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Opinion

THE EVOLVING ROLE OF THE CORPORATE SECRETARY

In her regular column on corporate governance issues, Holly Gregory explores the expanding role of corporate secretaries from recordkeepers to key advisors, and shares professional development advice for corporate secretaries from Peggy Foran, former chair of the Society of Corporate Secretaries and Governance Professionals.

The steady stream of new regulatory mandates over the past several years and the related growth in shareholder power, expectations and activism have added to the challenging environment that public companies must navigate. Corporate secretaries play a critical role in addressing these challenges, with significant responsibility for, and influence on, corporate governance matters.

Under state corporate law, companies are generally required to have an officer with responsibility for recording “the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose” (*Section 142(a) of the Delaware General Corporation Law*). However, over the years the role of this officer has evolved well beyond that of a corporate recordkeeper. Today, the corporate secretary of a public company also typically fulfills the duties of a chief governance officer, regardless of whether that title is formally applied.

The role of the corporate secretary has expanded over the past decade due to:

- An increase in corporate governance-related regulations.
- The enhanced emphasis on the role of independent directors on the board.
- The growing pressures to engage actively with shareholders.

The modern corporate secretary of a public company is a key advisor to the board and management on corporate governance matters and is often the primary contact for shareholders and their proxy advisors.

REPORTING LINES

As an officer of the company, the corporate secretary is appointed by the board. However, as a member of the management team, the corporate secretary is often hired, promoted and compensated based on the recommendations or decisions of the chief executive officer (CEO) or another senior member of the management team. Most corporate secretaries report directly to the CEO or to the general counsel (or another senior officer), but also may have reporting obligations to the board.

In some companies, the corporate secretary is also the general counsel or another attorney with responsibility for advising on legal matters. However, there is no requirement that the corporate secretary must be an attorney. Similar to the general counsel, the corporate secretary must straddle the worlds of management and the board in a way that engenders the trust of the management team, while also maintaining the objectivity necessary to support the board. The corporate secretary must be viewed by the CEO and other members of senior

TYPICAL CORPORATE SECRETARY RESPONSIBILITIES

Generally, the corporate secretary of a public company will have the responsibilities set out below.

Related to the Corporate Entity

- Maintain corporate records related to the share registry, shareholder meetings and board meetings.
- Attest to certain corporate documents.
- Ensure compliance with corporate charters and by-laws.
- Manage corporate formalities of subsidiaries.
- Stay current on evolving governance laws, regulations, listing rules and norms of effective governance practices.
- Manage compliance with corporate governance-related federal and state laws and regulations.
- Oversee securities market listings and compliance with listing standards.

>> For information on forming and maintaining corporate entities, search [Corporate Formation and Housekeeping Toolkit](#) on our website.

Related to the Shareholders

- Provide notice of and organize the annual shareholders' meeting.
- Organize and contribute to preparation of the proxy statement.
- Manage stock transfers and dividends.
- Communicate with shareholders as appropriate.
- Stay current on changing expectations of shareholders.
- Support shareholder engagement on governance issues.
- Maintain relations and negotiate with proxy advisors.

>> For a Toolkit of resources to assist with preparing a proxy statement and conducting an annual meeting of shareholders, search [Proxy Statement and Annual Meeting Toolkit](#) on our website.

Related to the Board of Directors

- Provide notice of and organize board and committee meetings.

- Help ensure that appropriate matters are brought to the attention of the board.
- Organize and assist in compiling and preparing board and committee materials.
- Record and maintain the minutes of board and committee meetings.
- Support the work of the board and its committees, including by:
 - advising on governance-related matters; and
 - facilitating the flow and availability of information.
- Advise the board on corporate governance duties and practices and shareholder interests.
- Support the work of the board leader(s), including the independent lead director or independent chair.
- Support the non-management and independent directors.
- Support individual directors as requested.
- Organize and implement orientation and continuing education programs for directors.

>> For form resolutions on a variety of matters before the board and its committees, with explanatory notes and drafting tips, search [Board Resolutions](#) on our website.

Related to the CEO and Management

- Support the work of the CEO and management team in relation to:
 - shareholder engagement;
 - board agenda and information flow;
 - compliance with governance-related laws, regulations and listing standards; and
 - evolving norms of effective governance practices.
- Advise management on corporate governance issues and shareholder interests.

management as part of the management team to ensure access to company information.

MODERN CORPORATE SECRETARY RESPONSIBILITIES

The corporate secretary has a number of traditional administrative responsibilities relating to the books and records of the company, including maintaining the records of share ownership, shareholder meeting decisions and board meetings.

The corporate secretary also typically organizes shareholder meetings and meetings of the board and its committees.

In addition to these administrative functions, the corporate secretary plays an important role in ensuring that the board and its committees are positioned to effectively oversee and govern the company. This involves:

- Supporting directors in the performance of their fiduciary duties (for more information on the fiduciary duties of a board of directors, search [Fiduciary Duties of](#)

the Board of Directors and Fiduciary Duties of Directors of Financially Troubled Corporations on our website).

- Advising the board on corporate governance matters, including compliance with rapidly changing legal and regulatory requirements (for information on issues a company should consider when establishing and evaluating its corporate governance practices, search [Corporate Governance Practices: Commentary](#) on our website).
- Assisting the board and its committees in obtaining the information they need from management and key advisors.

