

Board Presentations and Materials – Striking a Balance



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Introduction

Many years ago I was sitting in a board meeting as secretary of a large not-for-profit corporation listening in bewilderment to the Information Technology (IT) expert explain the proposed new IT system. Eyes glazed over and heads drooped as the “expert” spent twenty-five minutes taking the board through every intricate part of the system, explaining firewalls, transaction processing systems, electronic databases and systems architecture. As I struggled in vain to keep up, my minutes were a mess of scribbles. No doubt the presenter was an expert in his field, but he was too intent on demonstrating that fact and lost his audience. There were very few questions from the board because they did not know what to ask; much to the IT expert’s chagrin and surprise, they rejected the proposal.

Personally I believe that was a good thing. It would have been far more hazardous to have rubber stamped a project they clearly did not understand. Governance history is littered with such instances. The J.P. Morgan “London Whale” incident springs to mind, when aggressive trading practices in credit default swaps resulted in a distorted market and cost the bank around \$6 billion. The financial products were so complex that the Board had little concept of the trading activities and its implications. The bank was fined by both US and UK regulators for violating banking rules by not properly overseeing its trading operations.

The importance of board materials to the quality of a board meeting is often underrated. This article provides guidance on how to prepare board materials that adequately inform the board to allow it to operate effectively and achieve the purpose of the meeting.

Effective Board Meetings

Effective board meetings clarify priorities; they allow leaders to spotlight results, highlight challenges and discuss key strategic issues. The best management teams and board members hold each other accountable and truly want to review company progress and improve it where possible. CEOs and management teams get the most out of board meetings when they arm directors with the information required to ask smart, pertinent questions.

Board meetings are most effective when organized around top priorities and issues. An update from the CEO on key

accomplishments, challenges, and how the company plans to address those challenges helps orient the board. With a holistic view of the business, the board can provide sound advice and guidance.

Agenda

Effective preparation is essential to a successful board meeting, and the corporate secretary plays a pivotal role. Creating the agenda for the meeting falls within the remit of the secretary, usually in consultation with the CEO and/or board chair. Agendas typically have standing items that appear every quarter, for example quarterly financial, risk or compliance reports. However, it is the non-routine items, often with a strategic focus, that are most important. What are the current issues that require Board discussion and possibly approval? What is coming down the tracks? What should the Board be educated on?

These are considerations when drafting the agenda. In my experience, the optimum time to draft the agenda is around a month before the meeting. This allows presenters and providers of board material to be properly briefed and have time to prepare their board reports, while retaining currency around issues that may be impacting the company. This is with the caveat that the agenda has to be flexible and not set in stone, to allow for unexpected issues that may materialize and which need Board oversight. I recall such a case in another not-for-profit I worked for, when a major contributor threatened to pull out of funding the entity unless certain concessions were made. This required the Board’s immediate focus, and all other agenda items were subordinated to the “emergency.” It happens.

The agenda sets the structure for the Board meeting. It is important for directors to know what they will be discussing, and there should also be opportunity for input from directors if there are specific areas they wish to discuss. The agenda should be a short, concise one-page (if possible) document. It should be specific and may allocate time limits (as a guide only) for each topic’s discussion at the meeting. The agenda should distinguish those items that are expected to be routine and require little or no debate (e.g. approval of the minutes from the previous meeting) often called consent items, from items that will require greater deliberation (i.e. important resolutions or strategic business decisions). In terms of order, there are different schools of thought. Some boards like to

get the routine reporting out of the way first before moving to substantive issues, other boards prefer to start with the substantive issues when they are still fresh and fully engaged. Either works, the bottom line is to have the board engaged the whole time. I once sat in (and minuted) a board meeting that lasted over eight hours. After several hours, I sensed a decline in the quality of debate and decision-making with the passage of time!

