Director dialogue with shareholders— what you need to consider

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Introduction

Shareholders have access to a considerable amount of information about how public companies are governed, from SEC-prescribed proxy statement disclosures to corporate governance descriptions on company websites. Yet over the past few years we've seen rising interest—primarily from shareholders but also at times from directors—in more direct communication between shareholders and directors. Shareholders may seek greater insight about issues of interest to them or just want to ensure their concerns are heard, unfiltered, at the board level. Similarly, boards may seek an unvarnished understanding of how shareholders view the company and the particular issues it faces.

In most companies, management handles investor relations and shareholder communications, subject to oversight by the board. Yet at times, direct dialogue between the board and shareholders can be beneficial. Over time, periodic direct interaction may help to build trust on both sides. It may also reduce the risk of unpleasant surprises by encouraging major shareholders to reach out when they have concerns, instead of submitting shareholder proposals or launching withhold vote campaigns.

Direct dialogue between shareholders and a director may not be appropriate for all companies, or for most shareholder relations matters. Each board needs to discuss the circumstances where it may or may not be appropriate to engage in dialogue with shareholders. A board should also seek input from senior management and legal counsel.

Interview insight

I can't imagine any board categorically saying it would never meet with a major shareholder. At the end of the day, directors are shareholders' agents.

—A director

Interview insight

Our board stance is that directors shouldn't communicate with shareholders.

—A director

Interview insight

I found that meeting with large shareholders was very informative and healthy. I would tell other directors: Don't be afraid of doing it and don't avoid it.

—A director

Those boards interested in engaging more directly with shareholders should consider a number of points. In those rare instances when the CEO or other executives aren't handling communications, there needs to be a clear understanding about which director will do so. An agreed message needs to be set, and any participating director(s) needs to be properly prepared. In addition, there are legal and regulatory concerns that must be managed about how to communicate with one (or a few) shareholder(s) without putting others at an informational disadvantage (and the company at legal risk). Finally, companies may have to revise existing communications policies and procedures.

This publication describes the current public company-shareholder communications environment and provides a framework for boards to use as they consider whether and in what circumstances directors should participate in such discussions. It also addresses how Regulation Fair Disclosure ("Reg FD") affects communications. It shares practical insights based on our collective work with directors and companies and includes perspectives from interviews with individuals who are involved with such communications, as captured in the "Interview insight" boxes. Further, it includes results from PwC's 2013 surveys of directors and investors. (See related descriptions in the appendix "About the surveys and interview insights.")

Interview insight

In my experience, the companies that proactively reach out to offer meetings with directors are the larger, thoughtful companies. Typically management is pushing the board to connect.

—An investor

While this publication deals primarily with communications with shareholders, some directors also play a role in communications with other stakeholders, and an appendix addresses those communications.

The changing communications environment

Shareholder influence has increased over the last decade for a host of reasons. Ownership is now more concentrated in the hands of institutional investors[1]. Shareholders have say-on-pay votes and can seek proxy access on a company-by-company basis. Brokers are prohibited from voting uninstructed shares for say-on-pay votes and in uncontested director elections. More companies have adopted majority voting for director elections. Plus, many institutional investors use the same two proxy advisory firms, so if they follow those firms' voting recommendations, they may end up voting largely the same way. (Granted, some large institutional investors have their own proxy voting policies and use research from one or both major advisory firms as just another data input.)

Shareholders are increasingly willing to communicate their viewpoints and to try to effect change in the boardroom, often through shareholder proposals. Common proposals urge boards to declassify, to adopt majority voting, or to split CEO and board chair roles[2]. And the advent of social media may make it easier for interested parties to get their message out and connect with others who have similar concerns.

PwC's *2013 Investor Survey* asked institutional investors how important various corporate governance concerns are in determining whether they would communicate with a company. Seventy-four percent selected executive compensation, 68% said the board's overall governance profile, 55% said CEO succession, 54% said company strategy, 54% also said relative performance, and 48% said proposed mergers or acquisitions.

If a company is performing well, executive compensation is seen as aligned with company performance, and its board doesn't have any practices, policies, or structures that are considered "problematic," shareholders are far less likely to be interested in direct engagement with the board.

