

Best Practices For Board Communications

by Karen Kane

This annual meeting season will see investors hungry for answers as never before—and often angry about stock price meltdowns. Increasingly, shareholders are looking beyond the chief executive to the board of directors for assurance. Has your board laid the groundwork and developed the skills, counsel and technology to effectively “tell your story”?

Looking at the Fortune 50 level, companies provide a great deal of information about their boards on company websites. Yet so much of the governance information is alarmingly similar.

Citigroup, for example, describes its board’s role: “to provide effective governance over the company’s affairs for the benefit of its stockholders, and to balance the interests of its diverse communities around the world, including its customers, employees, suppliers and local communities.”

General Motors says its board is “representing the owners’ interests in perpetuating a successful business, including optimizing long-term financial returns by regularly monitoring the effectiveness of management policies and decisions including the execution of its strategies.”

Major corporations provide a wealth of numbingly similar information on their boards and committees, yet the impact of all this data is nominal.

Ford, Lehman Brothers, Merrill Lynch, AIG, Bank of America, JPMorganChase, Morgan Stanley or Wachovia websites provide numbingly similar information about committee charters, and even pay-for-performance discussions.

Every company posts a wealth of information that satisfies and even exceeds compliance requirements.

However, the general impact of the information is nominal, since “seeing everything” about the board means printing out several PDFs as well as the proxy which now features the required Compensation Discussion and Analysis (CD&A). Despite pleas from the Security and Exchange Commission for plain English, most CD&As are still mired in heavy “legalese.”

For many companies, this is a missed opportunity. Surely, boards have a better story to tell about how they add value and bring oversight to their firms, whether it is the hours and number of meetings they spend focusing on strategy and risk, the experts they consult, or their philosophy in constructing executive pay programs.

Board members are discovering a new world. Never before have investors and interested parties participated so openly in the dialogue about the board and its actions. *The New York Times* reporters Eric Dash and Julie Criswell documented how Citigroup, number 8 on the 2007 Fortune 50 list and one of the nation’s “largest and mightiest financial institutions,” was brought to its knees by more than \$65 billion in losses, write-downs for troubled assets and charges to account for future losses. However, it was J. Richard Finlay’s two-part blog asking “What if Citigroup had a real board?” that brought new meaning to board accountability.

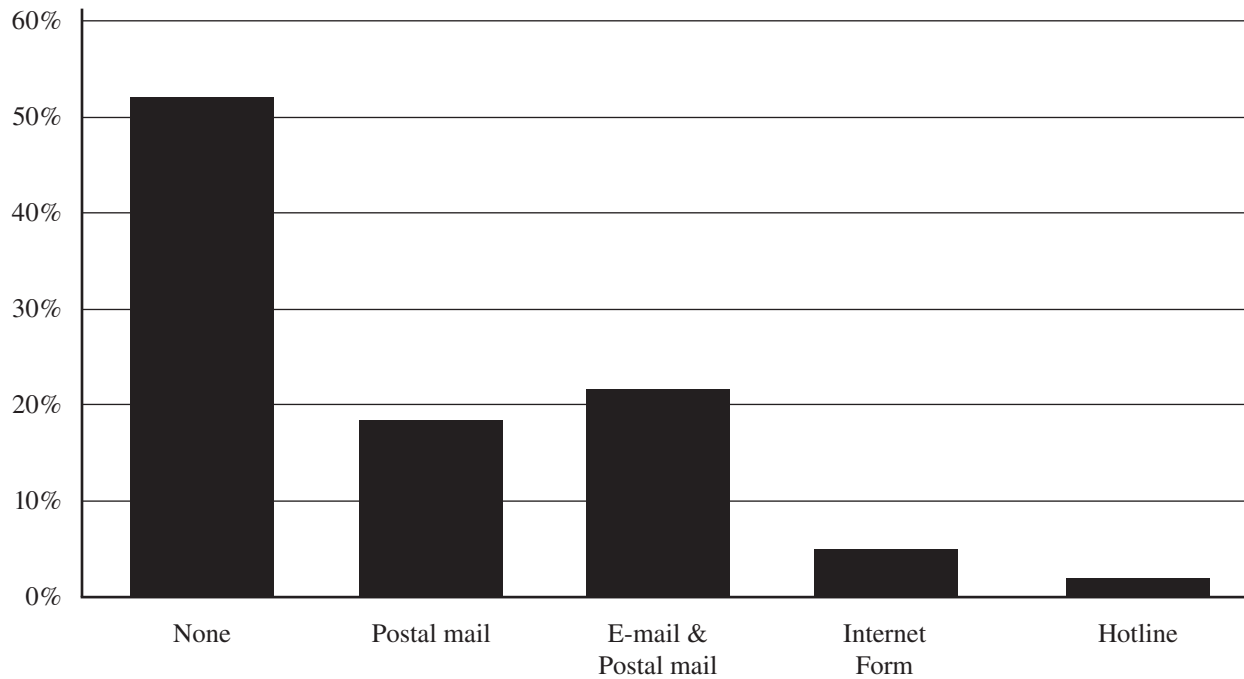
When General Motors CEO Rick Wagoner apologized to investors and the American taxpayers in a full page ad in *The Wall Street Journal*, it was not just the mixed reviews that garnered attention, but the notion that management and the board was

