processes in such a way that the discussion is easily located, digested and understood. These more thoughtful and creative disclosures are more likely to generate confidence in their companies' effective oversight of risk.

Due to space limitations in this article, we are sharing only the visual aspects of HCP Inc.'s disclosure. For a fuller view of their disclosure, please consult their proxy to see the greater context of these discussions.

Going forward, we anticipate that more governance-minded companies will continue to advance how they present their key messages, using visual elements as well as meaningful text explanations.

What Should You Do?

- Review your current risk oversight processes
- Review your most recent proxy and other disclosures about these critical processes
- Review your peer companies' proxies and other disclosures, looking for examples of how best to explain these processes
- Ask yourself:
  - If our processes are strong, are our disclosures of these processes equally strong?
  - Are our processes likely to engender confidence on the part of investors and others who don't have a direct window into the boardroom and convince them that our company has an appropriate focus and handle on these critical issues? CS



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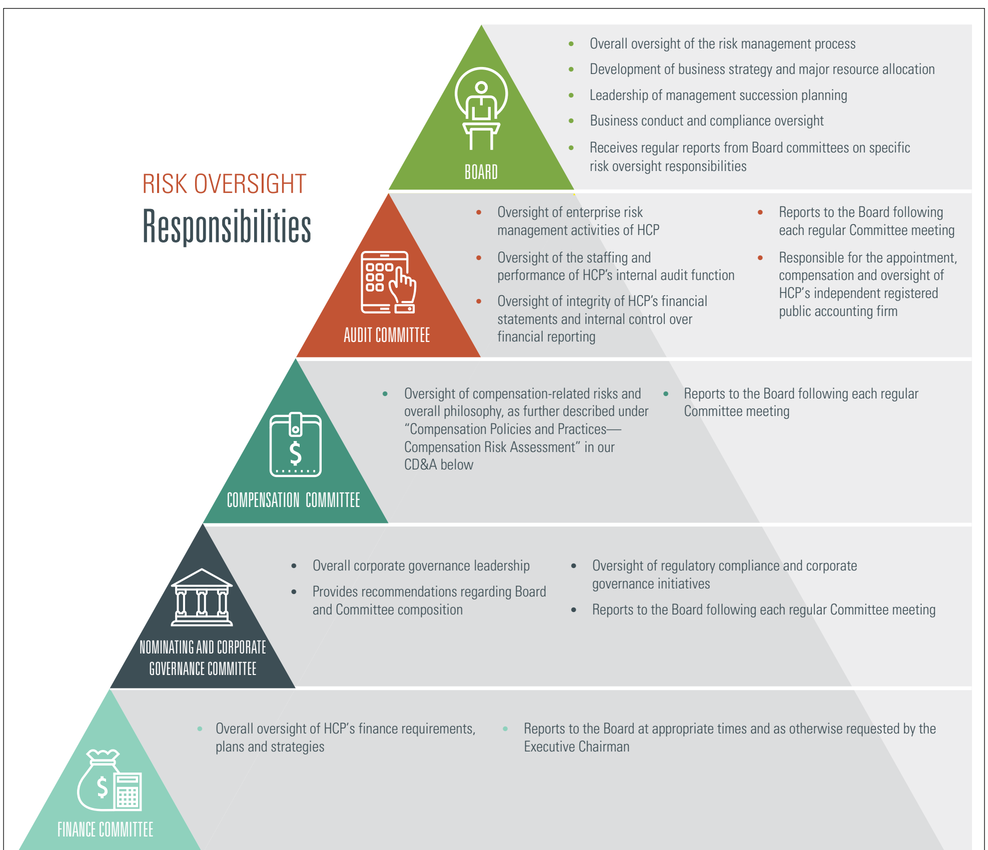
HCP, Inc. p. 19



Taking the Right Risks

Two questions all boards should ask themselves about risk oversight

By TK Kerstetter

BOARDROOM RESOURCES LLC

Risk has become a popular four-letter word in the world of corporate governance, yet it has been part of the business environment long before the first formal public board was ever elected. While there is no question that risk oversight for the protection of the shareholders is one of the core responsibilities of the board, the risk-reward thought process is inherent to any strategic or procedural decision a business will make.

I'm not sure I can point to a single incident that brought risk to the forefront in the boardroom, but the extensive work by COSO in 1985 is surely a significant event. COSO is the Committee of Sponsoring Organizations of the Treadway Commission, which is a joint initiative of five private sector organizations dedicated to providing thought leadership through the development of frameworks and guidance on enterprise risk management, internal control and fraud deterrence. COSO's impact has come in the form of thought papers, research and ERM framework recommendations over the last 30+ years.

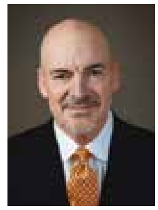
I could spend hours discussing the board's involvement in enterprise risk management, but in this article, I want to focus on two questions that boards should be asking themselves when they think about their role in risk oversight.

1. Who owns risk oversight?

"Owns" may not be exactly the right word, but this question has been bantered about for so many years that I don't want to lose the context. In the truest sense of the word "own," the simple answer is that the board as a whole owns risk oversight. Even though risk is spread across the organization and across various board committees, the simple answer is that the entire board "owns" and is legally responsible for risk oversight.

So let's discuss who on the board actually performs the function of risk oversight, which is what we mean when we consider the concept of "ownership." Two truths about board involvement in risk oversight in today's companies are self-evident:

a. **Risk monitoring responsibilities are inherent in every board committee charter.** As an example, audit oversees financial reporting and compliance, compensation oversees compensation plan risk assessment, and nominating/governance oversees board member composition and performance risk.
b. **There is no one-size-fits-all solution to how a committee or sub-group should monitor risk structures, policies, and procedures.** Yes, if you are an NYSE-listed company, your audit committee is required to discuss with the internal and external auditors how the company handles major financial risks and what steps are taken (within its guidelines and policies) to monitor and control exposure to such risks. But they also make it clear that, if a company has another committee responsible for risk oversight, the board just needs to ensure that the correct processes are in place—and they don't have to duplicate that committee's charter.



