Board Governance
Q&A Responses

- Will you touch on "what are the key enterprise risks" that Boards should be looking at?
  - ***Many boards are looking at succession planning (both at the management and board level), executive compensation, operational risks (how management is identifying and prioritizing risks), and corporate governance committees.***

- Can you ask the audience how many of their Full Boards own the ERM oversight process?
  - ***Many boards are creating a risk committee. Others are including ERM oversight at the audit committee level. Either approach can work. The important thing is to ensure the board is involved in understanding and monitoring management's risk activities and that the full board is appropriately updated on these oversight activities.***

- What if my board does not have the power to select the CEO?
  - ***It is assumed this is not a statutory board and it is further assumed that the organization is not incorporated in a commercial state since this is not permitted by such corporate laws.***

- Conflicts of Interest...what is the role of the board in asking for regular reports of conflict transactions or dismissals from staff because of conflict and/or expense report abuse, etc.?
  - ***The board should have policies covering conflicted transactions and dismissals in many cases for such conflicts. When such an apparent conflict arises, the conflicted party should be recused and not allowed to vote. Simply abstaining and remaining a part of the board proceedings is not sufficient. When expense reports filed with the proper accounting manager are improper, the matter should be reported to the chairman of the audit committee who should be empowered by committee charter or board policy to address such matters including turning egregious matters over to the prosecutor's office.***

- As a function of board responsibility, should boards ask for external evaluation of employee engagement and/or leadership of the organization?
  - ***Our focus here is on board and leadership evaluation. Historically, evaluations have been performed internally. This is a risky proposition. Under British corporate governance, board and committee evaluations are required by 3rd party experts. Today, a 3rd party evaluation is the best practice. This communicates a strong message of accountability to all stakeholders, particularly donors and authorities/regulators.***

- What would you recommend in terms of standard reporting and disclosures from the CEO to the Board and how frequently?
  - ***There is no set practice. Because boards traditionally meet quarterly, such a report each quarter is recommended. If the matter is of urgent organizational or financial risk or rises to a criminal level, the report should be disclosed instantly.***

- The risk for any board member at a non-profit is primarily reputational and surprise about something that has transpired within an organization. What is the best way to avoid "surprise" as a board member?
  - ***I will assume we are discussing "big" reputational surprises. 1. Build a healthy relationship between key management and the board. If your entity is not large enough to maintain a corporate governance committee that champions this cause, then appoint a member of the board to this task. 2. The board members should each expect a level of transparency that mitigates surprises. 3. Build trust among the leadership and board. Practical ways to build trust are scheduled times for***

teambuilding activities, 3rd party board evaluations, and board management socials.

- Define 10 areas for the scope of an evaluation?
  - ***Charitable Mission and Vision Identical to for profits. As a general rule, think of mission as to what should happen in a year or two out with hard projections; vision is who you want to be when the organization grows up and should be thought of without the detail constraints of budget.***
  - ***Board's Oversight Obligations. The board is responsible for tone at the top and processes; the board can destroy morale, and eventually the organization, by micro managing; reaching across the DMZ between managing and governing.***
  - ***Conflicts of Interest and Ethics. Conflicts can be thought of where the organization itself is not put first in a corporate transaction. Ethics is about proper behavior particularly when others are not looking.***
  - ***Board/Director Attributes. Indicia of skills, attitudes and ethics.***
  - ***Financial Accountability and Audit. Who has responsibility for financial matters; an Audit is simply the testing of financial numbers and accuracy thereof.***
  - ***Board's Relationship to Executive Director & General Counsel. Board's relationship with an Executive Director, where one has been set up, is disclosed in the bylaws, starting out with the duties of the Executive Director, where one is designated. General Counsel is hired and has the duty to protect the organization. Since management usually picks the counsel, it takes great oversight to make sure counsel does not lend their allegiance to the CEO in front of the organization itself.***
  - ***Board and CEO Evaluation. Five evaluations are typically used in this combination: Self Evaluation, Board Evaluation and Peer Evaluation, all by the board, CEO Evaluation and CEO 360 Evaluations. It is a best practice that board use outside experts; there is a mini-trend to use 3rd parties to assist in the evaluation process with C Suite executives.***
  - ***Whistleblower and Document Retention Policy. When wrongdoings are reported anonymously with generous rewards under Dodd Frank where the amount is over one million dollars.***
  - ***Financial Strategy. The long-term approach to financial policy and how the accounting process conforms and protects the organization.***
  - ***Executive Director Compensation. Understanding that the current strong committee system is eroding the position of the Executive Committee with an Executive Director, which is basically a board within a board, giving rise to many unintended corporate governance consequences, the Executive Director is almost always given a payment stipend higher than other directors because the responsibility is higher.***