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A Deaf Ear In The Boardroom

What Methods Exist For Shareholders To Access Directors?

Fortune 50 Companies



playing to a larger audience on a more public stage.

“Corporate governance has improved because it had to,” said Peggy Foran, executive vice president, general counsel and corporate secretary of Sara Lee Corporation. “Management and boards need to be able to convey their understanding of shareholder concerns and the fact that they are taking their responsibility very seriously.”

Over a decade ago, Foran set up the corporate governance department at Pfizer as a resource to the board and senior executives. Under her aegis, Pfizer’s chairman and lead director met with the company’s 30 largest shareholders. “It was a gift,” recalls Foran. “We learned more than we would have from a roomful of consultants. And it was a whole lot cheaper.” The meeting opened the door to a dialogue where the company received valuable insight and information. While large shareholders are generally investing for the long term, “they still need status reports.”

It is important for the board to develop channels of communication to its investor community before any crisis strikes.

Lizanne Thomas, Jones-Day partner and head of the firm’s corporate governance team has a list of 11 principles for boards when interacting with shareholders. Her list is a way to help boards engage responsibly without putting the company at risk.

In her first principle, titled “*Do It Before You Need To*,” she advises that it is helpful to have channels for communication as well as a game plan for board communication before there is a crisis. Another Thomas principle, “*Always Start with Management*,” reminds boards that stakeholder communication is not a primary or even secondary board responsibility.

Still, boards need to pursue this new initiative with care. Thomas has provided counsel to many governance committees on how they might better interact with shareholders. One concern is always Regulation

FD, selective disclosure of material information. Yet a Blue Ribbon panel report from the National Association of Directors suggests that Regulation FD is not a barrier to listening to shareholders concerns, but rather is the first and most important element of communication.

Directors need to convey to shareholders that board contributions are significant in providing the necessary oversight and direction to management. They need to convey that they take their responsibility very seriously. As Foran says, “boards are spending more high-impact time but they need to use every communication vehicle at their disposal, their websites, annual meetings, the proxy’s compensation discussion and analysis all to convey the thought and time they are putting into these issues.”

The current turmoil in the financial and global markets is driving greater activity at shareholders’ meetings as investors come to grips with reduced valuations of their portfolios and concerns over how management and boards have looked after their interests. This time it is not just shareholders who are insisting on better corporate governance, but every element of the market.

According to *The Washington Post*, investor groups angered by plunging stock prices are vowing to hold executives and corporate board members accountable at annual shareholders meetings.

New communication tools and initiatives are in the works. One plain-spoken board chairman/founder of a telecommunications business has written a letter to shareholders that reflects his approach in leading the board based on the firm’s core values. It may serve as a guide to investors resulting in an expanded web-based communication platform for the board.

Forward-thinking boards will see the period leading up to the annual meeting season as a chance to communicate their effectiveness in carrying out their fiduciary responsibilities to shareholders. A board with a strategic communication plan can use transparency and communication as effective risk management tools.

Conversely, a board with its head in the sand, pretending that no one is looking, is courting disaster or shareholder mistrust. The steps for effective

board communication are straightforward, but not necessarily easy.

