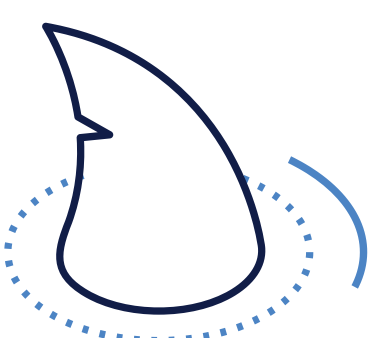
WHEN TO JUST SAY NO

BEING COURTED FOR A DIRECTOR SEAT 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 rubber-stamped. I didn't know much about governance at the time, but it seemed odd that there were no minutes and no formal elections, just new members who would suddenly pop up from time to time, handpicked by the chair."

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.

While no one willingly joins a bad board, the signs of trouble aren't always readily apparent. To guard against joining a board that may be headed for turbulence or where you'll be uncomfortable with the role you've taken on, veteran directors recommend a deep dive into due diligence with these steps:

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.

Boards with lopsided gender, racial and age representation, such as a preponderance of older white men, may lack enlightened views on environmental, social and governance (ESG) issues, which are front and center on many 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 in-

vestments. 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 post-Covid-19, according to a July 2020 survey of boards by *Corporate Board Member.*

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. When the deal culminates, the new members suddenly sitting around the table can have a major impact on 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. By the time a newly anointed board member has enough access to his or her fellow board members to have a sense of any potentially problematic perspectives or dynamics, it's too late. Without transparency into the board and a proactive effort to understand the different perspectives of sitting members, new members risk finding out about issues too late.

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 Eletrobras 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."

First timers, for whom being recruited can be a heady experience, can be particularly vulnerable, sometimes agreeing to serve after no more than a cursory review of company financial statements, when truly vetting a board requires a more intensive due diligence.

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 Bonime-Blanc. "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."

"If you are the first person of color or first woman candidate, beware of being the token."

—Andrea Bonime-Blanc, Founder, GEC Risk Advisory

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.

"The proxy statement is a great way to assess the directors' individual and collective skillsets," says Deb DeHaas, vice chairman at Deloitte and former head of the audit firm's Center for Board Effectiveness. "A board candidate 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 its 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 is 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."

Women and minority candidates may want to guard against being "token" appointments and ending up marginalized by pressing during the recruitment process as to what, specifically, about their experience and skillset will make them a good fit.

Ideally, due diligence should also involve in-person, one-on-one meetings with directors, preferably in person or, in these times, via Zoom. The goal should be for candidates to get beyond the sales pitch provided by the one or two board directors who solicited their interest. Meeting each director in a neutral setting, away from the entity's corporate boardroom for a candid conversation, can be helpful.

Dutra 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 and culture and the organization's mission, products and services. "If the answer is no on even one of these, I'm out," she says.

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—Ana Dutra, Director, Lifespace and Eletrobras Participacoes

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, Griffiths 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 jumps ship."

He makes an excellent point. If the company finds itself in dire financial straits, extricating from the board at this time is a dicey proposition. A few 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. Each director has a role to play, and all work together harmoniously.

That dynamic is delicate and easily upset when directors are recruited for the wrong reason or called on to step outside of their areas of expertise. That proved the case for Bonime-Blanc, who 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."

Deborah DeHaas, who will retire from Deloitte at the end of the year, is carefully reviewing a host of for-profit private and public company board seat offerings (the firm does not let employees sit on such boards) to avoid such a fate. 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 I don't take lightly." **CBM**

Russ Banham is a Pulitzer-nominated financial journalist and best-selling author.