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Directors Share Their Views On The Role Of The Board

*The Editor interviews members of the National Association of Corporate Directors (NACD) to get their views on questions relating to corporate governance and their roles as directors. The interviewees are **Barbara Duganier, David Rosenblum** and **Mary Beth Vitale**. The following remarks reflect the views of the interviewees, not those of NACD.*

Editor: Let me start by asking about your backgrounds.

Duganier: I have spent 34 years in finance, including 23 years at Arthur Andersen, one year as an independent consultant at Duke Energy North America, and the last 10 years at Accenture, where I worked with companies in the resources sector, including energy, chemical, natural resources, and utilities. I resigned from Accenture in early October 2013 and joined the board of Buckeye Partners, where all of the directors are NACD members. At Buckeye, I'm on the compensation and audit committees and will soon become chair of the audit committee. In addition to Buckeye, I have served on the board of Genesys Works for the last three years, where I chair the national board. I previously chaired its audit committee and currently chair the nominating and governance committee.

Rosenblum: I am a recently retired partner of Deloitte Consulting, and I also served on its board. While I was an active Deloitte partner, I was not able to serve on other corporate boards, so my board service has been with nonprofits. I've been the chair of a small foundation for five years, and I am a trustee of Wesleyan University in Connecticut, vice chairman of the board of the Library Foundation of Los Angeles, and the NACD chapter president for Southern California.

Vitale: I have been on the board of the NACD Colorado Chapter for over 11 years and have held a number of positions at the chapter before becoming chairman of its board. I have been a speaker and a moderator at NACD's annual Board Leadership Conference, as well as other conferences on governance topics throughout the United States. I am also an NACD Board Leadership Fellow. I serve on the board of CoBiz Financial, an asset management company, where I am chair of the nominating and governance committee. I am a member of the board of Zynex, a publicly traded medical device company. I have been on the Zynex board for five years, and I serve on the audit committee and chair the compensation committee.

Editor: What do you feel is the optimum size of a board?

Duganier: I've seen effective boards that had just five members. Personally, I think that is small, but boards that size can make very good, sound decisions that are in sync with company goals. They have enough expertise and behavioral depth to make it work. I've also seen boards be effective with 12 directors. I think the optimum size is somewhere around that eight to ten range.

Rosenblum: It is somewhere in the range of seven to nine board members. By the time decisions are made, most boards have arrived at a consensus, so you don't tend to have close votes, but it's always good to have an odd number.

Vitale: It depends on the size and complexity of the company. You don't want to have a board that is so unwieldy that decisions cannot be made in a timely manner with the appropriate due diligence. In my opinion, I feel a board with greater than 11 members is too large; smaller is ideal.

Editor: What are the advantages and disadvantages of a classified board?

Vitale: Institutional Shareholder Services and Glass Lewis definitely do not prefer classified boards because board members can only be removed during the time period that they are up for re-election. There is a benefit from classified boards in that you would not have the risk of losing an entire board at once due to shareholders votes. In that scenario, there would be no one familiar with the business left on the board.

Duganier: You can look at it from a takeover perspective and say that a staggered board is better. Another advantage is that it assures a degree of continuity. A disadvantage could be that too many remain on the board for too long.

Rosenblum: There are real advantages to having continuity on a board.

Editor: What qualifications should a director have?

Rosenblum: A director should be financially literate at a minimum. I think it's fair to describe most boards in companies with effective nomination and governance processes as a mosaic of the kinds of expertise and skills required to provide effective oversight.

Vitale: They should have a strong and broad background covering all aspects of a business. Currently, a majority of board members are former or sitting CEOs. They understand capital structure, account management, succession planning, and all aspects of operations. You also need someone who works well in a collaborative environment. I feel directors need the kind of continuing training in board governance and the role of the director that NACD as well as other organizations offer.

Duganier: Knowledge of the industry is key. International experience is also important if a company goes global, as so many are doing today. Directors need the ability to assess risks and understand finance. Their role includes being well-prepared and the ability to "lean in," which includes asking questions, paying attention, and observing the industry.

Editor: How frequently should a board meet?

Rosenblum: The answer, of course, is it depends. Part of it depends on the size of the company. Part of it will depend on business circumstances. If the company is involved in a major acquisition, a financial reporting issue with the Securities and Exchange Commission, or must deal with other major issues, it's not surprising to see a board meet physically more than a dozen times in a year.

Duganier: Some companies have six regular meetings a year with four at the time their quarterly earnings are reported and a strategy meeting and a budget-focused meeting. Situational ad-hoc meetings may be held to consider opportunities that may arise.

Editor: Who should preside at board meetings?

Vitale: Whether a company has a combination chairman and CEO or they are separate, the chairman should preside. A lead director should not play that role unless both the chairman and CEO are not available.

Rosenblum: Typically, the chairman would. If you have a situation where the chairman may have a conflict and is excused, the lead director or someone appointed by the board to play that role should preside.

Editor: What is your reaction to proposals to separate the roles of CEO and chair of the board?

Rosenblum: My reaction is it should be situation specific. There is no academic proof that companies that have a separate chair and CEO perform any better or worse than companies that have combined the chair and CEO. My personal view is that it should be up to the board.

Vitale: One size does not fit all. I feel that boards should make the decisions that are best for their companies and shareholders.

Editor: What are the key board committees?

Duganier: Every larger company should have a nominating/governance committee, an audit and finance committee, and a compensation committee. Many companies, such as Buckeye, where safety is number one, have a health/safety/environmental committee. Companies with a lot of focus on M&A may have an M&A committee.

Rosenblum: Public companies are required to have an audit committee, a compensation committee, and a nominating/governance committee. Financial services companies are generally required to have risk committees. Most nonfinancial services companies tend to leave specific responsibility for risk management with the audit committee, with overall responsibility being vested in the entire board. Private companies are not subject to the kinds of requirements imposed on public companies, so the board committee structure may be much simpler.

