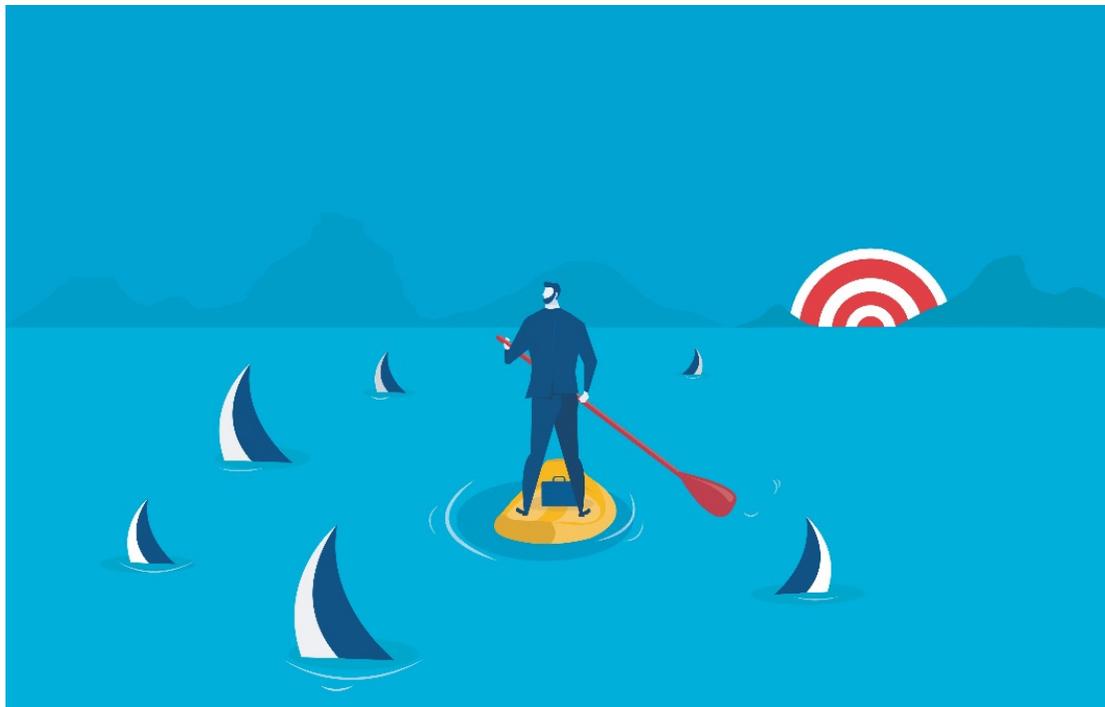


When Should You Just Say No To A Board Seat?

Being courted is an honor, but accepting isn't always a good idea. How to spot the danger signs of a bad board.

By **Russ Banham**



Andrea Bonime-Blanc had earned a solid reputation as an international corporate lawyer at Cleary Gottlieb when she joined her first board of directors in 1991. It was an honor to have been asked, and she felt a kinship with the organization's mission. She quickly accepted the offer, but over time learned that her decision was hasty.

“Looking back, the board had all the hallmarks of mediocre governance,” says Bonime-Blanc, who would later spend two decades as a C-Suite corporate executive at Bertelsmann, Verint and PSEG, while simultaneously serving on a handful of other for-profit and nonprofit boards.

For one thing, the board was composed entirely of successful white men twice her age, several of them retired. Some members worked hard while others coasted, just showing up, “if they did at all,” she says. “Whatever the chair and vice chair wanted, it was rubberstamped. I didn't know much about governance at the time, but it seemed odd that there were no

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While there were bylaws, no one looked at them, she adds. “Meetings had the appearance of a board discussion, but there wasn’t much, if any, governance infrastructure underneath.”

As the board’s junior member and only woman for a time, Bonime-Blanc did most of the work, writing up the various projects the board undertook. “As I understood more about effective board governance, I kept trying to resign but they wouldn’t let me,” she says. “Finally, I simply tendered my resignation. I just had to escape. The board was on a fast train to nowhere.”

Bad boards are nothing new, with some spectacular failures over the years (just type “worst corporate boards” into a search engine and take your pick). Looking back, many ill-fated board members blame their egos for overriding their better senses. As one director put it, “I was so honored to be asked, I forgot to do a reality check.”

Neglecting to perform due diligence into a board can result in the miserable experiences Bonime-Blanc endured, and far worse. Some directors have found it difficult to rub off the reputational tarnish of an in-the-news bad board, while others were ensnared in derivative shareholder class action litigation for allegedly failing their fiduciary duties. Had they dug beneath the surface, they might have discovered the harbingers of a bad board.

“Nobody willingly wants to join a bad board,” says Anna C. Catalano, an independent board director at several public company and privately held corporations, including audit firm Willis Towers Watson and polymer manufacturer Kraton Corporation. “As a candidate, the only way for you to avoid this fate is due diligence.”

