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Giving voice to values in the boardroom: Navigating common board challenges for optimal board dynamics

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Introduction

The boards of directors—who have likely never been more vital to the inner workings of a firm—routinely face values conflicts. As boards are pressured to contemplate new regulations about transparency and accountability, ongoing environmental and social concerns, executive pay and performance challenges, and the rights of shareholders and other stakeholders, it is clear that board work is values-driven. Boards must focus both on the moral element as well as the legal aspects of their role.

In this role, directors are increasingly faced with how to give voice to their values, especially when presented with certain ethical challenges, exacerbating the need for this type of board-level competence. While there may be numerous challenges unique to a single board, this chapter focuses on two key challenges that are fundamental to achieving better board dynamics. To help readers of the NYSE Public Company Series develop this skill, this chapter outlines the values conflicts that may arise in two main areas: (i) strategic planning and monitoring and (ii) director independence and nomination.

Values conflicts

All board members face ethical challenges. These dilemmas are most often about conflicts with moral values. By values, we do not mean qualities like “creativity” or even “innovation”—which are important no doubt—but rather moral values that are widely shared across time and culture. Moral values

are personal and deeply held beliefs about good and bad behavior, desirable and undesirable actions, and right versus wrong. These values often conflict with some other compelling option (e.g. profit, market share, promotion) or a fear, such as being fired, marginalized, or otherwise retaliated against. Board directors face these types of values conflicts when they are tempted by these other attractive options. Yet, all of us can understand—and even normalize—temptations in the business world without accepting them as being appropriate.

Strategic planning and monitoring

One of the first value conflicts directors are likely to face is balancing the need to monitor management with the ability to offer strategic advice. Many boards struggle with the dual nature of the board's tasks; on the one hand, a board must monitor senior management, on the other, it must provide strategic support for them.

To many, the primary role of a board lies in its ability to protect shareholder interests by hiring the right top management team while monitoring and compensating them properly. In fact, most academic research, media accounts and government regulation all echo the deeply held belief that boards should be able to actively monitor management.

In order to effectively monitor, boards of directors typically adopt one of two philosophies. The first rests on the idea that independent directors can effectively monitor executives. This focus has largely proliferated because of regulation. Boards of firms listed on a US exchange are required to have independent directors on the audit and nominating committee and among a majority of the overall board. The 2002 Sarbanes Oxley Act also increased the monitoring role of boards. This type of regulation spread; by 2016 most member

states of the European Union and virtually all major Asian jurisdictions had rules for appointing at least some independent directors to their companies' boards.

The second perspective views effective governance as a function of hiring board members with the right qualifications—those who bring human and social capital—because they provide these much-needed resources and thus they will use them to monitor management. In this way, the board serves as a provider of resources (e.g. expertise, status, advice and counsel), which are then used to evaluate management.

Both approaches rest on bringing an independent director to the board and thus it presents the board with one of its most common value challenges—who can best serve as an independent voice. According to the Securities and Exchange Commission, in assessing a director's independence, the nominating and corporate governance committee needs to take into account certain facts and circumstances:

- 1) First, it must determine if a director is indeed independent. A director is considered independent when he or she is free from any “material” relationships with either the listed company or with senior management (e.g. commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships) during the past 3 years.
- 2) Second, even if a director satisfies each listed requirement, the board still needs to determine whether the director *could* exercise independent judgment given the director's specific situation. The NYSE requires the board of any listed company to make an affirmative determination of each director's independence; this determination must be disclosed publicly.

Ownership of a significant amount of stock or affiliation with a major shareholder, in and of itself, does not necessarily preclude a board from determining that an individual is independent. But, even if a director satisfies each listed requirement, the board must still decide whether the director's independence has been compromised in some way. A recent case is illustrative. On 30 September 2024, the Securities and Exchange Commission (SEC) announced it settled charges against a public company director for violating proxy disclosure rules by standing for election as an independent director without informing the board of his close personal friendship with a high-ranking executive at the company. The director did not disclose this relationship when he completed his Directors' & Officers' questionnaires in which he stated that he did not have a material relationship with the company, including "any other relationship" with the company or its management. This resulted in materially misleading statements in the company's proxy that inaccurately identified the director as "independent" under both stock exchange listing standards and the company's governance guidelines. It also resulted in a compromised chief executive officer (CEO) selection because the director participated in the process of evaluating internal CEO candidates, including the executive he was friends with, without disclosing their relationship.

