Modern Corporate Directors

A Discussion with Steven Walker, General Counsel, Secretary, and Head of Board Advisory Services at the National Association of Corporate Directors

Steven Walker joined the National Association of Corporate Directors (NACD) in 2009 as general counsel, secretary, and head of board advisory services. He consults extensively with board leaders and C-suite executives on strategic governance matters, ranging from start-ups to Fortune 10 companies. His previous roles include serving as general counsel of Caraco Pharmaceuticals Laboratories and of Alderwoods Group and as an attorney adviser in the U.S. Securities and Exchange Commission's (SEC) division of corporate finance. He received his B.S. and J.D. degrees from Florida State University.

More information about the National Association of Corporate Directors can be found on its website, www.nacdonline.org. Interview conducted by John Okray, chair of the FBA Corporate and Association Counsel Division.

Can you tell us about the NACD, its history, and what Board Advisory Services is?

The NACD was founded in 1977 as the only national membership organization created for and by directors. Today we have more than 14,000 directors and key executives from public, private, and nonprofit companies around the United States and the world. We assist them in board development, director education, governance, resources, and networking among directors. Our mission is to advance exemplary board leadership for directors, by directors; we deliver the knowledge and insight that board members need to confidentially navigate complex business challenges and enhance shareholder value. We amplify the collective voice of directors in setting substantive policy agendas.

The Board Advisory Services is the group within NACD that customizes director education and delivers it in the boardroom of our member clients. We use active, seasoned directors as faculty facilitators and work with our clients to come in and deliver customized education, evaluation, governance, audit, and other services for our clients based upon their specific needs and challenges. We work on more than 100 engagements per year with clients ranging from family-owned businesses to the very top of the Fortune 500. As head of Board Advisory Services, I have the opportunity to work on nearly every engagement from a consultative stance with the clients to determine their strengths and challenges. I then make recommendations for developing an educational-based solution, either in the form of strategic education or board evaluation followed by training that includes concrete action steps toward strengthening board and senior management relationships.

You have been working with boards in different capacities since 1994. How would you compare the typical board from 20 years ago to today?

There has been a slow evolution in the boardroom. Directors traditionally were friends, acquaintances, and former colleagues of the CEO who basically provided a sounding board with very little push back in the way of real constructive tension or independent thought leadership. In 2009, the SEC implemented the proxy disclosure enhancements that require companies to provide more detailed information about individual directors' skill sets and qualifications to serve on the board. We have seen a real movement from more passive boards to what we would define today as truly strategic asset boards.

What I mean by strategic asset is boards today are more and more looking for individuals who bring unique insights and strategic skill sets. They are seeking people that can enhance the organization's ability to not only achieve its strategic goals, but also assess risk and provide constructive tension to the leadership team in order to meaningfully strengthen the company's future.

We are encouraging boards to develop skillset matrices whereby they identify the top categories of types of individuals they need in order to move the company to the next level and also to gauge their current directors' skills on an ongoing basis against those ideal characteristics. For instance, a company may have been in business for 100 years with one particular product line that has flattened out in its growth. This may cause the company to seek opportunities to diversify its product line. As a result of diversifying its product line, there may be an immediate need in many cases for a new CEO to be put in place. That CEO really needs individuals around the table who are familiar with the new and diversified industries that the company is engaged in and to bring new insights and thought leadership to the boardroom.

When such an event happens that requires adding new directors, how is this achieved, through immediate turnover, retirements, expanding the board, etc.?

For a public company board, you typically have a nominating committee, a governance committee, or a combination of the two. That committee is traditionally charged with nominating and evaluating board members and also conducting all of the oversight of the governance of the board and its functions.

What we are seeing more and more of today are nominating committees being more thoughtful and forward thinking in providing and constantly updating the pool of potential director candidates whose skills and attributes match the skill sets analysis and matrix that they have established. We are encouraging boards on an ongoing basis to constantly update their skillset matrix and seek candidates, because in many cases, it can take quite some time before they find the ideal candidate who not only fits what they are looking for, but who also is willing and able to come on as a board member.

In cases where you have a board that has been in place for more than 10 years, we are encouraging them to perform, at a minimum, annual board evaluations. We further recommend that every other year or every third year that the board conduct peer and self-evaluations, where directors evaluate themselves and their peers based upon the parameters, skills, and performance measurements needed for the current corporate strategy.

