Center for Board Effectiveness

On the board's agenda | US
The private company board: A director's perspective

Boards of directors face a growing and seemingly endless array of new and long-standing challenges, such as cyber risk, supply chain issues, and the role of the corporation in society, to name just a few. In considering how boards address these challenges, much attention has been paid to public companies. However, private company boards face many of the same challenges. Focusing on how they address those challenges may provide some insights that are beneficial to all boards.

With this background in mind, Bob Lamm, independent senior advisor to Deloitte's Center for Board Effectiveness, recently spoke with Lynn Nowicki Clarke, an experienced private company board member, to hear her views on these and related topics.

Lynn Nowicki Clarke is an independent board director, board chair, and chief executive officer with expertise in consumer packaged goods, technology, e-commerce/digital, distribution, retail, and startups. She has strategic, branding, and operating experience in 11 industries, has served on more than 10 boards, and has been a CEO of three companies. The National Association of Corporate Directors named her Private Company Director of the Year in 2021. She currently serves as a director of ABARTA Coca-Cola Beverages, where she is chair of the governance committee and a member of the compensation committee; chairman of the board of Nielsen-Massey Flavorings International; and a member of the board of A. Duie Pyle Transportation and Logistics.

What drew you to private company board service? What are some of the major differences between public company and private company board service?

There are many factors that make private company board service attractive. One practical consideration is that there are far fewer public companies today than in the past, so if you are looking to serve on a board, it's important to consider private company board service.

There are more similarities than differences between public and private company boards. The basics of good governance are the same. In fact, when I joined my first private company board, I was surprised at the formality of the governance structures and processes. The processes are similar to my public company experiences. Committees have detailed charters, just as a public company. We follow strict board and committee schedules and calendars. However, in my view, private company board service affords the opportunity to really focus on the longer-term aspects of a business versus quarterly results and compliance. In contrast, public company boards have to spend a great deal of time addressing more granular compliance matters imposed by third parties, such as the SEC and proxy advisory firms, which can sometimes compete with one another or with other interests of the company, its customers, employees, and communities.

Many aspects of public company governance stem from laws and regulations, as well as third parties, such as proxy advisory firms. Private companies are not bound by some of these requirements; as a result, private company boards may have more decisions to make about which governance structures and processes to follow. Does that make it easier or more difficult?

I don't think private company governance is easier or more difficult—it's just different. In a private company, you may not have as many regulators and other third parties influencing governance, but you do have shareholders. Good governance fundamentals still apply. For example, driving shareholder value is a must. In many private companies, shareholders can be family members or members of a closely held group that may take a more personal interest or may have a different definition of value or company performance; this can create opportunities and/or challenges different from those faced by public companies.

One specific example is the way in which private company shareholders treat compensation. In a private company controlled by family members or a family council, there may be a lack of understanding about CEO compensation, particularly if the CEO is family. For example, family dynamics can come into play ("Why is Cousin George making so much money?"). It's important for family shareholders to understand market-level compensation and how not offering competitive compensation can negatively impact executive/managerial retention. Concerns about compensation can also extend to independent directors. Family members, particularly those who are not on the board, may not understand why directors should be paid at all.

I've encountered some private companies that produce the same reports as public companies, including a proxy statement, albeit for internal use only. Is that something you'd recommend?

It really depends on the company and its executive and board leadership. Financial reporting is essential and should be the same as what public companies report, following accounting standards. Two questions need to be answered. What do shareholders and other stakeholders need/want to review? And how much information are shareholders willing to share with employees?

Public company boards are focused on issues such as diversity, board refreshment, board leadership, and committee structure. Are these matters on the agenda for private company boards and, if so, how are they approaching them?

Diversity is as much of concern for private companies as it is for public companies. A diverse workforce at all levels helps companies better meet the needs of their customers and communities. How private companies approach diversity varies depending upon organization needs, shareholder focus, industry, and many other attributes. Private companies are often competing with public companies for experienced directors who bring diversity to the board. At times, private companies are not structured to offer equity as a compensation component, which can make it more difficult to recruit. In these cases, a company may choose to recruit a less experienced board member and mentor the new member over time.

While public and private companies both grapple with board refreshment, private companies have more flexibility. Some don't consider chronological age but rather look at a director's experience, cultural fit, and chemistry. The private companies where I have experience elect all directors annually for a one-year term, with the understanding that a director will generally serve three to five years with one or two renewals. Again, director tenure always depends on company needs. I've been on a board for 13 years because of significant changes to company strategy, structure, and businesses.

Private companies have also more flexibility when it comes to board leadership. We are less bound to following a particular model or justify why we're not following it. There are cases when having the CEO serve as board chair makes the most sense and others when combining the two positions just doesn't work.

When it comes to committee structure, public and private company boards face similar challenges. Both have to give very careful consideration to how many committees they want or need. In general, I don't think it makes sense to form a separate committee for every new topic that comes along—for example, a committee on cyber risk. Having too many committees can diffuse responsibility, leading different committees to think that another committee is handling a particular matter, causing things to fall through the cracks.

The issues related to board composition are similar; I don't think it makes sense to bring on an expert in a particular field. I understand that there are proposals in Congress and at the SEC requiring public company boards to have a cyber expert on the board or explain why they don't. My view is that all directors need to understand risks of all types. If a board has an expert on a particular topic, other directors may defer to that director instead of asking questions and using their overall business judgment and expertise to weigh in on discussions and decisions.

Institutional investors and others are increasingly concerned with "overboarding"—when a director serves on multiple boards, raising questions as to the director's ability to make meaningful contributions to all of them. As with SEC rules on this matter, institutional investors often focus their concerns on public companies. Should private company boards be considered when assessing whether a director is stretched too thin?

While I would not support an arbitrary cap on the number of boards on which a director serves, the real answer is "it depends." It's important for both the director and the organization interested in that director to assess the director's portfolio rather than decide based on a number. The director under consideration may work with one company going through tough times, but the other companies may be strong, well-financed market leaders that require significantly less director time than a troubled company. I love to serve on startup or early stage boards, as they have afforded me the opportunity to work with people who are tomorrow's business leaders.

What do you see as the greatest challenges facing boards across all industries? Are the challenges different for public companies than for private companies?

The biggest challenge for boards, whether their companies are public or private, is to help the management team lead through high-inflationary, recessionary times with less than optimal staffing levels. Most of today's executives and many board members have never lived through high inflationary times. Succeeding through what we are currently facing requires the ability to assess, make, and execute the tough decisions. Boards and C-suite executives must be firm but measured as they manage through these challenges for both public and private companies.

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