NACD®

CULTURE AS THE FOUNDATION:
Building a High-Performance Board

REPORT OF THE
NACD BLUE RIBBON COMMISSION

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The National Association of Corporate Directors (NACD) is the premier membership organization for board directors who want to expand their knowledge, grow their network, and maximize their potential.

As the unmatched authority in corporate governance, NACD sets the standards of excellence through its research and community-driven director education, programming, and publications. Directors trust NACD to arm them with the relevant insights to make high-quality decisions on the most pressing and strategic issues facing their businesses today.

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With an ever-expanding community of more than 23,000 members and a nationwide chapter network, our impact is both local and global. NACD members are driven by a common purpose: to be trusted catalysts of economic opportunity and positive change—in business and in the communities we serve.

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Each year, NACD leverages the perspectives and experience of its more than 23,000 members, and appoints a Blue Ribbon Commission, an experienced collective of directors, investors, subject-matter experts, and leading governance professionals. The Commission engages in an extensive process to examine and develop recommendations and tools to address the most challenging issues facing boards.

Blue Ribbon Commission Reports (BRCs) have been strengthening corporate governance for three decades. In recent years, Commissions have developed comprehensive guidance to significantly rethink or elevate topics such as board oversight of corporate culture, talent, and new disruptive risks. These reports helped set the standard for effective board practices in these areas and have been used by investors and policymakers.

In 2022, a special commission was created, called the Future of the American Board Commission, to shape a comprehensive framework to help guide boards through an increasingly turbulent and unpredictable future. BRCs play a key role in helping to empower directors and transform boards to be future ready.

2023 Blue Ribbon Commission on

Culture as the Foundation: Building a High-Performance Board

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2023 NACD Blue Ribbon Commission

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Bose, Church & Dwight, Lacuna, Leaf Logistics, NACD Northern California Chapter, Saltbox

Acknowledgements

The Commission recognizes the contributions of the following NACD staff members:

Letter from the Cochairs

More than 20 years ago the massive Enron and WorldCom accounting scandals and the passage of the Sarbanes-Oxley Act dramatically changed the landscape of corporate governance in the United States. Investors and the general public turned their attention to the role of the board, prompting increased focus on board independence, expertise, and ultimately board performance.

These events ignited the development of many best practices and standards to guide improvements in board governance.

We are now in another transformational era for boards. A confluence of market and societal forces is creating an operating reality that is fundamentally different from any that sitting directors have ever experienced in their careers. Ongoing disruptions involving major macroeconomic shifts, the geopolitical order, major advancements in technology, labor market dynamics, supply chains, climate change, and social and investor activism are reshaping business in powerful ways and transforming how companies need to be governed.

Once best-in-class board structures, practices, and processes are now table stakes—important, but not sufficient in an environment where boards are expected to learn more and faster, make difficult decisions on new and often complex issues, capitalize on diverse thinking, and swiftly change course when needed. We believe this level of board agility can only be achieved if boards focus as much on their culture and conduct as on their protocols and provisions.

In our board work, we have experienced firsthand that culture can be either the foundation for positive change or, if ignored, an insurmountable obstacle. A strong corporate culture often acts as a unifying force that ignites high performance and contributes to long-term value creation, but a weak culture can quickly become a significant liability and a drag on growth. The same is true in the boardroom, and we urge boards to now shift their focus onto their own culture and dynamics.

High-functioning boards today need highly developed cultures, with firmly established behavioral norms and values that promote trust, candor, courage, inclusion, confidentiality, continuous learning, and accountability,

and that support better decision-making. Boards can no longer afford to ignore problematic cultural fault lines such as factions among directors, disengaged or "stale" directors, or behavior that threatens to destabilize the boardroom.

This year's Blue Ribbon Commission report is a call to action to explicitly use culture as an instrument to drive board excellence in today's complex environment. While board culture is often perceived as amorphous, this Commission argues that it can be consciously built, sustained, and changed.

> This year's report is intended as a call to action to explicitly use culture as an instrument to drive board excellence in today's complex environment.

We acknowledge that strengthening board culture is not always an easy process. Boards are in essence episodic bodies who interact relatively infrequently, and it can be difficult for them to change and maintain their group dynamics. A strong culture demands openness and honest self-reflection from all directors (which can be, at times, uncomfortable), courage from board leaders, and commitment from the full board. There isn't a one-size-fits-all culture: every board will need to shape and reinforce their own unique culture, driven by their values, working and leadership styles, and in support of the company's strategic direction.

In this report, we offer comprehensive guidance for boards, developed with the collective wisdom and insights of a diverse Commission comprising prominent directors and experts, who serve on the boards of more than 70 public, private, and nonprofit organizations.

In Part One, the report takes a deeper look at the disruptive shifts in the business environment and their implications for boards, most notably the need for boards to become more agile and adapt their culture and dynamics.

In Part Two, the report makes the case for building a strong board-performance culture and outlines the pitfalls that boards will likely encounter when doing so.

In Part Three, the report recommends 10 specific actions, along with examples and links to practical tools, that boards can take across three distinct categories: 1) define optimal board culture, 2) reinforce the board culture and behavioral norms, and 3) address major cultural fault lines.

As a starting point, wherever boards may be in their journey, we encourage them to reflect upon the qualities and shortcomings of their current culture. How are the current behaviors and norms impacting your board's interactions, relationship with management, and decision making? How could a deliberate, more robust culture improve your board performance?

The report's recommendations and practical tools—including discussion guides and other supporting materials—can be integrated into board practices to intentionally build and improve board culture and dynamics.

We believe that boards now have an urgent imperative to consciously define and shape their own culture and to use it as a lever for advancing positive deliberation and thorough oversight. It's time to own our culture: the quality and resiliency of board governance will depend on it in the coming, and likely more turbulent, years.

Oscar Munoz   Mary Winston

This Blue Ribbon Commission report represents a consensus of the Commissioners' viewpoints and reflects their support for its principal recommendations. We did not believe it necessary that each Commissioner agree with every word of the report. As a group, however, the Commissioners regard this report as a fair representation of their views on an important and timely subject.

Recommendations of the 2023 NACD Blue Ribbon Commission

The Commission believes that an intentional and healthy board culture is a unifying force that builds trust and encourages candor among directors and with management and advances the agility of the board. The recommendations to strengthen culture as a foundation for board performance are:

DEFINE OPTIMAL BOARD CULTURE

1 Assess current board culture and intentionally define the desired state.

2 Agree on behavioral norms that support a clear delineation of board and management authority.

3 Periodically diagnose and, when needed, refine board culture to ensure it is fit for purpose in a dynamic business environment.

REINFORCE BOARD CULTURE AND BEHAVIORAL NORMS

4 Clarify the roles and responsibilities of designated board leaders in reinforcing (and changing) board culture.

5 Assign primary ownership of board culture-related processes to the nominating and governance committee.

6 Build inclusive recruitment and onboarding practices to effectively integrate new directors into the boardroom and its culture.

7 Ensure that board evaluations assess the performance and behaviors of individual directors and their roles.

ADDRESS MAJOR CULTURAL FAULT LINES

8 Commit to addressing unhealthy behaviors and dynamics (group and individual), including problematic directors.

9 Destigmatize the decision of individual directors to leave a leadership position or to off-board.

10 Strive for consensus in key board decisions but recognize the value of rigorous debate.

10 Recommendations to Build a Board Performance Culture

PART ONE
In Pursuit of Board Agility

Companies, and the boards that govern them, are at a major inflection point in how they operate and perform. NACD's *Future of the American Board report*[1] calls on boards "to adjust and adapt to ensure that they are well positioned for their significant governance responsibilities, given intensifying dynamic, complex, and uncertain forces."

Directors and management teams are grappling with a "permacrisis" (an extended period of change and uncertainty) that is monopolizing their agendas and time—inside and outside of the boardroom. And they are confronted with seismic challenges that are often dramatically different from the issues that most directors faced in their operating careers.

Rapid and far-reaching advances in technology are among the forces reshaping the process of value creation and the nature of competition in every sector.

The growing repercussions of climate change are beginning to alter the structure and economics of many industries. Global trade is being challenged by growing geopolitical disorder. Investor scrutiny and employee expectations are more exacting than ever.

Companies are navigating their role in contentious social issues, which have increasingly taken on a political overtone. Societal expectations of business are expanding, and stakeholders are calling on companies to speak out on issues that often go beyond their core business. Both action and inaction may risk alienating a portion of stakeholders, even if managed carefully, potentially inviting legislative or regulatory attention or action. The growing political divide and varying generational views complicate this further. Polarizing social issues are entering and dividing boardrooms as well.

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[1] NACD, *The Future of the American Board Report: A Framework for Governing into the Future* (Arlington, VA: NACD, 2022), p. 8. https://www.nacdonline.org/all-governance/governance-resources/governance-research/future-of-the-american-board---reports/fab-report

In addition, the COVID-19 pandemic and its ongoing effects demanded more proactive board involvement as management grappled with a multitude of simultaneous, unprecedented issues. The relationship between the board and management is now more dynamic and collaborative and requires more attention.

In this environment, board work has become more intense, more visible, and has higher stakes, with expectations for board and individual-director performance greater than ever, including demands for transparency, diversity, and accountability. Major investors are more deeply scrutinizing the depth and breadth of director expertise. Stakeholders are directly probing the role of boards when crises occur. Activists are looking for "inactive directors" who are not keeping pace with these changes, and "stale" boards that have not adapted to new demands or refreshed membership. Now, if there is a contested election for directors of a US public company, universal proxy voting cards allow shareholders to select candidates from both the company and dissident slates. This has the potential to alter the composition of boards targeted by activists, and ultimately, to shake up the dynamics within the boardroom.

In response, boards are adopting new governance practices and adjusting their operations to improve performance. Many are aiming to increase their effectiveness by taking specific steps:

- ▶ Expanding board agendas and scope of issues covered by the core committees to address emerging and rapidly evolving topics, including artificial intelligence; cyber risk; geopolitical risk; climate change; diversity, equity, and inclusion; and human capital

- ▶ Reconsidering committee structures—for example, expanding the scope of compensation committee charters to address oversight of human capital issues or rethinking the scope of audit committee engagement on risk oversight matters

- ▶ Engaging in more formal board and individual director evaluations—periodically with the benefit of a third-party facilitator

- ▶ Seeking more forward-looking reporting and metrics from management

- ▶ Refreshing their composition more rapidly with new skills; racial, gender, and age diversity; and first-time directors (see sidebar, **The Evolving Composition of the Boardroom**, on page 10)

> In this environment, board work has become more intense, more visible, and has higher stakes, with expectations for board and individual-director performance greater than ever.

Put differently, boards are striving to become more agile. As highlighted in the *Future of the American Board report,* board agility is characterized by the capacity to address critical issues in a decisive, efficient, and well-informed manner, and to pivot from a course of action when it is apparent that change is necessary. An agile board is curious, learns more and learns faster, and proactively oversees the company's response to the changing environment and attendant shifts in opportunities and risks. It is prepared to activate the diverse expertise and experience of directors and adjust its meeting and oversight practices.

Increasing board agility has a profound impact on board culture (see sidebar, **The Concept of Board Culture**, on page 11). This pursuit of agility affects how directors contribute and interact and how boards make decisions, approach management, and hold themselves accountable. Longstanding norms of behavior may no longer be effective or acceptable.

The Evolving Composition of the Boardroom

GENDER DIVERSITY
Percentage of total board seats (Russell 3000)

Year	% of Female Directors	% of Male Directors
2019	22%	78%
2020	25%	75%
2021	27%	73%
2022	29%	71%

■ % of Female Directors ■ % of Male Directors
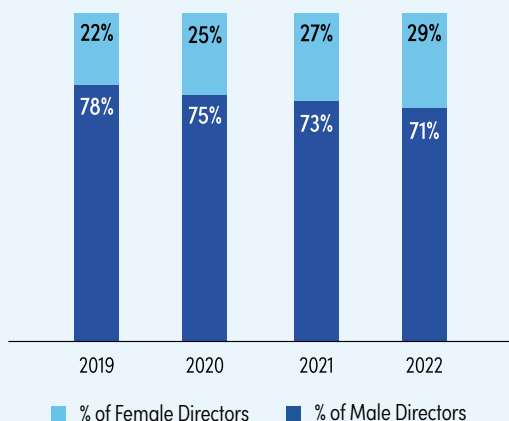
Source: MyLogIQ

AGE DIVERSITY
Number of directors 50 years old or younger (Russell 3000)

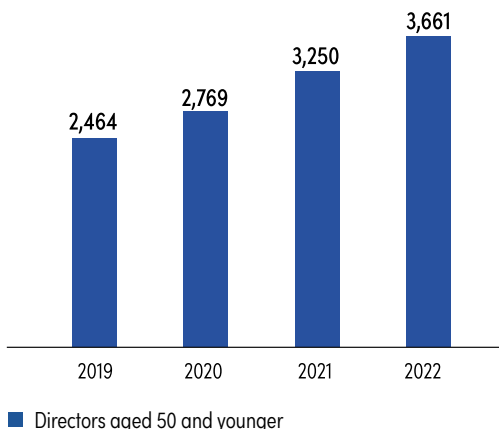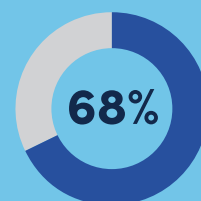| Year	Directors aged 50 and younger
2019	2,464
2020	2,769
2021	3,250
2022	3,661

■ Directors aged 50 and younger
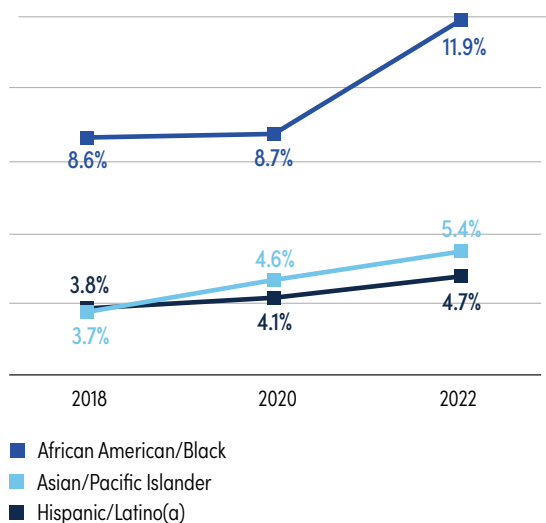
Source: MyLogIQ

68%

68% of incoming directors in 2022 joined their first public board (Russell 3000)

Source: MyLogIQ

RACE/ETHNICITY DIVERSITY
Percentage of total board seats (Fortune 500)

Year	African American/Black	Asian/Pacific Islander	Hispanic/Latino(a)
2018	8.6%	3.7%	3.8%
2020	8.7%	4.6%	4.1%
2022	11.9%	5.4%	4.7%

■ African American/Black
■ Asian/Pacific Islander
■ Hispanic/Latino(a)

Source: *Missing Pieces Report*, 7th edition, p. 36. Reprinted with permission from Deloitte LLP, Catalyst, Diversified Search Group, The Executive Leadership Council, the Hispanic Association on Corporate Responsibility, and Leadership Education for Asian Pacifics.