Let's briefly discuss consent agendas. This is a board meeting practice that groups routine business and reports into one agenda item. Consent agenda items can be approved in one action, rather than filing motions on each item separately. It helps to move business along quickly so that the board can move to discussing more important issues. The types of items that appear on a consent agenda may be the meeting minutes, business arising, program or committee reports, staff or committee appointments, correspondence or reports that are for information only. In principle it is good practice to move these along, especially when time is short. I have however, occasionally seen financial statements included as a consent item. In most cases this is inappropriate, as it is a director's duty to get comfort on the financial health of the company. They should challenge and ask questions to get that comfort.

My own experience suggests that they can potentially be counter-productive. They may give the inaccurate impression to directors that these matters are not for discussion and that might inhibit effective challenge. This can be addressed by the Chair instructing board members to review the items and seek clarification on any question in advance of the meeting. The person responsible for the answer can distribute the answer in advance of the meeting to avoid valuable time spent debating the matter at the board itself. Transparency and accountability are key to using a consent agenda effectively. Directors have a responsibility to read and critically review consent items and address any concerns prior to the meeting.

Board Materials

Once the agenda is complete, the next step is to arrange the submission and collation of the board materials. This is another essential component of a high quality meeting. Failure to provide adequate materials in advance of the meeting typically results in ad hoc discussions and an inability to make informed decisions (or any decisions) on important issues. A balanced set of materials that provide the salient points

and information pitched at the right level will help direct the discussion productively.

Directors have a fiduciary duty to exercise care, diligence and skill in their oversight of management or face potential personal liability. Good board presentations help directors demonstrate that they have made informed decisions, and allow them to provide management the direction they need to make better decisions for the business.

Some information conveyed to the board will invariably be of a complex and technical nature. I have seen far too many papers layered with technical information that the subject matter expert has laboured over for countless hours. They are usually full of highly impressive terminology, acronyms and rows of complicated metrics, but neglect the audience. Providing overly technical presentations with no clear message will result in the board's inertia. Directors are not necessarily technical experts in the same way and cannot be expected to absorb and understand the information to the same depth or degree as the technician. Instead the material should be understandable enough to enable them make an informed decision.

Supporting the Board

So how can we support the board to ensure that the board materials are delivered at the (i) right time, (ii) in the right format, and (iii) pitched at the right level to really support the board's function?

Timing

Generally, board meeting materials are electronically delivered. The optimum timing that my team has always worked to is one week prior to the meeting. Distribution too early risks the material not being fresh in directors' minds; delivery too late runs the risk that directors lack sufficient time to prepare for the meetings. It is important that board members be given sufficient time to read and absorb the material and raise questions.

The ability to deliver board materials electronically up to the last minute ensures material is completely up to date. However, updated material sent too late will cause board members to be unprepared to participate in the discussion around the item. Electronic delivery should not be used as an excuse for failing to meet deadlines. The discipline around delivery should be retained.

Right Format

Remember your audience. A technical paper may look impressive and show one's vast knowledge, but the board forum is no place for grandstanding. Board time is precious and the material must be concise, articulate and well thought-out.

Also, it must be clear to what is expected of the board; is it an approval item, a review or information item? This could be done in a covering memo that gives the board context for the presentation. Present data clearly – use a pictorial representation and colour-code it if necessary. Ensure the picture/graph reinforces the message you wish to convey. A visual can often have more impact and be a welcome relief to directors who may have 300+ pages of text to read in a week. Use specific figures or data to highlight your points, avoid adjectives or descriptors such as “good”; this allows for measurable outcomes. Use natural and direct language; avoid insider terminology or acronyms, unless they are defined first. Never assume the directors know the subject matter as fluently as the presenter.

If there is an item for discussion, lay out the issues for the board to facilitate an informed discussion. Consider risk and reputation issues and also consider what management is doing about it. The issues for which management requires board guidance should be a central theme of the presentation.

Right Level

A board's time is valuable. Most boards meet quarterly, usually for a few hours at a time. A presentation must get to the point quickly. The best approach is to provide a guidepost to the board by providing a summary of the key points you need the board to know.

