Boardroom INSIDER

September 2023

RALPH WARD'S BOARDROOM INSIDER is published monthly for directors, CEOs, those who work with boards (corporate secretaries, corporate counsel, support staff, advisors), and board prospects.
P.O. Box 196, Riverdale, MI USA 48877. Telephone 1+(989) 833-7615. website: www.boardroominsider.com Email rward@boardroominsider.com

The online resource for better boards and better directors

Ralph Ward, Publisher/Editor

A "GOVERNANCE AUDIT" FOR BOARD PROSPECTS

Auditing, grading or ranking a company's corporate governance is a concept that seems obvious and valuable… and yet has proven subjective and political wherever it's done.

Certainly governance scorecards are popular worldwide. There is ***JCR-Eurasia***, and here in the US, ISS is happy to develop a "***Governance QualityScore***" for companies based on shareholder interests. ***Systainalytics*** grades global companies based on ESG, as do many others… many, *many* others. There are currently over ***600 ESG ratings*** being given in the world, though how well they look at the "G" aspect is uncertain.

There is no lack of groups scoring corporate governance, but all these report cards seem driven by specific interests and agendas. They may rate public companies by how friendly the governance is to shareholders, based on proxy voting policies, and such. The ESG ratings look far more at the environmental and social aspects, with the governance scores focused on the proxy and board items noted above, plus stakeholder issues.

Private, family and most mid-cap firms are in an even deeper governance grey zone, with limited disclosure, and hence limited ranking of just how their governance is performing. Since these firms (along with state-owned enterprises) constitute the great majority of global business, the value of most governance rankings is hobbled from the start.

Here's the biggest problem I see with report cards on corporate governance. None meet the needs of the folks with the most immediate interest -- current and prospective board members. While a director wants to know how analysts and investors gauge the company's governance, she has greater interest in how well it fits *her*. This is an even bigger concern for board seekers trying to judge whether this is a club they really wants to join.

What if there were outside, independent audits of boards and their governance focused on weaknesses and needed improvements? This would be like a board evaluation, but performed by an objective third party, and for the interest of board members *themselves*. How do company legal exposures compare to peers? What is the status of the board's liability insurance (and what gaps exist)? How effective are company financial controls and audit structures, and board oversight of these? What's the status of litigation or regulatory actions against the company, and potential director liability? How do board membership, leadership, structure, information, meetings and materials compare to best practices? Is board compensation fair for the demands?

Think of this as a director assurance audit. When you buy a property, a title company first digs into all aspects of its history -- ownership, encumbrances and liabilities. Shouldn't you do the same before joining a board?

-- ***RDW***

5 WAYS BOARD SEARCHES HAVE CHANGED

The decade of the 2020s is maybe a third over, but we've already seen at least ten years worth of change in business, society, politics, work and all the other elements of our worlds and our lives. One example -- in 2018, I published my latest book, the ***Board Seekers Guide***. But the processes, best practices (and *worst* practices) for gaining a board seat have shifted a lot over the past five years. Here are some examples.

- Board diversity has accelerated from being important to being a *must*, especially for larger, international companies. Quotas for gender and ethnic diversity on boards have solidified in much of Europe and Asia. Legal challenges have set back formal quotas in the US, but informal bolstering of boards with more women, ethnic diversity, and younger members has surged. This opens opportunities for fresh demographics, but also speeds up the pace of learning and career development you'll need to be board ready. Older, white males already had plenty of boardroom exposure by the time they made it, but if you're a younger Ms. Exec, you'll need to seek out this seasoning earlier. Volunteer for company board support roles, and seek non-profit board gigs.

