Seeing Through the Fog

Managing a Business Through a Crisis
Disclaimer

Although the presenters are attorneys, this presentation addresses responding to the COVID-19 pandemic from an operational/business perspective. The perspectives and opinions expressed by the presenters are their own, based on extensive careers both as lawyers and as business executives, and not of Wilson Sonsini. The approaches to responding to the COVID-19 pandemic are intended to be suggestions for the intended audience of business executives, and not prescriptive business advice. There are no one-size-fits-all solutions to complex issues, and the approaches taken can and should be tailored to the particulars of each company.

Many topics covered in this presentation are subject to complex legal and regulatory issues. This presentation is NOT legal advice, and users should obtain legal advice with respect to the measures they are considering taking in responding to the COVID-19 pandemic.
Presentation Deck Authors

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GC of Verigy, a publicly traded multinational, during the Financial Crisis of 2008.

Started as an associate and corporate/securities partner at Wilson Sonsini.

GC to a number of companies – from late-stage, pre-IPO venture and PE-backed companies to large public companies – across a range of industries.

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CFO of Sonos during the Financial Crisis of 2008.

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Founded Sonos with former WS client, leaving in 2018 after 16 years and an IPO.
State of Play

The COVID-19 pandemic is an unprecedented crisis affecting people across the world.

There is a constant stream of massively important information, recommendations and governmental directives, including those that conflict with or change prior reports.

Governments around the world are responding with an unprecedented combination of public health and economic stability/stimulus measures.

Despite the rapidly evolving landscape and uncertainty, businesses—and you—need to make and execute critical decisions quickly—and be ready to quickly respond to new developments.
First & Foremost, Keep Calm and Carry On

Everyone is concerned about the health and safety of their families and friends, about how their job and financial security is being/going to be affected, etc.

No pressure, but all eyes are on you. How executives respond to challenging situations will affect how the rest of the organization responds.

Leadership is hard in the best of times...

Now is the time that you need to be at your best, to remain calm and provide steady guidance through turbulent times.
Prioritize and Delegate

Prioritize
• Be polite but prioritize with resolve
• Remember:
  • Not all questions are equally important
  • Not all questions need to be answered NOW
  • Volume ≠ importance—the squeaky wheel isn’t necessarily more important than others
• Triage. Focus today’s energy on the things that need to be resolved today and push tomorrow’s issue to tomorrow.

Delegate
• You cannot (and should not) do it all yourself and you don’t need to make all decisions
• Matters that can be delegated should be delegated
• Delegate authority with responsibility—you need to empower others to get things done where feasible

Be flexible to change priorities as changes in information or circumstances justify but... be thoughtful and deliberate about reprioritizing or nothing will get done.
Decide

New information and guidance about the virus, precautionary measures, government programs to assist companies and individuals and other matters is coming out—and sometimes changing—at a breakneck speed.

You cannot wait for perfect information before deciding/acting

As uncomfortable as it is, be prepared to make decisions with imperfect information

The default should be that you revisit prior decisions ONLY when it’s clear facts have changed and the topic merits further consideration

Apparent or actual indecision, or a ready willingness to revisit prior decisions, burns extra cycles people don’t have and can lead to paralysis
Governance – Board of Directors

The Need for Speed *Cannot Override Good Governance*

- Boards will be called upon to make significant, potentially existential, decisions including pursuing stimulus or other non-standard funding
- Boards need to be well informed (Duty of Care) and engage in appropriately deliberative and, if applicable, disinterested (Duty of Loyalty) processes*
- Create and maintain contemporaneous records of Board processes/decisions

Management Plays Key Role in Board Processes

- Don’t get ahead of your Board
  - Don’t wait to be asked: Prepare and provide information Boards will need
  - Keep Board apprised of developments and pending key decisions
- Work with Board Chair/Lead Independent Director to establish cadence for Board updates and meetings

*Work closely with corporate governance counsel on Board-related matters*
Communicate – Internal (Employee Focused)

Set the Tone
• Convey empathy
• Concern is first and foremost employee health & safety
• Acknowledge near-term concern, project long-term strength
• Foster a spirit of teamwork and let people know that the whole team is in this together

Establish Cadence
• Err on the side of more frequent updates, e.g., weekly townhall or “letter from the boss”
• Be prepared to augment scheduled communications but careful not to rush to communicate good or bad news

Be Conscious of Medium
• Email is tone-deaf and video can come across as scripted and mechanical
• Be thoughtful about both what you say and how you say it

As tempted as you are to be reassuring, don’t over promise and then have to backtrack, particularly concerning job security
Communicate – External