Check the Chemistry

Just like no two companies are alike, boards differ in the experiences, responsibilities, personalities, values, tenure and demographics of their members, which coalesce to create a culture affecting board decisions.

Boards of family-owned businesses, for instance, are often composed of family members, potentially skewing the objectivity of board decisions. Boards where the CEO is the chair and other C-level executives are directors also may sway decision-making, as may a board populated with business and personal friends of the CEO or chair.

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center on many board agendas today. And boards with activist investors are bound to invite disruption, given the director's focus on increasing the short-term value of stockholdings or other investments. Such activism is expected to be on the rise in the post-pandemic era. In fact, more than one in five boards (21.4 percent) expect a surge in shareholder activism postCovid-19, according to a July 2020 survey of boards by Chief Executive Group.

Early in his career, Grant Griffiths, a board risk and governance advisor who has sat on several public and private boards, including the boards of Siemens UK and mental health services provider Flexmind, was on a board with an activist shareholder who refused to listen to the other directors and tried to force their decisions. "He asked us privately to do his bidding and vote his wishes, despite our obligation to do what was best for the business," Griffiths says.

Boards also evolve over time in membership ranks and priorities. An acquisition, for instance, typically invites a new slate of board members. "Suddenly you're sitting in the boardroom with half of the people complete strangers," says Catalano. "The chemistry of the board changes."

While joining a board burnishes one's résumé, not taking the time to think through the opportunities and risks can backfire, as board members dragged into derivative shareholder lawsuits in the past few years at Wynn Resorts, PG&E, Yahoo!, 21st Century Fox and Oracle may attest. To be fair, an offer by any one of these well-known businesses to join its board would have been tough for an up-and-coming executive to decline. And that's the problem. "Without transparency into the board and the different perspectives of members, you're venturing forward blindly," Catalano says.

With boards in many states now compelled by law and public pressures to diversify their ranks, women and people of color are especially vulnerable to joining a big-name board because of the prestige it brings, says Ana Dutra, who sits on eight boards, half of them global public companies like the giant utility Elecrobras in her native Brazil. "It's an affirmation of their skills and experiences to be invited and that goes to their head. Sometimes they're lucky and the experience is good. Other times they've made a very serious and wrong decision."

Stephen Kasnet was among the lucky. Forty years old when he joined the

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“It wasn’t something you were taught in business school; back then, it was more a matter of taking up the offer and seeing how it played out,” Kasnet said. “In my case, it worked out fine. But I’ve learned that you cannot make [board seat] decisions based on pride alone.”

In the case of Bonime-Blanc, once burned, twice shy. When asked to join other boards in subsequent years, she parked her ego at the door and bided her time in making a decision. “I was asked by the CFO of a well-known company to be a candidate for a board seat,” she recalled. “My hubris almost did me in, but I told the CFO to give me some time to think about it.”

In investigating the company, her due diligence unearthed evidence of economic distress and the possibility of a regulatory investigation. “The reason the CFO wanted me on the board, which had not been disclosed to me, was my background as a general counsel and chief risk officer,” she said.

In effect, the board had recruited her to help them dig out of a deepening hole. “A series of unfortunate events kicked in, including the CFO’s dismissal,” said BonimeBlanc, founder and CEO of consultancy GEC Risk Advisory. “I removed my name from consideration and learned an important lesson. Whenever I am now asked to be a board candidate, I stop and think. ‘Will this board be good for my professional reputation?’ If I have any doubts, I take a pass.”

Look for Red Flags

Most people asked to join a board begin with an examination of the organization offering the opportunity. “If the asking organization is a for-profit entity, you want to be sure it is financially stable,” said Donald Mrozek, chairman of law firm Hinshaw & Culbertson, who sits on one for-profit board (privately held Panduit) and has served numerous nonprofit boards over the years. “If it’s a nonprofit entity, you want to be sure its mission aligns with your own set of values and beliefs.”

In researching a public company, board candidates can easily review key corporate documents like the 10-K and 10-Q reports on the company’s website. It is also advisable to review the company’s proxy statement, as it provides information on the board’s governance processes and practices, which can be compared to board governance at leading organizations.

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can then see where their own skills fit into the scheme of things, making them a valuable addition to the board.”

Mrozek advised candidates for a board seat at a privately held for-profit company to request a copy of the bylaws and articles of incorporation, which provide information on the organization’s purpose, governance rules and procedures, and limitations on director liability.

These varied steps may propel a board candidate for the exits, suggesting the organization is unsound financially, the C-Suite has lost their way, the company is apt to be acquired or is at significant risk of a disruption by a more agile competitor. On the other hand, the due diligence may indicate a financially sound and viable market leader.