BOARDS ARE INCREASINGLY RECRUITING DIRECTORS WITH SPECIALIZED SKILLS
Percentage change in the number of directors with skill reported in the proxy, from 2019 to 2022

Skill	Percentage change
ESG	273.5%
Digital	111.2%
Human Capital	87.4%
Cybersecurity	62.8%
Risk Management	50.6%
Technology	44.8%
Global Experience	32.3%
Government and Regulatory Relations	31.3%
Management/Strategic Vision	29.5%
Investor Experience	29.2%
Marketing and Sales	25.8%
Industry/Operations Experience	24.8%
Finance	24.8%
Leadership	23.9%

Source: MyLogIQ. Data is based on annual general meeting year (AGM) proxy filings which report current and prior year data. Proxy filing dates are dependent on fiscal year end.

Source: The *Blue Ribbon Commission Report* leverages data from MyLogIQ to create a snapshot of what boards look like. Their data has been cited as the source where utilized.

MYLOGIQ

Strengthening board agility may include having the courage to make uncomfortable decisions about directors who are no longer performing or whose skill sets may no longer align with the evolving business and governance needs of the organization. It may also require more challenging and candid discussions with management teams and consensus building among directors about whether and how to reinvent board practices. In this environment, the focus on board culture and its impact on performance and agile governance must be explicit. Better governance practices and processes alone are not enough.

However, many boards have not yet invested in their culture and ensured that norms of behavior support more responsive gover-nance. The culture remains implicit. It operates in the background, only gaining attention when crises erupt, and dysfunctional behaviors can become serious liabilities.

THE CONCEPT OF BOARD CULTURE

For purposes of this report, board culture is defined as the shared values, beliefs, assumptions, experiences, and expectations that influence behavior in the boardroom and manifest themselves in board norms, protocols, and practices.

Culture is unique across each board and is a fluid concept that changes over time. Whether explicitly defined or not, each board has a culture influencing how directors interact, decisions are made, and accountabil-ity is enacted. Factors that influence board culture can include these:

▶ Explicit and implicit rules

▶ Norms of behavior and interaction

▶ Leadership styles (board chair, lead directors, committee chairs, CEO)

▶ Compliance and ethics policies and values

▶ Compensation

▶ Recruiting, selection, onboarding, and succession-planning processes

▶ Processes for agenda setting, prioritization, and decision-making

▶ Types of meetings (virtual, in person, or hybrid)

▶ Communication and information flows

▶ Individual styles (diversity, backgrounds, biases, etc.)

Building a Board Performance Culture

The Commission believes that an intentional and healthy board culture is a unifying force that builds trust and encourages candor among directors and with management and advances the agility of the board. Boards now have an urgent imperative to proactively shape and adapt their own culture and use it intentionally as an instrument to drive board performance. They need to commit to creating a performance culture that is akin to the performance culture they expect management to build and sustain.

As one Commissioner articulated, *"More than ever, high-performing companies demand high-performing boards. And you cannot have a high-performing board without a strong and aligned board culture."*[2]

> Boards now have an urgent imperative to proactively shape and adapt their own culture and use it intentionally as an instrument to drive board performance.

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[2] Note: The Commission's meetings were held using a modified version of the Chatham House Rule, under which participants' quotes (italicized) are not attributed to those individuals or their organizations.

Research and observations by the Commissioners underline that a strong board culture offers the following advantages:

▶ Cultivating a strong purpose that binds directors in the common pursuit of good governance[3]

▶ Conveying the explicit and implicit ground rules for the way board work gets conducted, including how information is shared, issues are analyzed and discussed, how the board and management interact, and how decisions are made

▶ Activating all directors' voices, thereby contributing to a more honest, constructive discussion, fully capitalizing on the potential of each director and ensuring their full participation

▶ Strengthening group dynamics to help the board withstand stress and discord in times of disagreement and crisis and making the board more resilient during a permacrisis

▶ Setting clear expectations for directors and helping the board confront difficult issues, while reinforcing accountability and advocating for necessary change

▶ Reducing the likelihood of misunderstanding or misconduct by directors and reputational harm to the company

▶ Helping attract and retain top talent in the board and management ranks

As discussed in the 2017 *NACD Blue Ribbon Commission on Culture as a Corporate Asset*,[4] culture can no longer be considered a soft issue by boards and management, given its pervasive impact on company performance and reputation. While boards have taken on greater oversight of corporate culture and other human capital issues, they must now look inward at their own culture and the tone at the top that they, and the CEO, are setting for the company.

The Commission identified several acute pitfalls that may be common in boardrooms and must be addressed when shaping the right performance culture:

▶ **Perfunctory collegiality, "go along to get along" attitudes in the boardroom:** A veneer of collegiality may make candid, difficult conversations rare and allow the board to tolerate inadequate director performance. Such superficial collegiality may trump effectiveness where directors may not hold themselves to the same high levels of accountability expected of management.

▶ **The risk of authority or expert bias:** Over the last few years, many boards, encouraged by investors and anticipated regulation, have sought directors with expertise in new, mission-critical domains like cybersecurity, digitalization, or sustainability. Boards, often unconsciously, may put undue reliance on the expertise and opinion of these individual directors and risk abdicating their collective oversight responsibility.

▶ **Persistence of board silos:** A Commissioner observed, "*A culture implodes when there's an inner circle. A small group makes all the decisions, and there's less information sharing.*"

▶ **Culture-fit bias in recruiting and onboarding:** A Commissioner cautioned: "*If we've always done it this way, this is how we always want to do it, this worked for the company, and therefore this is obviously right, then the incoming directors are not going to get a voice.*"

▶ **Consensus in and of itself no longer an advantage:** A Commissioner observed, "*In this environment, boards are making many more tough choices on big, new issues. We sometimes move too fast in driving toward consensus and making big decisions, not leaving sufficient time for critical thinking and adequate room for diverging views.*"

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[3] Holly J. Gregory, "Establishing Norms for Director Behavior to Enhance Board Culture and Effectiveness," published in the Fall 2022 issue of *Practical Law Journal* and posted on sidley.com. https://www.sidley.com/en/insights/publications/2022/09/establishing-norms-for-director-behavior-to-enhance-board-culture-and-effectiveness

[4] NACD, *Report of the Blue Ribbon Commission on Culture as a Corporate Asset* (Washington, DC: NACD, 2017), p. 60. https://www.nacdonline.org/all-governance/governance-resources/governance-research/blue-ribbon-commission-reports/report-nacd-blue-ribbon-commission-culture-corporate-asset/

▶ **Boards slipping into management territory:**
A Commissioner said, *"Directors are asking
for more information from management.
Boards need to find a new norm of what
oversight looks like in permacrisis and
avoid making unnecessary demands
on management."*

▶ **Management skepticism of board
effectiveness:** A survey conducted by PwC
and The Conference Board found that
only 29 percent of US C-suite executives
rate their boards' effectiveness as good or
excellent, and nearly nine in 10 executives
believe one or more directors on their
board should be replaced.[5]

Addressing these common pitfalls is difficult work and
may not receive the same attention as more pressing
board priorities, but the investment in building a healthy
board culture is vital to prepare boards for a more
demanding future.

Boards are at various points of maturity with building
a performance culture: some boards may feel that
they have a healthy culture but have not deliberately
discussed or evolved it while others may be experiencing
a dysfunctional culture. In some instances, significant
interventions may be needed, but in most cases,
changes can be threaded through existing processes
such as recruitment, selection, onboarding, evaluations,
and offboarding.

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[5] PwC, *Board effectiveness: A survey of the C-suite* (PwC, May 2023) p. 3.
    https://www.pwc.com/us/en/services/governance-insights-center/library/board-effectiveness-and-performance-improvement.html

Recommendations for Action

A Commissioner said, *"In most boardrooms, culture is at best accidental; it is rarely talked about in board meetings. In today's complex environment, board culture needs to be intentional. We need clarity on our shared values and norms."*

The Commission's discussions identified 10 recommendations in three key areas of focus for the board to intentionally (re)shape its culture. Each recommendation offers an opportunity, based on where the board is in their journey, to strengthen culture. Some boards will benefit from a comprehensive, step-by-step approach, while others may benefit from specific recommendations, such as equipping board leadership to affect the culture. A toolkit is included to guide boards in implementing the Commission's recommendations.

Overall, the recommendations are not designed to create additional board work and process, but to help build culture reinforcements through the existing workings of the board. Taken as a whole, the Commission's recommendations are intended to spur reflection and conversation in the boardroom about culture and its link to the board's performance.

KEY AREAS TO INTENTIONALLY RE(SHAPE) BOARD CULTURE

1	Define optimal board culture	**2**	Reinforce board culture and behavioral norms	**3**	Address major cultural fault lines

Define Optimal Board Culture

As one Commissioner observed, *"As we have recently onboarded a number of directors, there are two different cultures emerging: one dominated by how things have always been done around here, and another driven by new perspectives and voices from board members, with different backgrounds than many of our tenured directors—those two worlds are coming together and colliding."*

A board's culture exists, regardless of whether it is discussed or not. However, the Commission observed that discussions about the board culture rarely occur. Without an intentional effort, the prevailing culture may not be reflective of the board's intended values and aspirations. Boards can take specific actions to assess, define, and maintain and monitor the board culture.

The tone for these actions will be set by *board leadership*, a term this Commission defines as meaning not only the single individual who is the designated leader of the independent directors (be it an independent chair or a lead director) but also the committee chairs and, as needed, another independent director who brings relevant experience in this area.

RECOMMENDATION ONE:
ASSESS CURRENT BOARD CULTURE AND INTENTIONALLY DEFINE THE DESIRED STATE.

Assess current state. The Commission recommends that boards engage in an open discussion to assess the culture that exists today—not the culture that they prefer. Often, individuals become accustomed to their own perspectives regarding culture and may not fully understand its deeply woven attributes. Directors, along with management, should tune in to understand their culture and uncover any areas of risk (see sidebar on page 17, **Red Flags in Board Culture**).

Before conducting the assessment, board leadership should carefully consider whether its directors are ready for an honest discussion about the present culture. For boards with previous culture challenges or dysfunction, a neutral facilitator and forum may be required to assess culture in a meaningful way.

See the Toolkit (page 39) for a discussion guide to start the dialogue on board culture.

RED FLAGS IN BOARD CULTURE

Commissioners identified a range of processes, behaviors, and norms as potential "red flag" signals in a board's culture that need to be addressed.

▶ Concerns about director adherence to board policies and processes and accountability, reducing trust among directors

▶ Board is in constant crisis stance or conversely, unable to act with agility when necessary

▶ Stale board agendas, conversations, and dynamics with diminished director alertness and curiosity resulting in the board slipping into rubber-stamping management's decisions

▶ Crowded meeting agendas with insufficient time to allow thoughtful deliberation and constructive debate

▶ Board is overly focused on everyday operational issues rather than strategic or big-picture items

▶ Difficult issues are only raised during side conversations, rather than in board meetings

▶ Directors who express dissenting opinions or challenge the prevailing view are marginalized, criticized, or ignored

▶ Consistent lack of preparation by members, such as insufficient review of preparatory materials

▶ Some directors are reluctant to voice their opinions, leading to discussions dominated by a minority of directors

▶ Same director usually has the first or last word, irrespective of the issue, and may hijack the board agenda

▶ Factions at the board level, with subgroups formed around the chair, lead director, or longer-tenured directors, creating an "us versus them" dynamic

▶ Input of newer directors not given the same weight as tenured directors' input

▶ Poor board relationship with the CEO and C-suite members resulting in strained board and management interactions

▶ Management is aggressive or defensive, signaling that they are not comfortable discussing difficult issues with the board

▶ Directors overly deferential to management and interactions remain at surface level

▶ Not enough appreciation of the importance and need for continuing learning and education and focus on overall board improvement

▶ Lack of diversity in the boardroom and lack of willingness to hear diverse viewpoints

▶ Consistent appeals to stereotypes and unhealthy biases

Define the desired board culture. *"While successful culture can look and feel like magic, the truth is that it's not. Culture is a set of living relationships working toward a shared goal. It's not something you are. It's something you do."* — Daniel Coyle, *The Culture Code* (Bantam, 2018)

Once the existing culture in the boardroom is well understood and priority improvement areas are identified, directors should work together to articulate and define the desired culture.

During the discussion, the board should consider the following dimensions:

- ▶ **Shared values and purpose of the board:** Just as corporate culture is company-specific, board culture is board-specific. When discussing the board's values and purpose, directors should consider attributes beyond generalities, such as mutual respect and collegiality.

- ▶ **Alignment with corporate culture:** The discussion should include consideration

of the overall corporate culture and how the board's culture can best support it. While these cultures may not fully align, the board should select certain aspects where it will be beneficial for them to match, for example, the company's core values (see sidebar, Case Studies: Aligning Board and Corporate Cultures). The CEO and the Chief Human Resources Officer can support this discussion.