- How often do non-profit CEOs and the board have the kind of misalignment that is evident here? Without P&L metrics, or return on capital metrics, wouldn't this be a common occurrence?
  - ***You need metrics. The best first step is a board evaluation to determine the misalignment gap magnitude.***

- Directors of for profit corporations have a whole lot of ways to help develop, oversee and build a business because there is a lot to measure. Help me understand what I should be asking my CEO to measure and report as a member of a non-profit board.
  - ***For starters, I would suggest a rigorous balance sheet analysis and the second consideration would be metrics that deal with the constituents. For example, the community is certainly a major stakeholder in a community hospital; how is the hospital serving the community. There are many ways to measure that; comparisons over several years are particularly helpful.***

McGladrey

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- Who participates in the first activity - "Board evaluation" Presumably management?
    - ***Management should not participate in the board evaluation. However, it is greatly recommended that C suite management be given an opportunity to evaluate the board. Even though management does not know many of the board's internal activities, it is important that management perceptions are addressed.***

- In terms of evaluating how to evaluate a board: What do you recommend for a new organization that is just setting up a board, or an organization whose previously board was not functioning well, is now being reformed.
    - ***Initiate a board evaluation. Use the first year's board evaluation as both a discussion builder and a baseline metric for measuring future performance.***

- Is Management ever asked to assess the Board formally?
    - ***Yes. And we recommend this process.***

- It seems that most non-profit boards are comprised of individuals perceived to have financial heft and puts them in a front-line development and contribution function -- and not because they are overseeing the organization. Explain your views on how board members should be selected and trained.
    - ***True, many NFP boards are selected for their fundraising prowess. Nonetheless, the board is the caretaker of the organization. Ideally, identify candidates that can both raise funds and provide the requisite oversight.***

- Is there an ideal size/number of board members?
    - ***I will answer the question this way: the board should contain at least one-third or 5 members who understand and are well versed in the duties associated and the risks associated with board membership.***

- What would you suggest for questions/strategies in a survey related to overly involved boards? E.g. opening a bank account requires board approval. It is a $45m revenue organization. There are other examples of significant detailed analysis and involvement.
    - ***A 45m organization is large enough to draft and maintain a good (concise) manual of policies and procedures. Utilize committees to manage many tasks like opening a checking account so that only gathering a few people together accomplishes simple tasks rather than the entire board.***

      Committees can be used to (for example):
        - ***Monitor large (over the threshold) transactions***
        - ***Review significantly impactful contracts***
        - ***Monitor specific areas of high impact risk***
        - ***Review and monitor CEO***
        - ***Provide a second signature on larger obligations***

- What happens with the evaluation as the board changes to some degree every year? How do you get a view of that?
    - ***The board evaluation metrics provide benchmarking to compare board evolution year over year.***

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- Expand on Organizational risk, how does that differ from Financial Risk?
    - ***They are different but certainly linked. Deficient CEO Succession Planning is an organizational risk; if not properly managed, it will turn into a financial risk, certainly in the short term if the CEO leaves for any reason.***

- I run an organization that educates college students. My risk/challenge is that my board won't put in the effort to help my organization succeed. They are all volunteers and I have tried to excite them about what we do. But they are involved in other organizations and ours is not as 'exciting' as say an organization that feeds the poor, or gives medical care to the sick. Any suggestions how to create a culture of accountability to the organization?
    - ***Establish clear expectations of board performance before a board member joins so that the board member is fully apprised of his or her expectations.***

- Regarding Regulatory risk and policy/procedure, who is actually responsible for writing policies?
    - ***The board is responsible, but often assigns these tasks to management and / or works with management to complete these tasks. Often, consultants are also used to complete these tasks.***

- Is the board responsible for writing governance policies? Are there any examples readily available for use (for a non- profit healthcare organization)?
    - ***The board is responsible for the governance policies. Practically, the board assigns this task to a corporate governance expert: an attorney with this expertise, or a consultant with this expertise. And, yes, for small, less complex organizations, "boilerplate" examples are available for a relatively low cost.***

- Should there be more than one direct reporting function to the board? Should the compliance officer have a separate reporting structure?
    - ***There should be more than one direct reporting function to the board; certainly in the whistleblower process since C level executives will also be on the board. The best procedure is to have whistleblower process go directly to the independent Chairman of the Audit Committee and she decides how to address the matter on a confidential basis.***

- What about merging boards? Is this a topic that you cover or that others are discussing?
    - ***Yes, this is a hot topic due to the economic downturn lately. CBE has years of experience in merging boards, and, yes, it begins with a robust board evaluation of each organization.***

- What should the Board do when the CEO fires the CFO for being too open with financial "truths"?
    - ***The board should review the action and answer the following questions: 1. Is the firing justified? 2. Was a judicious process followed? 3. Did the CEO act prudently? 4. Does the dismissal represent an action that is in the best interest of the organization?***