

REALLY REACHING OUT TO DIRECTORS:

Board and Director Evaluations Can Lead to More Effective Boards

By Kristina Veaco and Cherie Sorokin

A formal board evaluation process can be an invaluable tool for improving board effectiveness. The evaluation process allows directors to reflect on how they are functioning as a board; what is working well and what may not be working as well as it could. It also offers directors the opportunity to provide their perspective on what changes in board process and practices may help the board become more effective. Individual director evaluations enable directors to reflect on their own individual performance and possible ways in which their service to the company as a director could be improved. Peer evaluations can help directors understand how they are perceived by their colleagues and may surface issues which otherwise might be left unsaid but might be undermining or otherwise affecting board effectiveness.

The New York Stock Exchange requires listed company boards to conduct evaluations annually, and many other boards, including nonprofit and private companies also now regularly evaluate their own effectiveness.

The evaluation process is often managed by the corporate secretary who may develop and implement the process with oversight by the board committee charged with responsibility for governance matters (often called the Nominating and Corporate Governance Committee). Given the press of other board business, there may be a tendency to use the same process year after year. Unfortunately that means that the evaluation process can become a routine, check-the-box exercise yielding little useful information for the board or management. To keep directors focused and interested in the process on an annual basis and also to yield better information on the functioning of the board, its committees and individual directors, increasingly boards and corporate secretaries have turned to bringing in an experienced outside governance consultant to conduct the evaluation.

There are various reasons why it makes sense to engage an outside governance consultant to perform the board evaluation. While the corporate secretary may be seen as a neutral and effective intermediary between the board and management and among directors themselves, boards often find that the use of an outside governance consultant permits directors to be more candid in their comments on board operations and especially in peer evaluations

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of other directors. Similarly, the governance consultants can often be more straightforward in their comments than internal staff when presenting the results of the evaluation. Experienced governance consultants also have the benefit of having seen firsthand how other companies have addressed similar issues and what changes or adjustments to board practices and processes have been particularly effective. In any event, the corporate secretary will play a central role in the process, often managing the selection process for the governance consultant along with the Nominating and Governance Committee, or Chair of that committee and helping to build support for the process. The corporate secretary often works with board leadership to develop or help shape the format of the evaluation, appropriately documents the process, and helps to implement any changes to board practices as a result of the evaluation process.

At Veaco Group, we recommend that the methodology used to conduct board or director evaluations be tailored to the particular needs of each board and we spend time in advance to understand board dynamics and identify any concerns before recommending a specific evaluation process, which, in addition to the board evaluation might include committee evaluations, director self-evaluations, peer reviews or some combination of the foregoing. While we often rely on written questions and answers for part of the process, we also believe strongly in oral interviews to elicit a more candid discussion and to allow directors to more fully delve into the issues. Oral interviews also allow directors to address those issues important to them, which may vary from director to director.

We prefer to report results back to the board in the aggregate and without attribution. We synthesize the information gathered, identifying issues of particular importance or which may need further discussion. We also make recommendations on how to address the issues which surface during the evaluation process. Our recommendations are based on the results and our experience in working with boards on governance matters.

Confidentiality is of course essential to the process to encourage candor on the part of the directors. Consistent with many document retention policies, any notes on the interviews and any completed questionnaires are kept only until the results have been analyzed and presented.

We have found that our experience as former in-house lawyers running the corporate secretary function for

large public companies, gives us valuable perspective in understanding director concerns and also in recommending practical solutions for the public, private, government agency and nonprofit entities we now work with as consultants. Our clients also like the fact that we are lawyers and because we have worked so closely with boards both as internal governance practitioners and as external consultants, we understand the need for sensitivity and discretion.

Many firms now offer board effectiveness or evaluation services. When considering outside consultants for this very sensitive task, we recommend looking for a firm whose staff has a solid background in corporate governance and preferably experience in actually implementing governance, working directly with boards, so that there is a real understanding of how boards work.

Kristina Veaco and Cherie Sorokin are corporate governance consultants with many years of experience in the areas of corporate governance for both for-profit and not-for-profit entities of various sizes and stages in their life cycles. Following successful careers as in-house corporate lawyers with responsibility for corporate governance and the Corporate Secretary function at large public companies, they each started consulting in the governance field in recognition of the increased focus on the need for strong governance practices. Both are actively involved in educating others about governance practices, and are engaged with various governance organizations, including the Society of Corporate Secretaries and Governance Professionals.

Recent assignments include conducting a board evaluation for the board of the largest pension fund in the country, and for the board of the largest provider of workers' compensation insurance in California. Other recent experience include board evaluations for the boards of a leading healthcare company, the largest full service restaurant company in the country, a major commercial bank, an internationally recognized regional theater company and a fine arts museum.

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