



# Boardroom INSIDER

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## **A “TIPPING POINT” FOR WOMEN ON BOARDS?**

*The phrase* “tipping point” may be a cliché, but like most clichés, it’s popular for a reason. The issue of gender equity on board -- why there are still so few women directors worldwide -- seems now to have suddenly hit that tipping point as a business concern.

Maybe it’s the large number of groups which have taken up this issue. There are [\*Catalyst\*](#), [\*2020 Women on Boards\*](#), [\*Women on Boards\*](#), [\*The International Alliance of Women\*](#), and many more local groups. That’s just the U.S. Overseas, the issue of women on boards is an even greater concern, particularly in Europe. Norway has mandated a set percentage of women on all corporate boards for several years, and in England, the new [\*Davies Commission\*](#) report calls for U.K. companies to have 25% women directors by 2015.

Beyond this, there is a sudden spike in the number of activist groups, shareholder advisors, academics, regulators, and business groups raising the issue of why so many boards remain boy’s clubs. And a Google News search on “women +boards” will keep you reading for a few days straight.

Discussion of gender on corporate boards goes back forever, but interest has spiked so suddenly over the past year that we have to ask why. Certainly our sluggish economic recovery in the U.S., plus mass dissatisfaction with how corporations are run, are major issues. The days of trusting our economic fate to a group of white guys all named George gathered around a mahogany table seem long gone.

Here at *BI*, I like to find issues that are over the horizon for boards, and give readers early warning. “Women in the boardroom” is a topic that has spent years just under that horizon -- but its day may now be breaking.

-- *RDW*

## **5 INTERVIEW QUESTIONS FOR NEW CEOS**

All job interviews are pretty much job interviews -- unless the candidate happens to be a prospective chief executive officer. Then, the stakes are far higher... but the qualifications sought and the processes used far less certain.

The board of directors’ role is technically at the heart of CEO selection (the most stripped-down definition of board duty is to hire and fire the CEO). Yet the board’s actual part varies greatly. It may be the body that hires an outside search firm to seek and vet CEO candidates... or it may just rubber stamp the outgoing CEO’s internal selection. Suppose, though, the board takes an active role in at least one aspect of CEO selection -- interviewing

the prospective “candidate.” What sort of questions do directors need to ask the future boss?:

- “Walk through the history of every single job with the candidate,” suggests Krista Bradford, CEO of headhunter firm The Good Search. Such a stream-of-consciousness monologue offers far more than just job titles and dates. Listen for clues on *why* and *how* the CEO prospect sought a new position, accepted a transfer, or gained a promotion. What were the motivators? Does he or she measure achievements at each position with the measures you really want? Who were key mentors at each step, and can you contact them? How much of this career path was part of an overall plan, and how much happenstance?

- How much experience does the candidate have in working with boards? A candidate who is a current CEO should be expected to have boardroom background, but inquire also about specifics. Private company, VC firm, large/small public company? Each board microclimate will differ, as will the experience gained by the candidate. For those taking their first shot at the CEO role, probe the depth and quality of their previous board interaction. After the interview, quiz directors to see if their impressions are consistent here.

- What motivates this CEO candidate to lead *your* company? “If they’re current CEOs, most are already pretty financially successful,” observes Clark Waterfall, head of the Boston Consulting Group, so what drives them to take on this new challenge? If a division president or COO after their first CEO slot, what *specific* achievements can they name that prove them ready for prime time? The ideal candidate, says Waterfall, “is someone who has some proven success, but is not yet at the pinnacle” -- and is thus hungry for the challenge.

- What sort of a timeline is this candidate’s style? This is a subjective measure. You’re seeking to align the wannabe CEO’s talents with the company’s needs. A company with a growing, successful business model may seek a CEO who’s a good “long distance” overseer of growth. If you need a fast turnaround, though, you might need a sprinter, who moves fast and shakes things up. A superstar at one pace may prove hopelessly incompatible with a board and management team that needs something else.

