ACF 302: Week 20

Corporate Governance additional reading

Lecture

Outline

- Why CEOs shouldn’t also be the Board Chair
- Diversity mandates eyed by UK watchdog for listed companies’ boards
- Danone shake-up demanded by big shareholder
- The fall from favour of Danone’s purpose-driven chief
- Suez-Veolia hostile bid battle tests European M&A law

Why CEOs shouldn’t also be the Board Chair

- Harvard Business Review - Managing Organizations
  - by Joseph Mandato and William Devine
  - March 04, 2020

Why CEOs shouldn’t also be the Board Chair

- The article uses examples from Boeing, WeWork and Facebook to illustrate why companies should be concerned about giving the job of CEO and the board chair job to the same person (Two Job – One Person model).
- According to ISS, between 2005 and 2019 the percentage of firms in the S&P500 that separated the role of CEO and Chair of the board rose from 30% to 53%.
- Separating the two roles has become the most common type of governance proposal submitted by shareholders.

Why CEOs shouldn’t also be the Board Chair

- Board chair: leads the board to advise on strategy, monitoring performance, supervising finance and controls and evaluating management.

- CEO: establishes a set of values, practice and goals that enables the company to execute the strategic plan and build a future.

- To grow, a company needs both roles to be performed very well.

- Authors mention three main reasons to separate the two roles.

Reason 1:

- Early stage companies usually leave the founder to perform both the CEO and Chair roles.

- It’s unlikely that the founder entrepreneur has the skills and talents to perform well both roles.
  - Entrepreneurship requires persistence and an unwavering belief that your perspective is right.
  - As the firm grows, those traits turn into liabilities.
  - Founders rarely recognize they’re missing the traits required to lead their larger and more complex organizations.
  - With growth the founder loses control and must open up to influence, collecting information and feedback.

Reason 2:

- The Two Job – One Person model denies the CEO that opportunity to receive feedback from the board's closed executive sessions.
  - Closed executive sessions consists of sessions where no executives attend, the chair asks for feedback to board members and then aggregates these responses to have a sit down with the CEO for a feedback session.

  - If the CEO is the Chair, it is hard to get honest feedback and advise face to face.

Reason 3:

- If the CEO chair’s the board it can compromise the board discussion quality, weakening the corporation’s risk management ability.

- There are questions that might not get asked.

Diversity mandates eyed by UK watchdog for listed companies' boards

- Caroline Binham in London
- March 17 2021
- Financial Times

Diversity mandates eyed by UK watchdog for listed companies’ boards

- The number of women on FTSE boards has risen by 50% since 2015.

- As of January there are no longer any all-male boards in the FTSE350

- More than 100 FTSE 350 companies are still not meeting a government target of having at least a third of board positions held by women.

Diversity mandates eyed by UK watchdog for listed companies’ boards

- The chief executive of the Financial Conduct Authority (Nikhil Rathy) has signalled that the largest listed companies in London will have to appoint a minimum number of diverse board members or face regulatory scrutiny.

- Financial services should also consider increasing diversity at senior levels.

- Nasdaq in the US has already stated that companies listed in the US should have at least two non-white or female board members, or explain why not (comply or explain doctrine).

Diversity mandates eyed by UK watchdog for listed companies’ boards

- In general, all these requirements won’t have much effect unless the FCA decides to use its supervisory powers and intervene in the markets.

- Rathi said, that the FCA could use wider powers, including refusing regulatory approvals for senior managers, unless companies display greater diversity.

Danone case

- Danone shake-up demanded by big shareholder
  - Leila Abboud in Paris February 17 2021

- The fall from favour of Danone’s purpose-driven chief
  - Leila Abboud in Paris March 17 2021

Danone and shareholder activism

- Artisan Partners, a US-based investment fund that it is the third-biggest shareholder of Danone with a roughly 3 per cent stake.

- Artisan has urged its directors to oust chairman and chief executive Emmanuel Faber, halt a planned group reorganisation that he has championed, and sell underperforming brands that account for 15 per cent of revenue.

- Artisan’s plan was designed by Jan Bennink, an experienced consumer industry executive who earlier worked in Danone’s dairy and medical nutrition businesses.

Danone and shareholder activism

- The activist fund Bluebell Capital in January called for a governance overhaul at Danone to split the roles of chief executive and chairman.

- “The company needs new leadership as CEO, and we also want the chairman to be replaced with an outsider with consumer goods experience,” said Bennink.

- Causeway Capital Management, last week echoed that position in an interview with Bloomberg, adding that “people have to take accountability” for missed targets.

Poor governance at the origin

- The board was complacent over a share price performance that lagged rivals like Nestlé and Unilever, and did little as Faber cut annual profit forecasts three times in seven years.

- Its oversight of management was hampered by poor governance.

- Faber had held both the chairman and chief executive roles since 2017, and one-quarter of the board seats are occupied by former executives, including Franck Riboud, the former CEO and son of Danone's founder Antoine Riboud.

The end of Faber’s tenure

- Emmanuel Faber’s seven years at the top of Danone ended at around 1:30am on Monday after a marathon virtual board meeting during which he battled to keep his job.
- It was a victory for the activist funds which since January have laid siege to Danone, pushing for a radical overhaul to fix what they called its chronic underperformance.
- Gilles Schnepp, the former chief executive of industrial group Legrand who joined the Danone board in December, was named as chairman and will lead the search for a new chief executive.

Suez-Veolia hostile bid battle tests European M&A law

- Inside Business – Financial Times
- Peggy Hollinger March 17th 2021

Suez-Veolia hostile bid battle tests European M&A law

- Veolia and Suez are world's two largest waste and water groups.
- Veolia bought a 29.9 per cent stake in its bitter rival Suez in October last year
  - 12 cases and appeals have been brought before the French courts and one case before EU regulators.
- Suez or its unions have challenged Veolia's right to launch a bid, to vote its shares, and its handling of obligatory consultation with Suez employees.
- Veolia is challenging Suez disposals and its decision to use a Dutch law to ringfence its French water assets in a foundation whose board members would have veto rights over any disposal of the business.

Stichting or Foundation (*Dutch anti takeover measure*)

- A Foundation is a legal entity established under the Dutch law. The Foundation should have a board that is independent of the corporation. The board of the Foundation has veto power.

- If Veolia's bid is successful, the regulators would require them to sell the French water business.

- Since Suez transferred the assets of the French water business to the Stichting, the move would block Veolia from being able to sell the assets and being in agreement with regulatory requirements.

- Stichtings were first used in a takeover outside the Netherlands in 2006 when European steel group Arcelor was fighting tooth and nail to fend off a bid by India's Mittal Steel.

Veolia vs. Suez

- Suez's stichting could backfire. The foundation's directors do not take their orders from Suez, nor does the company own it.
- Veolia has challenged the establishment of the stichting without shareholder approval and is threatening to vote against directors who created the foundation at Suez's forthcoming annual meeting.
- A court ruling this month allowed Suez to maintain the stichting for up to four years, although the waters assets have not yet been transferred.
- A separate court case will decide the basic merits of Veolia's case — whether the foundation is contrary to French law, which requires directors to safeguard corporate interests.