**Identify Stakeholders**
- Customers
- Investors (equity & debt)
- Supply Chain/Vendors
- Regulators
- The public at large

**Set the Tone**
- Acknowledge near-term concern, project long-term strength

**Set a Cadence**
- Consider appropriate cadence for different stakeholders
- Be prepared to augment scheduled communications but careful not to rush to communicate good or bad news

**Content & Consistency**
While specifics may differ, core messaging should be consistent across communications targeting the range of stakeholders

**For Public Companies:**
Observe Regulation FD
- Ensure that material information is either not disclosed or is disclosed broadly
- Work with counsel to determine appropriate communications tools
  - Press releases
  - 8-Ks
  - Website postings
  - Social Media

*As tempted as you are to be reassuring, don’t over promise*
What IS Really Important?

1. **Manage Cash**
   For many businesses the COVID-19 pandemic presents an existential threat—Survival is #1

2. **Stay in touch with Funding Sources**
   Relationships always matter, but never more than now

3. **Focus on Customers**
   Your customers may need you now more than ever and you certainly need them now more than ever

- Develop and model different scenarios, including worst case and corresponding action plans
- Identify objective factors that would drive a pivot from one set of actions to another
- Note that some actions may be taken quickly, with little preparation or advance notice, while other actions—particularly related to employment matters—require more planning and may require advance notice. Prepare in advance, or at least understand time constraints, for contingent actions
Manage Cash – Everything Should be on the Table

Consider All Sources of Cash
• Existing credit facilities
  • Revolving lines of credit
  • Other currently available credit
• Debt/equity investment from existing and new investors*
• Government stimulus
• Working capital – chase receivables, slow-roll payables

*Terms & valuations won’t be what they were before the crisis and may be unpalatable, but be realistic about funding requirements over what may be an extended period of uncertainty

Examine Every Expense
• What seemed essential pre-crisis may not be essential today
• Cut for survival but balance with need to be able to move quickly as business levels pick up
• Avoid desire to evenly distribute the pain—cutting everything X% may sound good/easy, but not all expenses are created equal
• Unfortunately, headcount has to be on the table (see next slide)
Manage Cash – Personnel Expense Management is in Scope

When evaluating personnel expenses remember that there are many tools in your toolbox*

• Suspending, or closely re-examine, hiring
• Suspending bonuses and periodic compensation increases
• Reducing compensation – narrowly (senior personnel) or broadly based
  • Employees may be receptive to broad-based reductions knowing that they are contributing to preserving their and/or their coworkers’ jobs
• Temporary shutdowns/partial shutdowns
• Furloughs; and
• Reductions in force. If RIFs become necessary,
  • Go deeper than you initially think necessary to avoid rolling RIFs
  • Treat people with dignity and make landing as soft as possible, e.g., severance, assistance with COBRA costs
  • The people who are remaining will watch how you treat people through a RIF, and their perception of that treatment can influence voluntary attrition when business cycle improves

*Labor & employment laws are highly complex, localized and in some instances being temporarily adjusted by regulatory authorities. Not all tools will be available in all jurisdictions. Work very closely with your employment law advisors as you evaluate and execute options.
Some thoughts on Stimulus Programs

Local/State/National governments around the world are implementing financial stimulus programs to mitigate the economic impact of the COVID-19 pandemic all of which are complicated, may have strings attached and will provide only limited relief

Leverage all available resources to help navigate the stimulus opportunities available to your company
• Discuss with your current commercial bank
• Get in touch with any governmental agencies with whom you work, e.g., development agencies
• Work with industry trade groups covering your industry
• Consult with your investors and outside professional advisors such as attorneys and investment bankers for advice on resources that may be available to your company


Expect after-the fact regulatory and/or private scrutiny of stimulus programs ... misrepresentations in stimulus applications may result in civil and criminal sanctions
Never Let A Good Crisis Go To Waste…

Companies across the globe have had to quickly adapt work practices to meet the challenges of the pandemic. How can you apply your hard-learned lessons to yield long-term benefits?

• How were you able to stay close to customers and vendors/supply chain partners?
• What worked and didn’t work with remote working?
• What organizational and operational efficiencies did you introduce and how can you leverage these going forward?
• What hard-earned crisis management skills should carry over into normal times, e.g.,
  • More effective prioritization, delegation and decision making
  • More effective business planning and a greater willingness to say ”No”
    to/discontinue low RoI activities

You can emerge from this better and stronger!
Like All Previous Crises, This Too Will Pass

The new “normal” may look different than what went before but the world will be more dependent than ever on people and companies providing creative and innovative solutions to challenging problems.
Thank You