Shareholders say communicating with the board is the most effective way to get a company's attention if they do have a corporate governance concern—45% selected this approach in the survey. Lower down the list are contacting the executive team, contacting investor relations, submitting a shareholder proposal, and launching a withhold vote campaign against directors.

Interview insight

Sometimes we'll ask to talk with a director just to make sure the board understands that we don't think they should listen to an activist shareholder.

—An investor

Interview insight

We don't ask to meet with directors unless it's a serious issue that impacts our investment.

—An investor

1 See the *2013 Proxy Season Recap* of *ProxyPulse*, a Broadridge + PwC Initiative, at proxypulse.broadridge.com.

2 These governance terms and issues are described in *Governance for Companies Going Public—What Works Best*™ available at pwc.com/us/en/corporate-governance/publications.jhtml.

Interview insight

I estimate we ask directors to participate in a meeting in about 10% of our engagements with companies.

—An investor

Yet the survey also shows investors don't always find their interactions with companies on governance issues to be satisfactory.

During the last 12 months, how would you describe your experience engaging with companies on...	Very or somewhat difficult	Neither easy nor difficult	Very or somewhat easy	N/A or don't know
Executive compensation	43%	21%	16%	20%
Board leadership structure	38%	16%	17%	29%
Board composition	35%	21%	19%	25%
Frequency of director elections	13%	25%	31%	31%

Interview insight

I think management should welcome the opportunity to hear, through directors, what concerns major shareholders have. If I were them, I would always prefer to hear from shareholders privately.

—An investor

Those shareholders who do have concerns about a company are often satisfied if they can communicate with a company executive or investor relations personnel. But for certain sensitive topics, shareholders want to communicate with directors. Shareholders appreciate the opportunity for a more nuanced understanding that dialogue may provide. They also value having a director hear their concerns unfiltered by management.

Therefore, it's not surprising that the majority of boards are communicating directly with certain shareholders. PwC's *2013 Annual Corporate Directors Survey (ACDS)* shows 61% of boards had substantive communications with institutional investors, a finding that was largely consistent with the prior year's survey results.

During the last 12 months, has your board participated in communicating substantive issues to...	Yes, and it has increased	Yes, and it has stayed the same	Yes, and it has decreased	No, but we should	No, and we should not
Institutional investors	29%	31%	1%	6%	33%
Retail investors	8%	34%	2%	6%	50%

[Note: Similarly, PwC's *2013 Investor Survey* found 32% of institutional investors say the level of their direct communication with corporate directors had increased over the past 12 months.]

Interview insight

I've always gotten information from the corporate secretary, general counsel, or CEO on what shareholders were thinking, but to get it [through meeting shareholders] directly, unfiltered, was particularly valuable.

—A director

So it's clear that boards and shareholders are engaging in some form of communication outside the standard regulatory disclosures. However, many directors continue to express concerns—with one-third opposing direct communication with institutional shareholders, and half believing it's generally inappropriate with retail investors.

Requests for director-shareholder communication flow both ways. In many cases, companies are asking for these meetings, whether to build relationships, better understand past voting decisions, or signal board responsiveness.

Just as boards will wish to fully understand the purpose behind a meeting request from a shareholder, boards should expect that shareholders will seek to understand the subject matter and purpose of a company's meeting request. The purpose may be evident if there was a close (or failed) vote or if there's another similarly compelling reason. But shareholders are often cautious of meeting with directors if there are no matters of concern to them, given their limited time and resources. As a result, director-shareholder communication more typically occurs when there is a sensitive situation.

Therefore it may be challenging to build a relationship between directors and shareholders over time. While ongoing engagement can help establish a level of mutual trust, not all investors are interested in meeting if things are fine. Boards should consider other ways to maintain a relationship between meetings, such as periodic letters to emphasize a publicly announced initiative that relates to a shareholder's expressed interest or concern.

Interview insight

After proxy season, we [directors] met with major shareholders who voted against our say on pay. Those conversations were useful, and sometimes surprising.

—A director

Putting director communications in context

Larger companies typically have well-developed programs to connect with shareholders, involving investor relations and executives.

PwC's *2013 ACDS* asked about companies' investor relations efforts and found that 72% of directors are "very satisfied" with the management personnel involved in external communications. Further, 32% say that, in their view, the quality of their companies' relationships with shareholders increased from the prior year.

