

SO, YOU WANT TO JOIN A PUBLIC COMPANY BOARD

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Retired senior executives often receive, or seek out, public company directorships as the next step in their journeys. Before accepting, they should carefully evaluate key areas to make sure they are prepared for the responsibilities and potential risks. Likewise, companies should consider assembling relevant briefing materials for potential candidates to streamline the process, potentially along with an NDA if they intend to share any confidential information, including by making directors or the auditors available for discussions.

Candidates should also be prepared to share relevant information with the company, or its search consultant, including consents to background checks and questionnaires.

DILIGENCE ON THE COMPANY

Recognizing that many of these topics are addressed in SEC filings and the company's website, some of the key documents and areas for diligence for a potential nominee include the following.

LEGAL AND FIDUCIARY DUTIES

- Liability exposure: charter, bylaws, indemnification agreements and D&O insurance.
 - Coverage, exclusions and limits.
- Identity, reputation and financial health of carriers and broker and the company's history of coverage.
- Risk management.
 - History of litigation and investigations.
 - Regulatory and compliance oversight.
 - SEC disclosures of key risks; enterprise risk management.
 - Past restatements.
 - Past changes in outside auditor.

COMPANY HEALTH AND REPUTATION

- Financial statements and recent SEC filings.
 - Recent SEC comment letters and responses.
- Auditor reports.
 - *Consider requesting discussion with auditor.*
- Competitive position in relevant markets.
- Past or ongoing issues: litigation, investigations or controversies.
- Potential for activists and market perception of the company's board and business.

BOARD DYNAMICS AND GOVERNANCE

- Board composition.
 - Stature, experience, expertise and integrity of other directors.
 - Culture and engagement of other directors. *Consider talking with lead or other directors.*
 - Independence of board from management.
- Board governance.
 - Guidelines, committee charters, code of conduct/ethics, related person transaction policy, director education; etc.
 - Proxy statement disclosures, including director independence, frequency of board and committee meetings, transactions with principal stockholders or insiders, etc.
 - Onboarding materials and process.
- Board dynamics; information flow.
 - Adequacy of information; types and frequency of reports or updates to directors. *Consider requesting example of board package and minutes.*
 - Communication and decision-making between board meetings.
 - Access to company facilities and offices for visits.
 - Access to senior management without the presence of the CEO.

COMPANY STRATEGY AND OUTLOOK

- Objectives over near- and long-term.

- Frequency of board review and update of strategic plan.
- Sustainability and clarity of business model.
- Strategic risks.
- Future prospects; stock price volatility.
- CEO succession plan.

BOARD COMPENSATION AND BENEFITS

- Mix of types.
- Reasonableness; comparability to peers.

TIME COMMITMENT; SKILLS AND EXPERIENCE FIT

- Frequency, location and normal duration of board and committee meetings.
- Schedule of board meetings.
- Contribution potential.
 - Why does the company want you to serve as a director.
 - What experience and relevant expertise would you bring.
 - What committees, if any, would you serve on and why.

DILIGENCE ON CANDIDATES

In addition to requesting consents to background checks, companies should collect relevant information from director candidates regarding:

BIOGRAPHICAL DATA

- Biographical data.
- Professional background, including prior and current board experience.
- Educational history.
- Skills and expertise.

INDEPENDENCE; RELATED PERSON TRANSACTIONS

- Any relationships or transactions affecting the candidate's independence or that would otherwise be disclosable under SEC rules.
- Scope could encompass those involving the candidate, or family members or businesses, with the company, its management or its auditor.

COMPETITION MATTERS

- Any competitive overlaps with other companies where the director candidate serves that would raise antitrust (Clayton Act) issues.

POTENTIAL CONFLICTS OF INTEREST

- Financial interests and outside affiliations that could present potential conflicts of interest.

LEGAL AND REGULATORY MATTERS

- Past or current litigation, proceedings or investigations.

Frequently, this information will be obtained by the company through a D&O Questionnaire if not previously collected by the search consultant.

Other areas that may be handled informally through interviews, initially through a search consultant:

- Reasons for interest in board role.
- Approach to governance and board dynamics.
- Industry and functional expertise; matching to board skills matrix.
- Experience relevant to strategic needs and board committees.
- References for discrete checks, such as former colleagues or fellow directors.

RELATED CAPABILITIES

- Securities & Corporate Governance

MEET THE TEAM



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