Corporate Governance

How many times are we going to learn about another corporate misstep? The list of companies making headlines for the wrong reasons never seems to end —Wells Fargo, Volkswagen, Target, Toshiba, Experian, Yahoo, Weinstein, Wynn, Uber—just to name a few. What do all of these companies have in common? A lack of strong corporate governance.

Corporate governance can simply be defined as a framework of rules and practices by which a Board of Directors ensures accountability, fairness, and transparency in a company's relationships with all of its stakeholders. This is simple and logical, and cannot be seriously challenged as an extremely important, if not mission-critical, objective. Yet, even today, many companies large and small do not walk the walk, or even talk the talk, of strong corporate governance.

It may be trite to say, but it is all so true, that real corporate governance begins with the "Tone at the Top." The Board of Directors of an organization holds the power and has the duty to set this tone and, with that power, establish the culture of an organization. Culture is the true benchmark of what an organization is, what it represents as its values, and how it accomplishes its mission. Culture has now become a recognized asset of a corporate organization or, in far too many cases, a liability.

Great organizations can only be truly great when executing best-in-class governance. This requires mindful leadership from a proactive, intelligent, healthy, responsible, and accountable Board of Directors.

Today, regulators across multiple industries understand the benefits of strong corporate governance. As such, regulators are evaluating the companies within their jurisdictions from the perspective of corporate governance, both in hindsight following scandals and as added components of routine, proactive oversight. While federal regulators are reducing overall regulatory compliance, federal and state regulators are increasing the oversight of good corporate governance practices within the banking and other industries. Additionally, within the insurance marketplace, state regulators have similarly ramped up oversight on this important front.

Following the 2008 financial crisis, the National Association of Insurance Commissioners (NAIC) analyzed existing corporate governance regulatory initiatives and statutory requirements and identified a need to collect additional information from insurers regarding their corporate governance practices. Upon completing its study in 2014,

the NAIC developed a model act and accompanying model regulation, known respectively as the Corporate Governance Annual Disclosure Model Act (#305) and Corporate Governance Annual Disclosure Model Regulation (#306). As of January 2018, nineteen states (California, Connecticut, Delaware, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Montana, Nebraska, Nevada, New Hampshire, Ohio, Oregon, Rhode Island, Virginia, and Vermont) have adopted the Model Act. Eleven states (California, Connecticut, Florida, Indiana, Iowa, Louisiana, Nebraska, Ohio, Rhode Island, Vermont, and Virginia) have adopted the Model Regulation as well. Thus, nearly 40% of all states have enacted laws for insurers on corporate governance.

The stated purpose of the Model Act is to "[p]rovide the Insurance Commissioner a summary of an insurer or insurance group's corporate governance structure, policies and practices to permit the Insurance Commissioner to gain and maintain an understanding of the insurer's corporate governance framework." Model Act, Section 1(A)(1). Together, the Model Act and Model Regulation have four key areas of required focus: 1) governance framework and structure; 2) policies and practices of the Board of Directors and the Board's committees; 3) policies and practices for directing senior management; and 4) oversight of critical risk areas. Model Regulation, Section 6. Within these areas, the Model Regulation establishes sub-topics on which companies should focus, all within the spheres of self-evaluation, transparency, accountability, and leadership.

Great companies come in all shapes and sizes, and various management styles; but long-term success among them always includes the key feature of top down, strong corporate governance.

An insurer subject to the Model Act and Model Regulation must fully explain how the organization is governed, self-evaluated, and directed, from the Board of Director level through its various committees and downward to senior management. In preparing compliance disclosures, insurers already exhibiting strong corporate governance will possess the policies, procedures, leadership, and track record to show their regulators how they walk the walk. Insurers lacking strong corporate governance will have an opportunity to focus with a self-critical eye and build a strong governance culture from the top down.

Whether your company is within a Model Act state or not, now is the time for all insurers to take stock of their corporate governance practices and truly consider whether shortcomings therein might permit, or even foster, increased regulatory scrutiny, adverse circumstances that could create reputational harm to the organization, or even worse calamities.

Great companies come in all shapes and sizes, and various management styles; but long-term success among them always includes the key feature of top down, strong corporate governance. The insurance industry has an opportunity and, in many states, a statutory mandate, to focus and improve on corporate governance, and migrate to a position of greater strength, industry wide.

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