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Communicating with Directors *via* Board Portals

By Alex Sodi

Web-based corporate board portals are proving to be useful tools in managing board communications and information distribution.

The responsibilities of corporate boards and their individual directors have been given more than their share of the headlines in the last few years. It's been a rough ride for senior management, legal departments, directors and officers as shareholders, investors, eager watchdogs and the Securities and Exchange Commission have bounded from one issue to another in search of missteps and corporate governance malfeasance.

The financial services industry—specifically the banking industry—has not been immune to this pressure. The effects have been felt from the top of the boardroom, through senior management and even into the accounting and finance department.

Responding to the need for a deeper understanding of company activities, directors now must receive, absorb and consider significantly more information than was previously the case. At the same time, corporate secretaries and general counsels are distributing more information—a sizable portion of which is generated by accounting and finance executives—as they work to ensure that their boards receive the necessary material in a timely and effective manner.

Whatever other steps a company takes to ensure fiduciary duties are properly performed, this information flood inevitably means hours and hours of extra work for directors and their support teams.

Web Portals Now High Profile

Changes in policy to realign corporate governance practices are more dynamic and far-reaching than changes in procedure, but new procedures are more tangible. One procedural change—the use of corporate board portals—has the potential to enable better management and distribution of information within

organizations. This Web-based technology was nonexistent in 2000 and now is used by as many as 20 percent of corporate boards, according to the National Association of Corporate Secretaries.

Use of portals and digital board books is expected to grow, but that's not to say that there aren't issues to be considered and challenges to be managed. Some senior executives and general counsels are balking at the prospect of entrusting sensitive material to an alien digital world. Among the issues to address are security, directors' resistance to new technology and the various liabilities involved. These issues are being weighed against the benefits: easier access to board documents and archived material on demand; more efficient flow of board briefing materials to boards; time savings in compilation of board books and a decrease in logistical errors in the production and distribution of board materials.

Managing Security Issues

Preparing board materials for major meetings at most large corporations is highly paper intensive. Each director receives hundreds, maybe thousands, of pages representing hundreds of hours of assembling, collating, printing and delivery—ideally in time for directors to study before the meeting starts.

From a security standpoint, collecting and compiling so much sensitive material in one place and dispatching it to a number of locations has the potential for disaster, from board books compiled incorrectly to materials left behind in hotels and airports by directors.

Alex Sodi is President of Diligent Boardbooks. Contact him at alex@boardbooks.com.

Before the advent of corporate board portals, e-mail had been a small step in the evolution of board communications. While ubiquitous, e-mail has its hazards. Applied to board briefing materials, these dangers range from accidental misdirection by assistants and corporate secretaries to the forwarding errors of directors themselves. In any comparison between e-mail systems and Web-based portals, the latter can readily be seen to offer significantly higher security and a comparatively fail-safe set of operating protocols.

Web-based portals provide for a single, centralized database of documents that directors view using their standard Web browser. All the documents are encrypted so only the right eyes can read them, and access is restricted to a select user group. Unlike e-mail, they are never forwarded or sent anywhere.

Are Directors Tech-Savvy Enough?

The implications of implementing a new technology—and a new process—can be daunting in many corporate settings. This can be especially true for senior-level management and boards, who are generally older and have less experience with today's technology. But for every expert who insists that directors couldn't find their emails without their assistants, there is a growing number who see directors using the most sophisticated technology.

There's no way to settle that debate here. The takeaway for corporate secretaries and general counsels is that they need to review and analyze their boards and assess board members' tech readiness.

Corporate secretaries, general counsels and boards also should assess the range of Web-based board portal solutions available with an eye toward design, intuitiveness and customer support. Many providers understand their target audience—senior businesspeople who may have neither love nor aptitude for technology—and have designed their products accordingly.

Many of the 20 percent of boards now using Web-based portals do so in tandem with old-school methods, that is, they have the board books mailed. While the general counsel and corporate secretary are using the technology to more efficiently compile board books, they are making them available both on a secure Web site and in printed books for distribution.