- Since it’s your board asking the questions, find out what the candidate considers the ideal board/management leadership style. If you’re considering a “separate board chair” model, “is the prospect OK with that, and if not, why not?” says Waterfall. Who should set the board agenda, review it, and run the meetings? Would your potential CEO feel uneasy with directors “going around him” to talk with managers? Gauge what this candidate considers “normal” in board/CEO relations.

*ONLINE FIND:* The “Great Boards” consulting firm works with health care governance, but has a terrific article on considerations and questions for CEO interviewing that will work for any board. Check out their [webpage](#).

## **MEET THE NEEDS OF DISABLED DIRECTORS**

Board members fill many demographics (many of them marketers’ dreams), but one of the most consistent is based on age. Pearl Meyer & Partners 2010 numbers show average director age at the largest U.S. corporations as 62. While newer venture companies have younger numbers, the large nonprofit sector probably skews in the opposite direction. Suffice it to say that the folks in your boardroom tend toward either side of retirement age. Mobility is less, and sometimes limited outright. Hearing and vision are not what they once were.

Yet how many boards account for these factors in accommodating their members? No matter their age, the comfort -- and contribution -- of directors with disabilities can depend making governance accessible. Here are some boardroom factors you may not have considered:

- *Mobility.* Various local, state and national laws have improved wheelchair access at company offices over the past decade, and this includes most of your board meeting rooms. But go further than just the minimum to look at both director comfort and governance efficiency. Can board members in wheelchairs or with walkers easily get to any part of the boardroom? Are there power or video cords running over the floor, creating a danger? How far are restrooms? (Having to make it back and forth to a bathroom at the far end of the building during a short board break could prove a real challenge).

- *Vision.* Is lighting in your boardroom variable to meet personal needs (bright enough for low visibility, but adjustable to meet glare problems)? Are board agendas and *all* board book materials produced with large enough type and contrasting paper (no 4-point footnotes and captions, please)? Are large type/audio/Braille versions provided if needed? Are PowerPoint or other AV presentations formatted for directors with limited vision?

- *Hearing.* This is one of the most common boardroom handicaps, but the most subtle. Hearing acuity diminishes well before we fully realize it (and often it takes even longer before we’ll admit to it). Adequate volume by board speakers is important. But so is limiting background noise, encouraging speakers to vary their tone, slow down their presentation, face the board when speaking, and articulate. Fellow directors who mumble can be the

biggest problem here. The chair might take it on him or herself to ask all directors to speak up.

Finally, realize that these accommodations are actually governance quality boosters. The director who misses a word here and there, or who can't make out the tiny typefaces on PowerPoint slides, may say nothing, but could then make a poor decision, or draw a wrong conclusion. "Not only is disability accommodation practical, the contribution of *everybody* on the board will be enhanced," says Peter Blanck, President of the [Burton Blatt Institute](#), a major disabilities research group. Better to assume that *everyone* can do better with a little accommodation.

## CAN YOUR BOARD SPOT MISCONDUCT "RED FLAGS?"

While the boards of public companies in the U.S. may view the SEC as a large, ominous cop on the beat, the Commission has traditionally taken a fairly hand's off approach to individual directors. True, insider trading charges like those now facing Rajat Gupta will bring the SEC's hammer down in a hurry. But when it comes to board sins of omission -- missing signs of incompetence, chicanery, or looming disaster in the company -- the Commission has long given a strong benefit of a doubt.

Could this policy be shifting? A March client memo from law firm [Gibson Dunn & Crutcher](#) notes that the SEC has shown growing impatience with board members who ignore "red flags" of misconduct within the company. The highlight case mentioned was an SEC filing against 3 audit committee members of DHB Industries. The Commission says the former directors showed "willful blindness to red flags signaling fraud." The suit claims the audit committee members turned a blind eye while DHB senior managers filed false and misleading filings with the Commission, used corporate funds to pay for personal expenses, and diverted funds to a business controlled by the CEO (with whom they had a long relationship). The SEC's complaint offers lot of face-palm failings on the part of the board, like tidying up the minutes to obscure approving management's prostitution expenses.