TK Kerstetter is the CEO of Boardroom Resources LLC and is a second generation pioneer of governance thought leadership and board education. He can be reached at ***tkkerstetter@boardroomresources.com****.*

The reality is, when the NYSE amended its listing requirements in 2002, audit committee agendas weren't as overwhelmed as they are today (and there certainly wasn't the same focus on cyber and data security). If we could convene that 2002 commission today, I believe the risk oversight instructional language would be quite different and take into account the changes that have occurred in the new digital business environment.

I have grown to favor the idea of a risk committee for many company boards, especially when they can structure that committee to have a chair (who invariably does much of the committee's heavy lifting), but also include the chairs of audit, compensation and nom/gov who provide needed communication about what risks reside in each committee's monitoring processes. This committee would also be responsible for thinking through black swan events and other global risks not normally discussed in business division strategic planning.

I offer this as just one alternative to a host of other successful structures that have gotten the job done at today's companies. The key here is executing any process put in place. Most companies house monitoring and legwork in the audit committee. Audit committee members typically possess the temperament and process-oriented minds required to oversee the policies, procedures and structures necessary for financial or operating risks. At the same time, their skill sets are not always perfect for black swan, reputational or governance risks, which seem just as prevalent these days. All this lends to my understanding that structure and ownership isn't nearly as important as communication and execution. Maybe the question should be "How successful is our board in monitoring the company's risks?" versus "Who owns it?"

2. Does our company have a culture and risk analysis framework that will balance operating and regulatory risks with the strategic risks necessary to build company value?

When I think of balancing risk and reward, a lot of factors come into play: risk appetite, risk tolerance, corporate culture, innovation and market disruptors (just to name a few). As a former corporate director, I was always challenged by the conflicting issues of *building* versus *protecting* shareholder value. What is the right amount of calculated risk-taking that still allows us to benefit from the rewards?

Once again there are different structures and processes that companies use to analyze current and future risks and to decide whether they meet financial/capital and strategic guidelines. As a board member, I always tried to ask the stress test question on major strategies. What's the risk and reward on having everything go as planned and what is the worst-case scenario? Then, by looking at the likelihood of strategy disruptors (economy, interest rates, competitors, technology, etc.), I can decide how risky certain major initiatives are and make an assumption of how likely it is to contribute to shareholder value.

And don't forget the importance of one's corporate culture or risk culture. What is the tone at the top on risk-taking, values, innovation, etc.? The Institute of Risk Management describes an effective risk culture as "one that enables and rewards individuals and groups for taking the right risks in an informed manner." Boards need to ensure that compensation, data systems and other support systems assist key decision makers.

The bottom line is that risk oversight is one of the toughest of all board duties. Constantly evaluating your processes and ERM performance will help you be a better board and company. CS

Welcome Aboard

Equilar Diversity Network members join new public company boards in Q2 2017

As part of an ongoing effort to promote diversity in America's boardrooms, Equilar launched the Equilar Diversity Network (EDN) in 2016. A feature of the Equilar BoardEdge database, EDN is a consortium of leading diversity-focused organizations consolidating robust registries of board-ready executives.

Equilar would like to highlight and congratulate the 34 EDN members who joined new public boards in Q2 2017. These individuals are paving a path to diverse representation on boards and across corporate America. Below is a comprehensive list of these members and the boards they have joined.

Equilar Diversity Network Partners Include:

- 30% Club
- Ascend
- Athena Alliance
- CalPERS and CalSTRS' Diverse Director DataSource (3D)
- Catalyst
- Committee for Economic Development
- Directors & Boards
- Latino Corporate Directors Association (LCDA)
- Stanford Women on Boards
- WCD Foundation
- Wellesley Business Leadership Council
- Women in the Boardroom
- Women's YPO

Amit Batish is the content manager for Equilar.

SEMLER BROSSY

KPMG

EQUILAR DiversityNetwork

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This article is brought to you through a collaboration between KPMG, Semler Brossy and the Equilar Diversity Network (EDN). Learn more at ***equilar.com/diversity***.

VIET DINH

SG SCIENTIFIC GAMES

MARY BAGLIVO

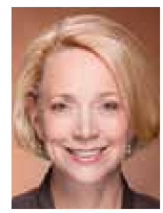
RUTH'S HOSPITALITY GROUP

ELIZABETH FETTER

FOX REDEFINING RIDE DYNAMICS

LYDIA BEEBE

Kansas City Southern Lines | Kansas City Southern de México | Panama Canal Railway Company



JANICE FIELDS

MICHAEL CAMUNEZ

EDISON INTERNATIONAL

MICHAEL FUNG

FLOOR & DECOR

AMY CHANG

P&G

EMIKO HIGASHI

Rambus

ISABELLE COURVILLE

SNC·LAVALIN

BONNIE HILL

BANC OF CALIFORNIA, INC.