Editor: What materials should be sent to board members before each meeting, and how far in advance of the meeting should they customarily be sent?

Rosenblum: The more background information you can provide in advance of the meeting, the more productive the meeting will be – 10 days should be the absolute minimum except in very special circumstances. The board books of financial services companies tend to be two to four times the size of your average board book.

Vitale: You should receive the board books at least one week in advance. I am an advocate of using electronic board books that enhance the capability of management to update information on a timely basis and more cost effectively. Electronic board books also provide enhanced security. Board books should always include financials and an update on the implementation of key company strategies. Each company should furnish its directors with a dashboard of key metrics that are critical to the company's success.

Duganier: The materials ought to be very crisp and concise as opposed to hundreds of pages that basically go on and on. We usually get ours out a week in advance.

Editor: What is the role of the corporate secretary and what qualifications should he or she have?

Duganier: The corporate secretary at Buckeye is also our general counsel. The general counsel's role, wearing the secretary's hat, is to assure that a record is made in the board minutes that the steps taken by the board meet the appropriate legal requirements. Obviously, the secretary should have a legal background or work closely with the legal department as well as have a good understanding of the company and a good relationship with the board.

Vitale: She or he keeps the official record of what transpired at board and annual shareholders meetings and is the point of contact for any shareholder proposals that will be included in the proxy. The corporate secretary is also responsible for disseminating information to the appropriate management and board committees as well as guarding the confidentiality of information that she becomes aware of. In many cases, she or he acts as the executive assistant to the CEO or chairman.

Rosenblum: Typically, corporate secretaries are lawyers by background because the job is legal and compliance intensive. The corporate secretary plays a critical role in handling the board's activities. If a company does not document that it has given due consideration to important matters, it could have problems.

Editor: How can directors get to know key members of management?

Vitale: NACD's most recent Blue Ribbon Commission report asserts that talent management is a boardroom imperative. In my personal experience as a board member, I found that board presentations by key managers were helpful. Board meetings should include discussions of succession planning, not only for the CEO, but also for all senior-level executives.

Duganier: An important vehicle is to give key executives an opportunity to make presentations at board meetings and to attend informal board events such as dinners and visitations to company facilities.

Rosenblum: Most organizations are good at providing directors with exposure not only to all meaningful facets of the business, but also to executives that are on the short list of candidates for succession to more senior positions. Management succession is a key board responsibility. It's pretty hard to do that if you're just looking at paper reports.

Editor: Under what circumstances should boards meet without members of management being present (also referred to as executive sessions)?

Rosenblum: Good practice would call for such sessions before or after regular board meetings without management, including the CEO, being present.

Duganier: I think executive sessions are healthy. We have executive sessions for committees as well as for the board itself. People can speak freely.

Vitale: Every board meeting should include executive sessions without management being present, both before and after the board meeting. This should take place at every board meeting. If executive sessions are infrequent, it can appear to management that there is an issue. It's simply good governance to have executive sessions at each board meeting.

Editor: Should companies invite institutional investors and other professionals to make presentations at board meetings?

Duganier: Absolutely. When you're developing strategy, assessing risk elements, or looking at industry trends or competitive threats, an external perspective can be very helpful.

Vitale: Management should have frequent dialogue with their investors while being careful not to provide information not available to the general public. A company needs to understand what is important to their shareholders. As for bringing them into the boardroom, I have not seen it done. As to other professionals, directors appreciate their perspectives to help balance the information provided by management.

Rosenblum: When you talk with institutional investors, many of them would welcome the opportunity to present their views and concerns to the companies in which they invest. Directors have to figure out how to speak with one voice to the investors so they are not overly confusing. Companies need to make sure that when they have those conversations, they occur in a structured manner so they don't end up tripping over the requirement of fair disclosure (Reg FD) to the public.

Editor: Should directors be encouraged to visit corporate facilities?

Rosenblum: Absolutely. That goes hand-in-glove with getting exposure to management.
Vitale: Yes. This provides insights about the company and employees that you can't obtain in a boardroom.

Duganier: Absolutely. Buckeye has at least one board meeting a year at one of its offices or facilities to ensure that the directors are getting the opportunity to understand some of the key workings of the company.

Editor: Should the general counsel attend board meetings, and what role should he or she play?

Duganier: As I previously mentioned, the general counsel of Buckeye is also its corporate secretary. This is important because the general counsel is in a position to answer any legal questions that may arise during the meeting. Regardless of whether the general counsel serves as secretary, I believe he or she should be invited to board meetings, given the pervasive regulatory and litigious climate in which corporations now find themselves.

Rosenblum: The general counsel should normally attend board meetings, although there may be specific executive sessions when he or she is not there. Also, in the nature of matters that come up in board meetings, there are always questions you want legal guidance on.

Vitale: The general counsel should attend board meetings. In today's highly regulated environment and with an emphasis on risk management, directors will raise questions that the general counsel can best answer.

Editor: What steps should be taken to foster collegiality among board members?

Vitale: A meal before or after the board meeting is ideal and tends to foster open discussion. I've made it a point personally to have lunches or breakfasts with my fellow board members throughout the year.

Rosenblum: Social gatherings, dinners, and strategy retreats create a less formal setting. These can help directors get better acquainted. Although you want the board to be collegial, you also want board members to operate individually with judgment and independent thought. You want straight talk with differences of opinion voiced and hashed out. If people know each other well and are comfortable with each other, it's easier to do that.

Duganier: A regular board meeting is an event around which there can be planned social interaction. Buckeye also looks for other opportunities that create an environment that fosters informal discussions among our directors.