Gibson Dunn notes that this SEC move fits in with other recent actions targeting board oversights. In 2009, the former audit committee chair of the InfoGroup, Inc. board settled charges that his investigation into management misdeeds was more like a cover up. Several other SEC actions are detailed to suggest that, as the Commission stated in the DHB filing, the SEC will now look more closely at "directors and audit committee members who repeatedly turned a blind eye to warning signs of fraud and other misconduct." What should your board do to head off "blind eye" allegations?:

- Set and document proper procedures for handling and following up on allegations against management.
- Respond appropriately to any warning signs of possible management misconduct.
- Consult with counsel immediately when any questions arise.
- Ensure that, when the board *does* launch an investigation, it is independent and thorough (Follow those procedures you set in item #1 to the letter... and make sure that any director in charge of the investigation has no ties to management that you can't defend in court).

## WHEN TO DISCLOSE DIRECTOR LEGAL WOES

Your board members are an asset to the company, fiduciaries, contributors, and representatives. Or at least they are until they find themselves in trouble. The Galleon insider trading trial has raised some unpleasant questions on the boardroom status of central figure Rajat Gupta. Gupta has world class vitae that made him a valuable director with Procter & Gamble, AMR and Goldman Sachs. But when the SEC started investigating him for insider trading, did he let those boards know he was in the spotlight soon enough? And did those companies in turn disclose all they should when they should about Gupta's issues?

Boards facing such tough disclosure calls have a few solid rules, but many that are less so. The legal standard for disclosure on matters related to board members is whether the information "materially affects" integrity or ability to do the job. Such a standard is ripe for later second-guessing by regulators, aggrieved shareholders, and judges.

There are the straightforward cases -- "the director is the target of an investigation, or has received a Wells Notice [from the SEC]," says Joseph Armbrust, a counselor with Sidely Austin. But beyond these, "the board needs to know *anything* that might affect the director's role," says Peter Hemming, a business professor at Wayne State University in Michigan, and author of the "White Collar" column for the *New York Times* Dealbook section.

Still, step one requires the director to make some judgment calls on notifying the board -- likely at a moment when he or she has some very urgent issues to manage. A wise policy would be to assume that it's safer to notify

the board chair and the CEO of *any* serious legal issue, even if it seems unrelated to governance. Yes, let the company know about a regulatory investigation, but also if you face a major lawsuit, are arrested, or are charged with a felony or serious misdemeanor. Certainly a charge of tax evasion will color your value as a fiduciary, but so could drunk driving.

Informing the company whose board you serve also puts the ball in their court on disclosure. The CEO and board chair aren't really qualified to take the next step, so "this is where company counsel comes in," observes Hemming. Seek legal advice regarding need to disclose, what, to whom, and when. The company's unique profile (a heavily-regulated sector, vulnerability to bad publicity in the case, etc.) are factors here. Another is the director's role on the board. A lead director, or chair of the audit or compensation committee faces higher concerns. The director will need to be an open book with counsel.

If counsel advises disclosure, timing is the next issue -- and is one of the greyest of grey areas. "Sometimes a company waits until its next 10Q or 10K filing, but that could be weeks away," says Hemming. Again, the seriousness of the allegations in relation to the board's fiduciary role requires calculation.

When should a director step down, at least temporarily? Again, judgment calls on the seriousness of the director allegations, and their impact on the company, must be weighed. Board politics can color the issue. "Boards have a tendency to close ranks, and identify with each other," notes Hemming. The CEO will also weigh in, especially if the director is an old pal. "Don't immediately terminate someone from the board, but have a realistic evaluation on whether the director needs to be confronted on the issue," counsels Hemming. "Everyone's first reaction is that it won't have an impact, that they can handle it." Your board needs to be the judge of that.

