Blogs

This feature of our blog is where our in-house readers share tips, anecdotes and thoughts about things This feature of our blog is where our in-house readers share tips, anecdotes, and thoughts about things that come up in their daily practice. After receiving great feedback on Stewart Landefeld's blog post a while back, "**Should Non-CEOs Serve as Directors? Six Best Practices to Consider**," this particular batch of thoughts is about how companies handle requests from non-CEOs to serve on other public company boards:

1. "Shareholders are starting to suggest that companies adopt a policy in their governance guidelines (permitting one or two spots in their overboarding section), but most companies aren't doing it yet. It would get vetted under the conflicts policy, but it usually depends on what the CEO thinks."
2. "Overall, I think informal policies are likely the norm. We have restrictions (and there were restrictions at the other companies I have worked at) for any board service that sniffed around any company that could

be viewed as a competitor (either from a product and services perspective or employee-pool perspective). I would think most companies would have an ethics limitation like that.

Outside of ethical limitations, there was an informal policy at my other companies and here that encourages board service on the theory that it is part of professional development for high performers."

3. "I tend to doubt there would be any type of specific policy on this for most companies. That instead, any policies and guidelines about moonlighting would cover it. And that an employee would either be flat-out prohibited by a moonlighting policy—or apply for an exception where it would be assessed for conflicts, etc."
4. Some companies do have a policy; many likely do not. And any company with a policy may not have it in writing. We have an approval policy and we apply procedures (governance, conflict, legal, ESG review). But the unwritten policy is that only one public board per person at the most."
5. "I think it is an amazing opportunity to broaden the outlook and skills of executive officers I also think it opens the market for potential directors that are diverse that have the skills the board needs. So, assuming the executive's company will support the time, and the executive can balance their work/board duties, it can work very well.

   However, if conflicts come up, the executive needs to be savvy enough to report and perhaps walk away."
6. "We don't have formal policy, but several senior executives of our company are on outside public company boards. Usually, we believe that one outside public board for employee senior executives is seen as good development. It requires advance notice. There must be no conflict (competitively, time-wise or interest/reputation wise) between our company and the company on whose board they serve. All other 'do's and don'ts' under the Code of Ethics would apply as well (e.g., no self-dealing, confidentiality etc.)"
7. "Some companies actively encourage C-suite execs to serve on other boards as a 'development opportunity.' But usually only one board. As an unintended consequence perhaps, it's a way to increase executive compensation without the employing company paying."
8. "There are a number of considerations that we assess as part of our informal process, including:

- **Antitrust policy covering Clayton Act.** People can be a little naïve about how quickly and easily one can run afoul of the antitrust prohibitions for some companies.
- **Purchasing policy.** If the company has an extensive supply chain network, the executive could come into possession about information related to suppliers.
- **Joint venture boards.** Fees must be paid to employing company to ensure there is no confusion that executive represents the investing employer. But what happens to the stock received for service? This might bring into play insider trading policy issues.
- **Company resources.** There is usually somewhere a policy about the use of company resources. If an executive is serving on [a] board on behalf of the company, that's clearly not an issue here. But if an executive is serving on a board for other reasons, one needs to assess whether the company's resources can support that activity. Can the secretary print out stuff for the executive? Can the company travel team be used to plan travel? Must the executive take vacation time for other company board meetings? And so on. It gets grey pretty fast if the employing company is encouraging this as a *development opportunity*.
- **Risk management/D&O insurance coverage.** Oh, the tangled situations that can come about if an executive joins a board without clarity on this. Don't assume that the board's company will cover if the executive is repping an investor. Might, but might not. Clarify that with the broker. And if it's not clear on whose behalf the service is undertaken, coverage may not be clear when it's most needed."

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