Results from a May 2006 survey of 298 board-level

executives demonstrate that directors are more ready to migrate online than one might think: 95 percent use a laptop or desktop; 93 percent read and answer their own e-mail; 88 percent rate their personal level of comfort with technology as "good" or "excellent." More to the point, 27 percent report that a board on which they serve uses a board portal for document delivery (up from 12 percent in September 2005).¹

Legal Aspects of Web-Based Technology

For general counsels, e-mail can be a blessing and a curse. The potential for e-mail to be used in the discovery process has caused many a sleepless night for corporate lawyers. A similar set of challenges is presented by the advance of Web-based board books and increased online communications with directors. But just as general counsels didn't throw the e-mail baby out with the bathwater, they are now weighing how best to protect directors and companies that use this new technology from discoverable communications that may be taken out of context.

For example, while it might be desirable to track whether critical or sensitive documents have been opened, and read, by all directors, that same tracking could prove problematic when interpreted or applied as a measure of a director's diligence.

The convenience of board portal features such as enabling of directors to make electronic notes within documents is desirable, but it could introduce an unacceptable level of vulnerability.

Considering that most, if not all, corporations have created policies and procedures governing normal email usage between senior executives, general counsels and corporate secretaries, some general counsels have adapted these procedures to board portals. In addition, it has been Diligent Boardbooks' experience that these general counsels work with their Web-based board portal providers to customize and create systems and procedures that ensure their liability is limited.

How Corporate Board Portals Work

A corporate board portal is a Web site designed to facilitate data exchange, often with the capacity to work

on multiple platforms such as personal computers and personal digital assistants.

The portal—and the software that operates it—resides in the software provider's system and is accessed by a company and its directors through a normal Web browser in most cases. This outsourced approach replaces the costs of buying, integrating and maintaining specialized software with a single, predictable monthly fee. In return, the vendor provides a ready-to-go service complete with 24/7 expert technical support and a high level of physical and electronic security.

General counsels, corporate secretaries and directors receive training on the system. Typically, both digital and hard-copy books are created simultaneously for one or two meetings, while all the key players become familiar with the process.

Once fully integrated, general counsels and corporate secretaries create material, post the material internally and use the board portal technology to assist in the approval process. Once documents are approved, they are posted to the board portal site and made available for directors. Directors, typically, will be emailed or otherwise electronically notified when new documents are posted to the site. Directors seeking updates and information log into the secure Web site, enter their passwords and can view newly posted and archived material. Directors can review their documents as they are posted or wait until the entire book has been posted. Based on earlier reviews of material, directors typically have a better opportunity of commenting on or questioning a firm's activity in advance of the board meeting.

As board books are put together, materials often change, are updated and amended because of changing market conditions, *etc.* The Web portal is updated in real time to reflect these changes, replacing the cumbersome task of mailing out updated materials and asking directors to insert new material manually.

If directors have questions or want to communicate with senior management or other directors, they can easily employ their e-mail systems, for which there are already policies and procedures governing the types of exchanges they can have, to discuss issues in advance of the meeting.

Encouraging Better Board Performance

Web-based portals—when properly implemented and

used—can enable a board to streamline its agenda and introduce new, more efficient procedures because information can be handled faster. When board papers are available for viewing in plenty of time, many routine matters can be dealt with well in advance of the actual meeting, eliminating it from the agenda. This can leave directors more time to invest in the major issues, with less stress surrounding the process.

Because updated material can be posted to a board portal immediately (as opposed to waiting for a group of documents to be mailed to board members), corporate secretaries and general counsels are able to maintain communications with their directors—keeping them engaged. Board briefing pages can even be accessed before the whole book is completely assembled, allowing directors a greatly expanded review period. If directors have issues with the technology, most board portal software providers maintain a 24-hour support desk with the ability to walk directors through technical issues.

Future of Web-Based Board Communications

As with other technologies, the move from nonuse to acceptance is often the biggest step. Once usage reaches critical mass, other directors and corporations may feel a need to keep up. When usage increases, we will also see more and better feedback and a relatively rapid pace of change in terms of customization and functionality to meet the changing needs of directors.

Just as Google and other search engines permit a user's homepage to be customized, board portals can be adapted to accommodate customized news feeds from various sources. These sources can include regulatory agencies, trusted news sites and industry associations. The goal of such an enhancement would be to provide directors with the information necessary—whether generated from within a company or outside—to allow them the best opportunity to add value to an organization.

Endnotes

¹ *The Directors & Boards Survey: The Wired Board*, 3 BOARDROOM BRIEFING 2 (Philadelphia: MLR Holdings LLC, Summer 2006), at 16–20.