SUSAN DABARNO

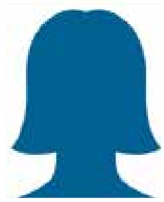
cenovus ENERGY

CATHERINE HUGHES

Shell

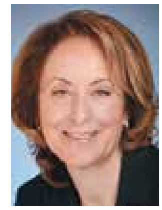
KAY HUTCHISON

MONEY ON MOBILE



CHRISTINE MCGINLEY

Mullen Group



KAREN ROGGE

AeroCentury

YON JORDEN

Capstone Turbine Corporation

HALA MODDELMOG

FLEETCOR

EKTA SINGH-BUSHELL

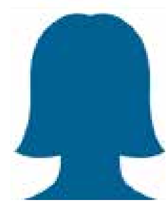
TeleTech

ADRIANA KARABOUTIS

Perrigo

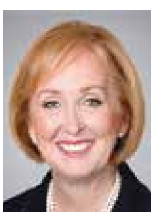
ADELENE PERKINS

BRUKER



CONSTANCE SKIDMORE

Sensata Technologies



DEBRA KELLY-ENNIS

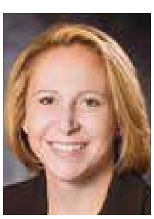
TFI International

CAROL PHILBRICK - LOWE

EMCOR

ABHIJIT TALWALKAR

AMD

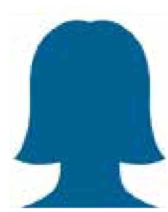


DEBORAH KERR

chico's FAS INC

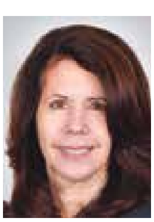
TERRY RAPPUHN

Genesis



FELICIA THORNTON

FLOOR & DECOR

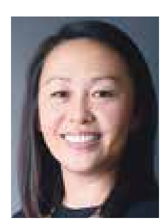


GRACE LIEBLEIN

AMERICAN TOWER CORPORATION

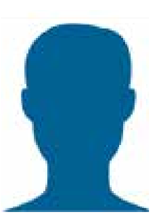
ELLEN RICHSTONE

orion



CAROLINE TSAY

MORNINGSTAR



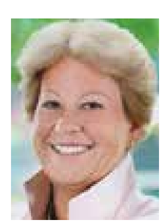
DAVID LINER

CECO ENVIRONMENTAL

ROSE ROBESON

Antero Midstream Partners LP

Antero Midstream GP



LESLIE VARON

Hamilton Lane

What will be the biggest risk for corporate boards looking forward to 2018?

A Delicate Balance

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Damian is a Managing Director for Marsh Inc. He has worked with some of the firm's largest clients to manuscript policies with state-of-the-art coverage. In his capacity as Claims Advocate, Damian has built an extensive network among clients, senior underwriting and claims executives, and securities and coverage attorneys. Damian joined Marsh in 1995 after serving as Senior Claims Counsel at a large insurer specializing in commercial and financial institution directors and officers' liability claims.

Unprecedented Political Dynamics Yield Risk of Uncertainty

Directors and officers today face unprecedented potential for personal exposure, given today's evolving risk landscape. Shifting regulatory priorities, increased scrutiny by regulators, a volatile business environment, cyber risk and increased legal exposures are only some of the significant issues directors and officers face, and the stakes continue to rise.

Looking ahead to 2018, we predict that boards will continue to face evolving risks relating to cybersecurity, climate change and the fallout from the ongoing, unprecedented political dynamics in the U.S. With respect to those politics and the rapidly changing political landscape, regulation risk continues to be the wild card with the most potential to plague boards going forward.

To date, the Trump Administration has focused its deregulatory efforts at easing rules on existing legislation. For example, regulators dropped plans to restrict bonuses on Wall Street—plans that had been opposed by banks and brokerage firms. The Administration also seeks to ease rules governing speculative investing by financial institutions, disclosure of executive pay in public filings and the powers of the Consumer Financial Protection Bureau. The changes effected or proposed to date are based almost entirely on the executive branch's rulemaking authority.

In the early days of 2017, policy changes emanating from Washington were identified as key drivers of the economic and business outlook. As the year draws to a close, there are lingering doubts as to whether the Administration will succeed in enacting any of its key agenda items, including tax and health care reform and infrastructure spending. There is an emerging consensus that, if Congress does not act before the end of 2017, little will happen in 2018 due to election year politics. A larger question is whether the lack of action will adversely impact the stock market, which has been on an increased trajectory in 2017.

For large corporations that deeply invest in long-term planning, the challenges presented by this uncertain climate cannot be understated. Boards must remain vigilant regarding regulatory changes and proposals in order to ensure adequate protection for directors and officers in this volatile environment.

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Douglas K. Chia is Executive Director of The Conference Board Governance Center. He joined The Conference Board in February 2016. Mr. Chia previously served as assistant general counsel and corporate secretary of Johnson & Johnson. Before joining Johnson & Johnson in 2005, he served as assistant general counsel, corporate of Tyco International and practiced law at the global firms Simpson Thacher & Bartlett and Clifford Chance, both in New York and Hong Kong.

The Specter of Activist Investors

The biggest risk will continue to be the specter of activist investors unexpectedly seizing opportunities to transfer value from the company to shareholders and threatening to replace some or all of the board members—and ultimately the CEO—as a means to those ends.

As we've seen recently with Procter & Gamble (P&G) and Automatic Data Processing (ADP), a board can never be too prepared for a shareholder activist campaign. It seems like we're now reading about a new activist campaign on a weekly basis! Two billionaire hedge fund managers familiar to all of us are seeking seats on those companies' boards in separate proxy contests. Trian Fund Management founder Nelson Peltz has targeted P&G, and Pershing Square Capital Management founder Bill Ackman put ADP in his crosshairs.

STEVE KLEMASH
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ey.com/boardmatters

EY

Steve leads the Americas Center for Board Matters (CBM) at Ernst & Young and regularly engages with board and committee members to understand their views, exchange ideas and discuss boardroom issues. Effective corporate governance is an important element in building a better working world. Under Steve's leadership, the EY Center for Board Matters supports boards, committees and directors in their oversight role by providing content, insights and education to help them address complex boardroom issues. Using our professional competencies, relationships and proprietary corporate governance database, we are able to identify trends and emerging governance issues. This allows us to deliver timely and balanced insights, data-rich content, and practical tools and analysis for directors, institutional investors and other governance stakeholders.

Shaping Long-Term Strategy Through Innovation and Transformation

Boards are not lost for significant risks to monitor: business model disruption, geopolitical, cybersecurity and regulatory compliance are just a few. Boards must manage these risks at the same time they may deliberately accept risk to seize new strategic opportunities.

To sustain growth and performance, companies need to maintain a balanced and integrated approach to enterprise risk management. Boards should confirm that management is giving appropriate consideration to managing risk-return trade-offs to drive value creation. Some level of risk or uncertainty may be necessary to gain economic opportunity. An investment in an emerging technology could be viewed as risky, but could improve efficiencies and expand a company's capabilities in new ways. The capacity to manage risk and the willingness to take risks and make forward-looking choices are key elements that drive growth and position companies to create long-term value.