On that point, the United Kingdom has a corporate governance policy whereby if directors have served continuously for more than 10 years, they may be considered non-independent, and a board should assess this presumption.

Generally speaking that is a prudent practice. There are exceptions, such as certain board members who provide true value beyond 10 years of tenure. However, the rule of thumb typically is, once someone has been on a board for 10 years, it is time to assess whether or not he or she is truly still independent and also whether he or she is bringing the necessary and unique skills and questions to the table that are desperately needed in today's competitive business landscape.

How would you describe an ideal public company director in today's environment?

First, an individual must have the time and desire to devote a considerable amount of energy getting to know the company, gaining a reasonable grasp on its business lines, products, or services. Individuals should have leadership capabilities, extreme integrity, independence, and willingness to speak their mind respectively and productively. They should not be afraid to provide constructive tension and question management and board leadership in order to provide and enhance creative thinking and interaction around the boardroom. Directors must also be able to work collaboratively.

It is very critical that individuals understand their role as a board member versus perhaps their former role in the C-suite as the CEO or CFO or other senior executive of an organization. They really need to understand they are transitioning to a board member role and they have to take off their former C-suite executive hat. They can still use their knowledge and the unique skills they bring from having those roles and responsibilities, but being a board member truly is a very different role, and they need to think in terms of the collective good of the organization and what their role and fiduciary responsibilities are as a board member in comparison to their previous role as an executive.

More and more, the ideal board member brings a unique industry insight or skill set, i.e., financial expert, technical expert, or international trade expert. In today's environment, it is helpful to have expertise in e-commerce or cyber issues and experience creating and driving strategy. If the company has an international footprint, it is beneficial to have directors who have actually lived, worked, and managed organizations overseas, not simply visited, so they can bring that truly hands-on experience to the table. Furthermore, we are seeing more company exposure to Foreign Corrupt Practices Act violations, so it is very helpful to have directors who have been involved with these types of compliance issues so they can assist the company both in terms of responding if needed, but also in prevention.

Are attorneys generally considered good candidates for becoming corporate directors?

I have the privilege of speaking around the country 25 to 30 times per year, and several of those engagements have been to private attorneys, law firms, and in-house attorneys who aspire to serve as corporate directors. The first thing I tell them is, it will be the very rare occasion when you will be selected to join a board by virtue of being a lawyer. The education is, of course, invaluable. However, traditionally and unfortunately, still in today's current environment, lawyers have a handicap because they are perceived as very conservative and always looking to take an overly cautious stance since their professional roles have often been about prevention and preparing for worst-case scenarios. Therefore, many board members have the misperception that lawyers come in immediately looking for reasons for why you should not do something rather than why you should.

My advice to all lawyers is, you need to draw upon the instances in your career where you were actively engaged in strategic planning thought processes. As far as in-house lawyers are concerned, I know I have always made a point of being very engaged in strategic planning and business development and being an integral part of those processes so that I'm seen as a team member. I have been involved in mergers and acquisitions and business combinations and have been thought of more as a business person who happens to be a lawyer rather than vice versa, which is helpful for aspiring director candidates.

There was a recent study conducted by Cornell School that found boards with lawyer-directors typically outperformed their peers. As you described, it showed that corporate risk taking appeared to be more measured, which may have helped companies avoid legal, regulatory, or reputation risk problems.

Having advanced education, a broad background, and exposure to business transactions and/or regulatory experience are all seen as positive attributes. Many general counsels have become CEOs, especially in highly regulated industries, because it is critical that companies be attune to their regulators and the regulatory environment. However, becoming a board member is a very different role—so my advice to lawyers seeking to become directors is that they really focus on where they have truly been engaged in the business. I have even had client companies tell me that before they will make an attorney general counsel, they will actually send him or her out into a business unit to run it for three to six months. They want the future general counsel to be sensitized to the business and the challenges of profit and loss responsibilities. For example, in my role heading up NACD's Board Advisory Service, it is akin to running a small law firm that goes out and provides customized governance audits and other services.

How should a board measure its own effectiveness and the performance of individual directors?