Companies' annual shareholder meetings provide an opportunity for any shareholder to interact with directors. Management teams help prepare responses for possible questions, and an effective board chair can direct any questions to the appropriate person—whether executive or director—for response. However, many companies find that very few shareholders attend annual meetings.

Interview insight

It's important for the board to understand the company's investor relations program. If management only contacts shareholders when there's a crisis, that's not good.

—A director

Interview insights

Companies that have good investor relations teams engage key shareholders in advance on items that need extra commentary or discussion, so there's less shock when we see the proxy.

—An investor

Sometimes companies will ask for us to meet with a director if they're anticipating a major transaction or an issue with another shareholder. They do it to build trust before the event.

—An investor

Sometimes, when a company requests to have us meet with directors, it feels like a check the box exercise—there wasn't any compelling reason.

—An investor

A framework for director-shareholder communications

If your board is discussing whether it should communicate with shareholders, it may be helpful to consider a series of questions.

Which topics are appropriate for director communications?
While the answer will differ from company to company, PwC's *2013 ACDS* gives a glimpse into directors' views.

How appropriate is it for the board to engage in direct communication with shareholders on:	Very appropriate	Somewhat appropriate	Not appropriate
Governance policies (i.e., board leadership, director election frequency, voting standards)	31%	43%	26%
Executive compensation	29%	37%	34%
Director nominations	25%	37%	38%
Earnings results	25%	13%	62%
Key risks facing the company	21%	27%	52%
Company strategy	18%	27%	55%
Use of corporate cash/resources (i.e., payment of dividends, stock buybacks)	17%	29%	54%
Major capital expenditure initiatives	11%	23%	66%

Interview insight

Don't be afraid to say, "That's a better topic for you to explore with management than with me."

—A director

These results indicate that the majority of directors generally are comfortable with communications about their boards' activities relating to governance policies, executive compensation, and director nominations. However, the majority of directors don't believe it's appropriate for their board to discuss with shareholders strategy, key risks, earnings results, capital expenditures, or use of cash or other corporate resources. This may be because directors believe executives should take the lead in addressing matters relating to company operations. (This is consistent with how, under corporate law, a board delegates to management the responsibility for running the business, while the board oversees management's activities as a fiduciary for shareholders.) Of course, a crisis or event that reflects poorly on company management may change a board's decision on whether a director should become involved in communications on a strategic or operational topic.

Which directors should be involved? Determining which director(s) to involve in shareholder communications depends largely on the topic to be discussed.

For example, if the topic is executive compensation, often the most effective director to participate would be the compensation committee chair. The independent board chair or the lead director/governance committee chair would be a logical participant for discussions involving succession or board composition, or general governance concerns. Board and committee leadership positions lend credibility, but other factors to consider include the director's understanding of the issue and his or her ability to communicate, make connections, and diffuse tension. In circumstances where one or more directors are under attack—as in a withhold vote campaign or a proxy contest—it may be appropriate to have those directors participate in shareholder conversations (recognizing the need to comply with federal proxy rules in connection with such communications).

> ***Interview insight***
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> When we ask to meet with a director, we want to speak with the most senior independent director, unless that person's not really independent in our view.
>
> *—An investor*

When a board has a choice between qualified and well-informed directors, one consideration is whether one director has superior communication abilities. A director who is involved in shareholder communications should be able to clearly explain the reasons underlying the board's decision—especially if the decision is controversial.

All directors chosen to participate in dialogue with shareholders should get additional training and support before having such meetings, as described on the next page.

Who else from the company should attend the meeting? With rare exception, a director should never meet alone with a shareholder. Someone else—most commonly inside or outside counsel—should attend. Depending on the topic for discussion, it is also common for someone from investor relations, human resources, or finance—and often the CEO—to attend as well. Such individuals can provide important background information, can clarify issues, and can follow up when needed. They also understand what information is in the public domain and can help avoid a Regulation Fair Disclosure slip up. (See "The impact of Regulation FD" section.)

> ***Interview insight***
>
> Meeting a shareholder without having management present is the exception, not the rule. When it does happen, we send a few directors.
>
> *—A director*

Other advisors, such as compensation consultants or investment bankers, may also be present if warranted.