One of the greatest risks—and a focus for boards today—relates to its role in shaping an organization's strategy in an environment of unpredictable change. Given the challenges of quarterly meetings and annual earnings forecasts, combined with the other aspects of risk management, boards and management can lose focus on the need to make investments in innovation that have potential to create significant long-term competitive advantages.

Boards work closely with management on strategy, but specifically, boards need to ensure that companies are appropriately future-proofing the business through the right innovations and transformations. The challenge is that investment in innovation can initially drag financial performance and show positive performance well after the initial investment time—typically beyond three years.

Many companies continue to have strategic planning cycles within one- to three-year time horizons. But as Jeff Bezos told *Wired* magazine in 2011, "If

More boards are finally realizing the need for regular communication with their large institutional investors. Yet, not many have prepared a formal shareholder engagement or activist response plan. Despite how much we've talked about this over the past five or six years, only a little more than half of the largest 20 public companies in the U.S. disclose details about a shareholder engagement that includes information about the frequency of meetings, type of shareholders met and topics discussed. The prevalence of such disclosure sinks as you move down the Fortune 500 list. So, public company boards will have their work cut out for them in 2018 with activism continuing to dominate the corporate governance landscape.

everything you do needs to work on a three-year time horizon, then you're competing against a lot of people, but if you're willing to invest on a seven-year time horizon, you're now competing against a fraction of those people, because very few companies are willing to do that." Now consider that two-thirds of CEOs have an average tenure of less than nine years while the average tenure of a board is nine years, and you begin to understand how critical the board's role is to ensure that management is future-proofing the business through investing in compelling innovations and transformations for the long term.

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Bob Romanchek is a Partner and Executive Committee Member at Meridian Compensation Partners, LLC. He is an attorney and CPA, and has consulted on executive compensation matters for more than 30 years with larger and middle market public companies, being engaged directly by the compensation committee of the board of directors.

Aligning Executive Pay With Company Performance

From an executive compensation perspective, boards have an important duty to pay executives appropriately in line with the underlying performance of the company. The age-old issue of paying for performance seems more complex than ever—and more highly scrutinized!

The design of short-term and long-term incentive programs needs to align with a company's business strategy, and contain goals that have sufficient stretch, to incent value creation without creating an excessive risk scenario. These programs also need to focus on the most appropriate financial measures to properly align with desired company performance. In deciding how performance should be defined, should these incentive plan goals be based upon growth or return measures, using GAAP, or materially adjusted non-GAAP figures? Or should setting pre-established goals be avoided entirely by using stock price growth, plus dividends, (i.e., Total Shareholder Return, or TSR) either on an absolute or relative basis?

The types of long-term incentives now available also provide a range of possible outcomes and incentive focus. Should stock-based incentives reward only for share price appreciation (like a stock option), or provide a retention aspect by providing the initial underlying stock value plus appreciation (like restricted stock), or should equity grants be earned only if pre-established financial goals are achieved over a specified performance period? And if performance goals are to be used in the long-term incentive plan, how should they relate to, or be different from, the goals used in the short-term incentive plan?

The probability of your pre-established incentive programs being fully aligned with future company performance on a consistent basis is always at risk due to the wide range of unexpected events, which can impact an otherwise well thought out design and goal-setting process. External market scrutiny comes in after the fact, where the conclusions are known and opinions are easy.

Thus, boards need to spend the time, and conduct the proper amount of diligence, in designing executive compensation incentive programs and in selecting and establishing the right financial goals and targets to increase the odds that the pay for performance connection is consistently valid and properly aligned.

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Stephen Giove is a Partner in Shearman & Sterling, a leading global law firm. He is a leading corporate governance lawyer who routinely advises boards, their committees and senior management teams on a full range of corporate governance matters, including board structural and process matters, annual board self-evaluations, fiduciary duties, proxy access, shareholder proposals, activism and dealing with external constituencies, including proxy advisory firms, shareholders and regulators. He is a frequent speaker, and author of articles, on a wide variety of corporate governance topics. He is a current member and co-founder of the firm's Corporate Governance Advisory Group.

Underinvestment in Crisis Management

There is not a single risk that is the biggest one for all companies. Like most things in governance, one size does not fit all. While cybersecurity is top of mind for many companies, others are more concerned with other risks stemming from areas as varied as regulatory and compliance matters, environmental laws and policies, supply chain problems, shareholder activism, the competitive landscape, natural disasters and terrorism, the company's compensation philosophy, manufacturing problems and product recalls, and, of course, reputational risks, to name a few. Two things all of these risks have in common is that they can have a dramatic negative impact if they come to pass, and they are unpredictable. While it is often not possible to significantly influence the likelihood of a particular risk, companies and boards can often reduce the negative consequences through effective crisis management.

Companies and their boards invest in crisis management to different degrees for a variety of reasons. These include the difficulty in preparing for many of these potential events, the sheer number of potential events that could occur, and concerns over spending precious management and board time on events that could have a significantly negative impact on the company despite a low likelihood of occurring and high cost of engaging in contingency planning, especially for multiple events.

However, crisis management can play a significant role in helping the board and senior management set the company's risk appetite at the appropriate level in light of the company's long-term business strategy. A company that is too risk-averse may fall behind its competitors in its practices and incur unnecessary costs, which could negatively impact its ability to compete. A company that is too risk tolerant may not only be inviting legal, regulatory or compliance problems, but also could alienate its customers, suppliers or employees. A meaningful part of analyzing business decisions from a risk management perspective is looking at what happens if the risk actually occurs and assessing the severity of the potential problem—an analysis that is only complete if it is understood how such risk could be dealt with from a crisis management perspective.