- The long Covid lockdowns, and continuing remote work have hit many of the networking opportunities board wannabes enjoyed a decade ago. "Covid changed things," says Rochelle Campbell, CEO of board recruiter ***Leadership Elevated***. "We may be back in person now, but good networking takes time, even years." Sabine Dembkowski, managing partner at the ***Better Boards*** advisory firm in the UK, notes "nothing beats connections, and if you didn't keep your networks alive, that harms your chances of finding a board seat." Make a conscious effort to revitalize your personal networking with a board angle in mind, and don't just "hop on a Zoom call" if you can meet for a cup of coffee.
- The rule that a great majority of board seats are filled via social networking is still true, but the percentage going through search firms continues to rise. The number of boutique headhunters specializing in board work, and specialty board practices at the big search firms is also growing. Much of this is driven by diversity demands, which means that female or minority board wannabes should assure their headhunter contacts are aware of their board interest and skill (and that you add the specialty board headhunters to your network).
- I wrote about the value of LinkedIn and other social media in my 2018 book, but today, your digital footprint – especially on LinkedIn – has become your de facto calling card. A few years ago, no one except celebs or CEOs would hire a digital branding consultant. Now, anyone with a rising career (or who wants it to rise) is smart to tap some professional advice on assessing and improving your online footprint. This can help fine-tune and boost the elements that buff your "strong board candidate" image. "It's not necessarily the number of 'likes' you have, but showing your successes and personal impact," says Dembkowski. *ALSO* – the potential of your online trail to harm your board seeking efforts has amplified over the past few years. If a search of your name brings up an industry chat site where former employees bitched about you a few years back, assume any board vetter is going to find it too.
- Rochelle Campbell shares an added LinkedIn tip for board wannabes – "never put that you are 'Looking for a board role' in your bio. It takes a board role to get a board role, and if you're telling me you're open, you're saying that you don't know the rules."

COMP COMMITTEES – ASK THESE PAY RISK QUESTIONS

One impact of the 2008-09 global financial chill was an immediate boardroom focus on risk issues. Since one factor in the panic was company pay plans that rewarded execs for scary bet-the-company actions, regulators cracked a whip on board oversight of compensation risk issues. Worldwide, rules have pushed corporations to further disclose the risk factors in their pay plans (many targeting climate risks) In the US, the SEC issued rules on comp risk disclosure back in 2009, and tightened these as recently as last year.

So, corporate board compensation committees worldwide today must zoom in the risks they create when creating executive pay plans. How best to do this (and what could you be missing)?

- The smart committee starts by reviewing three main aspects of comp plans. First is *design* – do the structure, controls and incentives make objective sense? Big incentives encourage big executive responses – and big potential risks. "If you overleverage incentives, you're encouraging [employees] to swing for the fences," notes Charles Tharp, senior advisor with the ***Center on Executive Compensation***. Also, review of pay and incentives for the top "named executive officers" (NEOs) must be only a part of the comp/remuneration committee's scope. "Look at lower-level plans," counsels Eric Hosken, a partner with ***Compensation Advisory Partners***. "Committees may closely govern the NEO plans, but those lower in the organization just get reported up to the board." How tightly are caps, results and controls enforced on the plans of sales staff, where you face huge potential risks?
- Next, focus on the committee's *processes and governance* over plan terms and metrics. Your comp consultants should offer extensive info on best practices and medians for cash/equity ratios, incentive structures and plan designs, targeted to your industry and peers. Comp plan norms are like the financial norms for your audit committee – if you're being presented with any outliers, a yellow caution light should flash, no matter the justification. Board oversight here starts well before the committee actually vets plans. "Part of this takes place before the meeting," Tharp notes. Ask the consultant or company comp team to run differing scenarios, gauging what-could-happen. Hosken reminds you that the committee "is in a position to kick the tires and ask questions."
- Third, look closely at the *compensation mix*, and the outcomes and incentive message you're sending

(consciously and unconsciously). Straight stock options fueled much of the boom in exec pay over the past few decades, so much so that they brought their own dis- and mis-incentives. Today, "loading up on options is inherently risky," says Tharp, so expect a plan informed by the growing variety of equity vehicles, including restricted stock units, phantom stock, and stock appreciation rights (SARs). Clawback terms also need a fresh look today, with tightening rules requiring their use. Assure clawback clauses are up to date.