- ▶ **Individual behavioral norms:** The board should agree on the behaviors expected of directors, considering behaviors that will make directors most effective, including the behaviors that are unacceptable and the protocols to address them. For example, establishing common language as a technique to quickly adjust behavior such as, "Let's put this in the parking lot for now," when a discussion moves beyond the intended scope.

- ▶ **Group dynamics:** The discussion should address the board's preferred manner to collaborate and engage, embrace inclusion, debate, make decisions, and work with management.

See the Toolkit (page 41) for a guide to establishing or reassessing cultural norms and behaviors.

Boards should maintain a written document that sets out the behavioral norms agreed upon by all directors and may include examples of unacceptable behaviors and protocols to address them. This document should be used as part of the recruiting, onboarding, and evaluation processes of the board.

To further promote accountability and transparency, boards may consider communicating aspects of their culture publicly, similar to the common practice of publishing corporate values on company websites. This practice can provide insights into the inner workings of the board and the attention given to fostering a strong culture that contributes to board performance.

See the Toolkit (page 44) for examples of disclosures related to board culture.

CASE STUDIES: **ALIGNING BOARD AND CORPORATE CULTURES**

- ▶ A Commissioner's board aligns board and company culture by sharing the same humble work approach ("work hard, no one is 'special,' we are not 'showy.'"). The board travels in economy class, stays at 3-star hotels, and refrains from discussing lavish trips, vacation homes, and extravagant hobbies/habits.

- ▶ The CEO of a Commissioner's board has pushed the importance of having processes in place and adhered to throughout the company. The board reflects this focus with its own well-established processes (e.g., new director recruitment) and building a disciplined board culture.

RECOMMENDATION TWO:
AGREE ON BEHAVIORAL NORMS THAT SUPPORT A CLEAR DELINEATION OF BOARD AND MANAGEMENT AUTHORITY.

The board's own dynamics and norms and the quality of the board's relationship with management are deeply connected. In both the 2023 NACD Public and Private Company Surveys,[6] respondents cited a healthy board-management relationship as one of the most significant factors contributing to strengthening board culture.

With many new, high-stakes issues demanding board attention, it has become more difficult for boards to know how and when to intervene. A more fluid relationship between the board and management creates the potential for the board to cross over into micromanagement or undue (rather than constructive) tension.

Making the shift in how the board engages requires continuous dialogue with management, and in particular a constructive relationship between the board leader and the CEO (see sidebar on page 21, **Is "Nose in, Fingers Out" Still Applicable in This New Environment?**).

The Commission identified the following actions to clarify (or reset) the rules of engagement with management to build trust and draw on the full potential of the board:

Establish management and board communication protocols. The board should communicate their expectations for information, including the protocol to request additional information from management. NACD research has found that directors in both public and private companies cited information flow issues as the biggest barrier to building and sustaining an effective board-management relationship.[7]

A Commissioner observed that *"boards are asking for more information from CEOs that they aren't used to being asked for,"* while others felt that management is providing, at times, too much information. Finding the right balance of thorough but concise information requires a feedback loop and taking into account management's workload.

On some Commissioners' boards, the independent board chair or lead director serves as the gatekeeper to ensure management is not inundated with requests and that the board is well informed. Additionally, a Commissioner observed that *"there can be board members that have certain relationships with management, and there need to be norms to assure that those with relationships are not getting additional information."* Another Commissioner shared that while their board does not have this gatekeeper role, directors are asked to share any new information they have obtained during executive session.

The board and management should also discuss crisis readiness and response plans, and it can be helpful for the board to participate in tabletop exercises. These plans should be based on a shared understanding of the company's mission (purpose), vision, and values; include escalation protocols; and serve to help guide management amid a crisis in line with the board's expectations (e.g., action—or inaction—about a controversial social issue).[8]

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[6]   Please see p. 23 of the *2023 NACD Public Company Board Practices and Oversight Survey* and p. 13 of the *2023 NACD Private Company Board Practices and Oversight Survey*.
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-public-company-board-practices-and-oversight-survey/
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-private-company-board-practices-and-oversight-survey/

[7]   Please see p. 26 of the *2023 NACD Public Company Board Practices and Oversight Survey* and p. 27 of the *2023 NACD Private Company Board Practices and Oversight Survey*.
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-public-company-board-practices-and-oversight-survey/
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-private-company-board-practices-and-oversight-survey/

[8]   For more information, see the NACD publication, *CEO Activism: What's the Board's Role?* (Arlington, VA: NACD, 2022).
https://www.nacdonline.org/all-governance/governance-resources/governance-research/director-faqs-and-essentials/governance-resource-template37/

Crisis response plans should be periodically reviewed and updated, including to address new and emerging issues and the changing risk landscape. The definition of a crisis can be ambiguous, and boards should develop parameters for management to alert, engage, and update directors in a timely manner, including smaller-scale events that may have reputational impacts. Without advance agreement and preparation, during a crisis, management will be fully focused on addressing the issue at hand, and the board may not receive the information it needs to discharge its oversight duties.

Improve quality of reporting and meeting materials. To strengthen the board's relationship with management, efforts are being made to improve board books and pre-read materials and the quality of reporting by management.

Management should strive for concise but thorough materials that highlight information essential to support the purpose of the agenda item and the board's discussion. Materials should be distributed sufficiently in advance (e.g., one week ahead of the meeting) to provide directors with time to review. Management should refrain from presenting the same information contained in the materials during the board meeting. Rather, most of the board's time should be spent deliberating on the issues presented by management, including forward-looking issues.

Clarify board engagement expectations. During agenda setting, the independent board chair (or lead independent director) and CEO, with the board's input, can determine what is being asked of the board with respect to each agenda item. The "ask" of the board can be included in the meeting materials (e.g., informational, for approval, or soliciting feedback). Certain topics, such as a major transaction or strategy, will likely require discussion at more than one meeting.

See the Toolkit (page 47) for a guide to more effective board-management meeting engagement.

Invest in ongoing relationships. Commissioners stressed the importance of relationship building between the board and CEO and the board and members of management—as well as touchpoints with employees in the middle and lower levels of the company, who often have a clearer view of what is really happening at a company. The board may invite management to board dinners or participate in a mentorship program with high-potential employees.

Create psychological safety. In a recent NACD survey, more than a quarter (28%) of survey respondents indicated that their management team acts defensively when engaging the board.[9] A safe environment is needed in order for individuals to feel comfortable in sharing ideas and concerns, asking questions, and making (and reporting) mistakes, while being supported by the others in the group.

Psychological safety—"the belief that the environment is safe for interpersonal risk taking"—helps foster a culture where management is candid and shares negative news promptly, and directors are constructive and deliberative. It can lead to better decision-making, creativity, resilience, and learning.[10]

Board leaders can reflect on the level of psychological safety that exists in the boardroom by considering the following questions:

▶ How often does management raise problems and concerns with the board?

▶ How are missteps addressed with management?

▶ Does management constructively challenge the board? How does the board respond?

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9 Please see p. 26 of the *2023 NACD Public Company Board Practices and Oversight Survey* and p. 27 of the *2023 NACD Private Company Board Practices and Oversight Survey.*
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-public-company-board-practices-and-oversight-survey/
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-private-company-board-practices-and-oversight-survey/

10 Amy C. Edmondson, "*How fearless organizations succeed,*" published on strategy-business.com on Nov. 14, 2018.
https://www.strategy-business.com/article/How-Fearless-Organizations-Succeed

IS "NOSE IN, FINGERS OUT" STILL APPLICABLE IN THIS NEW ENVIRONMENT?

Boards have long used the adage "nose in, fingers out" to articulate the ideal level of engagement with management: directors should oversee management ("nose in") without getting too involved in the day-to-day operations of management ("fingers out"). NACD's founding president, John Nash, coined this term to capture the important distinction between observation and advice, versus action.[11]

The Commission does not think that the foundation of "nose in, fingers out" needs to change, but believes its application by boards should adapt to the governance demands of today's environment. It is clear that a more proactive, deeply engaged board posture is needed without encroaching into management territory. Commissioners expressed the following views on the new level of board engagement:

▶ "It's important for boards to explore and stress test management's assumptions. In the past, implicit assumptions of the most likely scenarios might be enough, but in this new, highly uncertain environment, boards need to challenge management to contemplate even highly unlikely scenarios in order to avoid being blindsided, and to be able to have the agility and capacity to quickly react to unexpected events happening."

▶ "Directors need to take a pulse of exogenous factors, such as supply chain risk, shifts in foreign exchange rates, strategic moves in adjacent industries, etc., which the management team might be too focused inwardly to see."

▶ "I remain convinced that directors need to be more engaged and knowledgeable and willing to ask not just "what" but also "how, why, when, who, and where." Active questioning does not mean being in control or becoming operative."

▶ "Perhaps we should be thinking about the board-management relationship on a spectrum. The board now needs to be more proactive and better informed on all issues, but the depth and manner of its engagement will depend on specific circumstances."

A director with their **"nose in"** will ask thoughtful and probing questions to help steer management's focus on issues that may need additional or immediate attention—and listen to responses. They will detect short- and long-term consequences, recognizing new patterns, and viewing complex issues from different angles—especially for those issues where management does not have clear answers and benefits from the different expertise and viewpoints of directors (e.g., AI). Some Commissioners suggested referring to this as keeping "eyes open" and "fingers on the pulse."

A director with their **"fingers out"** will not attempt to run company operations, especially given that they are not involved with the company full-time. As directors expand their influence and time commitment, they must stay vigilant about the dividing line between overseeing and managing the business in order to avoid the risk of creating unhealthy friction with the management team and losing board independence. Boards delegate the day-to-day affairs of the company to the CEO and management team and should consider whether their reliance on those to whom they have delegated is well placed, and if not, to take action.

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11 NACD, *The Role of the Board vs. the Role of Management* (Washington, DC: NACD, 2016), p. 1. https://www.nacdonline.org/all-governance/governance-resources/governance-research/director-faqs-and-essentials/role-board-vs-role-management/

RECOMMENDATION THREE:
PERIODICALLY DIAGNOSE AND, WHEN NEEDED, REFINE BOARD CULTURE TO ENSURE IT IS FIT FOR PURPOSE IN A DYNAMIC BUSINESS ENVIRONMENT.

Boards should embed routine mechanisms to determine if the board culture is still driving board performance. Culture is dynamic and can change—intentionally or unintentionally—due to events such as a CEO change, shifts in board composition, a major transaction, or when the company is at a strategic inflection point or experiences a major crisis.

The board self-evaluation process can be used to invite a candid assessment of the current state of board culture, but boards should also use executive sessions to discuss the health of the board culture on an ongoing basis.

A Commissioner's board builds in time for reflection at the end of each board meeting during executive session, asking themselves 1) "Are we modeling the behaviors we want the rest of the organization to exhibit?" and 2) "Are we staying in our 'lane,' exercising effective oversight but not managing the business?" The board has found this routine practice effective to self-correct and consider real-time feedback.

Reinforce Board Culture and Behavioral Norms

Culture requires ongoing attention to ensure it positively influences boardroom dynamics and interactions. The board needs to integrate its values and expected behavioral norms into its practices and processes and reinforce them through its leadership.

RECOMMENDATION FOUR:

CLARIFY THE ROLES AND RESPONSIBILITIES OF DESIGNATED BOARD LEADERS IN REINFORCING (AND CHANGING) BOARD CULTURE.

Culture is a shared responsibility, and while each director plays a key role, board leadership is the primary culture carrier for the board.

Directors from both public and private companies cited effective board leadership as a top factor to strengthen board culture.[12] In the Commission's view, the role of these individuals is more crucial than ever. The job now demands not only courage, but also strength of character, boldness, perseverance, and resilience.

See the Toolkit (page 51) for a list of attributes of effective board leaders.

Board leadership sets the tone, controls the flow and quality of the dialogue in the boardroom, shuts down unproductive conversations, addresses unwanted behaviors, and assists new directors in understanding the difference between the role of management and the oversight role of a director.

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[12] Please see p. 23 of the *2023 NACD Public Company Board Practices and Oversight Survey* and p. 13 of the *2023 NACD Private Company Board Practices and Oversight Survey*.
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-public-company-board-practices-and-oversight-survey/
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-private-company-board-practices-and-oversight-survey/

Priority responsibilities for board leaders as culture carriers include these:

▶ Pay continuous attention to (a) what's working and why, (b) what's not working and why, and (c) how the board can use this knowledge to improve its effectiveness.

▶ Spend considerable time in one-on-one discussions on key topics with other directors, the CEO, and the management team, helping the CEO read the board correctly and vice versa.

▶ Constructively facilitate board discussions, ensuring openness to diverse and dissenting points of views from directors.

▶ Foster an environment of psychological safety, by welcoming, soliciting, and listening to ideas, questions, concerns, and even mistakes.

▶ Set the board's culture by example and ensure the board exemplifies its values and behavioral norms in all interactions in and outside of the boardroom.

▶ Foster strong, healthy relationships among

directors (see sidebar, **Cultivating Culture in the Hybrid Boardroom**, on page 25).

▶ Foster diverse and inclusive recruiting and onboarding programs.

For boards with a combined chair and CEO role, the lead independent director plays a significant role in shaping the board's culture. A Commissioner shared that the board chair and lead independent director alternate who is leading the evaluation process and delivering feedback to directors each year.