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From Capitol Hill to Corporate America

An Interview with Luis A. Aguilar, former SEC Commissioner and current board member, Donnelley Financial Solutions, Envestnet and MiMedx

Luis A. Aguilar served as a Commissioner at the U.S. Securities and Exchange Commission from July 31, 2008 to December 31, 2015. Currently he serves on the Boards of Directors of Envestnet, Inc. (NYSE: ENV), Donnelley Financial Solutions, Inc. (NYSE: DFIN) and MiMedx Group, Inc. (NASDAQ: MDXG). Envestnet is a leading provider of unified wealth management technology and services to investment advisors. Donnelley Financial is a financial communications and data services company serving both the investment and capital markets worldwide. MiMedx is a leading regenerative medicine and biopharmaceutical company.

Commissioner Aguilar is also a partner in Falcon Cyber Investments, a private equity investment firm focused on cybersecurity investments. Commissioner Aguilar's previous experience includes serving as the general counsel, head of compliance, executive vice president and corporate secretary of Invesco, with responsibility for all legal and compliance matters regarding Invesco Institutional. In addition, he was also Invesco's Managing Director for Latin America in the 1990s, and president of one of Invesco's broker-dealers.

Every public company board of directors has to operate within an environment where both expected and unexpected government regulations can have a meaningful impact on their strategic objectives. Being able to anticipate risk and identify how legislation may influence decision-making processes is a noteworthy skill—in fact, of the directors included in board skills matrices disclosed in annual proxy statements, 58.3% had government affairs or public policy experience. To gain insights on how this dual viewpoint can be an asset in the boardroom, *C-Suite* spoke with Luis A. Aguilar, an SEC Commissioner from 2008 until 2015 who now serves on three public boards. He shared his experiences from the SEC, as well as how those perspectives have shaped his approach to board service.

C-Suite: You were at the SEC during an "interesting" time, let's call it. How did that experience shape your perspective about regulatory influence on the public markets as the agency debated and regulated Dodd-Frank mandates?

Luis A. Aguilar: You can call it "interesting," "scary" or "a period of turmoil," and each would be an apt description. I was sworn in as a Commissioner only a few weeks before the collapse of Lehman Brothers and the financial turmoil that followed. This period included the "breaking of the buck" by a well-known money market fund that stressed the market, the short-sellers onslaught of publicly traded financial institutions, the tightening of the credit markets, and was only a few months before one of the largest financial frauds in U.S. history—the Bernard Madoff Ponzi scheme—was exposed. And, while that was the largest, it was only one of many fraudulent schemes that came to light.

Beyond their obviously substantial impact on American families and the economy, these events demonstrated many regulatory failings that the SEC needed to address.

As a result, the Commission entered one of the most active periods in its history—from internal restructurings to a transformative number of new rules. In addition, as you mention, in 2010 Congress passed the Dodd-Frank Act, which mandated that the SEC promulgate close to 100 separate rulemakings. In combination with Congress' subsequent passage of the Jumpstart Our Business Startups Act (the "JOBS Act"), and the Commission's own initiatives, my tenure coincided with one of the most active periods in SEC rulemaking history. Obviously, the continuing rapid changes in the capital markets require that the SEC continue to be vigilant, and I would urge the SEC not to be complacent and think that the work is done.

What are you most proud of in terms of what the agency was able to accomplish during that time? What were some of the challenges you faced? What lessons did you learn?

Aguilar: My years at the SEC were both challenging and rewarding. Clearly, the challenges the SEC faced were numerous, and almost all aspects of the

> Even before passage of the Dodd-Frank Act, the Commission had already entered what has become one of the most active periods in its history.

capital markets were under scrutiny—from the stress experienced by money market funds, the failings revealed by Madoff, the problems resulting from the faulty ratings issued by credit rating companies that, as one of their employees said, "would rate a cow," and the lack of transparency in asset-backed securities, just to name a few areas. We worked hard to address many of the failings and I believe that I left the SEC and investors in a better place, but the agency must remain on guard to make sure it's providing appropriate oversight and fulfilling its mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation.

I learned too many lessons during my tenure and there isn't time to talk about them all, but one takeaway is that regulations are tools, and like all tools they are only as good as the people who build them and use them. The way the regulators craft rules is important. Rules need to be crafted with a solid foundation of information that underlies the need for the rule and a clear understanding of what the rule is intended to achieve. This process requires a focus on protecting shareholders but with appropriate flexibility that allows for the affected companies to adapt to rapidly changing markets, both domestically and globally. On the other hand, even the best written rules may fail in their goals if those covered by the rules ignore them. To be effective, rules need to be adhered to with integrity, and not with an eye to doing end-runs that cause the rules to fail to have the intended benefits.

Regulators simply cannot do it alone. Those working for the companies that make up the capital markets have crucial functions to perform. That's always been true but even more so in today's more complex markets. To that end, companies need to have robust corporate governance regimes to be able to effectively police themselves.

Since stepping down from the SEC, you've joined several public company boards. What led you to the decision to seek out board service? How do you evaluate board opportunities?

Aguilar: I've always appreciated the important responsibilities that boards of directors have with respect to overseeing company management and setting forth the overall direction of the company. Directors play a critical role in setting the appropriate tone at the top, and are relied upon by both shareholders and the capital markets in general.

It can be a daunting responsibility to faithfully fulfill those responsibilities. Directors are expected to carry out their duties and responsibilities with a keen focus and attention to detail. This can be particularly challenging for independent directors that devote only part of their time to any particular company. Nonetheless, under our legal corporate structure, it's an invaluable service. Directors are expected to act as fiduciaries and protect and enhance the interests of others. When companies asked me to consider serving on their boards, I understood that responsibility.

Each board opportunity can be unique. When first approached, I do significant due diligence on a company—among other things, the company's history, the backgrounds of the existing directors and management, its industry, its corporate culture, its financial condition, who the outside experts are, etc. The list of things to consider is, of course, much longer. If I'm still interested after researching those areas, I then ask myself if I have something positive to contribute to that particular board. Obviously, this takes some self-awareness and soul searching.

In what ways is your perspective as a board member shaped by your experience at the SEC? How has it changed the way you look at issues in the boardroom? How does one inform the other?