At the risk of overdosing on clichés, the following apply to illustrate the point. If you delve into the weeds they won't be able to see the woods for the trees. In other words, present your material from a strategic, not operational level. Presenters often struggle with this because they are used to dealing with matters at an operationally complex level. They must learn to provide a presentation with clear, high level information limited in detail, yet highlighting the salient, important issues/items the Board needs to know to make an informed decision.

In my experience boards are often looking for comparators – how are we doing against plan, against last year or last quarter? What about our competitors? This can provide useful context for the board to establish trends and see where the company is headed. A metric in isolation provides no context. Is it an improvement or decline? Comparators act like a GPS for the board and provide a better idea of where the company is headed.

Electronic or non-electronic

I recall spending many happy(!) hours in the company of my colleagues preparing heavy paper board packs in a production line late into the night, usually when we were up against tight deadlines. The worst thing was to discover an error in a presentation deck, and each one of the 30 decks would have to be reprinted and reinserted into the board pack – that was even if you could get hold of the presenter to change it. I found it one of the more stressful elements of the job of coordinating and distributing board packs.

The ability to distribute electronic materials via a board portal has completely changed the landscape regarding the preparation and distribution of board packs. What is a board portal? It is a tool that facilitates secure digital communication with board members. The board materials can be uploaded onto the portal and assembled into an electronic format (usually pdf) to provide the look and feel of a board pack. The directors can access the secure site to view and download the materials or, if they wish to go ‘old school,’ they can print them. This saves an enormous amount of time (that can be spent in more productive pursuits than collating board packs) and money, and quite a few trees as well.

The more sophisticated board portals commonly have such features as voting tools (for written resolutions), a facility for the director to make notes on the electronic copy personal to his/her sign on, and provides links embedded within the agenda to quickly locate the relevant information on the item being discussed. They are designed to make the user experience for directors as seamless as possible and it certainly helps in the communication between the secretarial team and the board. I have long been an advocate of electronic board materials (partly because I never liked working stupid hours in a tedious assembly line!).

However, when I tried to introduce one at a previous employer, I was warned that it would never catch on, that certain directors would only work with paper. An understandable view, given that the vast majority of directors did not grow up with the Internet and online access. However I am glad to say that Luddite view has not really prevailed. Our board meetings now, almost without exception, consist of board members on their tablets or laptops. My observation is that it has increased engagement and consequently led to better governance. It has certainly led to greater efficiency in the production of materials, and saved time for both the corporate secretarial team and the directors, who can access their materials anywhere they have WiFi (or even offline if they download the materials in advance) without carrying around a hefty board pack.

One thing to investigate carefully when choosing a portal is the security features. Cybersecurity has been a major area of focus for the SEC, OSC and other regulators in North America for some time. Board materials may not immediately come to mind when considering cybersecurity or data security risks. It is important to develop an appropriate understanding of the security features used by electronic board portals.

From a practical perspective, you may also need to manage the individuals preparing the materials. It is often assumed that the lead time for the preparation and distribution of board materials is zero, so deadlines may be ignored. This requires careful monitoring and diplomatic negotiation with those individuals providing board materials. However, it is a minor issue relative to the benefits that board portals have brought.

The Corporate Secretary's Role Regarding Board Content

I have been asked several times before about the extent the Corporate Secretary gets involved in determining what materials go to the Board. My answer, as all good lawyers would say, is 'it depends.' An established Corporate Secretary is a trusted adviser to the Board, working closely with the Chair to ensure that the Board meeting runs as efficiently as possible within the governance framework of the company and prevailing laws/regulations. The standing and trust placed in the secretary can therefore determine his/her influence with the Chair. This is helpful in formulating the agenda, but in my view it should never be the Corporate Secretary that determines whether an issue makes the agenda or not.

However, they can suggest and provide advice to the Chair and/or senior management. For example, on issues that are coming down the tracks, or governance issues that may need discussion. This often requires a scan of the prevailing governance and regulatory environment, and its relevance to the business. These may need to be factored into the board meeting; however, in my view the process should be for the secretary to make this information available to senior management. They can better assess the impact on the business and what the Board needs to be made aware of. Although the secretary should and usually does have a rolling agenda of standing items, the executive team is best placed to know the business issues deserving Board attention. Ultimately it should be the Chair, working with senior management, who decides what is included.