Another problem area is what to do with "gray" directors. Gray directors are those who lack perceived independence for one or more reasons but are nonetheless independent for regulatory purposes. Some of these reasons include a director who: serves on a second or third board with another director or the CEO, is a former employee or consultant, receives above market director fees, has social relationships with management or other directors, has an office at the headquarters and uses its administrative staff, or

has excessive tenure on one board. Over time even those who were once independent directors can become gray by exhibiting the tendency to rely heavily on management briefings to tell them what is going on inside the firm or by lacking "*independence of mind*" by not speaking up or questioning the CEO. Sometimes directors' reason that being in the CEOs' good graces might enable the continuation of what has become a highly lucrative position.

Three additional factors may contribute to a director being perceived as gray. First, a director's independence may have come at the expense of outdated expertise. Second, some directors have been chosen due to their predisposition toward the policies of management. And third, the board itself may not be privy to key management information necessary to do their job effectively.

On the first point, while specialized experience has long been valued in board candidates, two somewhat new skills are increasingly in demand. A 2024 Spencer Stuart Pulse Survey highlights that directors with experience in cybersecurity (92%) and digital/technology (92%) are seen as having the most positive impact on board oversight. However, with limited spots opening up each year, there is now a preference for "generalists" who can effectively manage the wide range of governance responsibilities. According to many respondents to the survey, the most effective boards are well-rounded in terms of experience and expertise and therefore able to contribute to the board's dialog in multiple areas. Board evaluations are a good way to reassess director expertise.

Second, even when a director has a predisposition toward management, the obligation to monitor is intended to be a countervailing force. Activist investors

campaigning for board seats often argue that long-serving directors have grown too cozy with management. Academic research has suggested that more social ties among directors and the CEO, the longer the CEO's tenure. Because a director's independent status can change, boards may be well-served by conducting an annual review of the independence of non-executive directors. As new board skills and members are integrated into the boardroom, a culture of monitoring should be continually emphasized.

Directors often lack independence because they suffer from "information capture" when they are too dependent on the content and presentation of information management chooses to provide or conceal. This presents a conundrum; because even when a director is truly independent, they may have few other sources of information internal to the company other than the CEO or the other board members. But in order to monitor management, a director must have information about the inner workings of the company. Certain barriers can exist that ultimately inhibit directors from providing effective oversight on an ongoing basis which lay the groundwork for additional values conflicts. Chief among these barriers is the board member's ability to obtain, process and act on information from management on a timely basis. At the same time, boards have a duty to "ask the right questions" of management and may not escape liability even if management does not inform the board. Thus, even if it can be risky to ask questions, it can be equally risky to not ask them.

Director nomination and selection

A second topic presenting values conflicts, and one related to director independence, is the director selection process. Director selection is the formal or informal process

by which individuals are identified and screened for a position on a corporate board. Typically, this task resides with the nominating committee whose main role is to independently evaluate and nominate prospective candidates for the board of directors. Ideally, and as intended by various oversight bodies, the nominating committee seeks out potential candidates for board seats independently from the CEO. The very existence of a nominating committee aims to reduce the influence of the CEO on new director selections. In effect, the members of the nominating committee should have access to more potential candidates from different profiles than the CEO's network. And it allows the separation between management of the firm and control of the firm.

The SEC requires disclosure about the existence and process of this committee and its composition (e.g. level of independence, skills required, and source of nomination). The nominating committee is one of three customary standing committees required by the NYSE to be composed entirely of independent directors. Many countries have similar nomination committee requirements. However, the current structure of board selection—in many countries around the globe—consists of a stand-alone nominating committee wherein the CEO has a great deal of influence.

The board's process for director selection is a vital part of crafting the board's composition and establishes the dynamics and the characteristics of the board and helps determine the overall culture of the board. The quality of the director appointments is, in part, what determines the board's ability to effectively monitor management and offer strategic advice. Furthermore, many boards view their composition as a strategic asset and review it often as the company's own strategy inevitably changes.

It is common to have large institutional investors, proxy advisory firms and regulators attempting to weigh in on the board's nomination committee policies and practices. For example, State Street Global Advisors, Blackrock and Vanguard—the “Big Three” institutional investors—have all published voting policies on board diversity. All are prepared to vote against nominating committee chairs of boards that fall below the market norm, typically 30%. In recent years, they have voiced their concerns directly to management through private engagements about appointments to the board and are increasingly focusing on the diversity of perspectives as well.

