

Corporate Governance

A Discussion with Margaret (Peggy) Foran, Vice President, Secretary, and Chief Governance Officer for Prudential Financial

Peggy Foran joined Prudential Financial, Inc., as vice president, corporate secretary, and chief governance officer in 2009. She previously held corporate governance leadership roles at Sara Lee Corporation, Pfizer, Inc., and J.P. Morgan & Co., Inc. Foran is an independent director of Occidental Petroleum Corporation and chairperson of its corporate governance, nominating, and social responsibility committee. She is also on the board of advisers of Catalyst. She previously served on the board of directors of The Mutual of New York (MONY) Group Inc. and MONY Life Insurance Company. *Directorship* magazine recognized Foran as one of the Most Influential People in Corporate Governance for five consecutive years. In 2013, *Corporate Secretary* magazine named her Governance Professional of the Year. She received her bachelor's degree and Juris Doctor from the University of Notre Dame.



Interview conducted on Dec. 17, 2013, by John Okray, chair of the Federal Bar Association's Corporate and Association Counsel Division.

Everyone has probably heard of Prudential, but can you briefly summarize the company?

For more than 135 years, Prudential Financial has helped individuals and institutional customers grow and protect their wealth. Today we are one of the world's largest financial services institutions, with operations in the United States, Asia, Europe, and Latin America.

How would you describe your role as chief governance officer (CGO) and secretary with Prudential, and your interaction with executive management and the board of directors?

Corporate governance experts often talk about the CGO role in terms of relationships. But I see it more like a triangle. The chief governance officer serves as an information source to the board, sharing information coming into the company from shareholders and other external stakeholders. I also serve as a source of information to shareholders from the board and the executive officers of the company. The chief governance officer is responsible for mechanisms that foster this communication, enable the board to understand the concerns of stakeholders, and solicit feedback from shareholders by engaging them directly. The role also involves bringing up best practices to the board, drilling down with stakeholders to really understand what is on their minds, and benchmarking against what other companies are doing in terms of best practices. Because we are a global company, we look at emerging governance practices not only in the United States, but also outside the United States, and bring them to the attention of the board.

Is a corporation's secretary generally the de-facto CGO? Does the CGO title imply additional responsibilities, or is it more symbolic of a company's commitment to good governance?

I think it is symbolic of a company's commitment to governance. Prudential was one of the first companies to create the governance officer role. Companies, like Prudential, that put greater emphasis on corporate governance, tend to emphasize more proactive and substantive engagement with shareholders, including direct communication. That is the difference. A corporate secretary can denote someone that organizes board meetings, takes minutes, and perhaps deals with the New York Stock Exchange. A corporate governance officer is generally the next tier, and a chief governance officer is the level beyond that.

What is the difference in mandates between your role as CGO and Prudential's chief ethics officer?

At Prudential the chief ethics officer role is a full-time job with global staff and a clear internal focus on doing business the right way. We take that commitment very seriously and are proud of achieving recognition as one of the 100 best places to work—a clear affirmation of our commitment to ethics and integrity. I work closely as a collaborative partner with our chief ethics officer, whose attention is really focused inwardly on our more than 40,000 employees.

What are objective measures of a CGO's success?

There are several key measures of success, including innovations in disclosure that make it easier for shareholders to find and understand information about the company, engagement with shareholders, working with the board to adopt best practices, and anticipating changes and issues. As a global company, our shareholders and stakeholders are located across the globe. We have to know their expectations, understand the trends, and continually make improvements.

Prudential's website states that diversity is an integral part of its corporate governance principles and is taken into consideration in the recruitment and nominations of directors. To this end, the board has three women, as well as directors who are African-American, Asian-American, and Hispanic, and two directors who have worked outside the United States. How has this diversity impacted Prudential?

Diversity is critical, particularly in having a range of perspectives that inform us how we operate as a company. We are stewards of pensioners' money—often for 50 years or longer. To be good stewards, we need to take into account many different viewpoints. As a board, we need people who can see things from various perspectives. Boards generally use consensus as a way to operate, and they need the best information, which in most instances, is achieved by surrounding yourself with people who have the different viewpoints and the different expertise that you need to really analyze all parts of a problem.

Prudential's website says the secretary and CGO reviews shareholder and other communications to the independent directors. The March 2013 Prudential Board of Directors letter to shareholders says that 2,800 communications were sent in over the prior year. Have these communications had an impact on the board's decision-making process?

Just like we look at diversity with our board, we also have a diverse group of individual and institutional investors. The board hears about all of the comments and letters. For the directors, this is very important information, to find out what is on the minds of shareholders.

What is Prudential's eco-friendly incentive program to encourage shareholder voting, and what impact has it had?