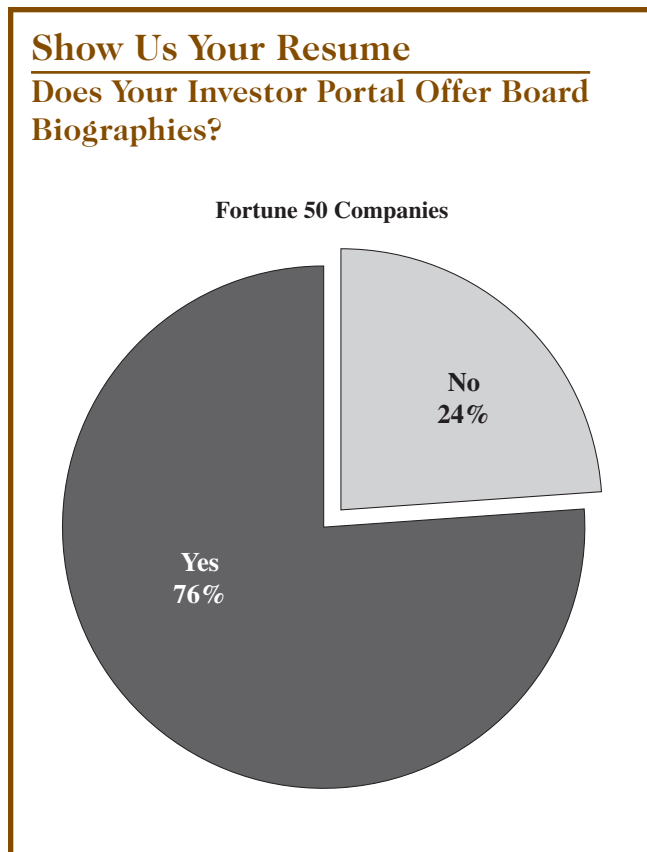
Business headlines and shareholder activists have painted an unflattering portrait of boards. Directors are finding that if they fail to tell their story, others will.

□ *Do not wait—act now.* While there is no one-size-fits-all approach, boards can begin their communication odyssey by making communication a regular board topic. The questions for discussion are predictable but important: What are the board’s goals for shareholder communications? What is the scope of the board’s role in overseeing management communications to shareholders? How does the board wish to be perceived by shareholders and investors? How can communication help to enhance the company’s overall strategy? Through a facilitated discussion on these questions, the board will uncover its specific communication philosophy.

Headlines in *The Wall Street Journal* and blogs by Carl Icahn and other shareholder activists have painted an unflattering picture of boards of directors. The current environment requires board action. Such a step presents a dramatic departure for most boards, a practice contrary to their very nature. In the aftermath of the dotcom meltdown and the disgrace of Enron, WorldCom, and Tyco, most boards chose discretion as the better part of valor, continuing to operate quietly behind closed doors.

Today, the concern over governance goes beyond shareholders to the public at large. Examples of poor oversight are an affront to investors. The public assumes that if a board cannot openly disclose some detail about the oversight they provide to a company’s performance, they must not be doing a good job. Directors are learning that if they fail to tell their story, others will.

□ *Engage an independent communication advisor.* Communication is not a primary board function. Over the years, most board communication help has been informal, ad hoc and likely from company staff. The world has changed. It is important for boards



to have objective and independent communication counsel, to help facilitate the development of the board's communication policy, to anticipate and avoid crisis and to protect the company's brand.

CEOs focused on reputation management are coming to see that a strong board with effective corporate governance practices is a reflection of company management, even an extension of the company's brand. While legal counsel generally advises board clients to limit disclosure, the court of public opinion has changed the rules.

In the face of shareholder activism, including majority voting and "say on pay," boards face a host of issues. Whether it is a change in leadership, compensation issues or managing through a disclosure issue on the CEO's health, boards that have a written policy about how and what communication takes place will navigate the waters much more easily with better results.

An independent communication counsel can help facilitate the board's adoption of guidelines to shareholders on the communication process and ap-

propriate topics. Guidelines should also distinguish between management communication and board communication.

The board should name the directors who will speak for the board, and also provide the necessary support in advance. We live in an age where no one steps before a microphone without media training.