Regardless of who attends, the various meeting participants representing the company should determine in advance who will address which topics and questions. Directors need to be able to answer the questions that investors would expect them to know and not redirect those questions to others.

> ***Interview insight***
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> If the comp committee chair needs to rely entirely on either management or the comp consultant to answer questions, that's a red flag.
>
> *—An investor*

How should directors prepare for these meetings? Whether the meeting is happening at the company's or a shareholder's request, the director(s) should be fully briefed on:

- The purpose of the meeting
- The investor's voting policies and procedures, voting history, and approach to activism (if any) on the issue(s) that will be discussed
- Whether the investor actively manages its funds (If, instead, the investor is indexed, it generally doesn't have the option to sell—although there are exceptions.)
- Who from the investor's organization will attend the meeting, and whether those people make voting and/or investment decisions
- How the investor's goals, if known, may conflict with other shareholders' goals
- What information is in the public domain on the issue(s), and what information hasn't the company disclosed that might be considered "material" from investors' perspectives (Such information shouldn't be discussed unless the company first discloses it publicly.)
- Whether the meeting discussion will be confidential

Interview insight

Directors need to understand that when we own their companies in an index fund, our ownership will be around long after the current management team and board are gone.

—An investor

As part of its preparation, management should connect with the shareholder ahead of time to ensure both parties understand the high-level agenda for the meeting and any particular agreed-upon protocols. And if needed, management should arrange for any directors who will be involved in the meeting to have (or get a refresher on) media/communications training.

Based on the planned agenda, management should also draft a list of potential questions that might arise and provide talking points on what the company has previously communicated in each area. That briefing document might also suggest who should take the lead in responding to each question. Counsel should be involved in reviewing that document and highlighting any areas of potential concern.

Interview insight

In our experience, we leave most compensation discussions with directors feeling better about the process than we did before we went in. But sometimes it confirms our worst fears or does more harm than good.

—An investor

A pre-meeting discussion among all company attendees is valuable to help map out who will do what. Each person at the meeting should have a clear role. The group should also discuss responses to expected questions and try to anticipate "surprise" questions. This can help the group decide the best way to address those questions that, due to sensitivity, they aren't prepared to answer. In such instances, it's helpful if the company has—and consistently adheres to—a policy of politely responding that the matter is outside the area for discussion (along the lines of "we can't comment on that pursuant to our 'no comment' policy") when a response would touch on material, undisclosed corporate information.

Interview insight

You can get into trouble with some discussions. It may not be that you don't know something—it may be that you don't know everything.

—A director

How will meeting logistics work? Directors can communicate with a shareholder in many different ways: an in-person meeting, or by conference call or video conference. Each has advantages and drawbacks, and directors will want to tailor their preparation accordingly. However the communication occurs, directors and shareholders should agree on whether the interchange is to be considered confidential.

Some observers suggest there are other ways to hold these communications, for example via web chat, or shareholder-only portals. Note there may be legal concerns that arise from holding discussions in a venue that could capture the discussion in a permanent record (e.g., electronic audio recordings).

Sometimes companies provide briefing materials or slide decks in advance of or during director-shareholder meetings. Since any written communications provided to shareholders—including slide decks that investors aren't permitted to carry away from a meeting—could be considered written proxy soliciting material, companies may need to file that information with the SEC if the private meetings are held in connection with or near the time of the annual shareholder meeting. It's also important to remember that oral communications by directors are covered by the proxy antifraud rule, although companies aren't required to put these in writing and file them with the SEC.

Some institutional investors are urging boards to hold what's called a "fifth analyst call," in which a few directors take investors' governance questions before the annual meeting. The Society of Corporate Secretaries and Governance Professionals' *2012 Board Practices Report* shows less than 2% of boards held such a call with investors, while another 5% had considered it. Although very few companies have embraced this practice, it's helpful to be aware of the concept in the event your shareholders ask about it.

Several boards have experimented with holding a meeting periodically or even once each year between the entire board and a group of major shareholders. Few boards have adopted the practice, although it is another option to consider.

As with any type of informal corporate communication—whether oral, written, or electronic—careful consideration also should be given to compliance with Regulation FD's ban on "selective disclosure" of material, non-public information, as discussed in a later section.

