Board oversight of workforce risk

On February 15, 2018, members of the Northeast Audit Committee Network (NEACN) met in New York City to discuss the board's oversight of sexual harassment and workplace culture, the workforce of the future, and tax strategy and risk. For a full list of meeting participants, please see page 6.

Members discuss the changing landscape of sexual harassment oversight

Sexual harassment awareness is at an all-time high, fueled by the ongoing social-media movement #MeToo. Jennifer Fay, a partner at Goodwin Procter, joined members for a lunch discussion on sexual harassment, workplace culture, and the board.

"Much has changed since the Anita Hill hearings in the '90s, but what has remained is clandestine behavior by individuals abusing their power over others who are not in positions of power," said Ms. Fay. She predicted that the current movement would make tolerance of sexual harassment almost nonexistent in the future. *"There is a change happening. This younger generation is braver and more willing to speak out, and we are now seeing bad actors getting fired as opposed to just moved around,"* she said.

Board members face increased scrutiny of their oversight of sexual harassment in the workplace. Ms. Fay explained that the standard of law mandates that management must investigate and ensure effective remedial measures are taken when a complaint is raised; however, management does have discretion in how to deal with the accused perpetrator. Dismissal is not the only option. Members discussed the complexity of these issues, particularly when a perpetrator expresses remorse. Ms. Fay told members, *"I'm not a fan of zero tolerance because I don't think it's practical. While providing a workplace free from harassment is essential, human beings are flawed and make mistakes and when those mistakes are isolated there may be room for effective remediation that does not involve termination."* Ms. Fay encouraged members to consider their options carefully and act decisively not only to protect themselves and the company from lawsuits based on emotional distress, lost wages, and punitive damages, but also to promote a strong culture. *"When you become aware of inappropriateness, you have the power to stop it. You can reduce liability and strengthen culture,"* she said.

Members discussed how to hold management accountable in creating a safe workplace. Ms. Fay described the importance of having a proactive, reactive and risk management approach to these situations. Setting the right tone at the top, having an effective process to handle complaints, including the whistleblower hotline, and requiring participation in awareness-training programs are all proactive measures. *"Interactive, in-person training programs work. All levels of the management, including the highest levels, should be required to participate,"* she said. One member added, *"CEOs need to walk the talk."*

Ms. Fay said that since you cannot avoid these situations entirely, members should ensure that there is a response team, composed of human resources (HR), investigators, and communications staff, in place and trained to respond to incidents when they occur. She also stressed that all allegations should be escalated to a central organization, such as legal or HR, that is well equipped to appropriately handle the situation. *"Managers shouldn't try to handle these situations on their own,"* she said.

Finally, Ms. Fay advised members to consider insurance to protect themselves and the company from liability. *"Employment liability insurance (EPLI) is a type of insurance to consider. Depending on policy terms, a company may have meaningful coverage for harassment claims. I would want it if I was responsible for risk oversight,"* she said.

Workforce trends create opportunities and challenges for boards

EY's Jeff Akin, people advisory services managing partner–Northeast region, and Sayed Sadjady, partner/principal–Americas talent markets leader, joined members for a wide-ranging discussion on the workforce of the future. Mr. Sadjady told members, *"Organizations should begin to look holistically at what their workforce will look like and plan for future requirements."*

Members explored implications related to the growth in contingent workers, or so-called gig workers. Mr. Sadjady said this trend could be attributed to the fact that *"most people want a more flexible work-life configuration, which can be hard to find in a permanent role. Individuals are putting themselves in the gig economy to achieve the right balance."*

The risks involved with overseeing a contingent workforce, including security risks and cultural and attitudinal differences that need to be measured and addressed, can be hard to navigate. One member said, *"I think the contingent workforce is the most neglected because no one has sole ownership of it."* Another member brought up outsourcing and the importance for management to think through unintended consequences: *"We have found that it's essential to take culture into consideration when hiring a contingent workforce. We outsourced jobs to another country and found that they don't understand project management the way we do and weren't comfortable being confrontational."*

Companies are also competing to recruit and retain the next generation of workers, many of whom prioritize working for a company with a strong collective purpose and reputation for social responsibility. Mr. Akin emphasized the need for management to take heed of this: *"Employers and industries that don't have a purpose beyond making money will lose out on a large segment of employees. Millennials operate under a different paradigm of information and values."*

Members and guests also discussed how to best overcome the challenges associated with training the next generation. Mr. Sadjady said, *"We continue to hear that people coming out of college aren't ready to work at companies because they don't have the requisite skill set needed. A lot of people are putting in apprenticeship programs because of it."* A member added, *"We partner with a digital learning organization and offer training programs."*

