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FOR (AND AGAINST) BOARD TENURE LIMITS

Among those of us involved in board and governance issues (it's more interesting than it sounds), a topic that's seen increasing discussion is board tenure. Average director tenure at Fortune 500 companies is now something like 8 years, which is longer than these companies' average CEO tenure. Once someone is elected to a board, he or she pretty much stays there.

Observers generally find long board tenures a negative thing overall, and there's a collective push for greater board refreshment. But the reasons differ by their agendas. Advocates for board diversity point out that these long-term board members are usually pale and male… along with being stale, the reason they need to move on. A bottleneck of older guys leaves too little opportunity for rising women, a concern faster turnover could address.

For governance activists and many academic observers, the issue is director independence. After 8, 10, 12 years, independent outside directors will lose objectivity. They increasingly see the CEO and management as "their" team. How do you honestly monitor a CEO who you helped nurture and hire? How tough can you be in vetting a strategy that you helped develop from its beginning? Some countries and their securities regulators have set a scale for tenure, and after so many years a director may still meet all other tests of independence, but will nonetheless be considered an insider.

A more recent concern has been raised about the most obvious side effect of long board tenure -- director age. Numbers from the ***IRRC*** find that the share of 70-plus directors in the S&P 500 rose from 11.7% in 2008 to 18.6% in 2016. The result is many directors out of the loop on new tech and business model ideas. Growing time demands of board seats are also a factor. Business folks with "retired" and "former" in their titles will have more time for boards -- but also have knowledge past its sell-by date.

In the end, these objections may not make much difference. Younger, fast growth and venture companies tend to churn their board membership much faster. Closely held or family firms have directors with personal skin in the game, no matter their tenure (and they're not going anywhere).

There is one defense of long board tenure that doesn't seem to work, though. Some say "why should we retire this great talent just because of how long he's been on the board?" The best reply is that there are several younger (and possibly better) talents waiting to take his place.

-- ***RDW***

5 TIPS FOR SMART SUBSIDIARY GOVERNANCE

Creation of subsidiaries is a handy tool for corporations. You can specialize operations, gain more freedom to operate in foreign countries, craft joint ventures, all while limiting your parent company liabilities. But smart, independent corporate governance of the subsidiary is crucial to easing those liabilities, and there are too many ways parent companies can fumble this challenge:

■ "A lot of companies set up a subsidiary for a purpose, but then kind of walk away from the details of governance," notes Paul Marcela, president of outside corporate secretary service provider Governance Partners Group. "That can be a trap for the unwary." A plaintiff will not only claim misdeeds by the subsidiary, but try to prove that it wasn't really independent from the deeper pockets of your parent firm. Does the board look just like that of the parent company? Does it meet at the same time and place? Are proper board agendas written up, and proper minutes kept? "Follow the formalities," counsels Marcela.

■ As this suggests, boards of parents need to stay in the sweet spot between poking their fingers into subsidiary governance -- and being too hands' off. Make review of subsidiary governance and results a regular agenda item for the parent board. If more than one subsidiary is involved, decide which require the most oversight, and allot board time to suit. In the latter cases, build in periodic review of your overall subsidiary structure and relevance. A legal entity may have been created in the past and since forgotten -- until it becomes a window of liability.

■ When selecting board members for the subsidiary, use care to assure skill and the proper distance. As noted, if the board looks exactly like that of the parent company, it's not only harder to claim independence, but you're missing an opportunity to craft a board that best suits the subsidiary's needs. The board chair need not be the separate's entity's top officer, for example. Consider adding outside, independent directors who can bring needed experience and connections (this can include execs from the parent company who may not work for the subsidiary). Finally, assure that all board members are trained on their fiduciary duties as directors for the entity, as well as good board procedure.

■ Governance isn't simple even when the subsidiary is wholly owned by a parent company. It grows even more complex when it's a joint venture or similar structure with multiple owners. Start out with strong, detailed ground rules on such things as who keeps the corporate documents, who gets board representation, and who gets to appoint leadership, the various VP's, the entity's secretary, and other offices. Spell this out going in, when all sides (presumably) are in a friendly mood. "As time rolls on, the venture partners may not get along, and there will be a diversion of views," warns Marcela.

■ *PLUS* - The Society for Corporate Governance has a ***page*** of good resources on subsidiary governance issues, many available to non-members.

FAMILY BUSINESS BOARDS - PICKING YOUR NEXT GENERATION

"Family business" and "corporate governance" are often viewed as contradictory terms, and the clash is most apparent when it comes to a company's boardroom.

We've written in the past on the importance of sound, professional board structures and procedures for the family company, and the value that an outside non-family director can bring. But one element is often overlooked -- how do we decide who from *inside* the family is chosen for the board? What qualification process should we use, and how do we navigate the politics involved?