In addition, the corporate secretary is becoming more involved in shareholder communications and engagement, and interactions with proxy advisors.

>> For information on effective proxy advisor engagement, search [Developing Relationships with Proxy Advisory Firms](#) on our website.

BOARD INFORMATION

The ability of the board and its committees to provide effective oversight and governance is dependent on the quality and the timeliness of information that directors receive about corporate matters. Boards are now required to rely more heavily on independent directors, who are corporate outsiders that by definition lack the intimate knowledge of the company that comes with being an employee or having significant business contacts within the company. As a result, boards have become more dependent on management to identify critical issues and provide the information that the board needs to monitor corporate and management performance and govern effectively.

An important part of the modern corporate secretary role involves helping to ensure that appropriate matters are on the agendas of the board and its committees, and that the directors have the information needed to make informed judgments. Because the corporate secretary is a member of the management team but is also responsible to the board, the corporate secretary is uniquely positioned to assist with the information needs of the board and, in particular, non-management and independent directors.

DISCLOSURE AND SHAREHOLDER COMMUNICATIONS

Participation in the company's disclosure process is a natural extension of the corporate secretary's role in helping to identify issues for board and committee agendas and organizing information for board and committee pre-reading materials and presentations. Assisting with corporate disclosures is also closely related to the corporate secretary's role in ensuring that key decisions are documented in the board and committee minutes. It is not unusual for the corporate secretary to participate on the disclosure committee and be involved in

identifying issues for and drafting Form 8-K reports, proxy statements and other periodic disclosures.

>> For more information on Form 8-K reports, search [Form 8-K](#) on our website.

>> For more information on proxy statements, search [Proxy Statements](#) on our website.

In the past several years, corporate secretaries have been driving efforts to improve shareholder communications, such as by:

- Using plain English to relay information to shareholders.
- Including executive summaries and charts in proxy statements.
- Directly interacting with key institutional investors.

Corporate secretaries also play a critical role in helping the board and members of the management team understand and address shareholder concerns, ranging from majority voting to political contribution policies. Corporate secretaries are often the primary contact for shareholders and their proxy advisors and are attuned to shareholder concerns about governance issues. This insight is often useful in the disclosure drafting process.

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BECOMING AN EFFECTIVE CORPORATE SECRETARY

KEY CHARACTERISTICS

An effective corporate secretary is able to combine business acumen and technical knowledge with an understanding of human nature and group dynamics. Strong communication skills are essential, and the ability to foster and maintain cooperative relationships with shareholders, directors and the CEO and other senior members of the management team is important.

A corporate secretary must also be able to maintain confidentiality when necessary and should carry out responsibilities

TOP TEN CAREER TIPS FOR CORPORATE SECRETARIES

The following career enhancement recommendations are excerpted and paraphrased from a keynote address by Margaret M. (Peggy) Foran to the Society of Corporate Secretaries and Governance Professionals' "Essentials" program in February 2012. Peggy is the Chief Governance Officer and Secretary of Prudential Financial (and also serves as a member of the Occidental Petroleum Board of Directors).

- Join and participate in the Society of Corporate Secretaries and Governance Professionals, in order to:
 - stay up-to-date on corporate governance developments;
 - interact and share experiences with colleagues;
 - get to know, and be known by, regulators, investors and activists;
 - grow as a professional by developing and participating in programs; and
 - learn about career advancement opportunities.
- Make the board and CEO look great by keeping them up-to-date on developments at other companies, and by scanning the environment for relevant information.
- Continually expand your professional toolbox by developing your skills and abilities.
- Identify exactly what your employer expects from you, behaviorally, performance-wise and in terms of professional relationships with others.
- Keep professional relationships positive and nurturing.
- Establish relationships with the people who can affect your company, the board and management, by joining organizations like CII and the International Corporate Governance Network, and by attending Institutional Shareholder Services Inc. (ISS) conferences.
- Share information about successful solutions and techniques.
- Use social networks like LinkedIn, Facebook and Twitter to follow corporate governance developments and blog activity.
- Follow international corporate governance developments, since many governance practices and policies emerge from developments abroad.
- Find a mentor (by joining a professional network).

For more information on the Society of Corporate Secretaries and Governance Professionals, visit governanceprofessionals.org.

with integrity, tact and professionalism. These qualities must be grounded in a respect for, and a commitment to supporting, the distinct governance roles that are established by law for shareholders, directors and management.

PROFESSIONAL DEVELOPMENT

To be effective in a fast-changing business environment, corporate secretaries must continually monitor new regulations and trends related to corporate governance and shareholder relations. Many corporate secretaries do so by participating in informal professional networks, including the Society of Corporate Secretaries and Governance Professionals, through which they can share information about shareholder engagement efforts and other corporate governance practices.

Corporate secretaries should also attempt to build relationships with influential members of key shareholder groups, such as the Council of Institutional Investors (CII). Frequently tracking trends and developments, including through these networks, positions the corporate secretary to provide the board and management with early warnings and insights on potential corporate governance issues. In addition, participating in networks that include influential members of the institutional investor and

proxy advisory communities offers opportunities to develop relationships that may be helpful when a shareholder issue arises.

The views stated above are solely attributable to Ms. Gregory and do not reflect the views of Weil, Gotshal & Manges LLP or its clients.