



Ep. 11: Corporate Culture and Board Diversity

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Jose Garriga:

Hello, and welcome to *OnAir with Akin Gump*. I'm your host, Jose Garriga.

At the end of every year, lawyers from a wide range of practices at Akin Gump come together to draft and publish the Top 10 Topics for Directors report. Each edition looks forward to the upcoming year and identifies those topics of greatest interest and, occasionally, concern, to boards and directors. This is the first of a mini-series of podcasts that delve into the topics covered by the 2019 Top 10 report.

And we have with us today to kick off the series Akin Gump partners Christine LaFollette and Daniel Walsh. Chris heads the firm's Houston office and is an oil and gas dealmaker with more than 30 years' experience in energy transactions. Dan, based in London, focuses his practice on mergers and acquisitions and capital markets transactions in a cross-border context. They'll be looking at two topics that boards will need to consider throughout this year and beyond: corporate culture and board diversity.

Welcome to the podcast.

Chris, Dan, thank you for appearing on the show today. So, let's start off by tackling the first of two topics that I mentioned: corporate culture. Chris, how would you define that term, and what does it mean when looking at a company's board?

Chris LaFollette:

This currently is a strong emphasis that we're seeing and in 2019, I think everyone is focused on culture. It's very impactful because it represents the heart and soul of a company, and it starts in the boardroom. It requires a board to help interact with management to guide the strategy of a company, and it involves all people, their values, and their reputations. And we have found, in our experience—because Dan and I and many of our colleagues have been in many a boardroom—that this truly makes a difference of how the board guides the success of a company. And it is the core values that the board helps management establish and run throughout the organization. And those core values make the difference in what will lead to the outcome of the company not only following its strategy, but maneuvering all the events that come along the way.

Jose Garriga:

Well, that's a good point, but talking about core values, maybe they're easy to apply or uphold in the best of times. Let's look at a less-happy scenario, and discuss crisis management as an example. How would a company's culture affect, then, how it handles an internal or external crisis?

Chris LaFollette:

Great question, because no matter what, a crisis is going to happen. We live in a fishbowl. News flies, events happen. So, I'm glad you asked that because the culture does impact how you address a crisis, and a board needs to be ready. And I think of

terms that a board should even be so intertwined with management that they do dry runs. They'd be prepared for what could happen. And we have seen that be very successful. We even helped companies do those dry runs, and with that comes the benefit of being able to deal with that instantaneous reaction. And I think about those crises can come internally, and they can come externally.

We certainly all have been through the experience of seeing the #MeToo movement and the impact it has on companies, and I think, in particular, focusing on allegations that come up against the C-suite. And so again, this would not be something that I want a board to hear about at it the first time and have to think about and develop a plan to respond, but to, in fact, have already done this so that they can be thoughtful and careful and address this without it exploding in the company's face.

I work in the energy industry, and I think we all remember the impact of Deep Horizon, the Gulf Coast huge explosion. I remember, we woke up, and it was feeds on the TV of the leak, and it was incredible ability to assemble and react to those plans, so I've actually worked with companies, and we've done dry runs on those situations.

And it's not just the impact on a company's reputation or the impact on its economics in responding to those things, but you'll get the board's attention if they're attuned to the civil and criminal liability that can follow some of these crisis incidents. So, I am a big believer that we really do want to help our boards and management work together with this culture that we've talked about that has good relations, good dialogue, very respectful, so that we can deal with what is eventually going to happen.

Jose Garriga:

Thank you, Chris. A reminder, listeners. We're here today with Akin Gump partners Chris LaFollette and Dan Walsh, in the first of our Top 10 Topics for Directors podcasts, and we're discussing corporate culture and board diversity, so let's move to the second of those, then. On the topic of companies' culture, the question of diversity has to be considered. So, let's zoom in on that topic. How important has board diversity become to a public company? Dan, could you field that, please?

Dan Walsh:

Well, I mean, I think the short answer is it's very important—I mean, I'd argue, even critical. As we've seen, a number of studies now have come out which show a positive correlation between diverse boards and company performance. Then there's building pressure from institutional investors and shareholder advisory services, each of which, as you know, wield quite a bit of influence in shaping company focus and conduct. What we also see now is, in the United States, as well, governments starting to take action. For example, the state of California recently passed a law requiring California-based public companies to have at least one female director on its board by the end of 2019.

The focus in these areas has been mainly on gender diversity, but there's also a push for, and I think what you'll see more of in the future, is a push for all sorts of diversity, including race and age.

Jose Garriga:

Thank you. Well, looking then at something that I know is very important from a corporate governance standpoint, how is board diversity being viewed from the standpoint of proxy voting?

Dan Walsh:

Well, I think it's a main driver of change. I mean, whether it's in board diversity or it's in corporate social responsibility, institutional investors own 70 percent of the shares of U.S. public companies, so their views count for quite a bit. In addition, the shareholder advisory services who give recommendations on board votes and annual meetings wield quite a bit of influence, as just mentioned. And what we see there is both the institutional investors and shareholder advisory services putting increased pressure on companies with non-diverse boards.

As an example, BlackRock added to its 2018 proxy voting guidelines that it expects to see at least two female directors on every board, and, in fact, voted against board members over diversity concerns. With respect to the shareholder advisory services, you know, Glass Lewis, for example, put out its board diversity policy for 2019 that provides that it will generally recommend voting against a nominating committee chair for re-election if the board has no female director, so, I mean, this is going to impact board members and whether they get re-elected or not, and it's a huge driver of the change in board diversity.

Jose Garriga: Thank you, Dan. So, just to wrap up, maybe some takeaways for listeners that I could ask each of you to field. What is the outlook for change in board composition and culture as a function of these factors you've mentioned and other factors that are discussed in the report? Chris, could you lead off?

Chris LaFollette: Well, in following up on what Dan said, I think the diversity is very important in helping to drive the cultural benefit of a company, in that the culture of the company starts at the top, it starts with the board, and if there is a diversity in that boardroom, then there'll be the benefit of being attuned to different perspectives, aspects and opportunities, and I think it drives the culture so that that permeates down through the company. So, I think this is very important for the culture of a company that the board takes their role quite seriously and works with management. It shouldn't be a situation where it's the board versus management, but let's work together and have a team approach.

Dan Walsh: Yeah, I would agree with that. I mean, and this runs across board diversity, it runs across #MeToo. It's part of what Chris talked about, about the board culture. It's a shifting, specific focus on shareholder returns and what a company does quarter to quarter, right? And we see it, as I said, driven a lot by institutional investors at this stage, in causing the change.

And what I mean by that is there's the beginnings of a shift away from the only thing you have to think about as a board and as a company is your quarterly returns to your shareholders. So, it's not just your shareholders. It's your employees. It's the society in which you operate, and, so, I think that's kind of overarching all of the items on our Top 10 list, to a large degree, is this what I think is a shift away or a shift back to, one would argue, because ... before the 1980s, when there was a perceptible shift to the only thing you need to focus on is return to your shareholders and what people will argue was a rise in just short-termism, now there seems to be a shift back towards multiconstituency focus of a company.

I mean, we see Elizabeth Warren introduced a bill in Congress, the Accountable Companies Act, I believe is what it's called, which goes to the very heart of this matter, and there's a lot of momentum building towards this multiconstituency shift.

Jose Garriga: Thank you. Listeners, you've been listening to Akin Gump partners Chris LaFollette and Dan Walsh. Thank you both for kicking off this Top 10 miniseries with such a great overview of these topics.

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