Proxy advisors are also exerting their considerable influence. While their policies are primarily governance-focused—historically written to set clear voting expectations for asset managers in areas like board composition, independence and effectiveness—they increasingly focus on diversity and equity among the top management team and the board. Glass Lewis and Institutional Shareholder Services (ISS), the two largest proxy advisors, have targeted nomination committee chairs with “against/withhold” votes if boards do not include a female director, or provide a cogent explanation. Glass Lewis and ISS have diverged in 2025 when it comes to issuing recommendations on directors. Glass Lewis will now provide a “For Your Attention” flag on any proxy report with a negative diversity-related director recommendation. ISS announced that it will no longer consider board gender, racial or ethnic diversity when making its vote recommendations. It's worth noting that in 2024 average support for director elections was 95%, according to The Conference Board.

The values conflict in director selection is present in two ways: (i) the choice of who sits on the nomination committee and

how it operates and (ii) the CEO's level of involvement. To some, it represents the biggest threat to true board refreshment, but to others the CEO's recommendation is important because they typically have an extensive network, and they ultimately need to work well with whoever is selected.

The CEO's network has been the search method of choice for directorships since the early 1980s. And while today the CEO continues to be a source of referral, they are often given latitude to influence director selection, despite the nominating committee mandates, due to director selection processes that endorse this behavior. Typically, there are two broad perspectives by which boards have approached the director selection process. The economic perspective is one where the board focuses solely on meeting the monitoring and resource provisioning needs of the firm. The socialized perspective suggests that social factors influence the selection process and reflect not so much of the board's desire to find directors to meet the needs of the firm and its shareholders, but rather the preferences and biases of those who are charged with new director selection. Here, the director selection process is influenced by the social status and prestige of the candidate.

The CEO is more likely to be involved in the selection process if he or she is long-tenured at the firm, has a high amount of stock ownership or is a member in the founding family. Additionally, the background of the chair of the nomination committee is most often likely to be a former/current CEO or the lead independent director. When the lead director and the nominating committee chair are the same person, the level of independence is likely to be compromised. Also potentially contributing to the values conflict is CEO duality. While there has been a continued decline in the number of

publicly traded companies who continue to have a dual CEO/Chairman of the board, Spencer Stuart's 2024 Board Index cites 40% of Standard & Poor's list of the largest 500 companies still have chief executives who also serve as chair, increasing the CEO's power and influence within the firm, including the nomination process.

Other factors in the director selection process have crept up in recent years. For example, boards have become increasingly involved in changing the company bylaws so that it can reject a shareholder's nomination. Typically, it does so by requiring shareholders to make a specific set of disclosures to the board in order to submit a valid nomination. And although director re-election tends to be high, shareholders opt to vote against director re-elections to flag their dissatisfaction with governance issues, environmental, social and governance (ESG) shortcomings and the broader strategic direction of a company.

Such tensions, as described here, make the values conflict apparent in the director selection process. Simply put, when directors are hired for their similarities to management, diversity of thought and identity take a back seat which, in turn, can relegate decision-making and oversight to homophilic bias.

Conclusion

Board members need to build moral muscle memory so they develop the competence and confidence to recognize and navigate the values conflicts outlined in this chapter—even, and especially, when forces compel them to act otherwise. Boards of directors are in a unique position to affect change in the business world. In most situations, directors are at the forefront of corporate accountability and judgment. This position, literally, gives board members an opportunity to shape others' actions—especially those of management and other key stakeholders.

Recognizing values conflicts is the first step in giving voice to values as a director. Giving voice to values is about implementation—or the action one takes knowing what their values are. Such an approach is not only a skill that can be developed but a series of tactics to be deployed (e.g. reframing, data gathering, ally and relationship building, sequencing conversations and actions). These skill building exercises as well as additional board challenges are included in *Giving Voice to Values in the Boardroom*, a book dedicated to helping boards figure out the optimal director behaviors, tasks and roles while learning how to improve board dynamics.

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Cynthia E. Clark, PhD, is the author of two books: *Giving Voice to Values in the Boardroom* (2021) and *Business & Society: Ethical, Legal, Digital Environments* (2020). As the founding director of the Harold S. Geneen Institute of Corporate Governance, she has led initiatives that bridge the gap between academic research and industry practice, focusing on creating frameworks for effective governance in the rapidly evolving corporate landscape. She has worked closely with CEOs and board members to implement effective board composition processes that align with corporate goals and shareholder interests. Her insights into managing shareholder activism, particularly in ESG-related areas, have helped organizations navigating these challenges. Her work is published in top-tier business and academic journals like *Harvard Business Review*, *Business Horizons*, *Sloan Management Review*, *Strategic Management Journal*, *Business Ethics Quarterly*, *Management Information Systems Quarterly* and *Journal of Business Ethics*.