When should directors get involved in shareholder communications? A board needs to consider which situations truly warrant a director's involvement. Your board may get numerous requests for directors to participate in discussions. But everyone's time is limited, so even boards that are willing to communicate directly with shareholders may choose not to engage in certain circumstances. Directors should be comfortable, though, that the company is responding to the request, even if that response is to decline a meeting.

Interview insight

The first time I met with [a major shareholder], I had no idea I'd be meeting with someone who had only been out of school for a year or two. I was surprised that person was a key player in deciding how they'd vote.

—A director

Interview insight

If your company is in crisis, consider bringing directors on a roadshow to meet major shareholders in person.

—An investor

Interview insight

If directors participate in a routine [investor] call, I question whether that's a good use of their time.

—An investor

Throughout our interviews and at various corporate governance programs, both investors and directors recommended practices for more productive meetings and described common mistakes they've witnessed. These distill down to some basic "Dos" and "Don'ts" for directors.

Do...

- Listen and try to understand a shareholder's stated concerns from the shareholder's viewpoint. Shareholders understand that just because directors listen, it doesn't mean they agree.
- Recognize that concerns or opinions of one or a few investors aren't necessarily shared by all investors.
- Be alert to what you're hearing from shareholders, especially when they have a genuine interest in getting more insight into an issue. This feedback could indicate an opportunity for management to expand company disclosures in a way that will be helpful to all investors.
- Be careful to follow the agreed-upon message. At the end of the day, the board and management must speak with one voice.

Don't...

- Be quick to react to or reject messages or criticisms that may not align with your own views or may contain messages you might not want to hear.
- Give undue weight to conversations with a limited set of shareholders.
- Subordinate your own business judgment to the views of shareholders. Directors cannot simply defer to the wishes of shareholders.
- Share details about the board's internal deliberations, imply the board was split on an issue, or indicate disagreement with management.
- Focus too much attention on proxy advisory firms' recommendations or spend too much meeting time criticizing or rebutting their point of view. Investors make up their own minds, and not all subscribe to proxy voting recommendations. That said, we recognize a key purpose of the meeting may be to address concerns about recommendations in a proxy advisory firm's voting report.
- Suggest shareholders simply sell shares if they're not happy. If those shares are in an index fund (as many are), that may not be possible. And regardless of whether investors are or aren't indexed, many consider this response to be inappropriate at best, and evasive or insulting at worst.
- Try to set up a meeting at the height of proxy season unless there are special circumstances. If you have a choice, summer and fall are often the best time to have these communications with shareholders.
- Contradict information in the proxy or other public filings.
- Participate in shareholder communications without fulsome preparation on the topic(s) to be discussed. Similarly, if a director simply reads a statement, that doesn't reassure an investor that the director understands the issue(s).
- Bring too many directors. The risk is that all will want to speak, and the more who speak the higher the chance that some statements will be contradictory or off-message.
- Do all the talking.
- Expect senior managers from the investor organization to attend. Although the analysts you'll meet with may be young, they may be the ones making the voting decisions.
- Let an outsider, such as a compensation consultant, do all the talking. It undermines confidence that the director understands the issue.
- Use a meeting with a shareholder only to try to win a shareholder vote. The goal of communication should be to share information and perspectives. Recent experience with director-shareholder communication on say-on-pay proposals indicates that two-way exchanges of information can be very constructive.
- Be arrogant. Remember, shareholders own the company.

Some boards have a policy on director communication. In PwC's *2013 ACDS*, just over half of directors (53%) say their companies have a specific director policy regarding communications with stakeholders (which would include shareholders) and that the policy is very useful. One third indicate they don't have such a policy, and an additional 10% indicate they don't, but should.

Interview insight

A director who is meeting with a shareholder should listen more than speak.

—A director

Some companies have a stand-alone policy for director communications, while others may address the issues within the body of other company policies on communications or Regulation FD compliance, or in corporate governance guidelines, for example. Wherever the guidelines on director communications are lodged, a policy can be helpful to ensure everyone understands the company's expectations.

