Temin and Company

Reputation Matters

# ANNOUNCING CEO ILLNESS

## Best Practices from Buffett to Benmosche

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Announcing a CEO's illness is never easy. All sorts of public and private speculation can follow even the most carefully choreographed announcements. The situation is often complicated by the level of severity of the illness and the personal style of the CEO affected – and exacerbated by the very human fear we all experience in the face of catastrophic illness.

This fear can often lead to a sort of paralysis in communication from the company's board as well, as seen recently in the paucity of detail from United Continental Holdings upon the sudden heart attack of its 56-year-old CEO Oscar Munoz just 37 days after he was named to the top job.

There is dramatic variation in how CEOs and boards communicate CEO health issues, reflecting the kind of differences they exhibit in "normal" situations. For instance, Warren Buffett's public announcement of his cancer diagnosis in 2012 stands in stark comparison to the way Steve Jobs chose to announce his own condition. While the circumstances were wildly different – one was serious and fatal, and the other more routine and non-life-threatening – they do bring up the question, again, of a CEO's responsibility to shareholders, employees, the board and other stakeholders, when he or she falls ill or sustains a serious injury.

Must a CEO announce his or her health problems immediately? Is the health of the leader of a public company material information? How best should the information be announced, by the board, the CEO him- or herself, the interim CEO, or an institutional message?

The timing and tenor of announcements often are determined by the type of illness or condition; how much of a surprise it was; how badly the CEO is incapacitated; and the feasibility of treatment and recovery.

When Warren Buffett announced his illness, he made a pre-emptive strike at controlling his message, before news of his cancer diagnosis leaked out and was sensationalized by the media. It worked very well. Similar cases – where an illness was seen as serious yet recoverable, with a prescribed course of treatment available – have worked equally well. JPMorganChase's Jamie Dimon took control of the announcement of his throat cancer diagnosis and treatment, and Goldman's

Lloyd Blankfein followed a similar strategy in 2015.

When AIG's well-loved CEO Bob Benmosche, who helped them recover from the crisis of 2008, announced his fatal, but not immediately so, cancer diagnosis in 2010, he did so in concert with his board. Jointly they announced that he would not retire until 2012, although an interim CEO was in place, in case it should be necessary for him to step in earlier. Internally and externally the announcement was measured, respected and believed. Benmosche continued out his term with fortitude and good will.

These types of "reassuring" announcements stand in stark contrast to the uncertainty around Mr. Munoz's sudden heart attack and unclear recovery. Understandably, in such a fluid situation, minimal information around treatment options and recovery is available, great distress to the family unfolds in real time, and there is profound uncertainty as to what to say to shareholders and the public.

**Companies must strike a complicated balance among issues of transparency, privacy, sensitivity to family requests, and disclosure imperatives when a CEO falls ill.**

The challenge for companies becomes much greater when an illness is seen to be likely fatal (as many heart conditions are perceived to be), or if the CEO's condition seems too unpredictable. This is when "worst practice" kicks in, and where companies need compassionate yet professional guidance.

Temin and Company has conducted extensive research on the topic for corporate and board clients. Up until now, there has been a widespread lack of a "playbook" or best practices on how to communicate news of a serious CEO illness.

Communication from companies, their boards, and CEOs involved have tended to be reactive, ad hoc, vague, and occasionally misleading. Employees may be left in the dark as much as the general public, and the press, acting as proxy for the public, can react with severe criticism.

Shareholder reaction tends to speak the "loudest" to companies, as stock prices can drop dramatically immediately following disclosure of bad news. Regulatory compliance raises another concern: while there is no SEC rule requiring disclosure of a CEO's health status, the agency does require disclosure when a CEO is unable to perform his or her responsibilities for a significant period of time, or, on a quarterly basis, when a company becomes aware of a risk that could materially affect operating results.

Complicating this further is the issue of the CEO's personal privacy, especially that of a CEO who has become a "celebrity": when does this leader cease to be a private citizen and become a public figure?

Here are a few strategic insights we have shared with our clients on handling serious illness of a CEO publicly:

1. **Regulations regarding public companies' need to announce the serious illness, impending death, death or unplanned retirement of their CEOs are very muddy.** The most important analysis of options has been written by Harvey Pitt, former head of the SEC, in *Compliance Week*, called "Rules for Disclosing a CEO's Unexpected Absence." There seems to be no standard for how to deal with the announcement, either externally or internally. The majority of companies, even when they "announce," do not issue a press release. Most issue a statement, often along with their 8K filings, and then put it on their websites, and give it directly to press when they call.

2. **It really is all about transparency.** Although recent legislation does not *seem* to address this topic, the new call for corporate America/listed companies to become more transparent, fueled by the economic meltdown, and ensuing corporate scandals like those at AIG and BP, does seem to indicate a greater tendency to disclose.