■ Start with structure before thinking about candidates. Family businesses thrive on informality, but a loose system for deciding who among the next generation or the cousins should join the board is a recipe for feuds. Step back a moment to look at the boardroom structure you have in place. Assuming that you've learned the value of good practices like agendas, minutes, proper meeting and such, why not also add a proper board committee structure? Usually this starts with an audit committee, but to help you choose next gen directors, form a nominating committee. This need not be limited to current board members, and can include company HR or other talents. Put the committee in charge of planning goals of board succession, skills sought, talent development, and preparing recommendations. For smaller firms, Mike Fessler, a principal at the ***Family Business Consulting Group***, suggests a separate "family owners' group, or family counsel."

■ After structure, get the processes right. Your nominating body needs to assure a transparent, objective process for developing and winnowing family talent. Discussions on board succession should be open to the family, and well minuted. Building a solid, fair process means that, even if someone is not happy with the outcome, they should have no reason to kick at how it was reached.

■ Even in smaller family firms where there may be a consensus board candidate, a proper vetting procedure and requirements for business literacy, outside training, and governance knowledge will keep the process objective (and improve overall board quality). Set benchmarks of experience (years in the business, knowledge in particular sectors, education, and so on). Make sure these qualifiers aren't crafted to tilt the decision toward (or against) particular candidates.

■ Family board selection is often based on family politics, along with business acumen and involvement. But *also* mandate some seasoning in the boardroom. "Look for wide experience in training, serving on an outside nonprofit board or family council position," Fessler suggests. Actively assist family board candidates to gain roles on the boards of nonfamily companies. This broadens their experience, and gives them fresh ideas they'll bring back to the business.

■ "One thing that's *not* healthy is allotting family board representation based on family branch," warns Fessler. This "tribal" approach nurtures "Us vs. Them" grudges, moves the process away from quality into bloodlines, and can create further squabbles *within* the branch as to who should represent them. Less dangerous (but a common family business misstep) is to treat board succession planning as identical with *management* succession. A family member in line to be the next president should also be groomed for board duties, but family on the board and family in the office need not all be the same.

■ Board refreshment can be a family business issue a fully as for public companies, especially if a younger generation is rising. Fessler suggests term limits and regular rotation policies for your board as a way to give new blood a say in the company, and help season them for future roles.

4 BOARD WANNABE TIPS FROM A GOVERNANCE PRO

My new book, ***Board Seeker***, offers a step by-step plan for launching your boardroom career and, as the author, I advise that you buy at least a dozen copies. But there is some good board wannabe advice that didn't make it in time for the book. Donna Hamlin, CEO of the ***BoardWise*** governance consulting firm, is one of the sources I cite often in *Board Seeker*. She recently shared a few late-breaking tips on gaining that first board seat:

■ *Health care?* "The American Nurses Association announced a couple years ago its mission to get 20,000 nurses on boards by 2020. They set up a ***non-profit*** dedicated to this and are working placing nurses in this US market."

■ *Back to school?* "Another angle in landing a seat we've found helpful is to get on a university board of trustees. For some reason, people see this as more comparable to public boards. It increases the likelihood of getting a larger company board role (far more so than serving on a large non-profit)."

■ *Focus*. "Going wide is only one approach. Another is to 'go narrow.' We have a client who comes out of the upstream side of oil and gas. He decided he wanted to get on a board. Instead of looking in his own industry, he studied businesses ancillary to his to identify those who would need his expertise (e.g., supply chain businesses). He researched the businesses and their boards, and short-listed the top 5 where he felt his expertise would best complement the backgrounds of the directors. He wrote 5 one-page letters to make the case as to why he felt he would make a difference. He got 5 offers!"

■ *Look in the mirror*. "Take time to: (1) Assess your board readiness, and (2) Discern and differentiate yourself based on your problem-solving orientation and board style. This is a way to distinguish yourself."

SHOULD BOARDS USE NONCOMPETE AGREEMENTS?

The use of "noncompete" agreements has spread broadly in the business world, from top execs, to sales people, to tech talents, and even janitors, according to a ***USA Today*** article from last year. (However, courts increasingly give them a skeptical eye when "unreasonably" broad). But who else holds the keys to your business, including strategies, future plans, pending markets and new technology? *Board members*.

Despite this ultimate insider knowledge, noncompetes are "nontypical in a board context," notes Mike Freed, a shareholder/partner specializing in the issue with law firm Gunster. Both the fiduciary duties of loyalty and of care require a board member to put the interests of the corporate entity ahead of his or her own. Courts and regulators take these duties seriously enough to dissuade anyone except the most incorrigible director from cheating (and making a noncompete redundant). Yes, there may be exceptions, but…:

■ In the venture capital and private equity worlds, partners who serve on the boards of the companies they hold are mingling with lots of different firms, investments, networks, etc. There are no doubt risks of a partner poaching a talent from Company A to another of their investments (Company B). But again, these investors run a real risk of legal liability for such mischief. Further, who exactly would make the partner sign a noncompete -- their own venture firm?

■ Other types of corporate entities can also face noncompete issues with their board members. In health care and other fields where group practices and providers are continually forming and re-forming alliances, a director could well be a member of your board today, and a competitor tomorrow. However, these board members are inevitably officers or owners of the enterprise as well. They likely *do* have noncompetes in their legal paperwork -- just not for their capacity as a board member.

