

# Northeast Audit Committee Network

October 2019

NEACN

SUMMARY of THEMES

## Privacy, disclosures, and special investigations

On September 18, 2019, members of the Northeast Audit Committee Network (NEACN) met in New York City for discussions on oversight of data privacy, trends in corporate ESG disclosure, and special investigations. This *Summary of Themes* provides a brief overview of the meeting.<sup>1</sup> For a full list of meeting participants, please see the list on page 6.

### The risks and opportunities of data privacy

Macy's Chief Privacy Officer Michael McCullough, Verizon's Chief Privacy Officer Karen Zacharia, and EY's Angela Saverice-Rohan joined members to discuss the privacy landscape. The discussion touched on several key points:

- **Emerging constraints on data use create massive compliance challenges.** Ms. Saverice-Rohan described the challenges of complying with new data privacy regulations, focusing on the European Union's (EU's) General Data Protection Regulation (GDPR), the California Consumer Privacy Act (CCPA), and pending state and federal legislation. She said, *"GDPR is the most transformative privacy law we have ever seen, with 384 requirements for companies to operationalize. There are a lot of use constraints on data with regards to individual consumer rights to access, deletion, consent, and transparency. On average, companies are spending \$7 million to implement GDPR."* Although the GDPR protects EU citizens, many US-based companies have followed its principles when designing privacy policies. State and federal legislators are considering additional privacy laws, with debates happening in at least 30 states. Ms. Zacharia explained, *"Our European footprint is mostly B2B and Verizon's effort with GDPR was probably our largest compliance effort to date. It's a mammoth undertaking for companies."* Mr. McCullough agreed, *"CCPA is the largest compliance effort we have ever had."* Companies are challenged to locate all of the data about a consumer, understand who has access to it, and remove it (when asked) within a specific time frame.
- **Generational views of privacy are important considerations.** A member asked, *"Is it possible that privacy is yesterday's issue? Younger people do not seem as concerned about privacy. Are we fighting yesterday's war?"* Mr. McCullough responded that, *"It's a logical assumption about the younger generation, but they really just treat privacy differently. They are less loyal to brands, and if you have a breach, they will punish you and walk away."* Ms. Saverice-Rohan added that although the younger generation desires personalization, *"equity and fairness"* are extremely important to them.

- **Reputational risk is a major concern.** Privacy is about more than just compliance. Members discussed the challenge of determining—in the face of rapidly changing expectations—whether a practice is socially acceptable. One member said, *“My views have evolved over time. Today, I may like this piece of clothing, but I’m not sure I would have felt that way 10 years ago.”* Ms. Zacharia said that determining if a business offering could create reputational harm is *“the hardest part of my job.”* Mr. McCullough said that he asks himself two questions before rolling out new projects: *“First, does it border on creepy and is it legal? Get counsel if you are unsure. And second, how would it look on the front page of the paper?”* Members and guests agreed that with all the new technologies on the horizon, such as facial recognition, it will be important for companies to carefully consider decisions and provide transparency with both consumers and employees.
- **Privacy is a tool for differentiation.** One result of broader attention to privacy issues is that certain features are now being considered earlier in the product or service development process. Mr. McCullough discussed the concept of privacy by design: *“We have evangelists embedded in our product teams to deal with innovative technologies where the rules of the road are still unclear. These teams go through a checklist to ensure the right privacy controls are in place from the get-go.”* He encouraged companies to form internal, cross-functional teams to evaluate potential new uses of data and technology and to make sure the privacy issues are dealt with up front.
- **Considerations for board oversight.** Ms. Saverice-Rohan emphasized the importance of understanding what your company is doing with its data: *“As a board member, understand your risk posture around privacy generally. Then as you hear about the digital transformation efforts at your companies, don’t look at this issue in a vacuum. Ask to hear about the benefits of data, some of which go against privacy. It’s important to get both views.”* Ms. Zacharia added, *“There is no one size fits all model for privacy. If it’s a Top Five risk for your company, dig in. If it’s not, you should consider your priorities specific to your company’s risk profile.”*

## Good practices in corporate ESG disclosure

Joining members to discuss their disclosure journeys were Beatriz Perez and Mark Preisinger of Coca-Cola and Yafit Cohn of Travelers. Several key points were discussed:

- **Escalating demands for ESG data prompted Travelers to overhaul its reporting.** Ms. Cohn described the deluge of requests for ESG disclosures that Travelers faced: *“In 2017, we received 55 requests for information from various rating organizations; one such survey, CDP, took 30 Travelers employees a total of 44.8 workdays to respond to. The amount of time and resources being expended was enormous.”* With respect to their initiative to enhance its sustainability reporting, Ms. Cohn said: *“We were already doing a lot in the ESG space. We just hadn’t previously taken the opportunity to collect it all and tell our value creation story in a cohesive and comprehensive fashion.”* Ms. Cohn told members that the

company interviewed half of its investor base in shares outstanding to better understand what ESG information they were interested in, which frameworks for disclosure they thought were most helpful, and what they deemed to be defining features of effective sustainability reports for investor purposes. As a result, Travelers learned, in part, *“Our investors want to understand how Travelers creates value in the broadest sense and how various operational, environmental, social and governance issues tie into the company’s long-term business strategy.”* Through a lengthy process of information gathering, Travelers then built a comprehensive sustainability site<sup>2</sup> that takes an integrated approach to reporting and includes standalone reports aligned with the SASB standards for the insurance industry and the TCFD framework.