- Board pay itself is likewise drawing much closer scrutiny now, with its own obvious conflicts. You may not face big-money board comp clawbacks like those hitting ***Tesla***, but be aware that board pay setting today must meet the legal "entire fairness" standard – courts won't automatically defer to the board's judgment. The Tesla settlement includes a clause that all board pay must now be approved by shareholder vote… a possible future best practice?
- *PLUS* – Tharp's CEC offers a handy list of risk questions comp committee members should ask. It's available only to CEC members, but he gave me permission to cheat a bit and share these nuggets… is the compensation mix overly weighted toward annual incentives, or does it balance annual and long-term opportunities… must a meaningful percentage of incentive equity payouts be retained by participants… are comp committee discussions of plan risk issues recorded in meeting minutes (and how much oversight will it show)?

FIRST PERSON – CEOS ON BOARD (BUT *NOT* THE CHAIR)

While in the US, a combined chief executive officer and board chair is still the rule at big public companies, throughout the rest of the world, the CEO is typically just one more member of the board, with an independent chairman running the meeting. Yet we all know that the CEO is never quite just one of the directors (especially the independents). This requires a crucial, but little-explored juggling act on the part of the chief. How do you balance sitting around a board table with a group of legal equals, while *you're* the one whose work is being vetted?

To find out what works and doesn't in the boardroom for the leader who technically isn't, I spoke with a veteran in the role. ***Pat Andrews*** served as chief executive of Sumitomo Pharma Oncology from 2017 until earlier this year, and was a board member during her tenure (but not the chair). What tips does she offer on this governance balancing act?

- "To be honest, I'm always the CEO of the company, but I consider the two roles very different, like your work life is different from your personal life. But your experience brings connections between the two roles. The outside directors are essentially recipients of information, but the CEO brings perspective on it. We go through all the information and then share our views."
- [At board meetings] "the CEO is sort of like the leader of an orchestra, talking to the board members and getting their input. Maybe I've already thought it through, but we want to have their thoughts on topics, which can be very different."
- "If you're familiar with your board, their tone and work style, that's very beneficial. If you're coming into the board as a new CEO, you need to establish these new board relationships. There's a substantial amount of work in that, a lot of direct communication with the board members to understand them better. Also, CEOs should have a call with each director before the board meeting to touch on key points, one on one, so everyone is better prepared."
- "The board/CEO relationship is a critical one. When a CEO is interacting with the board, you must be honest on what works, and what doesn't. A lot of the relationship is built on trust. You have to be willing to seek and know what the board members think, and why you as CEO chose a certain path. This can fray if the roles aren't clear, of if the board oversteps. When you're a CEO on the board, you have to know where that line is."

HOW BOARD PRESENTATIONS CAN SUCK LESS

Sometimes, our Online Finds (see below) just offer so much good, relevant info that it can't be compressed into a simple hyperlink. Broc Romanek's ***Public Chatter*** blog, through the Perkins Coie law firm, is one example. It's an inside source for smart, irreverent wisdom that public company counsel, boards and leaders need to know, but too often don't. A couple of recent posts shared in-house counsel's anonymous, candid (and sometimes brutal) takes on what outside experts (lawyers, deal bankers, consultants, etc.) get wrong in board presentations. A few tidbits you'll want to remember…

- "We like our speakers to be low ego. Focused on what the board needs, not self-aggrandizement. Able to adjust to audience on the fly. Good listener. Able to really hear questions and reframe for maximum education… The kiss of death is when a speaker is a narcissist. I don't say that flippantly. We have all seen it. It does not end well."