It is important that board leaders are evaluated periodically. In selecting an independent board leader, the board should not default to selecting the longest tenured director. Rather, the board should pick an individual who has the desired attributes, understands the company and business, and can develop a positive, constructive relationship with the CEO/management team.
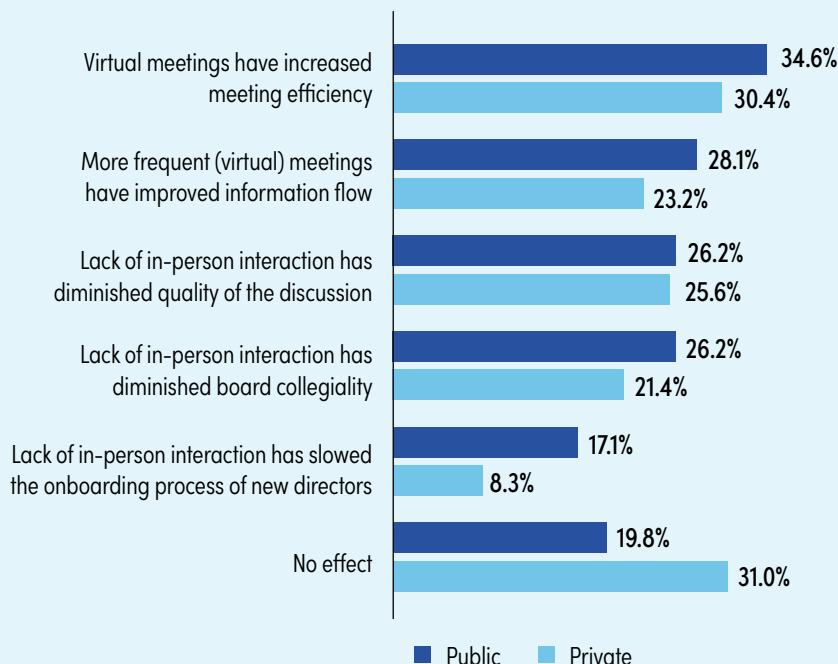
CULTIVATING CULTURE IN THE HYBRID BOARDROOM

Board leadership plays a key role in bolstering strong, healthy relationships among directors. As boards only meet periodically, directors may struggle to make personal connections with their fellow board members. According to recent NACD surveys,[13] the biggest barrier to creating and sustaining an effective culture was the lack of board time spent together outside of formal meetings, selected by half of respondents. This has been driven by the change to virtual board meetings, including committee meetings, during the COVID-19 pandemic and the continued shift to hybrid workplaces and boardrooms.

Boards have overcome the initial technical hurdles of virtual meetings and realized the benefits: increased attendance; improved efficiency; shorter, more frequent meetings; the ability to address complex issues over the course of multiple meetings; and etc.[14] However, some have experienced difficulties with developing and maintaining personal relationships (especially with newer directors who joined during the pandemic), discussions, and collegiality between their fellow directors and with management, raising concerns about shallow board cultures.

HOW HAVE VIRTUAL MEETINGS AFFECTED YOUR BOARD'S CULTURE?
(Select all that apply.)

	Public	Private
Virtual meetings have increased meeting efficiency	34.6%	30.4%
More frequent (virtual) meetings have improved information flow	28.1%	23.2%
Lack of in-person interaction has diminished quality of the discussion	26.2%	25.6%
Lack of in-person interaction has diminished board collegiality	26.2%	21.4%
Lack of in-person interaction has slowed the onboarding process of new directors	17.1%	8.3%
No effect	19.8%	31.0%

Public: n = 263, Private: n = 168

Source: *2023 NACD Board Practices and Oversight Survey*

With many boards not returning to 100 percent in-person meetings, Commissioners emphasized the importance of dedicating time to relationship building—inside and outside of the boardroom. Board leadership, as the culture carrier, should ensure it is a priority.

See the Toolkit (page 53) for tactics for building board relationships.

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[13] Please see p. 12 of the *2023 NACD Public Company Board Practices and Oversight Survey* and p. 12 of the *2023 NACD Private Company Board Practices and Oversight Survey*.
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-public-company-board-practices-and-oversight-survey/
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-private-company-board-practices-and-oversight-survey/

[14] See the NACD publication, *Director FAQ: Virtual Board Meetings* (Arlington, VA: NACD, 2022).
https://www.nacdonline.org/all-governance/governance-resources/governance-research/director-faqs-and-essentials/virtual-board-meetings-faq/

RECOMMENDATION FIVE:

ASSIGN PRIMARY OWNERSHIP OF BOARD CULTURE-RELATED PROCESSES TO THE NOMINATING AND GOVERNANCE COMMITTEE.

While board leadership is the primary culture carrier for the board, the nominating and governance committee plays a critical role. NACD's 2023 *Future of the American Board: Nominating & Governance Committee Blueprint*[15] recommends that "The committee should help define and ensure an inclusive board culture, set expectations for directors, design rigorous renomination processes (if a public company), and ensure that board leadership reinforces the agreed-upon culture, expectations, and processes."

Actions that nominating and governance committees can take to build, reinforce, and monitor board culture include these:

▶ Modify the committee's charter to reflect its delegated role for board culture oversight.

▶ Build culture into recruitment and onboarding practices. Communicate and reinforce the board's norms during candidate interviews and orientations (see recruitment and onboarding sections below).

▶ Integrate culture-related criteria into board evaluation processes, and monitor progress on action plans (see evaluation process section below).

▶ Periodically include a discussion of board culture on committee and board agendas.

▶ Monitor board culture during governance changes such as the election/appointment of new directors, the creation of new committees, and changes in leadership, and in the face of emerging issues or crises.

▶ Monitor alignment to corporate culture.

▶ Establish clear offboarding processes that can include exit interviews about the board culture and performance.

Establishing and maintaining clearly defined processes both reinforces the value and focus on board culture and can help reduce the discomfort of potentially "awkward" discussions when actions or steps need to be taken to address specific problems. This may include issues around individual director performance or lack of expertise.

> As one Commissioner cautioned, the board leader and the nominating and governance committee chair "should be governors over each other—if both are ineffective, lots of bad behavior is tolerated."

There is a natural interplay between the board leadership and the nominating and governance committee chair. Each should receive a performance assessment that considers board culture. As one Commissioner cautioned, the board leader and the nominating and governance committee chair *"should be governors over each other—if both are ineffective, lots of bad behavior is tolerated."*

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[15] NACD, *The Future of the American Board: Nominating & Governance Committee Blueprint* (Arlington, VA: NACD, 2023), p. 5. https://www.nacdonline.org/all-governance/governance-resources/governance-research/future-of-the-american-board---reports/fab-blueprint-nominating-governance/

RECOMMENDATION SIX:
BUILD INCLUSIVE RECRUITMENT AND ONBOARDING PRACTICES TO EFFECTIVELY INTEGRATE NEW DIRECTORS INTO THE BOARDROOM AND ITS CULTURE.

Both public and private directors in recent NACD surveys identified diversity as a top factor that contributes to strengthening board culture.[16] But having a diverse board—a board with a range of backgrounds, demographics, skills, competencies, and experiences—is only valuable to the extent that it is also an inclusive board, that is, a board that actively considers the different perspectives brought to the table and integrates them into deliberations and decision-making. These benefits of board diversity may go unrealized without an inclusive boardroom culture and practices that aim to intentionally draw out these advantages.[17]

Recruit new directors that will be additive to the board's culture. Throughout the recruitment and selection process, the board needs to be transparent about its expected behavioral norms and probe how candidate directors can contribute or add positively to the culture. Nominating and governance committees can bring structure into the interview process to identify the cultural attributes the board is seeking.

When assessing candidates, the committee should consider if the candidate's personal values, past experiences, and motivations advance or (if needed) will help the board's culture evolve.

As with management positions, directors should have a "job" description that includes behavioral competencies. The description can be used to communicate

expectations to the potential new director and as a reference for evaluating the candidate, ensuring the interviewers are aligned. Committees can develop common interview questions related to the board's culture to explore the candidate's skills and attributes.

See the Toolkit (page 56) for setting expectations about director behavior.

Boards may consider exposing the candidate to the board's inner workings, including during discussions with other directors outside of the nominating and governance committee and during in-person meetings over a meal.

In considering how new directors will be additive to culture, directors should challenge their assumptions and look beyond directors who seem to "fit" on their boards. Culture fit "is the likelihood that someone will reflect and/or be able to adapt to the core beliefs, attitudes, and behaviors that make up your organization...it doesn't mean hiring people who are all the same."[18]

When a board's culture is implicit, directors may be more prone to rely on their inherent biases to make judgments and decisions, often unconsciously. For example, during the selection process, directors may favor candidates with similar characteristics to them (referred to as the affinity bias).

See the Toolkit (page 59) for strategies to manage biases to improve board culture.

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16 Please see p. 23 of the *2023 NACD Public Company Board Practices and Oversight Survey* and p. 13 of the *2023 NACD Private Company Board Practices and Oversight Survey*.
    https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-public-company-board-practices-and-oversight-survey/
    https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-private-company-board-practices-and-oversight-survey/
17 NACD, *The Inclusion-Driven Boardroom: Incorporating Inclusion to Help Realize the Benefits of Diversity* (Arlington, VA: NACD, 2023), p. 4.
    https://www.nacdonline.org/all-governance/governance-resources/governance-research/director-faqs-and-essentials/director-essentials---the-inclusion-driven-boardroom
18 Katie Bouton, "Recruiting for Cultural Fit," posted on hbr.org on July 17, 2015.
    https://hbr.org/2015/07/recruiting-for-cultural-fit

Integrate new directors into the board culture. Practices to promote inclusion—actions taken to understand, embrace, and leverage the unique strengths and facets of identity, so that all individuals feel welcomed, valued, and supported[19]—include these:

▶ Development of a mentorship program for new directors (often called a board "buddy"), establishing the relationship prior to the first meeting, and sitting the pair together at meetings

▶ Periodic, informal check-in calls or meetings with the board leadership and CEO

▶ Feedback provided to new directors, by the mentor and/or board leaders, following each board meeting

▶ Calling on the new directors to voice their views first when discussing an issue

▶ Providing background on topics which are part of a running dialogue between the board and management

▶ Soliciting feedback on the board's culture from new directors and evolving norms as appropriate

See the Toolkit (page 62) for a guide to promote an inclusive onboarding process.

While most boards have a formal onboarding program (69% of public company respondents, 58% of private company respondents), far fewer tailor onboarding programs to new directors' needs and backgrounds.[20] As boards recruit directors from a broader range of roles, they should consider if their onboarding programs reflect the refreshed board's diversity of different experiences. Nominating and governance committees should work with the new director to identify knowledge and skills gaps and create customized onboarding plans. This should include targeted sessions with members of the management team.[21]

Both the new director and the board bear responsibility for successful onboarding. A Commissioner said: *"If you don't see that you're being onboarded well, it's incumbent upon the new director to speak up and say what you need. It's also incumbent upon old guard (tenured) members to ensure integration of culture goes well."*

While onboarding is typically limited to the first few months of board service, as with any profession, continuous education is important and necessary (see sidebar, **Reboarding Tenured Directors**, on page 29).

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[19] NACD, *The Inclusion-Driven Boardroom: Incorporating Inclusion to Help Realize the Benefits of Diversity* (Arlington, VA: NACD, 2023), p. 5. https://www.nacdonline.org/all-governance/governance-resources/governance-research/director-faqs-and-essentials/director-essentials---the-inclusion-driven-boardroom

[20] Please see p. 29 of the *2023 NACD Public Company Board Practices and Oversight Survey* and p. 13 of the *2023 NACD Private Company Board Practices and Oversight Survey*. https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-public-company-board-practices-and-oversight-survey/ https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/surveys-benchmarking/2023-nacd-private-company-board-practices-and-oversight-survey/

[21] For more information, see the NACD publication, *The Future of the American Board: Nominating & Governance Committee Blueprint* (Arlington, VA: NACD, 2023). https://www.nacdonline.org/all-governance/governance-resources/governance-research/future-of-the-american-board---reports/fab-blueprint-nominating-governance/

REBOARDING TENURED DIRECTORS

"Reboarding" refers to a structured training and development program for tenured directors to help ensure that all directors are operating from the same level of understanding and knowledge about the company, the issues it faces, and the evolving requirements and standards for good governance.

Directors should challenge their own assumptions and ensure that they understand the realities of the changing business that they oversee today. Even the most tenured directors will benefit from an ongoing investment in learning, particularly in new and emerging areas, such as artificial intelligence; diversity, equity, and inclusion; and evolving regulatory requirements.

Recommended processes to "reboard" existing directors include these:

▶ Set expectations for continuous development through self-directed training, professional development opportunities, and full board educational sessions.

▶ Allocate budget and establish parameters for qualifying education programs.

▶ Encourage each director to self-reflect on their board service. How are they evolving to remain fit for the board?

▶ Create a director development plan as part of the individual evaluation/renomination process.

▶ Reassess director skills annually and update them in the skill set matrix.

▶ Develop a mentorship program, pairing tenured directors with new members, and request that the pair attend orientation sessions together.

▶ Invite existing directors to orientation sessions. Share lessons learned with the full board in executive session.

▶ Hold periodic tabletop exercises on key board matters (e.g., crisis management, shareholder activism).

RECOMMENDATION SEVEN:
ENSURE THAT BOARD EVALUATIONS ASSESS THE PERFORMANCE AND BEHAVIORS OF INDIVIDUAL DIRECTORS AND THEIR ROLES.

With directorship increasingly seen as a profession, director evaluations should be rigorous and invite candid peer-to-peer feedback on individual performance, including director contributions to the overall board culture. Formal individual director evaluations, in addition to both board and committee evaluations, are becoming a common practice for S&P 500 companies, increasing from 37 percent in 2018 to 52 percent as of July 2022.[22]

See the Toolkit (page 68) for guidance on strengthening committee and full-board evaluations.

Given that many directors are current or former CEOs, a Commissioner, who is a retired CEO, observed that *"CEOs who haven't had a lot of feedback in their careers aren't good at receiving it."* Individual director evaluations can be more difficult to conduct, but can allow for self-reflection and can promote accountability and improved performance.

Both self-evaluations (directors evaluate their own performance) and peer evaluations (directors evaluate each other, often without attribution) can be used in connection with the board evaluation process or a separate process that also informs the renomination decision. Boards should consider asking management for input

during the process, and, at minimum, periodically gather management feedback about the performance of the board.