The Investor Relations function provides an important management function while supplying the board with helpful intelligence. IR is often the first place of shareholder contact, the request for annual reports, proxies and basic investor questions. In addition, IR is often the point of contact for shareholder concerns that need to be brought to the board. Generally, the IR staff will advise the board either individually or through the chief financial officer or board secretary about any perception issues or shareholder comments.

If the board decides that the lead director or governance chair should serve as spokesman for the board, advance preparation is necessary. Not only should the board name the directors who will speak for the board on such occasions but also provide the necessary support in advance. Since we live in an age where no one steps before a microphone without media training, why should a director be any different?

These steps do not come about easily or naturally. Creating a blueprint requires the counsel of a knowledgeable communication leader with experience in the C-suite and the boardroom.

□ *Ensure relevance in communication by using the Web.* When boards move from simply posting information or responding to shareholder petitions to actively incorporating the feedback into their activities, they will naturally exert more choice about what is communicated. Reviewing existing board communication for relevance is the first step. Organizing board material on the website in a logical and succinct way will also send a message of respect for investors' time and interest.

Creating a board presence, rather than burying the

board function in “Investor Relations” or “Corporate Governance,” may well become a best practice. More than half of public firms use an outside resource such as Thomson Reuters or Shareholder.com to host the investor relations or corporate governance section of the website, so changes in this area could occur quickly.

It is important for the board to find and use its “own voice” in articulating its role. Investors need to get a sense of the board via a letter or other communication from board leadership. Reassure shareholders that directors are serious people, using their time and business expertise to review management performance, adding value by asking tough questions and providing perspective.

□ *Communicate to all shareholders on the proxy process.* Even shareholders who are not involved in a specific shareholder proxy effort should know and understand the process of making suggestions to the board and how the company responds.

Shareholders are not a monolithic group. They represent many points of view, and investors cannot micromanage the company. Oversight of companies is not a democracy. Boards are called upon to be the stewards, to make the right decisions based on the best information. Says Peggy Foran, “Boards are asked to bring their experience and judgment to their role. That is the reason for being—why they are elected and compensated.”

□ *Incorporate the principles of good communications into operations.* Ultimately, shareholders want to be reassured that boards are taking an active role in looking out for their interests. Boards alone can define what communication style suits the company, the sector, and the board. A key step in a board’s journey to greater transparency is *implementing* the principles of good communication.

“Many companies are involved in a process of shareholder relations all year long. It is not timed to the shareholder meetings,” says Holly Gregory, partner in the corporate governance group of Weil, Gotshal & Manges LLP. “The success that activist shareholders have achieved in majority vote campaigns has invigorated them to seek more changes

in governance issues.”

□ *Make this year’s annual meeting an effective communication platform.* Having operated behind closed curtains for so long, boards could take important transparency steps at this year’s annual meeting. If a board has developed a communication policy, what better time to present it to shareholders than at the annual meeting? Most annual meetings have been inert affairs by design, but the environment may no longer tolerate such a tactic.

Given the financial crisis, the concern over executive compensation, and the drop in share prices, companies can expect more scrutiny. Scheduling the annual meeting on the Friday before Memorial Day has been a tactic that some companies have used to discourage shareholders from attending. Contrast that with what has become the Woodstock for investors at the Berkshire Hathaway meeting in Omaha. Warren Buffett and Charlie Munger greet a crowd of 31,000 shareholders in the Quest Center, and answer questions from 9 a.m. until 3 p.m., with a break for lunch.

At a minimum, your company’s board of directors should appear in person at the annual meeting. With advance preparation, board members, particularly the chairs of the audit, compensation and nominating committee, could answer questions. Being at the annual meeting to listen to investors seems the most elemental of director responsibilities.

Agreeing to webcast the proceedings of the annual meeting increases transparency and inclusion. Boards may find that preparing for such an online meeting places new requirements on them as well. For shareholders to see the board in action, even if it is just listening to shareholders voice concern, helps convey directors’ dedication and engagement, in contrast to the picture of a group of friends, charged with providing a rubber stamp to management.

No one sees shareholder activism going away. Transparency and communication will serve as risk mitigation strategies for both the company and the board. This is an opportunity of limited duration. Good boards will act now. ■