Of course any policy should reflect the board's decisions on whether or how it will engage in communications with shareholders. Ideally, a policy will:

- Remind directors they're subject to the duty of loyalty, and thus they shouldn't talk unless specifically asked and authorized to do so (Some policies may simply say that the board will not engage in shareholder dialogue and that only management is authorized to speak for the company. Consider allowing for exceptions, because unusual circumstances may arise where it's not only appropriate but necessary for a board director to engage. Also, some shareholders may view such blanket prohibitions as negative.)
- Reference the need to comply with the company's Regulation FD policy, which should expressly apply to directors
- Require directors to coordinate messages with the company
- Emphasize the need to be mindful of boardroom confidentiality
- Identify which directors would be expected to communicate on different issues
- Bar ad hoc communications with shareholders or other stakeholders

Directors are subject to the duty of loyalty, and thus they shouldn't talk [outside the company] unless specifically asked and authorized to do so.

While we've provided a great deal of guidance for directors, shareholders also have views on how other investors should behave when communicating with directors. Some of those key messages are captured below.

Shareholders' advice for other shareholders when communicating with directors

- Focus on long-term value creation.
- Be selective when asking to engage with directors. You can resolve most issues with management, so don't waste directors' time.
- Prepare thoroughly. Understand the company and its business.
- Give the company a fair hearing. Don't ask to meet if you aren't willing to try to understand their position.
- Give positive feedback when the company or board takes actions you approve of.
- Be reasonable, rational, and responsible. This includes not asking for information that hasn't been made public and might be material (meaning that its disclosure in a private meeting context would violate Regulation FD), or for information that might raise other securities law concerns (such as the anti-tipping provisions of the insider trading laws).
- Recognize there are other shareholders and stakeholders (such as debt holders, employees, and customers) the board and company need to consider.
- Keep the focus on the issue, not the individuals involved.

The impact of Regulation FD

Over the years, some directors and board advisors have pointed to Regulation Fair Disclosure's ban on selective disclosure as a key reason to avoid director-shareholder communication. In a nutshell, Reg FD prohibits a public company from disclosing material, non-public information to analysts or investors unless that information is simultaneously, or was previously, released to the public by:

- A Form 8-K,
- A press release, or
- Another non-exclusionary means that is reasonably designed to distribute the information broadly.

Although the SEC has clarified that Reg FD doesn't bar private meetings between directors and one or more shareholders, directors and companies do need to use caution when having such meetings. And that applies whether the meetings are in person, over the telephone, or held via videoconference. (Also use caution in written communications with one or more select shareholders.)

The key to Reg FD compliance is that no one shareholder should learn of material, non-public information before another. In other words, no shareholder should receive confidential information that the company could reasonably foresee would alter investment decisions. So companies, management teams, and directors have well-founded concern that private meetings with shareholders might create a heightened risk of violating this anti-selective disclosure regulation. This is particularly true when outside directors attend such meetings, given they may not be as closely attuned as senior management and/or investor relations personnel to what important company information has or has not been made public.

Interview insight

Reg FD shouldn't be a barrier to communications, but it adds further to directors' workload. Directors need to spend significant time preparing and coordinating messages.

—A director

The key to Reg FD compliance is that no one shareholder should learn of material, non-public information before another.

SEC Staff guidance published in 2010 provides useful "rules of the road" for conducting private director-shareholder meetings without running afoul of Reg FD[3]. Counsel and knowledgeable IR officials can assist directors in following the guidance when they hold private director-shareholder meetings. The following precautions, some of which stem from that guidance, can help avoid the potential for major exposure under Reg FD:

- Pre-clear discussion topics within the company to confirm they are public or immaterial.
- Discuss possible answers to questions ahead of time so there are no slips. Thoroughly vet the planned messages with legal counsel to ensure that there's no prohibited selective disclosure. Have company counsel participate in the meeting.
- Ensure that any directors who are designated to meet privately with shareholders are authorized to speak on behalf of the company. And ensure that those communications comply with the company's Reg FD policies and procedures.
- Schedule meetings after public announcements of material information. Avoid meeting when the board or management is aware of impending corporate developments that shareholders might consider important (i.e., "material") in making investment and/or voting decisions.
- Be careful to avoid inadvertently violating Reg FD when responding to unexpected questions. This could happen if the speaker reveals material, non-public information and either knows that this information was material or non-public, or was reckless in not knowing.
- Debrief immediately after the meeting to determine whether any material, non-public information inadvertently seeped out. If so, discuss with counsel whether the company should publicly disclose the information. Reg FD gives companies up to 24 hours to disclose material, non-public information that was unintentionally disclosed to a shareholder in a private meeting.

