

# the Corporate Governance I a d v i s o r

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## CORPORATE GOVERNANCE CONSULTANTS

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### Corporate Governance Consultants: What to Look for When Hiring

By Kristina Veaco and Cherie Sorokin

There is an old parable about six blind men and an elephant, in which each man is asked to define and describe an elephant based only the part of the elephant he has touched. The one who touched the tail describes the elephant as like a rope, the one who touched the ear, says the elephant is like a fan, the one who touched the belly, describes the elephant as like a wall, and so on. Each is accurate to some degree, but the descriptions lack overall context and are faulty because they are limited only to the parts of the elephant the blind men were familiar with.

Although in the last 10 years the term “corporate governance” has become more widely recognizable, uses of the term can vary widely, and definitions may be as limited or narrowly focused as the description of the elephant by the

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blind men. For this reason, in looking for a corporate governance consultant it is important to remember that the term “corporate governance” may be used differently by people from different disciplines and the meaning can vary widely depending on the context and who is using it. Furthermore, a consultant’s background and main area of expertise may affect not only how broadly or narrowly he or she looks at corporate governance, but also how practical or relevant his or her advice may be. A broad, all overarching definition we like is the following:

Corporate governance “... consists of the concepts, practices, procedures, expectations, legal requirements and traditions used by the leadership of organizations, the boards and individuals charged with organization oversight and management.”<sup>1</sup>

## Types of Governance Consultants

For those of us with corporate secretarial and other in-house legal experience who have worked with and supported boards and senior management, developing and implementing these processes and practices and working to make sure boards, individual directors, and management are meeting their fiduciary duties, has always been an integral part of our jobs. Corporate secretaries and in-house counsel are essentially in-house consultants on corporate governance. Nonetheless, as the pressure for companies to have “sound” corporate governance programs continues to increase, boards and management often elect to hire outside experts to assist with some corporate governance matters. That assistance can take many forms, and not all firms or individuals within the firms are suited to assist with all areas of governance. Many use the term corporate governance in a much narrower context than the definition provided and it is crucial to the success of any governance-related project to understand the way the term is being used.

For example, some consultants focus principally on governance-related issues that are mainly within the purview of management.

- Management consultants often offer “corporate governance consulting” to the company’s management on such matters as compliance and management processes.
- Human resources consultants may offer management succession planning and organizational development advice as part of “corporate governance services.”

In recent years, some of these consultants have sought to broaden their reach beyond management issues into consulting on board of directors matters as well.

Other consultants focus principally on governance-related issues that are more typically solely within the purview of boards of directors:

- A few years ago, as “corporate governance” became more widely of interest to boards, investors, and others, auditing firms (through separate arms of the firm) added “corporate governance” to their services, with an initial focus on the Audit Committee and its oversight of company financials and internal controls. Some have now broadened their corporate governance services to include such things as drafting committee charters and providing board evaluations.
- Executive search firms have begun adding corporate governance services within the last few years. Now many include board evaluation services in addition to conducting director and executive management searches.
- Some executive compensation firms list corporate governance as part of their services now that “say-on-pay” and investor concerns about executive compensation have become an area of strong interest to boards and investors.
- Some proxy solicitors list corporate governance services as part of their solicitation services, including auditing current governance practices or advising on compensation plans, to increase the likelihood of investor support.

- Some consultants focus largely on board effectiveness issues, conducting board and individual director evaluation services; these firms may or may not be able to assist in implementing needed changes. And they may or may not be able to assist with more technical governance issues such as those related to equity compensation.
- Others, including academics, may offer governance education programs, or conduct governance audits that compare board and governance practices at multiple organizations.
- Many law firms now regularly identify corporate governance as a separate practice area, providing governance documents and also advice on disclosure, or shareholder litigation, and in some cases offering board evaluation services for their clients.
- Some firms focus exclusively on working with boards on strategies around investor communications and relations and particularly on investor governance concerns given the growing interest of activist investors in the way boards make decisions and what exactly is happening in the board room.

Given the increase in the number and types of firms offering “corporate governance” services, and because understanding a consultant’s perspective can be a great help both in the hiring process and in understanding the basis of any recommendations made once hired, we decided a few years ago to put together a checklist for our clients on matters to look for and consider when hiring a governance consultant.<sup>2</sup>

When we developed the checklist our focus was on consultants working with the board of directors and senior management on a governance audit, board evaluation, or other board level governance study. However, with minor adjustments in terminology, we believe the checklist can be valuable in other governance consulting contexts because the key point of this article and the checklist that follows is the importance of understanding what the

firms under consideration mean when they say they provide “corporate governance” services or consulting, whether their definition corresponds to the particular project, and whether the backgrounds and levels of expertise of the individuals in the firms are consistent with the services to be offered.