Aguilar: Even before becoming a Commissioner, I was a practicing corporate and securities lawyer that interacted with many boards and have always appreciated their roles. I've always understood that the better boards are those that are informed, proactive and ethical and understand that their fiduciary obligations are not to management. My experience at the SEC helped to cement the fact that those types of boards generally don't have anything to fear from the SEC. I also think that good boards also recognize the need to adapt to new circumstances—such as developments in their company and industries and the emergence of new risks, such as the increasing risks of cyberattacks.

One of the SEC's failings leading up to the financial crisis is that it failed to keep up with how the markets had grown and changed in the preceding years. Some of the failings, of course, can be attributed to insufficient resources given to the Commission that impaired its ability to keep up with those developments.

In addition to Dodd-Frank, of course there was much more that went on at the SEC during that time. You were also focused on cybersecurity during your tenure, and were instrumental in organizing the SEC's first Cybersecurity Roundtable. Why did you feel that was important to initiate at the SEC? How has that been applied?

Aguilar: My interest in cybersecurity arose from meetings I had with various experts and directors who expressed concern about cyberattacks and the mounting evidence that companies of all shapes and sizes were subject to potentially disastrous cyberattacks. In addition to the threat of significant business disruptions, there can also be substantial response costs, negative publicity, lasting reputational harm, and, perhaps, a derivative lawsuit against the company and/or its officers and directors. Given the potential risks posed by cyberattacks on publicly traded companies and capital market participants like stock exchanges, custodians, transfer agents, broker-dealers and others, I thought that the SEC needed to be more informed. I also hoped that the Roundtable would send a message to corporate boards and senior management that they needed to be proactive in addressing these cyber risks.

> “Board oversight of cyber risk management has greatly increased.”

Speaking of cybersecurity, it's clearly at the forefront of the minds of boards of directors. To what degree are there broad standards for boards to follow, and to what extent are they left to themselves to figure it out? What do you think boards are missing in terms of education and resources around cyber, and what can an organization like the SEC (or others) provide to alleviate their challenges?

Aguilar: For a number of reasons—including the frequent occurrence of cyberattacks—since the Roundtable was held, board oversight of cyber risk management has greatly increased. In addition, over the last few years, providing advice on cybersecurity measures has become a cottage industry for many lawyers, consultants and accounting firms. I don't think boards will lack for guidance and advice.

> [Many investors] want disclosures that address matters not specifically required by the SEC or that go beyond any guidance provided by the SEC.

But it's important for boards to not abrogate the responsibility to others. Fortunately, many boards now take seriously their obligation to make sure that their companies are properly prepared. In today's internet world, this needs to be a critical part of a board of director's risk oversight responsibilities. In considering where to begin, I think boards should consider the Framework for Improving Critical Infrastructure Cybersecurity, released by the National Institute of Standards and Technology in February 2014. The NIST Cybersecurity Framework provides a set of industry standards and best practices for managing cybersecurity risks. A good first step would be for boards to work with advisors and/or management to assess how their companies match-up to the Framework's guidelines.

This is more a comment than a question, but with regards to your point about corporate governance regimes policing themselves, just because a regulation is in place doesn't necessarily lead to greater transparency on a topic. In our research studying and analyzing shareholder/corporate relations, we've observed that regulations sometimes have an ironic effect wherein a company will only go so far as the letter of the law. Whereas, conversely, if their shareholders are demanding information, companies are likely to respond to those specific requests and concerns with clearer disclosures—albeit on an inconsistent basis and with varying degrees of depth. We've seen

this with pay and performance alignment, we've seen it with board diversity—not quite yet with climate change and environmental impact, but we'll see if that changes in 2018 as that has been a critical investor issue this year. While the SEC can "read the room" as it were, and put in place regulations that are germane to more ubiquitous market factors, ultimately it's up to the constituents themselves to be on the leading edge by addressing their investors directly.

Aguilar: I have a couple of reactions to that. First, I commend companies that provide good and useful disclosure that investors benefit from, and I hope they wouldn't limit disclosures just because they can.

Second, you're correct about the importance of investors being active. You can see that in the rule requiring diversity disclosure. At the time it was being considered, there was give and take among the Commissioners, and it looked like the only way it was going to get sufficient votes for it to pass was to allow companies to define diversity themselves. This wasn't what many investors wanted. It was clear from their comments that they wanted disclosure along a more traditional view of diversity, that is gender, race, ethnicity, etc. Nonetheless, the fact that companies have to discuss whether they have a policy on diversity, and if so, how they define it, allows investors to gauge how companies feel about it. The proxy statement disclosures are allowing investors that care about diversity to laud those with the best practices and to reach out to those that fell short in providing the information shareholders are asking for. Shareholder involvement is a good thing.

If you look at other situations where there is no specific or comprehensive rule requiring disclosure, you can find that same behavior. For example, many investors are pushing companies to enhance their disclosures on matters such as climate change, cybersecurity and other issues. They want disclosures that address matters not specifically required by the SEC or that go beyond any guidance provided by the SEC.

"One thing I've learned in life, and as a Commissioner, is that risk pops up in the most unexpected places."

In addition to cybersecurity, what do you think are the most critical risks that boards are facing in 2017 and looking forward to 2018? What are the steps boards should take to prepare for risks both foreseen and unexpected?

Aguilar: One thing I've learned in life, and as a Commissioner, is that risk pops up in the most unexpected places. Things you didn't think could occur, will occur. The flash crash is one example, and the break in the dollar in 2008 was only the second time in history that occurred. Risk comes from unexpected places, and it's difficult to plan for those black swan events. Nonetheless, there is still some benefit for directors to sit down with management and engage in some out-of-the-box thinking about the "what ifs." It's not a waste of time.

Obviously, it's also important to consider the risks you do know are out there. Start with cyber—you can no longer take the view that "it won't happen to me, I have robust systems and no one can penetrate my walls and get into my systems." Too many companies and government agencies have been hacked, many with robust cybersecurity. And, don't forget that Target was hacked through a provider.