- "Prep is critical for board presentations. It should align with the board's goals for that meeting. The CEO may have a few more goals. Work with an expert to ensure they understand your goals. They may have good insights regarding an approach and content based on their experience."
- "A speaker doesn't work well who has not presented to the board, who doesn't understand that what they are talking about is not the most important topic in the world, or is not able to be sympathetic to the reality that board members are sitting through 8 hours or more of meetings for 2-3 days, and so they appreciate brevity."
- "If you have 30 minutes allocated to your presentation, then half that time should be kept open for questions. Make high level points only – do *not* get in the weeds. Anticipate questions. It is not a good look to not have a quick answer to everything that is asked. Don't BS. If you don't know, just say you will get back to them after the meeting."
- "DO NOT READ THE SLIDES YOU HAVE PREPARED!!! Always assume that the board has read your slides. Remember, the board members will be sitting through a lot of content besides yours."

Q&A: The Big Move Up to a Public Company Board

***Q**: My career background is in corporate finance and investor relations, and I'm currently a corporate vice president. Over the past several years, I've served on the board of a joint venture for my company, as well as a venture-backed startup in our business sector. I believe that I've built a solid board portfolio with private companies, and would like to seek my first public company board role, but I know that's a big step up. Any tips?*

***A*:** You're right in thinking the move to a public company board is a big competitive leap. Step one is to put pen to paper for a strong vitae of your current board experience. Too many board wannabes limit this to the name of the companies, board tenure, and a few of your generic learnings ("Strategy… Financial Oversight").

Instead, dig in and spell out specifics on your committee service (bonus points for committee chair roles), and major wins during your tenure (new funding rounds, leadership changes, turnarounds, product rollouts, new markets, etc.) Numbers are as important in telling your board story as on a career resume – investments raised, revenue increases, market share growth, etc. Also, show your personal *board* input on making the magic happen. Did you act as the connection with a major investor? Did you take the board lead on hiring a new CEO? Tell a story of achievement, with you front and center.

But you'll need more to gain the attention of a public company board. Now go back and inventory your career skills for touch points that address specific *public* company needs. "Be very clear on the skills you have and why they apply to public companies," counsels Alyssa Gelbard, founder of ***Point Road Group*** exec branding experts. Private company board status is more advisory, while on a public board you must be more of a monitor, so your skills should tell that tale. Serving on your current boards' audit committees (or career audit experience)? "Play that up." Dealing with compliance, regulatory and public market matters is your new currency, so dig for all your expertise there.

How about your own board search strategy? Look over your networks with an eye toward "those who are directly or indirectly involved with public company boards," Gelbard suggests. You already know that a general "I want to get on a board" pitch doesn't work for board seekers, but this applies even more for the move up to public companies. Target specific sectors and companies, and do a deep dive on their board members, top team, and contacts in your networks.

Finally, give yourself a reality check on whether you're ready for the added time, effort, and liability that go with public company governance. "Think twice before you do," notes Gelbard. "There are a lot more dangers and potential conflicts."

BI ONLINE FINDS – 9/23

- Preparing your board search effort? Be ready for the challenges of the board interview process. Here's a helpful cheat sheet – The Board Appointments Group in the UK shares the ***6 types of board interview questions you should expect***.
- Speaking of board wannabe tools, if you're quick there's still time to register for the University of North Carolina Law School ***How I Got My First Board Seat*** Zoom webinar, set for September 6 at 4pm US Eastern.

COMING IN *BOARDROOM INSIDER*

- *REVIEWING DISCLOSURES – STAY OUT OF TROUBLE*
- *BOARD WANNABES – WILL ONLINE SKELETONS COME BACK TO HAUNT YOU?*

Ralph Ward is author of the books *BOARD SEEKER, BOARDROOM Q&A, NEW BOARDROOM LEADERS, SAVING THE CORPORATE BOARD, IMPROVING THE CORPORATE BOARD* and *21st CENTURY CORPORATE BOARD*, and a speaker on corporate board issues.

For the latest ***Boardroom INSIDER*** updates, follow us at:

BI Database Hot Search Topics

Subscribers to Boardroom INSIDER gain free access to search and download reprints from our thousands of back articles (***visit here***). This month's hot boardroom search topics: ***agendas; CEO, calendars; audit***