- **Coca-Cola sees a sea change in investor sentiment on ESG reporting.**<sup>3</sup> Mr. Preisinger observed a dramatic change over the past several quarters in how investors are demanding and using ESG information: *“Many investors are integrating ESG factors into their investment calculus and are seeking more detailed and richer data to inform their views.”* Ms. Perez emphasized the importance of third-party assurance around ESG reporting: *“We worked with EY to narrow our sustainability efforts to be in line with our top 3-5 business issues, and EY assured our metrics, which led to more credibility. We also committed internally to keep these metrics and definitions the same for 3-5 years to ensure a trend line.”*
- **Consider standard setters and ESG rating institutions.** ESG reporting has yet to converge on a single set of standards. While Travelers follows SASB, TCFD, the Integrated Reporting framework and GRI, Coca-Cola uses GRI. ESG ratings also remain a work in process. Coca-Cola and Travelers agreed that there are issues with the ESG raters, including, in some instances, conflicts of interest, a lack of understanding of the company’s business, and ratings the company on issues that are not relevant to its ability to create value over time.

Our guests shared some key takeaways for members. Mr. Preisinger encouraged, *“Talk to your management teams about investors inclusion of ESG in their investment analysis.”* Ms. Perez reiterated the value of an outside consultant assuring your metrics. *“Focus your ESG efforts on what is important to the business and stop doing the things that aren’t.”* Ms. Cohn left members with this message: *“Know who your primary audience is, understand what they are looking for and make sure you are communicating with them effectively, both in your disclosures and engagements.”*

### Special investigations create unique challenges for boards

Members were joined by former US Deputy Attorney General Sally Yates, a partner at King & Spalding, for a wide-ranging discussion of board-led investigations. The meeting explored several issues:

- **Leading the investigation.** Ms. Yates said, *“Anytime you have a credible allegation that would impact the company’s reputation or brand in a way that would have a long-lasting impact on the organization, that is when you need to think about not doing it internally.”* Ms. Yates added that if allegations concern a high-ranking individual in the company, it could put the general counsel in a difficult position, so seeking outside counsel would be advisable in order to reinforce public shareholder confidence. NEACN members had questions regarding the independence of outside counsel. Ms. Yates advised, *“You need a competent firm to provide your counsel, first and foremost. If they have never done any work at all for you, great, but if there has been a little work done, it won’t be held against you. I would recommend going through the process to identify these firms ahead of time and creating a short list to use in the time of a crisis.”*
- **Managing “scope creep.”** Ms. Yates acknowledged the challenges for a board or audit committee in overseeing outside counsel: *“In my experience, boards are most likely to see an investigation go off the rails when there is no communication between the firm and the DOJ during the course of the investigation. Getting guidance from your regulator could help tailor the investigation.”* She likened defining the scope of an investigation to performing a cancer surgery: *“You go in and size the cancer and keep going until the edges are clean. Then you can talk about whether to stop or keep going.”* Ms. Yates reminded members that outside counsel is working for them and that a board should not be hesitant to engage them in conversation. *“You really do have control as the client. Have an ongoing dialogue around fees and scope, but do not micromanage the investigation because you want to maintain independence.”*
- **Contemplating self-reporting.** Ms. Yates noted that, recently, the government has made an effort to reward companies for self-reporting. She explained that *“if a company raises their hand and volunteers that they discovered something, it’s wrong, and they are working to remedy it, it sets a mindset for enforcement authority that this is an otherwise good company and it colors how the regulators look at your case. You would get presumption of declamation.”* Members were curious about timing of self-reporting. Ms. Yates said disclosure can begin without having all of the facts at hand: *“When I was at the DOJ, if a company reported an issue to us and explained that an investigation was underway, we would almost always wait, and not start our own investigation.”*

Ms. Yates left members with some advice: *“Trust your intuition. If your gut is saying something doesn’t feel right, it’s worth the time and legal fees to get to the bottom of it. Sometimes you let something go because it’s not screaming, and it turns out to be a real problem. To spend money even to find out everything is fine is worth it.”*

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## Meeting participants

- Virginia Addicott, CDW
- John Alchin, Ralph Lauren
- Bert Alfonso, Eastman Chemical Company
- Mary Choksi, Omnicom Group
- Steve Elliott, PPL Corporation
- Pat Gross, Waste Management
- Brian Hudson, Erie Indemnity
- Paul Joubert, Ares Management Corporation
- Christie Kelly, Park Hotels & Resorts
- Lew Kramer, L3Harris Technologies, Inc. and Las Vegas Sands
- Simon Lorne, Teledyne Technologies
- Gracia Martore, WestRock
- Judy Schmeling, Constellation Brands
- Alice Schroeder, Quorum Health
- Tim Yates, CommScope

### **EY was represented by the following:**

- Herb Engert, New York Office Managing Partner, EY

## Endnotes

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<sup>1</sup> *Summary of Themes* reflects the network's use of a modified version of the Chatham House Rule whereby names of members and their company affiliations are a matter of public record, but comments made before and during meetings are not attributed to individuals or corporations. Guests, however, have given permission for their remarks to be attributed. Comments by guests and network members are shown in italics.

<sup>2</sup> The Travelers Companies, Inc., "[Sustainability at Travelers](#)," accessed September 24, 2019.

<sup>3</sup> The Coca Cola Company, "[2018 Business & Sustainability Report](#)," accessed September 24, 2019.