

Corporate Governance Perspectives from an Industry Under the Microscope

July 27, 2026 – *Dorsey Law & Policy Notebook*
by Troy M. Keller

Recap from our July 16 webinar: “Direct Selling and Good Corporate Governance in 2026”

Most corporate governance presentations follow a familiar script: recite some best practices, note how they offer legal protection for companies and boards, and adjourn. In our recent webinar on good corporate governance, we set out to do something more bespoke. We spotlighted an industry that has seen its share of regulatory attention and plaintiff suits over the years and looked to connect the dots between good governance practices and the specific challenges faced by this industry.

I was joined by two very qualified people. **Chris Martinez**, a litigator in our Salt Lake City office, regularly defends companies in the industry and is familiar with the variety of claims they see. **Dave Grimaldi, CEO of the Direct Selling Association** in Washington, D.C., is the face of the of the direct selling channel before Congress, the White House, the FTC and other relevant governmental bodies, including at the state levels.

While our focus was direct selling, we frequently found ourselves noting how these lessons apply across consumer-facing sectors.

Why governance matters before anything goes wrong

In the webinar, we noted how a feature of consumer products startups is that many of them are able to grow organically, often without outside, institutional money. That feature is relevant to this discussion, as institutional investors typically require some basic governance and compliance structures, and they also provide a degree of oversight. Without that it can be tempting, particularly in early days when a company is moving fast, to push off worrying about formalities.

I made the case that good corporate governance is strategic even when no-one is

Related People

- Troy M. Keller

Related Capabilities

- Consumer Financial Services
- Corporate Governance & Compliance
- Consumer Insights

watching. For example, a situation we see regularly is when a fast-growing company gets to an inflection point where they seek investment or a sale, but their weak governance and thin compliance programs lead to a negative impact on their valuation. During due diligence, buyers are accumulating all the issues and assessing value impacts. In particular, a buyer will look at potential third party (including governmental) claims. A quick corporate clean-up can help going forward, but often, that contingent liability historically just sits there. Investors and buyers regularly will discount a company's value or put money in a long-term escrow that otherwise would go to the seller right away.

In short, not having your house in order will cost you at strategic moments, even if the underlying risks never come to pass.

Chris made a similar point from the litigation perspective:

It's really the process that matters as much as the outcome. Having good processes where risks are brought to the board, where they're discussed, and the reasons why a decision is made is put into the minutes will better prepare a company to utilize the business judgment rule. Even if the decision ends up being wrong, that process itself can often be enough to shield the company or the decision makers from liability.

The industry-wide stakes

Dave brought another perspective that often does not make it into these types of discussions. He pointed out how governance at the company level doesn't just protect that company: it helps protect entire industries. In this light, showing a great track record across the industry strengthens Dave's hand when advocating with regulators to defer to the industry's self regulatory operation it has invested in (namely, the Direct Selling Self-Regulatory Council). Tighter governance across the sector also reduces the perceived incentives for plaintiffs attorneys, attracting fewer claims overall. He argues that good governance is an asset at all levels and is also strategic right now:

Extolling and demonstrating good governance is a very powerful defense mechanism. But it can sometimes be an offensive mechanism. . . . We are in arguably the most light regulatory four-year stretch that America has ever seen. It's not going to stay this way, and so a lot of what we're doing right now is smartly preventive. The DSA's work now is about laying the groundwork to make sure that they don't have ammunition to come at us and say, you have been asleep at the wheel.

Cautionary tales and an industry success story

We looked at some cautionary tales, both outside of the industry (Dave had some amazing insights into the FTX collapse) and within it, with Chris walking through how platform compliance failures have been spotlighted by recent FTC complaints brought against distributors. One of the Commission's concerns is companies who have

“compliance programs in name only.”

On the success side, Chris pointed to *FTC v. Neora* as “a bit of a roadmap.” When the FTC brought pyramid scheme and false income claim allegations, Neora prevailed because it had the goods: robust record keeping, sign-up data showing why distributors actually joined (overwhelmingly, to buy products they liked at a discount), and a compliance program that was enforced, including against top-of-field distributors. As Chris summarized: *“It was more than lip service, and it went all the way from the top down... It ended up giving them the data and the information they needed to win.”*

What boards should actually do

We closed with practical guidance on a few basic, best practices:

Add outside directors early. Even private and family-run companies benefit enormously from at least one or two outside directors, *i.e.*, people not on the management team and not closely tied to it. Management is incentivized to grow and take risks; that’s appropriate. But an outside perspective can say, *“I’m not personally invested in this, but I have fiduciary duties, and some of these risks just don’t make sense.”* Outside directors also provide a more independent, defensible process for boards to review conflicted transactions like CEO compensation.

Committee structure. Committees provide another layer of protection. Start with at least an audit committee that owns compliance oversight. Under the *Caremark* line of cases, complete board absenteeism on mission-critical risks is treated as a duty of loyalty problem with its attending liability for directors.

Worker classification vigilance. With PAGA litigation spreading beyond California, the structure of distributor agreements should become a board topic. Chris noted arbitration provisions as an example: *“Everybody who’s in this industry who’s worried about PAGA ought to put their arbitration clauses as a topic of discussion.”* Class action waivers can backfire when a plaintiff’s firm files 3,000 individual arbitrations, and the company bears the fees.

Board hygiene. The written record matters as much as the underlying conduct. Resist the temptation to let AI record and transcribe board meetings, as you are creating a discoverable, uncurated transcript that can be turned against a board doing everything right. One professional set of minutes, prepared by someone who knows what they’re doing, remains the standard. And Chris offered a tip for individual directors: use a dedicated email address for each board you serve on. *“It actually makes you think about whether you ought to put something in an email, and it protects your other communications in a discovery process.”*

My thanks to Chris Martinez and Dave Grimaldi for their generosity and candor. The webinar slides are available on request, and any of us would be glad to discuss these issues in more depth.