## Some Factors to Consider When Hiring a Governance Consultant

### Questions to Consider:

- What array of services does the firm or consultant provide in the governance area?
- Is board governance a primary area of expertise and focus, or one area among many others?
- Is there a particular focus to the firm’s or consultant’s approach?
  - For example, overall governance effectiveness, fiduciary/legal responsibility, compliance, risk management, organizational development, executive compensation, interpersonal skill development or relationships
- How long has the firm or consultant been engaged in governance consulting?
- How did the consultant acquire his/her expertise for the particular service?
- What is the firm’s or consultant’s approach to conducting governance studies?
  - For example, written questionnaires, online responses, oral interviews, comparisons with peers or trends, *de novo* study, building on the company’s past efforts, written report of findings, written recommendations, oral presentation of findings and recommendations
- Is the firm willing to tailor the approach to meet the company’s needs or expectations?

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- What is the background and experience of the person or persons who will be doing the work?
    - For example, legal training, management or human resources consulting, risk management, or audit expertise
  - What type of governance study does the board want and what is the scope of the project under consideration?
    - For example, audit of current practices, analysis of current board effectiveness, review of committee practices and effectiveness, director self-evaluation, director peer evaluation, evaluation of chair, evaluation of committee chairs, evaluation of the board's relationship with the CEO, implementation of recommendations, focus on particular substantive areas, help with a known problem such as disaffected directors or confusion over the board's role, education of the board on governance trends
  - Is the scope of the work desired a good fit with the experience and expertise of the consultant or firm?
  - What is the experience of the firm or consultant with different types of boards?
    - For example, public, private, nonprofit, government entity, large organization with substantial staff, small organization with few staff
  - What has been the actual boardroom experience of the firm or consultant?
    - For example, involved as corporate secretary, CEO, or business executive, director, consultant to the board or a committee, general counsel or attorney
  - What experience has the firm or consultant had in actually implementing governance processes and practices?
  - What is the firm's or consultant's reputation in the corporate governance arena (including in the case of a firm, the individuals it uses to provide governance consulting services)?
    - Is the personality of the consultant or the individuals providing the services a good fit with the board and/or the CEO?
  - Is the consultant or firm known to members of the board?
    - For example, by general reputation, by work done for other boards on which directors serve, as a result of other consulting services the firm or consultant is providing or has provided to the company
  - What other companies have been clients of the firm or consultant and what was the nature and scope of the services provided to those companies?
  - What is the quality of references provided by the consultant or firm?
  - How long will the project take?
  - What will management's role be?
    - For example, will the CEO and other top executives working with the board be interviewed; will results of the work be reported to the management team separately; what role will management have in the implementation of recommendations; who in management will assist in scheduling and in responding to both director and consultant questions/needs during the course of the project
  - What will be expected of directors and how much of their time will be needed?
    - For example, will the board and committee chairs be part of the project design process, are all directors willing to participate, will in-person or telephonic interviews be part of the process, how much time will it take for directors to fill out questionnaires and/or be interviewed

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- What is the desired process for reporting results?
    - For example, written or oral presentation to the board chair, to the Nominating and Governance Committee chair, to the Nominating and Governance Committee, to the full board, to the CEO, to each committee evaluated, to the management team, and/or, for director peer reviews, to directors individually
  - Are the proposed fees reasonable given the scope of the project?
  - What steps are taken to protect the confidentiality of individual director responses?

Given the number of providers of corporate governance services, having some sort of process to screen firms and individuals will facilitate finding the right firm for the particular governance project.

## Notes

1. C. Sorokin, *et al.*, *Nonprofit Governance and Management*, 3rd Edition, Society of Corporate Secretaries and Governance Professionals and Business Law Section of the American Bar Association, 2011.
2. The full checklist also appears as a Practice Tool in our BloombergBNA portfolio on *The Role of the Corporate Secretary*. Kristina Veaco and Cheryl Sorokin, *The Role of the Corporate Secretary: Facilitating Corporate Governance and the Work of Corporate Boards*, 96 Corporate Practice Series (BNA). Practice Tool 18.