3 The SEC's Division of Corporation Finance published Compliance and Disclosure Interpretations covering Regulation FD. These are available at http://www.sec.gov/divisions/corpfin/guidance/regfd-interp.htm. See Question 101.11 for helpful, common-sense guidance to companies and directors on how to conduct meetings with shareholders in an FD-compliant manner.

Appendix: Communicating with other stakeholders

Groups other than shareholders may want information from the company—especially on matters of interest to them. These communications are typically handled by management. Yet sometimes directors play a role.

For instance, a director might be better positioned than an executive to handle communications with key stakeholders in a crisis. We've seen directors get involved in a number of crisis situations, from environmental disasters and scandals involving executives to unplanned CEO succession issues.

PwC's *2013 ACDS* asked about board participation in communicating with stakeholders.

During the last 12 months, has your board participated in communicating substantive issues to:	Yes, and it has increased	Yes, and it has stayed the same	Yes, and it has decreased	No, but we should	No, and we should not
Employees	22%	47%	1%	6%	24%
Analysts	20%	33%	2%	3%	42%
Regulators	19%	34%	1%	4%	42%
Proxy advisory firms	16%	34%	4%	5%	41%
Media	10%	34%	3%	3%	51%

When communicating with stakeholders, like those listed above, directors need to understand how the federal securities laws apply. For example, Regulation Fair Disclosure treats analysts in the same manner as shareholders. Plus, the SEC generally views proxy advisory firms as potentially falling into the "shareholder" category because they influence shareholder voting, and in some cases, have delegated voting authority for institutional investor clients. Company communications with employees and the media generally are not covered by Reg FD, but if employees are also shareholders, the rules can get tricky if there is, for example, a proposed merger or other significant transaction that shareholders will be voting on. And there's always a concern about violating insider trading policy provisions that bar "tipping" of material, non-public information to anyone who might trade on the basis of such information, or tip others who may do so.

To be clear, director-stakeholder communications should abide by the protocols and policies for director-shareholder meetings discussed throughout this publication. That includes following the same guidelines as those governing communications with shareholders including, where applicable, Reg FD, the anti-tipping provisions of the federal securities laws, and/or the SEC's proxy rules. So, in other words:

- Avoid ad-hoc communications
- Vet messages in advance
- Understand that whatever is said to these groups will likely be published in one form or another—through traditional media outlets or through social media
- Comply with the company's policy on Regulation Fair Disclosure

What topics might directors cover when interacting with stakeholders? Depending on the stakeholder (and recognizing Reg FD, anti-insider trading, and other potentially applicable legal constraints on disclosure), topics could include:

- Major changes in approach to governance (for example, a change in philosophy regarding whether to separate the chair and CEO roles)
- A sudden or unexpected change in executive leadership
- Executive compensation
- Sustainability and similar issues that relate to the company's effect on communities and the environment, impacting its reputation as a good corporate citizen

Appendix: About the surveys and interview insights

PwC's 2013 Annual Corporate Directors Survey

Each summer PwC conducts its Annual Corporate Directors Survey. In 2013, 934 public company directors responded to the survey—70% of these directors serve on the boards of companies with more than $1 billion in annual revenue. For the full survey report, see *www.pwc.com/us/CenterforBoardGovernance.*

PwC's 2013 Investor Survey

PwC's Investor Resource Institute conducted this first-time survey in the summer of 2013. Institutional investors responded, representing over $2 trillion in assets under management. For a full report on the survey results, visit *www.pwc.com/us/InvestorResourceInstitute.*

Interview activities

In summer 2013, partners from PwC and Weil Gotshal & Manges conducted interviews with four directors, three investors, and one corporate secretary. These discussions allowed us to understand their perspectives on communications between directors and shareholders. Insights from these individuals are shared throughout the publication. We thank them for their time and candor.

About the authors

PwC's Center for Board Governance

Our Center for Board Governance helps directors effectively meet the challenges of their critical roles. We do this by sharing governance leading practices, publishing thought leadership materials, and offering forums on current issues. We also meet with boards of directors, audit committees, and executives to share our insights into significant corporate governance challenges and developments.

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