■ There could indeed be cases where a member of your board of directors leaves the board, and later puts knowledge or opportunities gained to work for his personal interests. But members should have signed off various confidentiality and conflict of interest statements when joining the board which address this behavior. There are also common law tort provisions on anyone exploiting trade secrets learned for their own benefit.

■ *Summary* - asking your board members to sign a noncompete as part of their board role is likely overkill.

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■ Over the years, I've preached about the dangers director note taking can create for boards and companies, but such Fear of God liability sermons are always most effective when delivered by legal counsel. David Katz and Laura McIntosh of Wachtell, Lipton recently wrote an excellent ***review*** of this and other dangers of board materials for the Harvard Law School blog.

■ Richard Winfield's Director's Academy in the U.K. offers an excellent guide for board wannabes, a checklist of things to ask and consider before joining a board. Though some of the material is specific to Britain, there are plenty of good due diligence items that belong on a boardroom checklist anywhere. Click ***here*** to get your free copy.

■ The value of social media in your board wannabe effort has exploded just within the last couple of years. Good wisdom on using online tools for seeking a board seat is increasing daily. Here are some ***helpful tips*** on crafting your LinkedIn profile for career success that also helps build your boardroom vitae.

Q&A: Am I Irrelevant on This Board?

Q: *I'm an attorney, and have served as an independent board member with a major community foundation in our state for the past 10 years. I joined this indirectly -- I was on the board of an economic development group, and was asked to represent them on this board. A merger between ours and several other ED groups lead to me losing that board role several years ago, however. I'm still on the board of the community foundation, but frankly feeling a bit stale. I don't have any real constituency to represent now, and it seems like all I do is show up and vote "Aye." The foundation still seems to still value my membership -- but is it time for me to move on?*

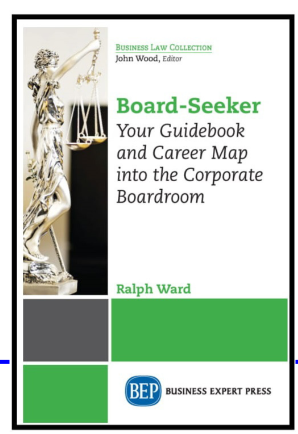
***A*:** Long-term board roles can indeed lead to staleness. Particularly in the nonprofit or governmental sector, there may be limited strategic input needed from the board to implement policies. And if yours is a constituency board, *without* that constituency you may well feel irrelevant.

Not standing for reelection could seem like your next step, but do up a checklist before deciding. First, does this foundation board need people who represent specific sectors… or does it seek directors with knowledge, connections and commitment, no matter their constituents? What value do you bring to the board table aside from your departed economic development group? What about competition? Is a seat on this foundation board sought after among talents in your area, or does the foundation struggle to recruit members? If the former, yes, maybe rotating off to allow new blood could be beneficial.

However, the irrelevancy you feel may be of your own making. Are you still on the same board committees you started with? Could you chair any of them? Have you offered to lead up new capital campaigns, outreach efforts or other moves? How much do you network with your fellow directors (and are you ignoring personal and business opportunities)?

For that matter, have you discussed your feeling with the board chair? Lunch with the chair could clarify some of these points. Maybe you'll receive the message that it's time to move on -- or you could get a plea to stay.

MY NEW BOOK FOR THE "BOARD SEEKER"



My new book, ***Board Seeker****: Your Guidebook and Career Map into the Corporate Boardroom*, will be published in July by ***Business Expert Press***. Over the past few years, we've developed a lot of great information to help the executive "board wannabe" turn hopes for a board seat into reality. Now, I've collected and expanded on these insights to develop a road map for your board search. The link above has more detail, or check out my ***video*** introduction.

Stop by the BEP website for pre-order info, or ***email*** me for details.

COMING IN BOARDROOM INSIDER --

- *THE NEW GOVERNANCE DO'S AND DON'TS FOR AN IPO*
- *BOARD WANNABES - TRY THESE FRESH APPROACHES*

Ralph Ward's upcoming Boardroom Masterclass and speaking engagements:

Our April Boardroom Masterclass session in Chicago for Marcus Evans was a big success! Lots of great idea sharing! Be sure to visit the link below for more information on bringing the Masterclass to your boardroom.

June 2018 - Keynote speech, TRSA Leadership Summit, Chicago.
November 2018 - *BI* Masterclass for the Campden Family Business Conference, London. ***PENDING 2018 DATES*** - For India, Pakistan.

Visit the ***speaker*** page on the *Boardroom INSIDER* site for links to keynote speech videos, and also my listing on the ***eSpeakers*** site.

RALPH WARD'S BOARDROOM INSIDER is published monthly for directors, CEOs, those who work with corporate and nonprofit boards (corporate secretaries, corporate counsel, support staff, and consultants), and those who are board prospects.
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