See the Toolkit (page 71) for best practices in conducting individual director evaluations.

It is important to recognize that peer evaluations can lead to or exacerbate silos and subgroups in the board if not handled carefully. Directors should understand that peer evaluations are intended to improve the performance of each director and thus the board as a whole, rather than target individual directors. Regular feedback delivered to directors throughout the year by the board leadership, such as following each board meeting, can help create a culture of constructive feedback.

The results of an individual evaluation should be addressed privately with the director, and an action plan should be developed to address any findings. The nominating and governance committee should periodically review progress against stated goals (e.g., asking a director to reboard or off-board if stated goals are not achieved). Boards should avoid defaulting to renomination rather than undertaking tough decisions.

Each board leader should be evaluated with additional questions assessing their leadership performance.

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[22] Matteo Tonello, "Board Refreshment and Evaluations," posted on the *Harvard Law School Forum on Corporate Governance* on Aug. 25, 2022. https://corpgov.law.harvard.edu/2022/08/25/board-refreshment-and-evaluations/

Address Major Cultural Fault Lines

Commitment and the courage to confront "fault lines"—areas that can divide the board—are essential to building and maintaining an effective culture. Among the common pitfalls identified by Commissioners as those impacting board performance are a number of dangerous fault lines that can degrade even the strongest board culture: board silos, problematic individual directors, and the risk of groupthink. These fault lines demand vigilance and, most importantly, honesty and accountability to address them.

> **RECOMMENDATION EIGHT:**
> **COMMIT TO ADDRESSING UNHEALTHY BEHAVIORS AND DYNAMICS (GROUP AND INDIVIDUAL), INCLUDING PROBLEMATIC DIRECTORS.**

Break down board silos or factions. Silos keep individuals or groups separate and distinct from each other and can lead to misunderstandings, inefficiencies, and negative impacts to culture. Board silos or factions can develop among directors with similar tenure, backgrounds, committee membership, or views. Delegation of certain board responsibilities is appropriate, such as to committees, but care must be taken to properly share information, particularly considering the interconnectedness of issues and risks that are being addressed at the committee level.

Some boards have activist directors, appointed or elected by shareholders to effect a particular change at the company. These directors may have different priorities than others on the board, and ultimately shake up dynamics in the boardroom.

Evidence of board silos can include these:

▶ Non-committee members lack understanding of committee work (e.g., committee reports to full board are rushed).

▶ The board relies on certain committees or leaders to "own" certain topics without input from other directors.

▶ Certain directors have undue influence on decisions and/or additional access to management and information.

▶ Decision-making is not grounded in a broad or diverse assessment of information; instead, it reinforces the innate bias of the inner circle.

Approaches to collapse silos include these:

▶ Plan for committee chair succession.

▶ Provide committee materials and invite non-committee members to attend meetings as scheduling allows.

▶ Consider having one or two members overlap on committees whose work is often related (e.g., audit and risk).

▶ Present adequately detailed committee reports to the full board.

▶ Have periodic meetings of committee chairs.

▶ Adhere to board expectations with respect to confidentiality.

▶ Develop personal relationships between directors; recognize the common views that exist.

Address problematic directors. About half of directors (48%) believe that at least one director on their board should be replaced. Nineteen percent would replace two or more of their fellow directors.[23]

Directors can be labeled as "problematic" for a variety of reasons: disengagement (e.g., attendance issues, lack of meeting preparation, distracted and/or minimal participation during meetings), staleness (e.g., skills/expertise no longer serve company strategy), toxicity (e.g., antagonistic, failure to follow agreed-upon behavioral norms), or misconduct (e.g., breach of confidentiality, undisclosed conflict of interest, violation of existing law).

For public companies, the shareholders ultimately determine who is elected to and serves on the board. Therefore, problematic behaviors need to be addressed by conversations, dialogue, and guidance.

Boards may seek to avoid conflict and take a less-than-optimal, indirect approach: waiting until the age or term limit is reached. However, the impact on board dynamics—or worse, liability—and ultimately board effectiveness can be detrimental. Boards must have the courage to take action to ensure the optimal functioning of board culture: they must establish the expectation that renomination is not automatic.

See the Toolkit (page 75) for guidance on identifying and addressing problematic behaviors.

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[23] For more information, see *PwC's 2022 Annual Corporate Directors Survey*.
https://www.pwc.com/us/en/services/governance-insights-center/library/annual-corporate-directors-survey.html

RECOMMENDATION NINE:
DESTIGMATIZE THE DECISION OF INDIVIDUAL DIRECTORS TO LEAVE A LEADERSHIP POSITION OR TO OFF-BOARD.

Board service today is demanding and requires increased time, energy, and ongoing learning from directors. The heightened accountability demanded by investors and the board itself, and the constantly changing needs of the board call for an "off-boarding" strategy—for both individual directors and the full board.

While boards can use tenure-limiting mechanisms, such as age or term limits, to manage their composition, they also should consider making more frequent changes when director expertise and skill sets are no longer aligned to the rapidly evolving needs of the company. Thorough discussion and active decisions about whether to renominate a director help ensure that the board's collective skills and diversity of backgrounds and expertise remain fit for purpose.

See the Toolkit (page 77) to explore the impact that a board compensation plan may have on director turnover.

A Commissioner shared that *"I made the decision to retire from one of my boards when the company entered a new industry and needed a director with that oversight expertise. It had nothing to do with tenure or competency but with a desire to keep the board small and change the skill mix. Rotating off the board was my last 'fiduciary duty' as a board member."*

When joining a board, directors should view the appointment as the start of a new career rather than a final destination. Beginning at the candidate interview and throughout board service, boards can start to normalize leaving the board—even before age or term limits are reached—to reduce any associated stigma and encourage directors to off-board at their own discretion.[24]

Directors should take time to self-reflect on their behaviors, value, and contributions to the board. They can consider these questions:

▶ Am I as engaged as I should be in boardroom discussions? Am I putting in the work that is necessary in order to be effective (e.g., meeting preparation, continuing education, culture enhancement)? What would my life look like without these demands?

▶ What is in the best interest of the company: that I stay on the board or that I make room for a fresh set of eyes or new skill sets? What is the main driver to stay on the board?

▶ If an activist shareholder demanded changes among the board's members, would they target me?

This strategy can also be applied to leadership positions. A Commissioner expressed that "*It is not a demotion to change the chair position as it should just be part of the norm of the committee.*" Succession-planning processes for committee chair roles can lead to more engagement by other directors, including those with less tenure.

Boards should celebrate the achievements and service of a director by, for example, an external press release acknowledging the parting director's service or an invitation to a board dinner to allow the director to stay engaged with the company. When handled correctly, moving a director off a board will be seen as part of the normal cycle of the board.

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24 NACD, *The Healthy Departure: Considerations for Effective Off-Boarding* (Arlington, VA: NACD, 2022), p. 2. https://www.nacdonline.org/all-governance/governance-resources/governance-research/boardroom-tools/healthy-departure-considerations-effective-offboarding/

RECOMMENDATION TEN:
STRIVE FOR CONSENSUS IN KEY BOARD DECISIONS BUT RECOGNIZE THE VALUE OF RIGOROUS DEBATE.

With a less homogenous composition, boards are sometimes finding consensus harder to achieve. In the Commission's view, this can be an advantage. Agile boards must activate the diverse expertise and experiences of directors and encourage open, honest debate. They must consider new and difficult issues from different angles in this uncertain environment, challenging long-standing assumptions.

The spectrum of a board's decision-making ranges from groupthink with high cohesion and a focus on preserving harmony, to disruptive disagreement that results in irreconcilable differences. The optimal middle ground is a constructive commitment to strive for consensus—while understanding that full consensus may not always be achieved (see side bar, Case Studies: Fostering Robust Debate).

A strong board culture will be inclusive of the varying voices on the board and supportive of dissenting opinions. Directors with views contrary to those of the majority should not automatically be considered "problematic." Other directors should listen, refrain from rebuking all views they do not share, and seek to find points of common agreement.

Board bylaws and state law typically define the vote required for board action, ranging from a simple majority for some matters, to a supermajority for other matters.

See the Toolkit (page 81) for guidance when a director disagrees with the position of the board majority.

CASE STUDIES: **FOSTERING ROBUST DEBATE**

▶ One Commissioner's board has identified certain topics that require consensus that all directors can support before moving to a vote such as selling a division, new plant construction over a specific dollar amount, or entering a new geography. With other topics, the board works to gain "alignment" and not necessarily consensus. Clearly defining areas where the board can "agree to disagree," has helped to reinforce a healthy culture of debate.

▶ When one of the board's key committees faced a contentious issue, the committee chair spoke with each director in advance—and even non-committee members as well—to uncover dissenting views and to foster deeper discussions during the committee meeting. By the time the issue reached the full board, the committee had reached its own consensus on the issue, taking dissenting views into account, and was able to lead the board in the same direction.

▶ On another Commissioner's board, during the board meeting, the chair asks each director individually to share any insights, questions, concerns, or comments prior to a decision. This round-robin ensures that the board's final decision reflects as many valid perspectives as possible.

Conclusion

The pursuit of agility in this ever-changing environment is illuminating the importance of the board's culture. While often overlooked, the board's shared norms, protocols, and practices influence each interaction, discussion, and decision of the board—and its ultimate success. If left unattended, culture will still exist, however, it may foster misunderstandings, conflict, and undermine good governance.

The 2023 Blue Ribbon Commission recommends a purposeful culture, agreed to with a commitment from all directors, supported by management, and adapted as needed. A strong culture does not require dramatic, far-reaching change, but it does require active investment, leadership, and a willingness to create discomfort, including the courage to address unwanted behaviors.

RECOMMENDED ACTIONS BY ROLE
Responsibilities by role to support a board performance culture are outlined below.

Board Leadership	Nominating & Governance Committee	Other Committee Chairs	All Directors
▶ Recognize and accept role as a board culture carrier ▶ Support a process to define the board culture that is endorsed by all directors ▶ Commit to regular assessments of board culture ▶ Ensure clear management and board communication and engagement protocols	▶ Establish and drive processes to maintain desired board culture ▶ Ensure that board leadership and committee chairs reinforce the agreed-upon culture, expectations, and processes ▶ Drive and support processes to ensure new directors are effectively onboarded to the board culture ▶ Lead processes for individual director evaluations, renomination processes, and expectations for director performance	▶ Take actions to reduce "silos" within the boardroom ▶ Work with management teams on board reporting and meeting preparation materials ▶ Recognize when consensus or alignment is necessary ▶ Address problematic behaviors	▶ Take ownership for own role in board culture including relationships and participation norms ▶ Commit to high-performance expectations and continuing education ▶ Consider if skills remain aligned to organization's needs and when to roll off the board

Tools for Adopting Recommendations

The 2023 Blue Ribbon Commission report is accompanied by discussion guides and other supporting materials that help boards adopt the Commission's recommendations. The Toolkit, prepared in collaboration with the Commission, NACD partners—KPMG, Marsh McLennan, Pearl Meyer, Sidley Austin, and Russell Reynolds—and NACD content staff, is geared to meet directors' needs for actionable and practical guidance they can apply in their boardrooms to improve performance.

Toolkit materials in order of citation in the core report.

1. Starting the Dialogue on Board Culture: A Discussion Guide

2. Establishing Cultural Norms and Behaviors

3. Examples of Disclosures Related to Board Culture

4. Improving Board-Management Relations: Tips for Effective Meeting Engagement

5. Model Attributes of Board Leaders

6. Tactics for Board Relationship Building

7. Setting Expectations About Director Behavior

8. Managing Biases to Improve Board Culture

9. Guide to Inclusive Director Onboarding

10. Approaches to Strengthening Committee and Full-Board Evaluations

11. Model Individual Director Evaluation

12. Guidance for Boards on Identifying and Addressing Problematic Director Behaviors

13. Assessing the Impact of Director Compensation on Board Culture and Agility

14. Guidance for Dissenting Directors

The table below indexes the contents of the Toolkit according to the recommendations for action in Part Three of the report.

Define optimal board culture	
Commission Recommendations	**Associated Tools**
1. Assess current board culture and intentionally define the desired state.	▶ Starting the Dialogue on Board Culture: A Discussion Guide ▶ Establishing Cultural Norms and Behaviors ▶ Examples of Disclosures Related to Board Culture
2. Agree on behavioral norms that support a clear delineation of board and management authority.	▶ Improving Board-Management Relations: Tips for Effective Meeting Engagement
3. Periodically diagnose and, when needed, refine board culture to ensure it is fit for purpose in a dynamic business environment.	▶ Starting the Dialogue on Board Culture: A Discussion Guide ▶ Establishing Cultural Norms and Behaviors

Reinforce board culture and behavioral norms	
Commission Recommendations	**Associated Tools**
4. Clarify the roles and responsibilities of the designated board leaders in reinforcing (and changing) board culture.	▶ Model Attributes of Board Leaders ▶ Tactics for Board Relationship Building
5. Assign primary ownership of board culture-related processes to the nominating and governance committee.	▶ Tactics for Board Relationship Building ▶ Setting Expectations About Director Behavior ▶ Guide to Inclusive Director Onboarding ▶ Approaches to Strengthening Committee and Full-Board Evaluations ▶ Model Individual Director Evaluation
6. Build inclusive recruitment and onboarding practices to effectively integrate new directors into the boardroom and its culture.	▶ Setting Expectations About Director Behavior ▶ Managing Biases to Improve Board Culture ▶ Guide to Inclusive Director Onboarding
7. Ensure that board evaluations assess the performance and behaviors of individual directors and their roles.	▶ Approaches to Strengthening Committee and Full-Board Evaluations ▶ Model Individual Director Evaluation

Address major cultural fault lines	
Commission Recommendations	**Associated Tools**
8. Commit to addressing unhealthy behaviors and dynamics (group and individual), including problematic directors.	▶ Guidance for Boards on Identifying and Addressing Problematic Behaviors ▶ Guidance for Dissenting Directors
9. Destigmatize the decision of individual directors to leave a leadership position or to off-board.	▶ Assessing the Impact of Director Compensation on Board Culture and Agility
10. Strive for consensus in key board decisions but recognize the value of rigorous debate.	▶ Improving Board-Management Relations: Tips for Effective Meeting Engagement ▶ Tactics for Board Relationship Building ▶ Managing Biases to Improve Board Culture

Starting the Dialogue on Board Culture: A Discussion Guide

NACD

The 2023 Blue Ribbon Commission underlines that a healthy board culture is a critical determinant of strong board performance. Boards can use this tool to examine their current culture—the shared values, beliefs, assumptions, experiences, and expectations that influence behavior in the boardroom and manifest themselves in board norms, protocols, and practices, and identify gaps hindering the board.