3. **Certainly shareholders and the market wish to see that disclosure.** However, disclosure needs to be balanced by privacy concerns, and there seem to be legal opinions as well on the privacy that a CEO must be granted in such an instance.

4. **Timing plays an important part.** Few companies disclose a terminal but largely non-acute illness immediately. In the best cases, the companies do seem to be able to take the time to do it right, strategically, and delicately, laying out the course of treatment. They emphasize succession planning, their deep bench, interim plans, and concern and appreciation for the ill CEO.

5. **When there is a cataclysmic event, immediate communication cannot cease.** An acting head must be publicly announced, even if the

organization states that the current CEO's prognosis is unclear. And periodic updates must be made. The worst instances, of course, are when companies obfuscate, lie, and/or never make an announcement at all.

**Our ultimate counsel is that a company should proceed with kindness and humanity, while guarding shareholder value, transparency and best practices.**

## COMPANIES SEEN AS "DOING IT RIGHT"

**McDonald's** – Seen as the "wake-up call" for companies (having lost 2 CEOs in less than a year), McDonald's has been widely praised for having good succession plans in place to deal with these sudden departures.

- **Communication with employees:** The company also made efforts to communicate rather transparently with employees (which would then trickle into the press). For example, after succeeding Jim Cantalupo, who died suddenly, Charlie Bell himself was diagnosed with cancer only two weeks later, in early May, and began immediate treatment. During this time, Mr. Bell communicated to employees through emails and voicemails some details of his treatment and a general positive outlook toward his recovery. While there was a bit of critique in the press that announcement of what turned out to be only his first treatment was made after the fact, the overwhelming perspective in the press and public was that McDonald's was, for the most part, open and transparent about the situation.

- **Communication with shareholders:** Mr. Bell also attended the company's annual meeting that May and reassured shareholders that his battle with cancer had not hurt operations.

- **Interim announcement:** In July 2004, two months after Mr. Bell began treatment, the company issued a press release about management changes and promotions, including an expansion of duties for Jim Skinner (who would eventually replace Mr. Bell in November of that year). This press release served as a kind of de facto announcement of the succession plan that the leadership was putting in place as Mr. Bell's condition worsened (he would die in January '05, within weeks of his resignation).

Another company that has seen positive results from their transparency about CEO illness is **Imation** – Imation received good words from analysts after promptly disclosing Bruce Henderson's treatment for a malignant brain tumor, with shares largely unaffected by the corporate announcement in August 2006.

Also, when Herb Kelleher at **Southwest** chose to disclose treatment for prostate cancer, he notoriously made quips about his illness and the fact that his staff would be disappointed that he wasn't travelling more. Upon the "bombshell" announcement that he was sick, the stock barely budged.

## COMPANIES WITH A MIXED RESPONSE FROM INVESTORS

**Sara Lee** – Sara Lee was criticized by shareholders for its "information blackout" on the state of Brenda Barnes' health as she recovered from a stroke. Nevertheless, while shares of Sara Lee did fall with the broader market drop, their shares did not noticeably dive, and larger investors defended Ms. Barnes' right to privacy.

**Lazard** – Lazard issued a statement immediately after Bruce Wasserstein's hospitalization for an "irregular heartbeat," and this news moved the stock price only 1%. Further news the next day, however, moved the stock price down another 1%, with investors starting to call for clarity about the situation. Unfortunately, Mr. Wasserstein died shortly after this announcement.

**Avaya** – The analyst and investor response to the sudden departure of Avaya's CEO was mitigated probably in large part due to their respect for how much he had grown and transformed the company during his tenure. As a charismatic leader, Lou D'Ambrosio caused "shockwaves" with the announcement, but most coverage focused on his achievements rather than stress about what was to come.

## COMPANIES THAT HAVE BEEN MOST CRITICIZED

**Apple** – While the company claimed to be open, secrecy and obfuscation did surround Steve Jobs' illness.

- **Communication with investors and employees:** Just a week after reassuring stakeholders on January 5, 2009, that his health issues were just a "nutritional problem" that he was addressing with diet, Mr. Jobs announced that he was taking a medical leave of absence. This news caused a dramatic drop in Apple share price.

- **Communication with analysts:** In a July 2008 conference call with analysts after the release of their quarterly earnings statement, a senior officer responded to an analyst's question about Mr. Jobs' health with a statement that this was "a private matter."

**Kraft** – After Kraft announced that Roger Deromedi was hospitalized with an undisclosed illness in March 2004, the company waited two weeks to provide an update to the original announcement. After an initial small drop of 15 cents, shares remained largely unchanged. During this absence, Mr. Deromedi's staff was directed to report to chairman Louis Camilleri, and eventually he was replaced by Irene Rosenfeld. In this instance, Mr. Deromedi's illness was not revealed, and was handled with sensitivity to his privacy. However, the company was criticized in the press and by analysts for their lack of transparency.

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