Reporting to the Board on Coronavirus
How should general counsel keep the board informed on COVID-19?

- **Update the board** on the impact of COVID-19 on company revenue and operations.

- **Discuss actions** the executive committee has taken in response to COVID-19, the implications of those actions and the board’s role in future decision making.

- **Set directors’ expectations** for communications to the board and the logistics of virtual board and shareholder meetings.
How should general counsel keep the board informed on COVID-19? (continued)

The novel coronavirus — COVID-19 — has forced companies to make rapid, high-impact decisions in response to shifting regulations and an uncertain operating environment. As these decisions are made, it becomes essential for the general counsel to keep the board informed on the basis of these decisions and maintain a steady flow of information between the board and senior executives.

In all interactions with the board, general counsel should continuously align them to the organization’s current phase of the COVID-19 response to help directors track which changes have already begun to take hold and what they can expect to see going forward.
Tracking the phases of the COVID-19 crisis: Phase 1

COVID-19 (Crisis Response)

Characterized by:

- **Public**: Voluntary/required limited mobility, income instability, focus on safety and essentials

- **Economic**: Significant contraction in growth

- **Corporate**: Supply and production disruption, employee dislocation and remote work, hiring and event freeze, reduced capital expenditures, and merger and acquisitions (M&As)

Legal-, compliance-, privacy-impacted workflows:

- Crisis response plans
- Assessing and responding to workforce needs
- Impact on business operations
- Crisis management teams
Tracking the phases of the COVID-19 crisis: Phase 2
The Effective Remote Enterprise (Restore and Build)

Characterized by:
Public safety focus, contraction in growth and operational disruptions continue

Legal-, compliance-, privacy-impacted workflows:
• Messages to reinforce integrity and privacy
• Establishing remote work and return to work policies
• Employee training and communications (virtual)
• Alternative due diligence methods to quickly onboard high-priority third parties
• Tracking rapidly changing regulatory guidance
• Maintaining employee productivity and supporting business continuity
Tracking the phases of the COVID-19 crisis: Phase 3

Cost Optimization (Rightsize)

Characterized by:
Public safety focus, contraction in growth and operational disruptions continue

Legal-, compliance-, privacy-impacted workflows:
- Enable enterprise cost containment (legal review, supplier negotiations, etc.)
- Preparing for operational impact and increased risk
- Reduce department spend (bring work in-house, negotiate with outside counsel)
- Coordinate risk management to improve efficiency
Tracking the phases of the COVID-19 crisis: Phase 4

In Crisis, Opportunity (Accelerate)

Characterized by:

- **Public**: Diminishing restrictions, possibly changed attitudes
- **Economic**: Catch-up growth in some sectors
- **Corporate**: New, emerging supply chains, hiring and travel freezes begin to lift, selective M&As, industry realignments and accelerating transformations

Legal-, compliance-, privacy-impacted workflows:

- New/revised corporate objectives risk analysis
- Support for selective M&As and other “new normal” business structures and operations
- Revision of department structure/resourcing to support new/revised corporate objectives
- Policies and procedures update for new normal
- Changing supply chain and third-party oversight
- Crisis management updates and improvements
Update the board on the impact of COVID-19

Provide the board with an update on two critical pieces of context to justify the actions the executive committee has taken so far and give sufficient background to inform decision making going forward:

- The regulatory updates that are affecting the organization’s end-to-end operations, such as local rules around nonessential business closures and social distancing that may impact regional operations, federal orders that may dictate how company resources are directed (e.g., the Defense Protection Act), and emerging regulations that could impact how and when nonessential employees can return to work and operations can resume
  - In addition to the impact on operations for the company itself, be sure to provide an update on regulations that may impact key suppliers or affect customer demand (such as, if their operations are restricted or shutdown as nonessential businesses).

- The status of financial projects and corporate cash flow, including what revenue streams have been significantly impacted or cutoff as a result of the pandemic, potential issues meeting debt/EBITDA targets, aid packages the organization may be eligible for and projections for the organization’s financial health in the next quarter and the remainder of the year
  - The CFO is likely better suited to provide this update to the board, but the general counsel should work with the CFO to ensure the message is clear and the implications are understood.
Discuss actions taken and board involvement in decision making

Drive buy-in from the board on the company’s COVID-19 response, and align directors to the executive committee’s decision making by walking through:

• The impact of COVID-19 on employee health and measures taken to protect employees’ safety, including how much of the workforce is now remote, policies for employees self-reporting of illness, measures taken to protect safety of on-site employees, processes for determining when and how employees who have been sick can return to work, resources for employees to report COVID-related issues or misconduct, and tools for connecting remote employees

• Cost-cutting measures that have been taken and their expected effectiveness, including halted business travel, expense restrictions, employee furloughs or layoffs, and paused or discontinued supplier contracts as well as any opportunities for cost reductions later on

• The legal and reputational implications of decisions made, such as labor and employment concerns of on-site employees, managing ADA accommodations for remote workers, navigating travel restrictions and stay-at-home orders, protecting employee and company information, and unemployment responsibility for recently laid-off workers

• The board’s role in supporting and pressure-testing decisions, including increasing awareness of developments in the COVID-19 situation and their impact on company operations, monitoring and testing crisis management plans, reviewing plans to protect employee health and safety, reviewing internal and external communications strategies, conducting succession planning for temporary vacancies on the board or executive committee, and increasing access between directors and senior executives
Set expectations for availability, communications and meeting logistics

Set up an infrastructure for communicating with the board and shifting key meetings to a virtual format by:

- **Deciding on a communication plan** by agreeing with the board on an appropriate cadence and altitude for email updates on the executive committee’s decisions (such as, daily or weekly updates from the CEO on operational changes and upcoming decisions that require board input) as well as how regularly to check in with directors outside of regularly scheduled board meetings (for example, weekly or biweekly to answer questions and source feedback)

- **Discussing the logistics of and setting expectations for virtual board meetings**, including the length and frequency of meetings with the full board (e.g., shortening virtual meetings, shifting to weekly/biweekly); policies for holding emergency votes when a quorum might not be attainable, and relevant state laws; what platform will be used (e.g., Microsoft Teams, Webex, Zoom, depending on group size, security requirements); how votes will take place; how board books will be distributed; and what support may be needed on standby during the meeting (e.g., IT)

- **Discussing the logistics of virtual shareholder meetings**, including what platform can accommodate enough attendees to be used to host the meeting, how votes will be conducted and validated, and how to field shareholder questions, proposals and protest votes