Where the secretary can add value is in vetting the materials. For example, if the board is overloaded and a report submitted is long and technical, such as my IT friend's, the secretary can work with the presenter to summarise or simplify the materials

into a more digestible format. For one board I know of, the secretary makes it a rule that presenters cannot produce a deck longer than six pages. In addition, they are uniquely positioned to see all the presentations across the business spectrum, and can use this to drive consistency in terms of the director experience.

Presentation

Supporting a good set of board materials with a strong presentation is a key component of good board decision-making. If you are a presenter reading this consider the following tips:

- It is reasonable to assume that the directors have read the materials. Unless you are providing a summary, try not to read or repeat information contained in the materials. The information you provide should be supplementary to the materials provided in advance.
- Make sure that the board is able to navigate to any pages you are referring to. If the materials are electronic, as is usually the case today, you should refer to the page numbers for the materials package, not your individual report.
- If possible be there in person. It allows for much better dynamics and supports a more robust question and answer session.
- Board meetings can be intimidating. They need not be; the directors are merely trying to elicit information, not trying to trip you up. Listen carefully to the question to get at the real concern/issue before answering.
- With this in mind, try and answer questions as concisely as possible, but also comprehensively. If you don't know the answer, say so and undertake to follow up. Be respectful – neither friendly, nor dismissive. State your message clearly and simply.
- Unless invited to remain, presenters generally leave the meeting once their presentation is over.

In Camera Meetings

It is quite common for board meetings to have an in-camera meeting available before, during or after the meeting. These can be for a specific purpose or may be *ad hoc* opportunities for the board to discuss matters without officers and management present. It is likely that there are no materials for ad hoc meetings. However, where materials are provided, (for example to discuss the results of a board assessment survey), the

material should be sent separately from the main board pack. It is important to observe the necessary confidentiality so that only board directors receive this information.

Security of Board Materials – Best Practice

A key part of the Corporate Secretary's role is the maintenance and safekeeping of corporate records in accordance with the company's retention policy. In most cases the secretary is responsible for storing, maintaining, retrieving, certifying, and explaining corporate documents. This includes oversight over the length of time records are to be retained, ensuring the documents are stored in a safe place, whether documents are backed up, either in hard copy or electronically, as well as access to the materials.

A key part of this process is to educate directors on the importance of good practice in regards to the prompt disposal of board materials. This is sensible risk mitigation because board documents are unlikely to enjoy legal privilege, and all copies, including annotated (paper or electronic) could be subpoenaed in litigation. After a Board meeting, the Corporate Secretary should collect and destroy all documents distributed to the Directors for the meeting, including binder contents. The board portal materials should be removed or archived, and directors asked to remove their copies of any board materials downloaded onto their device. The process of ensuring security of materials is more effective using board portals to distribute electronic material. However, the secretary must ensure that all users of the information understand how to keep the information secure.

Conclusion

Board materials are essential for an effective board meeting. When prepared and delivered well, they enable a board to focus on and make informed decisions on critical matters facing a company.

In summary, some of the key matters to consider or oversee are as follows:

- Plan the agenda carefully to optimize time spent by directors on strategic issues.
- Consider going electronic if you are not already. It may save your sanity!
- Work with the presenters to ensure that directors receive materials that are succinct, not too technical, pitched at the right level and in a consistent format. Remember the directors have limited time to review the materials. Right timing, right format and right level of detail.
- Ensure the presenters are properly primed and prepared to deliver succinct, high level presentations that support, not repeat, their written deck.
- Have a system or protocol that ensures swift and efficient disposal of board materials following the meeting.

Management is a crucial stakeholder in achieving a successful board meeting; they should be honest, prepare well thought-out material, support plans and presentations with data, seek and solicit feedback from directors. Directors must question and challenge management and offer guidance and support. Only if all of these elements are present can there be an effective board meeting.

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