## 4 BOARD PRESENTATION LANDMINES

Books written for board members are growing common (I've written 4, with a 5<sup>th</sup> on the way). But books for the folks who have to *interact* with boards -- company staff, counsel, the corporate secretary, advisors -- remain few and far between. That's why I'm so pleased to see the new book by Julie Garland McLellan, *Presenting to Boards*. McLellan is an Australia-based governance consultant, and gives first-person insights on how to sell your info to that toughest of audiences, the board of directors. At just \$24.95US, you can't beat the price, and I advise anyone who works with boards to [buy a copy](#) of Julie's book ASAP.

But here's a taste, looking at a particularly tricky board situation -- how do you present to the board when it's "acting up?" Since the board is at the peak of the company, and its outside members tend to have pretty impressive egos, getting everyone to focus, work as a team, and stick to the rules can be like herding cats. McLellan pinpoints the top "unproductive behaviours" that can make boardroom presentations a misery:

- *Confidentiality*. Is there a member of the board who tends to prove leaky to outside sources? If you're presenting highly-sensitive info, it may be wise to ask the chair to give a quick comment to the full board on their fiduciary duty to maintain the privacy of board info. If you're a non-employee presenting info to this board from the outside, you have every right to stress the importance of confidentiality of what you're sharing.
- *One conversation*. "Side-bar" whispering or even discussions among directors during the presentation, if done at all, should be very brief and quiet. If a chat continues, McLellan advises the presenter "look to the chairman to see if he or she will say something." Should this fail, just stop talking until the chatters get the point (don't try to out-shout them). Boardrooms may be intense at times, but should never be rude.
- *Personal animosity*. This director and that director just don't play well together, and your presentation gives them a chance to squabble. Perhaps you're trying to make your case to differing factions on the board, who agree on nothing. Maybe a director makes clear he just doesn't like *you*. "This is definitely the chairman's job to sort out," writes McLellan.
- *Harping on*. You may have a tightly planned presentation, but a member of the board can easily derail it with repetitive, off-topic, or ill-timed questions. Or, perhaps, one point in your spiel leads the board off into a 10-minute digression on why the company's delivery trucks are painted blue rather than white. In any case, appeal to the chair to put discussion and questions off until the end. Since the board chair is the director most acutely aware of covering a full agenda with limited time, expect results.

## Q&A: Do We Let Our Execs Join Outside Boards?

**Q:** "Our board is facing a matter that seems minor, but could have internal repercussions. Our CEO/board chair mentioned it to me in a phone call that the company's CFO has been queried about joining the board of

another company. The CEO seems uncertain about allowing the CFO to accept. His concern seems to be a simple one of the CFO taking time away from our company. We have a full board meeting soon, and I asked our CEO if we could discuss it further then. Any advice on shaping a policy for company employees joining outside boards?"

A: The manager who's approached about joining an outside board often feels that his own company's approval process is a subjective, political mystery -- while CEOs and (too often) the boards of the employing company turn into control freaks.

Nonsense. As a first step, suggest shaping a basic board policy on when and how company execs will get an OK for accepting board offers. Include having company counsel give the other company a quick once-over for potential conflicts or board interlocks, and get a good estimate of the time, travel, and potential liabilities the employee will face. You'll find a thorough boilerplate policy [here](#) with plenty of good ideas. Some common sense restrictions (no outside boards in their first year with the company; a limit of 1 or 2 boards) are reasonable. A written policy gives everyone the benefit of objectivity -- your top execs won't be happy with an outside board policy that looks like a mysterious "black ball" process.

Next, suggest the board shake up how it views managers serving on outside boards. "Companies have come to view board membership as a development opportunity," says Nat Stoddard, chair of Crenshaw Associates executive development. "C" level execs increasingly interface with your board, and will definitely need governance seasoning to reach higher levels in the company. (Indeed, hi-pots might view a blanket ban on outside boards as a factor in tempting them away from your company).

For that matter, go a step further. Rather than just sit and wait for execs to come to *you* with offers, make prospecting for board experience part of your company's exec development pipeline. Such an active approach adds the benefit of letting you shape board placements that bring strategic benefit to the company

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