Since the board's own dynamics, norms, and the quality of the board's relationship with management are deeply connected, boards should also explore the board's relationship with management.

Instructions:

▶ Determine when to discuss the board's culture. Boards may consider conducting an off-site retreat to dedicate full attention to this activity. This exercise is particularly important when a board is confronted with persistent challenges to its dynamics, including the erosion of trust and respect among board members.

▶ Determine who will lead the discussion. Boards may engage a third-party facilitator to offer an objective and fresh perspective; this can be especially useful for boards with significant dysfunction.

▶ Prior to a discussion, distribute pre-reading materials including, for example, educational pre-reads, the most recent board evaluation results, any relevant corporate values and ethics documents, and questions to encourage self-reflection in advance.

▶ This tool can be used at the following times:

- During a dedicated board meeting to frame a discussion of the board's culture

- After a major event—such as a change in leadership (board or CEO); after a merger, acquisition, or restructuring; or after a corporate emergency to reassess or reestablish culture

- In the follow-up from the board's regularly scheduled evaluation, every one-to-three years

CURRENT CULTURE

▶ How would directors describe the board's current culture as demonstrated through current behaviors, norms, and practices?

- What behaviors are encouraged, discouraged, accepted, or rejected inside and outside of the boardroom?

- Which topics get traction in the boardroom, and which get ignored? Who is listened to, and who is dismissed? Why?

- Do we regularly engage in or avoid difficult discussions in the boardroom? Why?

- Does the culture encourage open discussion and disagreement?

- Does the culture foster continuous improvement, open feedback, and coaching?

- Does the culture promote collaboration and information sharing? Are there directors who dominate discussions or form factions that close off other points of view?

- Do we have a board culture that puts the company's interests at all times above the interests and comfort of directors?

▶ How effective was the board's culture during the last crisis or major change? How does the board culture need to evolve?

▶ How do the board's policies and practices impact the culture (e.g., recruitment and selection processes, onboarding, succession planning)? Are changes needed? How does the board culture contribute to or detract from the quality of governance and achievement of strategy? How can we mitigate any risks?

CORE VALUES

▶ Has the board defined a set of core values that help guide our decisions, actions, and behaviors?

  ● If so, what are they?

  ● If we have not explicitly defined the board's core values, what are the implicit rules and norms that currently guide our behavior?

▶ How are the core values communicated and shared within the board today?

  ● Have they been translated into specific behaviors or practices in a document to help illustrate how we expect a given value will be "lived and breathed" inside and outside the boardroom?

DIRECTOR'S ROLES

▶ Are the board and committee chairs and the lead director (if applicable) consistently modeling the agreed-upon behavioral norms? What role are they playing to maintain/evolve the board culture?

▶ How are individual directors, including both new and tenured directors, contributing to detracting from the optimal culture?

▶ How are we periodically assessing how we are performing against our agreed-upon norms of behaviors?

  ● What information do we gather as evidence (e.g., evaluation results, board and committee assessments, management feedback, informal feedback after meetings, etc.)?

  ● What is the level of alignment between our values and expectations and the behaviors demonstrated on the board?

RELATIONSHIP WITH MANAGEMENT

▶ Does the board have a culture of trust with management that accommodates candid and difficult discussions?

▶ How is the board's culture influencing the corporate culture? In what areas would it be best for board culture to be complementary to corporate culture?

Next Steps: Answers and feedback received from this exercise can be used to identify any gaps and prioritize improvement areas. The board can then work together to articulate and choose the desired culture.

Establishing Cultural Norms and Behaviors

Sidley Austin LLP

Sidley Austin LLP provides this information for educational purposes only. It should not be construed or relied upon as legal advice. Given the complexities of law, regulation, and practice in this area and the variety of company-specific factors that need to be considered, this information should not be applied to any particular situation without the advice of an attorney experienced in this area of law.

The board is responsible for developing its own culture of trust, respect, and openness, and that culture is in large measure a product of accepted behaviors among directors. Periodic consideration of the behaviors expected of directors, the behaviors that are unacceptable, and mechanisms for addressing unresolved disagreement helps shape the positive board culture that is central to board effectiveness, especially in times of volatility and crisis.

Instructions: This tool can be used by boards to establish or reassess cultural norms and agreed-upon behaviors for directors in their interactions with one another and with members of the company's management. As part of this exercise, the board chair, lead independent director, and/or nominating and governance committee chair should seek input from all directors and the management team to arrive at agreed-upon expectations.

Board culture is reflected in how directors engage with one another and with management, the candor with which differing viewpoints are raised and deliberated, and the ability to agree on priorities and reach consensus. A collaborative board that fosters trust and creates an environment for candid deliberation and assessment of corporate opportunities and risks will be better prepared and positioned to manage transitions, withstand stress, and navigate crisis.

Whether established implicitly through pattern and practice or explicitly through board policies, defining behavioral norms can

▶ help set the tone for the board's deliberations, its resolution of disagreement, and ability to reach consensus;

▶ assist in establishing the board's relationship with management and the manner in which the board and management engage, including through expectations regarding when the board becomes informed of and involved in a matter;

▶ serve as the foundation for the trust that supports the board's ability to act in times of stress; and

▶ reduce the likelihood of interpersonal discord and the potential for related misconduct.

LEGAL FRAMEWORK

The board's authority to act is as a collective body. Individual directors are fiduciaries who have duties to act with care, loyalty, and good faith, but they lack authority individually, unless delegated by the board, to (1) authorize action by the company; (2) bind the company to agreements; (3) issue directives to management or employees; or (4) speak on behalf of the board or the company.

DEFINING EXPECTATIONS FOR DIRECTOR BEHAVIOR

While diversity in director viewpoints should be highly valued and encouraged, and a range of director styles is to be expected, the board should establish expectations concerning the norms of director behavior. These norms should address behaviors that are valued and acceptable in board and committee discussions and in interactions outside of the boardroom that relate to the company (or could impact its reputation). Boards should consider the following as they work to build and maintain an appropriate culture:

Develop consensus regarding board and management roles (including leadership roles): The board and management should agree on behavioral norms that support a clear delineation of board and management authority. Of course, sharp lines between board and management roles are difficult to draw since that line will and should shift in varying degrees with context.

Foster candor and trust: Behavioral norms related to the flow of information and communications can help foster a culture where management is candid and shares bad news promptly, and directors are constructive and deliberative. This includes developing a shared expectation with management of circumstances that require prompt and substantive board notification and engagement, and procedures to help prioritize director requests for

agenda items and information and to ensure that all directors have access to the same base of information.

Respect discussion opportunity and confidentiality: Consideration should also be given to norms of behavior that respect the limited time presented for board and committee discussions and promote interaction and equal opportunity for participation. In communicating with one another outside of board and committee meetings, directors should be mindful that the work of the board and its committees is only undertaken through discussions in duly convened meetings. Email and text messaging among directors about substantive matters raise confidentiality and litigation risks, given their susceptibility to security breach, informal tone, and discoverability. Substantive deliberations should take place in the security of a duly convened meeting in which all directors share the same base of information.

Address problematic behaviors when they arise: When problematic behavior is evident, it should be identified and called to the attention of the director promptly. Raising the issue promptly usually will help avoid its continuing or escalating. While board leadership plays a key role, every director should support and adhere to agreed-upon behavioral norms.

INDIVIDUAL BEHAVIORS

The following behavioral norms are generally recognized as helping to support the atmosphere of trust and candor that is fundamental to rigorous deliberation, resolution of disagreement, and timely formation of consensus:

▶ Show respect for one another and for executives and employees, including respect for expertise and viewpoints.

▶ Listen actively, with an open mind (and avoid distractions and multitasking during meetings).

▶ Respect the limits of the board's role, which is focused on setting policy and oversight, and avoid operating in the zone of management.

▶ Be constructive and respectful in questions directed to management, employees, or other directors.

▶ Apply discipline in requests for agenda items and information and follow established procedures to ensure that (1) board and company leaders have the opportunity to help determine priorities and (2) absent a conflict of interest, all directors have access to the same information.

▶ Promote discussion and debate, including through the exercise of self-control in use of discussion time, respecting the rights of other directors to also participate.

▶ Commit to try to work toward a consensus after an informed and deliberative process.

▶ When in disagreement with the board majority, dissent in a respectful and appropriate manner. **(See also the Toolkit on Guidance for Dissenting Directors, page 81.)**

▶ Commit to support, and not undermine, decisions reached by the board.

▶ Strictly protect board confidentiality and take special care to avoid substantive discussion of confidential board matters in texts and emails.

▶ Strictly avoid acting or speaking on behalf of the company or the board without authorization.

▶ Bring forward concerns that arise in as open and transparent a manner as possible.

▶ Identify and disclose conflicts of interest and recuse yourself from discussions and voting on such matters.

▶ Abide by company protocols and policies.

Examples of Disclosures Related to Board Culture

NACD

The Report of the *NACD Blue Ribbon Commission on Culture as the Foundation: Building a High-Performance Board* recommends that boards "consider communicating aspects of their culture publicly, similar to the common practice of publishing corporate values on company websites. This practice can provide insights into the inner workings of the board and the attention given to fostering a strong culture that contributes to board performance."

While they are not required by the SEC or listing exchanges, more boards are choosing to expand disclosures about key governance processes in a variety of areas on a voluntary basis in order to enhance the transparency of share-holder communications and increase investor confidence. NACD found that public disclosures about board culture and values are more commonly found in proxy statements.

> **Instructions**: Boards can use these examples as points of reference when considering possible changes or enhancements to their own disclosures.

Proxy Statements

Bank of America: 2023 Proxy Statement (pages 25–26)

Well-defined duties of our Lead Independent Director (excerpt)

Board culture

- ▶ *Serving as a liaison between the CEO and the independent directors*
- ▶ *Establishing a close relationship and trust with the CEO, providing support, advice, and feedback from our Board while respecting executive responsibility*
- ▶ *Acting as a "sounding board" and advisor to the CEO*

Board culture. *Our Board considers its role in setting the standard for the company's culture and values by forging a collegial and collaborative dynamic that values independent judgment and emphasizes accountability. As part of this review, directors evaluate how they interact among themselves and with management, including the importance of challenging and holding management accountable. This past year, the self-evaluation included a focus on enhancing Board engagement as the company emerges from the pandemic operating environment.*

Denny's: 2023 Proxy Statement (page 11)

[Chair will] Support a strong Board culture by fostering an environment of open dialogue, effective information flow and constructive feedback among the members of the Board and senior management, facilitating communication among the chair, the Board as a whole, Board committees, and senior management, and encouraging director participation in discussions...

Foot Locker: 2023 Proxy Statement (page 35)

[Board assessments include:]

Board culture and dynamics, including the effectiveness of discussion and debate at Board and committee meetings.

Proxy Statements (Continued)

Starbucks: 2023 Proxy Statement (page 25)

[Role of chair:]

Support a strong board culture by fostering an environment of open dialogue, ensuring effective information flow and constructive feedback among the members of the board and senior management, facilitating communication among the chair, the board as a whole, board committees, and senior management, and encouraging director participation in discussions...

Verizon: 2023 Proxy Statement (page 10)

Role of the Lead Director:

Promotes a strong Board culture, including encouraging and facilitating active participation of all Directors

Walmart: 2023 Proxy Statement (page 30)

[Board evaluation includes:]

Board culture and dynamics, including the effectiveness of discussion and debate at Board and committee meeting.

Corporate Social Responsibility/Sustainability Reports

Camden: 2021–2022 Corporate Responsibility Report (page 45)

Good corporate governance, fostered by a high performing board culture with ethical, responsible business practices, is vital to the Company and its stakeholders. We are committed to maintaining a business environment of integrity, transparency, and accountability.

Chase: Sustainability Report 2022 (page 25)

Corporate Governance is reliant on external marketplace commitment and legislation, and a healthy board culture which safeguards policies, procedures, and processes.

Corporate Governance Guidelines

Royal Bank of Canada: Corporate Governance Framework, March 2023 (page 4)

Culture and conduct: By setting the tone from above, the board champions the values of trust, integrity and good governance. These values are well entrenched in the culture of RBC and reinforce the ethical principles on which RBC's reputation and success are founded. To enhance shareholder value on a sustainable basis, these values must extend into every segment of RBC operations and business activities.

Committee Charters

CFA Institute: Governance Committee Charter, August 7, 2021 (page 2)

In addition to carrying out any other responsibilities delegated to the Committee by the Board, the Committee shall: Review information and take appropriate action with respect to Board practices and Board culture, including but not limited to training, orientation, operations and effectiveness.

Dupont de Nemours Inc. Nomination and Governance Committee Charter, April 28, 2021 (pages 1–2)

[A primary purpose of the Nomination and Governance Committee is to:]

Monitor and shape the culture of the Board of Directors

[The Committee's authority and responsibilities include the following:]

Conducting an annual assessment of the Committee's performance, overseeing the evaluation of the entire Board of Directors and its other committees (including an evaluation of the culture of the Board of Directors and its other committees) and reporting its findings to the Board of Directors.