The role of the HR department in meeting an increasingly difficult set of challenges was also raised as a concern, with some members saying HR often misses the mark. One member said, *"I don't think companies have set a high enough bar for human resources, and I find it extremely frustrating."* Another member added, *"If there was an accounting issue, you would fire the CFO. The bar is set too low for human resources teams."*

Mr. Sadjady advised members to know how their HR departments are defining the people agenda: *"HR should focus on creating alignment, enabling the workforce to do its job, and continuing the progressive path. The more they think in this model, the more strategic they will become."* One member said, *"Get people in HR that are really business thinkers. Don't relegate the role to benefits."* Another added, *"I'm realizing that my CEO only spends about 10% of his time on people issues. This needs to change."*

Members were also interested in discussing how new technologies, particularly robotics and artificial intelligence, are impacting the workforce. Mr. Akin said change will not happen all at once but rather in bursts: *"Robotics and AI have already permeated supply-chain functions. Next will be the customer experience."* Mr. Sadjady advised members to be sure that their management teams are prepared to manage the new level of complexity that the digital economy will bring. *"You will need a defined governance and operating model on how to manage this effectively in the new digital economy where speed and pace limit scope for experimentation,"* he said.

Assessing the opportunities and risks of tax reform

The complexity of changes to the corporate tax code are challenging tax departments and advisors. Robert Weber, EY's Northeast tax managing partner, and Robert Westreich, senior vice president, treasurer, and chief tax officer for Newell Brands, recommended several approaches to help boards navigate the new tax law:

- **Ensure companies are planning for compliance by 2019.** The SEC's Staff Accounting Bulletin (SAB) No. 118 provides guidance for companies in disclosing how the Tax Cuts and Jobs Act of 2017 will impact their financial accounting and allows companies to demonstrate where accounting is complete, where estimates are being used, and where information is unknown. Under SAB 118, companies have until December 22, 2018, to complete the measurement of the changes. Despite this leeway, experts advised members to do their due diligence and get numbers as close as possible. Mr. Westreich said, *"SAB 118 is provisional, but you still don't want to have large changes throughout the year. Companies should strive to make sure adjustments are very small and not significant."*

Another member mentioned an added benefit of early disclosures: *"The danger in waiting is that the analyst could do their own analysis and get it wrong."* In order to be compliant with SAB 118 by year-end, members will want to include it as an agenda item for their 2018 audit committee meetings to understand the company's approach to implementing the guidance.

- **Understand the implications of changes to foreign tax.** The new base erosion anti-abuse tax and the global intangible low-taxed income provision could increase the tax on income derived offshore and have a substantial impact on companies with significant intangible overseas assets. Mr. Westreich advised members, *"Other countries are watching to see how companies will be moving around their valuable assets in response to reform. Take this into consideration before making any major moves."*
- **Ask management the right questions.** Members agreed it's important to understand how much risk their management teams are taking on in this new environment. Mr. Westreich encouraged members to have strong communication with their tax teams: *"It behooves the audit committee to be talking to the tax folks on material matters and get some taste of their level of risk tolerance and if the team is competent enough to make that assessment."* Mr. Weber added, *"In sizeable companies, the tax person should be in the quarterly audit committee meetings to regularly update the committee on the company's tax posture. More interaction on a regular basis will help get this right."*

  Given the significance of the undertaking, coupled with the implementation of the revenue recognition and leasing standards, members were concerned that their tax teams could be stretched too thin and lack the right level of expertise. Mr. Westreich encouraged members to press tax teams on their ability to handle the workload today and in the future: *"The question I would ask tax directors is, Do you have the right resources to handle this? If not, then you have an issue with the internal control environment."* One member said, *"This tax law is even more complicated than I anticipated. I need to make sure I have the right talent in the tax department to get through the next three years."*

NEACN

About this document

Summary of Themes reflects the network's use of a modified version of the Chatham House Rule whereby names of members and their company affiliations are a matter of public record, but comments made before and during meetings are not attributed to individuals or corporations. Guests, however, have given permission for their remarks to be attributed. Comments by guests and network members are shown in italics.

Meeting participants

The following NEACN members attended all or part of the meeting:

- Virginia Addicott, CDW
- Bill Creekmuir, Party City
- Chuck Dockendorff, Boston Scientific
- Mary Guilfoile, Interpublic Group
- Pat Gross, Waste Management
- Christie Kelly, Park Hotels & Resorts
- Doug Maine, Orbital ATK, BroadSoft, and Rockwood Holdings
- Marianne Parrs, Stanley Black and Decker
- Bert Scott, Becton, Dickinson and Company

The following NEACN alumni members attended:

- Joan Amble
- Gabrielle Sulzberger

EY was represented by the following:

- Mark Besca, New York Area Office Managing Partner
- Tim Tracy, Northeast Region Assurance Managing Partner