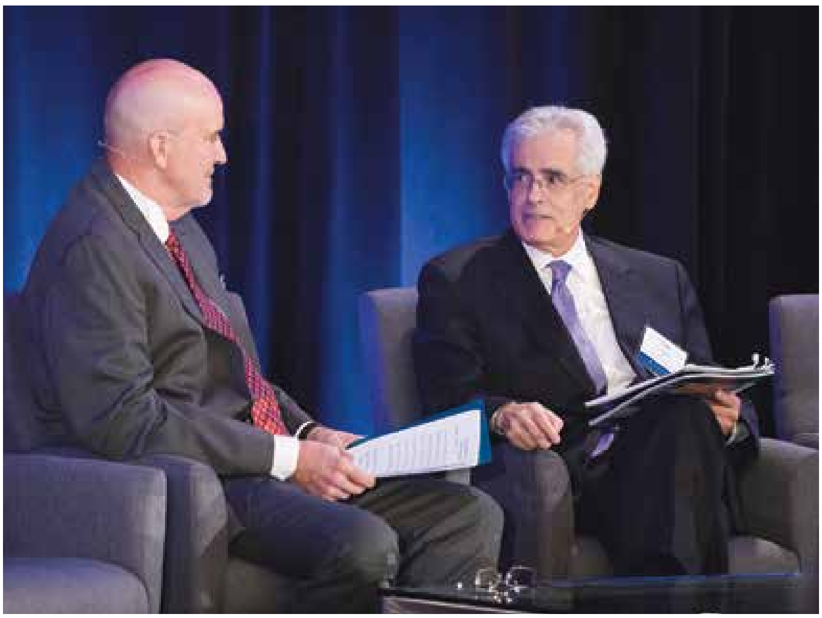
Risks, whether known or unknown, result in uncertainty, and businesses hate uncertainty. Today, for example, there's a lot of uncertainty about the regulatory, political and economic outlook. Is tax reform going to happen? Is healthcare going to happen? What's happening on regulatory reform? What's the possible impact of blockchain or artificial intelligence to my company or industry? Etc.

For some companies, some are more key than others, but the uncertainty can create gridlock or delay needed decisions. Of course, much of this can't be controlled. In the meantime, however, it's advisable to at least try to come up with Plan A and Plan B and make the best judgment calls you can. It's certainly not a panacea, but I think proactivity helps you be prepared. Companies have to play offense and defense based on the best knowledge they have. CS

Boards That Lead

Why board structure and composition are the top issues in corporate governance

By Dan Marcec



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At the recent Board Leadership Forum, co-hosted by Equilar and Nasdaq in New York, a group of 120 investors, board members, general counsel and other executive leaders spoke about the most critical topics facing boards of directors at public companies. The discussions throughout the day looked deeper at these issues to provide perspective on expectations for the board and how they can take steps to engage with shareholders—especially around board composition and having the right people at the table.

Investors have become much more vocal in recent years when it comes to board composition and evaluation, as they are not only concerned with what decisions are being made in the boardroom, but also who is behind those decisions. A well-rounded and diverse board is more likely to relate to diverse shareholder, employee and customer bases.

One of the standout discussions at the event featured representatives from the National Football League and architects of the "Rooney Rule," named after former Pittsburgh Steelers owner Dan Rooney. This initiative was implemented by the National Football League in 2002 to increase opportunities for diverse candidates in head coaching and front office positions. Now extended to the NFL's corporate offices, the rule moved forward with a mandate for gender diversity hiring practices several years ago. This panel not only covered the legacy and the results of this initiative, but also shared valuable takeaways and relevant lessons for boards to improve their director recruitment efforts and ensure well-functioning, results-driven boards.

Former NFL Commissioner Paul Tagliabue aptly noted, "When you work within a closed network, you end up overrating the existing talent pool that is known and missing the rest of the talent pool."

The quickening pace of activist settlements shows how dissident shareholders are reshaping boardrooms. Boards therefore must consider how shareholder activists may interact with and approach them, and then put in place policies to minimize becoming a target.

Of course, all activists are not created equal, just as a company's "shareholder base" is not a monolith. It's prudent to prepare for an activist, but it's important not to be overly hung up on one or two. When it comes to diversity and angling for seats on the board in proxy contests, one panelist noted: "Activists have done a good job of making boards less stale, but not less male and pale. That's a place where corporate boards can do better than any activist, and by building a genuinely diverse and constantly refreshing board, that disarms a lot of reasonable complaints by activists."

Conducting evaluations and identifying who is the best fit for the board are critical—also taking into consideration the awkward likelihood that some directors will be asked to leave. With that in mind, attention to detail is critical. One director outlined several examples of board skills matrices gone badly, such as laying out the needed director traits and choosing a new member who checked just one box. There aren't enough seats for someone who is not multidimensional. Similarly, choosing someone just because they're young and know social media can help, but that is not a significant enough contribution by itself. Finally, skills matrices can be abused by directors saying their experience on that board is one of their skills—then it's tautology and useless.

Overall, one panelist said that governance professionals don't realize it because they're living it now, but shareholder outreach is in its infancy. What's happening now was not happening in any similar capacity 10 years ago, and the ones having these conversations today are on the leading edge. This is just the beginning of what's to come. CS

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*Visit **equilar.com/equilar-events** to view more highlights of recent Equilar events and to learn more about the next Board Leadership Forum in San Francisco in February 2018.*