I will be going to Miami, Fla., next week to participate as a faculty member in our Director Professionalism Program. This program could be described as a foundation course or boot camp for new board members to truly understand what their roles and responsibilities are. My experience with the NACD over the past five years is that the vast majority of even seasoned directors never received any formal training on what their true roles and responsibilities were unless they took a course like NACD's Professionalism Program or Master Class. We have a membership of 14,000 directors, and only a percentage of those have taken our courses, so you know there are still tens of thousands of directors who have never received formal training and do not have a true appreciation for their roles and responsibilities. Board members and management teams are trying to balance out their responsibilities and roles and finding a really good mix. I look at it as a tune-up between the board and the management team on how much is enough oversight versus how much is too much. We have a saying at the NACD called "N.I.F.O.," which stands for Noses In, Fingers Out. In other words, board members should stick their noses into the business, but they should keep their fingers out of the business. They are there to provide counsel, strategic advice, and risk oversight and perform their fiduciary responsibilities, but they are not there to run the operations of the organization.

NACD's Directors Professional course is for new and aspiring directors and seasoned directors who need a refresher. Our Master Class is for more seasoned directors who want to network with other experienced directors and talk in detail about leading issues of governance around committees, strategy, and risk and look at cyber security and other cutting-edge topics that are being faced by board members today.

As a program faculty member, I also lead a breakout session for the nominating and governance committee chairs and members and talk to them about the importance of board evaluations and director self- and peer evaluations. The NACD encourages boards to consistently conduct evaluations of their performance, meaning that after every board meeting and executive session, the board should ask itself a number of questions for at least 5 to 10 minutes. How did the meeting go? Did we follow the agenda? Did we get full participation by all board members? Were the management team presentations crisp and precise so that we were allowed plenty of time for discussions of strategy and potential risks associated with the business plan? Therefore, the board is constantly assessing its performance, relationship, and interactions with the management team, whether or not it followed the agenda or got sidetracked, so that it is not waiting a full year to do a formal evaluation. The board will perform a formal evaluation at the end of the year, but hopefully it can address a lot of the issues that came along the way in the three or four meetings leading up to that time. We recommend that boards consistently evaluate themselves, that board leaders, such as the chairman of the board, the non-executive chairman, or the lead independent director, truly provide leadership and encourage all board members to be active and engaged participants in board meetings.

Management teams are desperately looking for boards to provide strategic counsel, oversight, and advice. They are really encouraging their boards to be more active participants, not in the day-to-day operations, but in providing thought leadership that they simply can't get inside of their own world in the company.

Traditional board self-evaluations are a very effective tool in helping a board to assess its performance, but one of my major passions since joining NACD is encouraging our member clients to include the management team in board evaluations. Management teams can be provided with a shorter form assessment of how they believe they work with the board and how the board is performing. I find that the vast majority of boards have never gone through the exercise of asking management to give them constructive feedback. They are often very appreciative of this opportunity, particularly since the NACD does it in a confidential way so that the board and the management team can speak openly and candidly. These evaluations provide a really constructive interchange and exchange of dialogue so that issues that may have become pent up frustrations are addressed in a productive way.

Are there particular catalysts that cause companies or directors to reach out to NACD? For example, if one or more director did not receive a high percentage shareholder vote for their election, if the company's say-on-pay vote was controversial, the company is not performing as successfully as had been expected, etc.?

There are often events in the evolution of an organization that drive more introspection into individual and collective performance of boards. Of course in a time of crisis or during a downturn in a company, boards tend dive much deeper into the operations of a company. The directors are charged with hiring and firing the CEO, so they are going to be a lot more hands on in a time of crisis.

When we are called in, many times we find that boards have become somewhat complacent or perhaps not as leading edge as they need to be in a highly competitive environment. The boards are looking for a trusted independent third party to come in and create a dialogue among the board and its individuals about strategic succession planning. In some cases this includes opening this dialogue through evaluations and education, whereby the board starts to work as a team by identifying which of its members may be extremely valuable to another board but that have run their course on this particular board because their skill sets may no longer match those needed to add value. We are often brought in to open that dialogue and to provide facilitators and faculty members who are active and seasoned board members themselves or who were formerly CEOs. Board members typically are more willing to listen to their peers and have a conversation with a trusted independent third party, as often times it is too sensitive and difficult to accomplish this internally.

What are your views on diversity in the boardroom?

I believe diversity is an important issue. For example, you mentioned the study that shows having an attorney on the board may increase performance. Other studies have shown having minority and female board members also enhance performance. To this end, a year ago the NACD commissioned a Blue Ribbon Commission, which issued a report on the benefits of board diversity. The study discussed the benefits of diversity of race, gender, and ethnicity, but also unique skill sets, business experience, and types of backgrounds. ⊙