This is an initiative that we are extremely proud of. Prudential has a number of small investors because we are a demutualized insurance company, and in order to communicate well, you have to engage your shareholders. If shareholders are not reading the materials, they generally are not voting. We tried to think of a way to address this, consistent with our sustainability program. So our team got together and thought of a way to really highlight our sustainability program as well as try to incentivize shareholders to vote. You can pay a proxy solicitor to call someone, and for me, I usually get those calls in the middle of dinner.

What have you been most proud of during your tenure at HHS, and what is your biggest goal as general counsel?

Since the day I started at the Office of General Counsel (OGC), my most important goal has been to lead the office in doing everything we can to assist in the successful implementation of the Affordable Care Act. I'm extremely proud of the work we have done insuring that the regulations and policies issued to implement the act are consistent with the law and will withstand legal challenge. Of course, the highlight was the June 2012 Supreme Court decision upholding the constitutionality of the ACA.

I am also proud of the terrific team we have built in the OGC. I inherited a talented pool of lawyers, so I was in a great shape when I walked in the door. In addition, a number of outstanding lawyers have joined OGC during my tenure, including the deputy general counsels and the associate general counsels whom I have appointed. As a team we have been able to provide critical support to the programs at the Food and Drug Administration, including the new, exciting program to regulate tobacco products, to the Medicare and Medicaid programs, and to the truly astonishing range of other pro-

grams at the department, including programs for children, mentally ill patients, refugees, Native Americans/Alaska Natives, and many other Americans in need of health care and other services.

We have experienced great success in most of our significant Supreme Court cases. Last term alone, HHS participated in seven Supreme Court cases as a party or *amicus*, and we had a significant interest in three more. In almost all but one of these cases, our position prevailed or the Court's decision aligned with our interest. We also played a critical role during the recent government shutdown by advising our clients how to ensure that life-saving activities continued consistent with the legal requirements.

My goal as general counsel will continue to be to ensure that we provide our clients the highest quality legal services in a timely and effective manner so that their important policies can be implemented and withstand potential legal challenge. I am confident that the strong legal team we are building will continue to provide excellent legal advice for many years in the future. ☉

CORPORATE GOVERNANCE continued from page 39

Or you can try to motivate a shareholder to vote on their own and to give their opinion. The board wants that communication to find out what is on the minds of shareholders. So we developed a program that gives voting registered shareholders the option of having a donation made to plant a tree or they can get an environmentally friendly reusable bag that has the logo of our sustainability program on it.

Additionally, it has increased the engagement with individual shareholders and led to an increase in comments from shareholders and a greater participation rate to satisfy the shareholder quorum requirement. This will be the fourth year of the program, and not only has it been effective, it is also cost effective. It's a great way to get the vote, but also get the information from shareholders on what is on their minds.

Do you believe that sound corporate governance practices translate into shareholder value? Or put another way, do you believe that investors should avoid corporations with poor governance practices?

Yes, companies with sound corporate governance practices are generally committed to transparency, and this can significantly contribute to creating value for shareholders. I believe that having sound and best practices in the corporate governance area not only helps you navigate through the usual issues, but also when you get into difficult issues because you have the processes and procedures in place for those types of dilemmas.

If you could make all companies adopt three corporate governance best practices today, what would they be?

Usually the simplest concepts are the best ones. The first example is executive sessions, where the board meets by themselves, discusses the issues, and develops suggestions that go to the CEO and other executive officers. I think this has been one of the best practices that boards have adopted in the past 10 years. Some boards were not holding executive sessions, but now it is more the rule.

The second practice is transparency—writing documents in ways that people will actually understand them. I'm very proud of Prudential; we were one of the leaders in this area, creating proxy statements and other documents that shareholders could understand. They do not have to pour through a document to find something on page 72, footnote 2. Transparency is using understandable language in summary form, charts that people can understand, etc.

The third corporate governance best practice involves the skills and experiences of your board, really looking at an issue and matching it to your short-term and long-term corporate objectives so you really have the right oversight. It is important to have those skills and experiences and a diverse board with the broad range of perspectives so that you can really analyze and use consensus building to get to the right decision.

What have you been most proud of during your career as a corporate governance professional? Are you seeing any trends in the industry?

It would be increasing the level of communication with shareholders, enhanced engagement by the board, and improving the transparency and usability of information provided to shareholders and stakeholders. Boards and management have improved their connection to the mission of their companies.

Boards are really taking their jobs very seriously, and you are seeing a tremendous amount of board engagement. They recognize what their role is and how important oversight is. I think every year you are seeing more of that. For example, in the letter from the board to shareholders that starts off the Prudential proxy statement, the board is essentially giving their state of the union address, recognizing they are stewards for the shareholders and discussing what they have done over the past year. You are seeing boards generally recognizing their roles and how they can communicate better with shareholders. ☉