Featured Speakers

- **Hon. Luis A. Aguilar**, Former SEC Commissioner (2008 to 2015); Board Member, Donnelley Financial Solutions, Evestnet and MiMedx Group.
- **Glenn Booraem**, Investment Stewardship Officer, Vanguard
- **Maureen Brundage**, Former EVP, General Counsel, Corporate Secretary & Chief Ethics Officer, The Chubb Corp. (2005 to 2016)
- **Michael Garland**, Assistant Comptroller – Corporate Governance and Responsible Investment, Office of New York City Comptroller
- **Robert Gulliver**, Chief Human Resources Officer, National Football League
- **Linda Hall**, Board Member, IRET and Amedisys
- **Drew Hambly**, Executive Director, Corporate Governance, Morgan Stanley Investment Management Global Equity Group
- **TK Kerstetter**, CEO and Host, Inside America's Boardrooms
- **James Lam**, Board Member, E*TRADE Financial Corp.
- **Sonia Lurie**, Proxy Voting Officer and Investment Operations Specialist, Dodge & Cox
- **Capricia Penavic Marshall**, Ambassador-in-residence, Adrienne Arsht Latin America Center; Former Chief of Protocol of the United States (2009 to 2013)
- **Michael Montelongo**, Board Member, Herbalife and Larry H. Miller Management Corporation
- **Tonia Pankopf**, Board Member, Landec
- **Arden Phillips**, Corporate Secretary & Associate General Counsel, United States Steel Corp.
- **Jim Rooney**, Founder, FirstLink Research Analytics
- **Paul Tagliabue**, Former Commissioner, National Football League (1989 to 2006)
- **Eugenia Ulasewicz**, Board Member, Bunzl, Signet and Vince Holding
- **Lopa Zielinski**, SVP, Deputy Corporate Secretary North America, HSBC

Additional Speakers

- **Barbara Berlin**, Director, PwC's Governance Insights Center
- **Steven Borden**, Founder & President, Borden Media Consulting
- **Melissa Burek**, Partner, Compensation Advisory Partners
- **Sean Coady**, Corporate & Executive Protection Practice Leader, Woodruff-Sawyer & Co.
- **Erin Dwyer**, Senior Director of Stakeholder Engagement, Center for Audit Quality
- **Jeremy Jacobs**, Managing Director, Abernathy MacGregor
- **Doreen Lilienfeld**, Partner, Shearman & Sterling
- **Leah Malone**, Director, PwC's Governance Insights Center
- **Bob Romanchek**, Partner, Meridian Compensation Partners
- **Ron Schneider**, Director, Governance Services, Donnelley Financial Solutions
- **Martha Steinman**, Partner, Hogan Lovells LLP
- **David Wicks**, Vice President, Nasdaq

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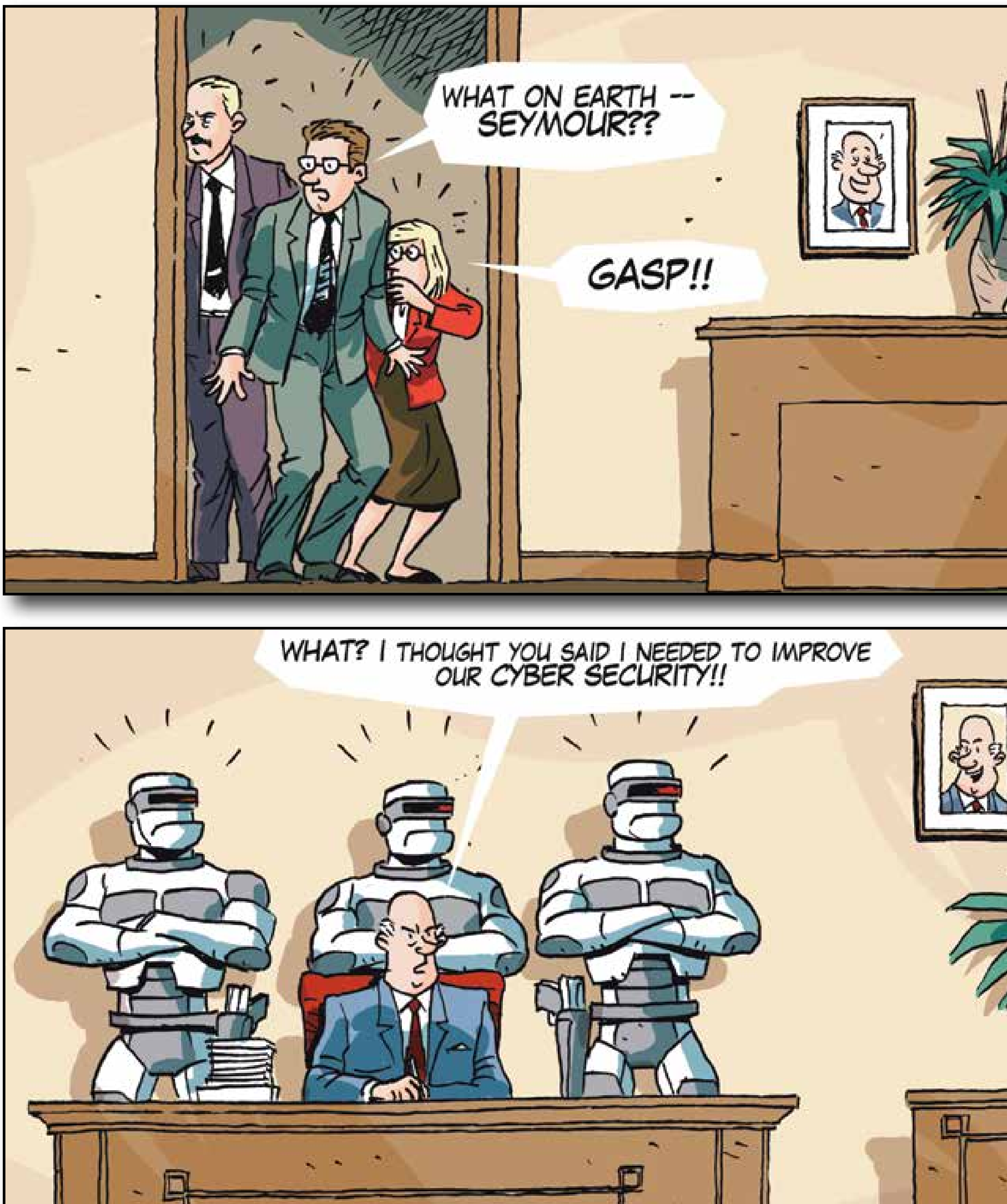

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