Phillips 66: Nominating and Governance Committee Charter, December 9, 2022 (page 1)

The Committee shall determine the skills and qualifications required of directors to be considered in selecting potential candidates for Board membership, taking into account the necessity of composing a board which possesses the collaborative culture, character, skills, experiences and expertise required for oversight of execution of the Company's strategy and its responsibility to select nominees who reflect a diversity of backgrounds and perspectives. Diversity shall be broadly construed to mean a variety of identities, perspectives, personal and professional experiences and backgrounds. This can be represented in both visible and non-visible characteristics that include but are not limited to race, ethnicity, national origin, age, gender and sexual orientation.

Recreational Equipment Inc. Charter of the Nominating and Governance Committee, Revised May 14, 2022 (page 2)

In carrying out its responsibilities, the Committee shall:

...lead an explicit focus on clarifying and sustaining practices and behaviors that create an inclusive and equitable Board culture—including consistently practicing and giving and receiving feedback on norms and behaviors.

Improving Board–Management Relations: Tips for Effective Meeting Engagement

NACD and Robert Galford

Boards operating in today's fast-changing environment face increasing demands—but the time available to address them has not changed. Failure to address this scarcity can lead to poor meeting quality, tension within the board, and friction between the board and management that threatens overall board performance. With an agenda that includes an expanding range of diverse topics, boards must be agile to appropriately oversee each item. Efforts should be made to maximize the time boards spend together by

▶ better utilization of the limited agenda time,

▶ establishing clear roles and expectations for the board on each agenda item to work more collaboratively and make better decisions, and

▶ presenting thorough but concise information that provides a holistic picture.

The relationship between the board and management is dynamic and is deeply connected with the board's culture and performance. Nurturing an effective relationship requires continuous and constructive dialogue with management. Boards and management teams can leverage the following tactics to build trust and draw on the full potential of the board.

> **Instructions:** This tool can be used to maximize the efficiency and effectiveness of pre-read board materials, agendas, presentations, and meeting discussions. Boards can leverage this tool prior to, during, and after each board meeting.

MEETING PREPARATION

The work to make board meetings productive begins well before the board convenes. To ensure that time is used efficiently, board leaders, management, and individual directors must be proactive and explicit in establishing expectations.

Prior to the meeting, the board agenda should be prepared and circulated, including what is being asked of the board with respect to each agenda item, as determined by the board chair (or lead independent director) and CEO, with the board's input. Establishing clear "asks" ahead of the meeting primes and positions the board to engage with management on the topic in the desired manner. For each agenda item ask, "which of the following is the expected role of the board?" **(see EPIDERMIS example on page 48).**

Pre-meeting practices should also include clarity of the process and roles regarding the substance, form, and timing of the meeting materials. In cases and for individuals where it would be helpful, sufficient and timely advance preparation (and delivery) of pre-reading and materials should be provided as a *pre-present* to key individuals (e.g., chair, LID, others), committee(s), or full board as appropriate. Directors, especially newer directors, may benefit from additional background materials in an appendix; however, these materials should be concise.

There should also be time for the delivery of feedback to management through the chair or LID in a way that allows for document modifications or "agreements to disagree" *prior* to the actual meeting.

EXAMPLE:
ROLES & RESPONSIBILITIES EPIDERMIS FRAMEWORK

The following example lists a set of "asks" about the specific role or contribution of the board for each board agenda item which is utilized by a healthcare company:

E Education, Updating, Information (provided by management)

P Parsing and scoping the effort

I Ideating (provide thoughts, advice)

D Deciding (approve/deny)

E Evaluating (progress, expectations, et al.)

R Reflecting (on progress and process)

M Modifying (an ongoing effort)

I Initiating (a new activity)

S Stopping (or canceling) an activity or initiative

MEETINGS

The way in which materials are structured and presented to the board has an immense impact on meeting effectiveness. Boards should request management present a succinct yet complete picture of the topic under discussion. However, management should refrain from presenting the same information contained in the materials during the board meeting. **See the "Lights and Sights" template on page 49** for presenting a complete "story." This approach helps boards and management teams strike an appropriate balance between being overly concise and "flooding the zone" with information.

Most of the board's time should be spent debating the issues raised by the board materials, including forward-looking issues, rather than hearing a recitation of

the materials already provided. Discussion is a critical component of meeting effectiveness and adequate time should be allotted. Boards should ensure there is moderated dialogue, discussion, debate, and decision-making in the meeting itself.

To help ensure varying views are considered, boards may include a "promoter" and a "skeptic" view, with both positions separately and ably raised and argued. These roles are not charades, but instead provide a genuine platform for the exploration of alternatives and concerns. Knowing that all perspectives will be considered for each item can help create psychological safety—"the belief that the environment is safe for interpersonal risk taking."[25] This approach provides an avenue for directors to present their differing views and ask their questions, and for management, who may not have answers to all questions.

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[25] Amy C. Edmondson, "How Fearless Organizations Succeed," posted on strategy-business.com on Nov. 14, 2018. https://www.strategy-business.com/article/How-Fearless-Organizations-Succeed

In the uncertain economic environment in which businesses operate, directors should expect that concrete answers or solutions may not be readily clear. The evaluation of both sides should also not be considered a zero-sum equation with a winner and a loser. Instead, the contrasting options discussed should be considered viable alternatives that can be deployed if the company needs to pivot or change course on the previously agreed-upon direction. Consensus may not be necessary for all discussions, which should be identified within the agenda.

EXAMPLE:
"LIGHTS & SIGHTS" PRESENTATION TEMPLATE

Boards may find it helpful to request the following types of information from their management teams to address during board presentations:

- ▶ **Highlights:** what's going well, what's new or surprising

- ▶ **Lowlights:** what's going "less well"

- ▶ **Headlights:** what's on the horizon, near-term and more broadly

- ▶ **Insights:** what we have learned, what we are currently learning, what do we need to learn

- ▶ **Spotlights:** what topics merit greater focus, more time, more profound understanding

Management should identify the most relevant information related to each topic to present to the board associated with the message management is trying to convey. The entire document should be five slides maximum, with a strong suggestion of five bullet points maximum in each of the categories.

Note: For decisions/evaluations, add "Metrics" slide that presents data relevant to the agenda item or discussion topic at hand.

POST-MEETING

Lastly, lessons learned should be captured and incorporated into future meeting preparations and processes to improve board meeting effectiveness. After each meeting, the board chair or lead independent director should follow up with the CEO to deliver and solicit feedback on roles and meeting performance to determine if any improvements or changes can or should be made. These changes should then be incorporated into the pre-meeting, in-meeting, and post-meeting processes for subsequent board meetings.

MEETING CHECKLIST

PRE-MEETING CHECKLIST

- ☐ Agenda prepared and circulated, including respective roles of Board and Management for each item. **(See EPIDERMIS example on page 48)**
- ☐ Clarity of process and roles for meeting materials/delivery expectations in terms of substance, form and timing.
- ☐ The timely delivery of feedback to Management through the Chair or LID to allow for document modifications or "agreements to disagree" prior to the meeting.

IN-MEETING CHECKLIST

- ☐ Board presentations and information that completely but succinctly, provides a holistic view of the ongoing effort or agenda item. **(See Lights and Sights example on page 49)**
- ☐ Moderated dialogue, discussion, debate, and decision making in the meeting itself.
- ☐ "Promoters" and a "skeptics" view incorporated into the discussion with both views separately and ably raised and argued.
- ☐ Agreement and role clarity regarding decisions and/or recommendations, applicable metrics, internal and external communications, execution, metrics, follow-up and monitoring after the fact.

POST-MEETING CHECKLIST

- ☐ Board Chair or lead independent director follows up with CEO to deliver and solicit feedback on roles and meeting performance to determine if any improvements or changes can or should be made.
- ☐ Incorporate follow-up feedback into agenda setting and role establishment for the next meeting.

Model Attributes of Board Leaders

KPMG

Part of the job description of lead independent directors and independent chairs (board leaders) is to be the culture carrier for the board. Fulfilling this job responsibility will require board leaders to exhibit many, if not all, of the attributes listed in this tool.

In our discussions with directors, these are the attributes of effective board leaders they have identified and seen in action.

Instructions: Boards can reference the following attributes when

- establishing behavioral norms and expectations of board leaders,

- planning and conducting board leader evaluations,

- recruiting new board leaders and committee chairs, and

- planning for the succession of board leaders and committee chairs.

LEADERSHIP QUALITIES

- Highly sophisticated type of leadership

- A leader of leaders, who should not be seen as the most important person in the room

- Servant leadership mentality

- A symphony conductor—someone who doesn't play an instrument but brings out the best in each director and the board

- Collaborative and inclusive consensus builder

- Sets the board culture by example

- Trusted, discrete, and viewed as independent and objective—not allied with the CEO or board, but always working toward consensus or resolution

- Strategic thinker, always keeping the big picture in view

- Projects an attitude that the board and management can effectively address issues when they arise

- Demonstrates the courage to address uncomfortable issues that undermine the board's culture and performance

- Seeks to optimize the diversity of the boardroom, including ensuring that different, unconventional viewpoints are aired

- Attuned to the changing needs and responsibilities of the board, and seeks to adjust board practices, processes, agendas, and structures accordingly

COMMUNICATION SKILLS

- Good listener, with the ability to interpret and synthesize various points of view

- Master of group dynamics, including body language in the boardroom

- Willing and able, in coordination with the chair of the nominating and governance committee, to engage in "difficult discussions" with directors about stepping off the board

RELATIONSHIP WITH THE CEO

▶ Requires the delicate balance of being trusted by the CEO, but not so close that the board leader loses objectivity

▶ "Mentor" is too strong—more of an adviser to the CEO or the CEO's alter ego

▶ Helps to make sure the CEO is reading the board correctly—and vice versa—as well as leveraging the board fully and effectively

BACKGROUND AND TENURE

▶ While former CEOs may not always make the best board leaders—as they often bring the CEO mindset of being decisive and selling their particular point of view—it can also help to have been a CEO, so the current CEO can say, "You've been in this seat. How did you handle this scenario?"

▶ Must have sufficient time to devote to the board leader role

▶ The board leader role may have a general term limit—with flexibility—to help keep things fresh and avoid falling into a routine and risking groupthink

Tactics for Board Relationship Building

NACD and Dr. Stephanie Creary

As seasoned leaders, board directors are already aware of how valuable it is to build healthy relationships in the workplace: healthy work relationships are vital to work engagement, productivity, and meaningfully shaping an organization's purpose, culture, and direction. They are also important vehicles for fostering professional development and growth.

The goal of this tool is for directors to become more attuned to relationship dynamics on their boards, including with management, which may be impeding their board's effectiveness and ability to discover the best approaches for addressing these issues.

> **Instructions:** Board leadership, the nominating and governance committee, and CEOs can use this tool to identify opportunities to strengthen relationships within the board, including with new directors and with management, to develop an intentional strategy for building more effective board relationships.

Tactics the board chair or lead director can take to proactively build healthy relationships on the board:

▶ Allocate time for relationship building, positioning it as a "must have" activity for all directors on the board by

- asking directors to share personal achievements with the board during dedicated board building time (e.g., new certification, new board membership, family milestones),

- highly encouraging attendance at social activities of the board, and

- modeling healthy relationships and the efforts to develop and nurture them.

▶ Create a psychologically safe environment where directors feel comfortable sharing their ideas and different perspectives with these tactics:

- Dedicate time to learn about other board members' interests and values.

- Offer support to newer and/or underrepresented board directors by helping their voices to be heard during board meetings. For example, the board chair or lead director can call on quieter directors to share their opinions during board meetings.[26]

- Monitor contributions to the board, including being mindful of not dominating or under-contributing to board discussions.

- Support other directors' work by providing feedback on their work and expressing appreciation for their contributions.

- Ask for help and accept support and feedback from other board directors, including those who are less tenured.

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[26] Stephanie J. Creary, Mary-Hunter ("Mae") McDonnell, Sakshi Ghai, and Jared Scruggs, "When and Why Diversity Improves Your Board's Performance," posted on hbr.org on March 27, 2019. https://hbr.org/2019/03/when-and-why-diversity-improves-your-boards-performance

- Communicate perspectives consistently, honestly, and openly, even when they differ from the norm (e.g., challenging the status quo).

- Volunteer to engage in a variety of board tasks, including administrative work.

▶ Ensure that board processes promote a diversity of perspectives that can be heard and integrated into the board's work:

- Evaluate the onboarding process so that it includes the provision of topics that are part of a running dialogue between the board and management.

- Engage in more formal board and individual director evaluations, often with the benefit of a third-party facilitator.

- Create a formal "reprimand" procedure if problematic behaviors are not corrected (e.g., removal of committee leader position or assignment or off-boarding).

▶ Sponsor social activities that can help build camaraderie and cohesion on the board:

- Conduct one-on-one informal discussions with directors pre- or post-board meeting.

- Provide board mentorship opportunities for new directors, establishing the relationship prior to the first meeting, and seat mentor and mentee together at meetings.

- Facilitate virtual happy hours.

- Host board dinners.

SAMPLE SCENARIOS

SCENARIO 1
NEWER BOARD MEMBER STRUGGLING TO CONTRIBUTE

You have been a director on your board for five years. Jackie is a female executive in her 40s who joined your board last year. The board thought that Jackie's expertise in cybersecurity would make her an excellent addition to your board, but recently, Jackie told you during a one-on-one lunch meeting that she was finding it challenging to contribute during board meetings.

▶ As a tenured director, consider sharing lessons learned with Jackie and mentoring her. This could be an opportunity for the board to develop a mentorship program that pairs tenured directors with new members. Help Jackie to recognize knowledge gaps and identify needed training and schedule additional sessions with members of the management team.

SCENARIO 2
DOMINANT CHAIR/LEAD DIRECTOR AND
LESS ENGAGED BOARD MEMBERS

Ajay, the board chair, tends to dominate conversations during your board meetings—so much so that many directors have expressed their frustrations about Ajay's leadership style during your informal conversations with them. As a result of this dynamic, many of your fellow directors have opted to remain silent during board meetings unless Ajay specifically asks them a question.