If this is the case, the next stage of due diligence commences—an examination of the board’s composition. “Too much homogeneity on a board is a red flag,” says Bonime-Blanc. “If you are the first person of color or the first woman candidate, beware of being the token. Think twice before considering the opportunity. They may not want you at all for your experience, knowledge and skills, just to fill a quota.”

Catalano shares this perspective. “If you’re being asked to join a board to fulfill a legislative requirement, they’re not going to take you seriously,” she said. “Do your homework to be sure you’re not going to be marginalized—that they are specifically recruiting you because of your experience and unique skill sets.”

All the board members recommend that candidates’ due diligence involve in-person, one-on-one meetings with directors, “where you can look them in the eye and size them up,” says Catalano.

Kasnet concurs: “You need to get beyond the sales pitch provided by the one or two board directors that solicited your interest in being a candidate.” He tries to set up meetings with each director at the person’s office, away from the entity’s corporate boardroom. “Most times, I’m offered to attend a social gathering of the full board, which I politely decline for the time being. I’d rather engage each board member in a personal discussion, where they’re apt to speak the truth.”

For example, he will ask directors if the board is “an open board, where each member has equal independence, or a hierarchical board, with a small

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Dutra also requests one-on-one meetings with the board members, as well as with the organization's CEO. "Do I like these people, do I respect them, or do I see evidence of mediocrity and arrogance?" she says. "I also try to understand what the directors consider to be the board's role—is it a pro forma board or more of an operating board. I want to be sure I'm being called upon to do actual work. My sole interest in being on a board is if my skills and experiences can make a difference for the better."

After these discussions, Dutra asks herself three questions—if she feels aligned with the board's values, culture and the organization's mission, products and services. "If the answer is no on even one of these, I'm out," she says.

Beware Power Imbalances

In his discussions with directors, Mrozek seeks to determine if a group of family members, large shareholders or executives have greater sovereignty over other board members. "If that's the case, you're likely to have no impact whatsoever," he says, adding he would personally avoid joining such boards.

In her discussions with individual directors, Bonime-Blanc asks who runs the board sessions, whether or not independent directors have standing and power, how each of the board committees is organized, and how much leeway directors feel they have in their work. "I also ask for examples about the board's exchanges with management and how effective these interactions are," she says. "You can pick up potential dysfunction or toxicity by touching on delicate issues."

Nevertheless, she advises candidates to tread lightly in these discussions. "It's a dance, since the candidate hasn't officially been offered the position," she explains. "You don't want to be too inquisitive or too aggressive, but there are few better ways to get under the skin of the board's culture and dynamics."

Aside from interviewing board directors and management, Griffith advises also scheduling time to talk with the entity's largest customers. "If the company's mission statement says it's 'customer-focused' or the 'best in our industry in delivering excellent customer experiences,' I'd make sure its biggest customers also feel that way," he warns. "You don't want to be sitting on the board when one of its largest revenue-producing customers

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court cases have ruled that a director who resigns instead of staying on the board to resolve the organization's problems is in breach of their fiduciary duties. "Board members must put the interests of the organization above their own, especially when things go south," says Mrozek.

Know Your Potential Role

Great boards often are a combination of diverse people whose skills, personalities, expertise and other personal characteristics come together like the different musicians in an orchestra playing a Beethoven symphony.

"Whenever I'm interviewing the directors, I ask the question, 'What is the voice at the table that you're missing that you think I can fill?'" says Catalano. "That tells me whether or not they have they considered the needed balance of skills on the board. If they don't provide an intelligent answer, I scratch them off the list."

A few years ago, a French oil company solicited her interest in becoming a board candidate. She asks what role she would play on the all-male board, based on her skill sets. "They couldn't answer the question," she says. "It occurred to me they simply wanted a woman on the board because they were getting legislative pressure." She scratched another board off her list.

Bonime-Blanc describes a similar experience. In her case, she had joined the board of a global company thinking she was chosen because of her background in international risk and compliance. "Within a year of joining, the board made me the audit committee chair, which I was not comfortable leading," she says. "It subsequently turned out the company was involved in a serious audit concerning complex international transactions. I said, 'I'm sorry. I'm just not equipped to do this.' They insisted there was no one else on the board to handle the task. Rather than destroy my reputation, I resigned."

DeHaas, who will retire from Deloitte at the end of the year, is reviewing a host of for-profit private and public company board seat offerings (the firm does not let employees sit on such boards). Through the years, she estimates she has sat on 25 nonprofit boards. Given her tenure leading the firm's Center for Board Effectiveness and her understanding of the reputational risks of joining a board, she is carefully scrutinizing each entity's values, purpose and reputation. "My reputation will be affiliated with that organization's reputation going forward," she says. "It's a decision

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Russ Banham

Russ Banham (russ@russbanham.com) is a contributing writer to Corporate Board Member.

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