▶ Although the board leader is the board's primary culture carrier, the nominating and governance committee can also define an inclusive board culture and ensure that board leadership is reinforcing it. The nominating and governance committee should consider using executive sessions to discuss the current culture. In addition, the board self-evaluation process can be used to provide a candid discussion of Ajay's actions.

SCENARIO 3
VIRTUAL MEETINGS LEADING TO LESS CONNECTION
WITH PEERS AND MANAGEMENT

A private company board has adopted a hybrid meeting schedule and meets virtually during two of its annual board meetings. You have noticed that the virtual board meetings are more presentation-focused than in-person meetings, leading to less discussion among directors and with management. You have also noticed a lack of personal, informal interactions between directors and with management and meeting fatigue toward the end of the day.

▶ Feedback should be shared with the board leader and expectations for information sharing should be established with management. Boards should assess the quality and completeness of information provided in the pre-read materials, and management should refrain from presenting the same information during the meeting, so that most of the board's time is spent deliberating on issues. If management is convening together and sharing a screen, each presenter should identify themselves prior to speaking. The board leader should include unstructured time during the agenda for informal dialogue between participants and consider spreading the meeting across several days with plenty of extended breaks.

Setting Expectations About Director Behavior

Russell Reynolds Associates

Instructions: Through this resource, boards can define the cultural attributes, qualities, behaviors, and expectations for current or prospective directors to be effective board members. This model draws on proprietary Russell Reynolds Associates research and data about highly effective directors and boards. The tool may be used at various stages to establish behavioral criteria during the recruitment, onboarding, and individual performance review cycles.

DESIRED BEHAVIORS OF THE MODEL DIRECTOR

FOUNDATIONAL BEHAVIORS
The basics for director success

1 Prepared & Engaged
Arrives well-prepared and remains fully present, seeking to add value through appropriate engagement.

2 Current & Open
Stays abreast of industry headwinds, company updates; remains open to new ideas and ways to solve problems.

3 Builds Trust & Respect
Is able to cultivate and earn the trust and respect of fellow directors

4 Stakeholder Savvy
Understands relevant stakeholder perspectives and how to think about maximizing shareholder returns (where applicable)

DIFFERENTIATING BEHAVIORS
Distinguishes the most effective directors

1 Courage to Act
Possesses the courage to do the right thing for the right reason

2 Willing to Challenge
Is willing to constructively challenge management and fellow directors, when appropriate

3 Questions Appropriately
Raises the right, strategic-level questions that get to the essence of the issues

4 Independent Thought
Brings an independent perspective an avoids groupthink

5 Business Judgment
Demonstrates sounds business judgment based on insights applicable to the situation

HOW DIRECTORS STAND OUT AS DISTINCTIVELY EFFECTIVE

▶ Regularly check the altimeter and stay focused on material, strategic topics and questions, and recognize changes to altitude are appropriate but should be done for clear reasons.

▶ Create a model for your work that prioritizes being curious over being judgmental. Always try to lead with questions rather than answers (or worse, accusations).

▶ Outside meetings, make the continuous effort to truly understand the industry and business constraints so that you can better leverage your own experience to the real issues at hand.

▶ Maintain a healthy and appropriate tension with management, characterized by a balance of support, trust, accountability, independence, challenge, and partnership.

▶ Recognize that your ability to add value has a shelf life. Objectively look in the mirror and be ready for when it is your time to step down (e.g., experience is becoming "staler").

▶ Strive to foster an inclusive culture within the boardroom and among your peers by showing up with an open mind and a willingness to listen. Cultivate and maintain relationships with fellow directors.

▶ Apply a longer-term outlook (three to five years and beyond) when thinking through board-level decisions and evaluating opportunities.

▶ Contribute meaningfully outside of your "lane." Opine on the areas where your skills and experiences are relevant, but don't shy away from other topics where you might offer a new lens.

BEST PRACTICES FOR IDENTIFYING BEHAVIORS AND INCORPORATING INTO CULTURE

RECRUITING:

▶ Share description with short-list candidates to introduce critical cultural and behavioral expectations

▶ Test for cultural fit in background and reference checks, considering questions such as these:

- Tell us about you as a culture curator, particularly your style in working with diverse groups and stakeholders.

- Give us an example of how you operate in times of great conflict or where there was a lack of consensus.

- How do you see yourself adding value at the board level / in the director seat?

- What cultural environments are you most successful in?

- How do peers describe working with you?

- How do you influence others—rather than direct them?

ONBOARDING:

▶ Onboarding should be holistic and address a wide range of elements important to director effectiveness (e.g., fiduciary responsibilities, director duties, behavioral norms, and expectations for ongoing service). Sessions will require different leaders and may leverage executive, director, and external advisor expertise.

▶ If assigned a board mentor, talk through the cultural dynamics and relationship tone with management, providing real-life examples of recent board engagements.

▶ Board leaders and any mentors should make sure onboarding is more like a continuous process (ideally spread over the first year) than a kickoff. Work to check in on onboarding topics and provide relevant real-time feedback in a director's first year.

ONGOING:

▶ Structure rigorous director feedback processes that collect and share qualitative behavioral feedback that highlights the director's strengths and any potential opportunities for improved effectiveness.

▶ Where possible, link peer feedback to the key behavioral norms (e.g., foundational and/or differentiating behaviors).

▶ During peer review, ask "How is the director showing up in terms of fulfilling their duties and contributions? What adjustments would bring them closer to the model director?"

▶ During the self-evaluation, ask "Is it difficult for me to speak up and dissent? Am I having an impact here?"

Source: Russell Reynolds Associates. Used with permission.

Managing Biases to Improve Board Culture

NACD

Biases are a natural consequence of the way our brains process extensive amounts of available information to make decisions. These mental shortcuts are susceptible to various influences and limitations that shape our perspectives, such as personal experiences, cultural upbringing, social conditioning, exposure to media and information sources, decision fatigue, and emotional factors, among others. These judgments may not align with rationality or objectivity and, if left unchecked, they can cause disagreements, poor decision-making, and silos in group settings, including the C-suite and the boardroom.

> **Instructions:** This resource can help boards recognize major biases and address them through different actions. Directors, supported by board leaders and the nominating and governance committee chair, can use this tool to challenge their beliefs and assumptions, and apply strategies to mitigate the impact of pervasive biases.

Description	Potential Risks	Strategies to Reduce Bias
AFFINITY BIAS A tendency to gravitate toward others who look, act, and think as you do. **In the boardroom:** Seen in the recruitment, selection, and succession-planning processes when board members favor who they know or people with a similar background to them or within regular boardroom interactions leading to silos or subgroups within the board.	▶ Creates an overly homogenous board when boards recruit directors with similar backgrounds ▶ Exposes a company to stakeholder scrutiny (employees, investors, communities, customers, etc.) due to a lack of diversity ▶ Leads to factions or cliques on the board ▶ Limits innovation	▶ Assess board composition using a skills matrix ▶ Implement processes and practices to ensure that candidates of diverse backgrounds are considered (e.g., expand search to outside networks) ▶ Promote relationship building among all directors ▶ Create a revolving seating chart for each board meeting
ANCHORING BIAS A tendency to rely on irrelevant information as a fixed reference point for making subsequent decisions. **In the boardroom:** Directors giving more weight to the first opinion shared.	▶ Undermines critical thinking	▶ Analyze data and the weight given to each data point ▶ Invest in and prioritize training and development for all directors

Description	Potential Risks	Strategies to Reduce Bias
AUTHORITY BIAS The propensity to attribute greater accuracy to the opinion of an authority figure. **In the boardroom:** May be observed in meetings when discussions are monopolized by, and credence is given only to, the board leadership, a long-tenured director, or a per-ceived expert—or even the CEO.	▶ Leads to lesser quality decision-making due to the reliance on one director's opinion ▶ Limits discussions once the perceived authority figure has shared their opinion ▶ Creates silos or subgroups on the board around the perceived expert	▶ Consider the timing of participation by board leadership and others that the board often relies on during discussions ▶ Explicitly ask each director to share input prior to a decision to ensure full participation by all directors ▶ Utilize an anonymous survey tool for each director to submit their suggested options anonymously, and create a shortlist of submissions for discussion ▶ Promote training opportunities to educate more directors on specialized areas
CONFIRMATION BIAS A tendency to gather facts that confirm preexisting expecta-tions, typically by emphasizing or pursuing supporting evi-dence while dismissing or failing to seek contradictory details. **In the boardroom:** Directors rely on their own anecdotes and analogies rather than facts and data when making decisions.	▶ Promotes narrow-minded and short-sighted thinking ▶ Causes a failure to consider contradictory evidence	▶ Adopt a data-driven approach for decisions ▶ Engage an external advisor to offer additional perspectives and expertise
GROUPTHINK A phenomenon that occurs within a group in which dis-senting views are discouraged or rejected in order to maintain harmony or conformity. **In the boardroom:** Seen when there is a "case to be made" or when requests for informa-tion exist only for opposing or unconventional viewpoints.	▶ Leads to poor decision-making as directors refrain from challenging the consensus view	▶ Appoint a contrarian voice to actively seek perspectives and evidence that challenges conventional ideologies and board views on specific issues or opportunities ▶ Ask each director individually to share input prior to a decision ▶ Consider board composition, including diversity ▶ Work with management to develop thorough pre-read materials with advanced distribution to allow directors adequate time and information to form their own opinions ▶ Engage outside experts to bring a different perspective

Culture as the Foundation: Building a High-Performance Board

Description	Potential Risks	Strategies to Reduce Bias
LOSS AVERSION BIAS A propensity to attribute more weight to a loss than a gain of equal magnitude is known as loss aversion. **In the boardroom:** The board may be reluctant to consider alternative courses of action that may appear to be "risky" for the organization, with a preference for familiar approaches.	▶ Reduces risk-taking when addressing complex challenges ▶ Prevents implementation of innovative solutions ▶ May impede agility and willingness to adjust strategies	▶ When possible, slow down the decision-making process. Allow sufficient time for gathering facts, exploring different explanations, assessing viable alternatives, interpreting results, and regularly assessing the integrity of the decision-making process
STATUS QUO BIAS A preference for maintaining the current situation and opposing actions that may change it. **In the boardroom:** Promotes hesitancy among directors to consider new strategies or ideas despite changes.	▶ Lacks long-term planning and preparation	▶ Play the role of each stakeholder during discussions, including competitors, employees, shareholders, etc. ▶ Conduct a pre-mortem exercise to analyze a future course of action ▶ Consider changes to board composition

REFERENCES AND RESOURCES

▶ Sherrin Ingram, "Overcoming Confirmation Bias in the Boardroom," *Directorship* magazine, Fall 2021. https://www.nacdonline.org/all-governance/governance-resources/directorship-magazine/private-company-directorship-newsletter/overcoming-confirmation-bias-in-board-room/

▶ PwC, *Unpacking Board Culture*, February 2022. https://www.pwc.com/us/en/governance-insights-center/publications/assets/pwc-unpacking-board-culture.pdf

▶ Ralph Weber, "Bringing Decision-Making Science into the Boardroom," *Directorship* magazine, Quarter One 2023. https://www.nacdonline.org/globalassets/protected-pdfs/directorship-magazine/directorship_winter_2023.pdf

Guide to Inclusive Director Onboarding

Mercer

Familiarizing incoming directors with the board's culture is a key component of the onboarding program. As boards recruit directors from a broader range of roles, they should consider if their onboarding programs reflect the diversity of different experiences.

> **Instructions:** This guide can be used for designing onboarding programs that provide an inclusive experience for new directors. Alternatively, users can also reference specific sections for targeted enhancements to existing programs. To effectively implement these onboarding experiences, boards and their governance/legal support teams should allocate sufficient lead time in advance of the new director's official start date.

The guide is composed of two sections:

1. **Director Onboarding Overview:** provides an overview of the director onboarding process, including guiding principles and general timeline.

2. **Detailed Onboarding Process:** includes the specific action items and responsibilities for the company and the new director, for each phase of the onboarding process.

1. DIRECTOR ONBOARDING OVERVIEW

ONBOARDING GUIDING PRINCIPLES

ORGANIZATION WIDE
Guiding Principles

Provide Support
Create personal satisfaction and help validate that you have made the right choice

Build internal network
Empower you to connect with new colleagues and build an internal network

Enable performance
Clarify your role, responsibilities, expectations, and help you become self-sufficient and productive quickly

Acclimate to company culture
Introduce you to company culture, values, norms, and behaviors

DIRECTOR SPECIFIC
Guiding Principles

Operating Environment
Understanding of macroeconomic & geopolitical trends, disruptive industry forces, and regulatory requirements

The Business
Familiarity with long-term strategy and short-term milestones, critical risks to the business, and financial performance

Boardroom Dynamics
Awareness of role of the board vs. management, stock exchange requirements, and board structure / committee makeup

ONBOARDING PROCESS OVERVIEW

PRE-ONBOARDING
▶ Company will send pre-onboarding material to Director, examples include the welcome packet, organizational diagrams, educational videos, board and leadership biography, and relevant cultural materials.

▶ Introductory meetings with current board members and relevant stakeholders are set up in advance of the start date to ensure a smooth transition.

MONTH 1
▶ Director attends cultural orientation training sessions, meets with key stakeholders, and is briefed on financial statements, strategic goals, company culture, key systems, and processes.

MONTH 3
▶ Director has developed connections with different parts of the organization, beginning to foster substantive inroads and functional relationships with company leadership.

MONTH 6
▶ Director is considered fully on-boarded and trained to speak knowledgeably on company products, processes, and systems.

▶ Able to effectively navigate and negotiate within the organization.

2. DETAILED ONBOARDING PROCESS

PRE-ONBOARDING

| Pre-Onboarding | Month 1 | Month 3 | Month 6 |

PHASE OVERVIEW

1. Company will set up a user account in its board management software for the Director
2. Company will provide the Director with pre-orientation materials
3. Director is paired with a "Buddy" to serve as a guide throughout the onboarding process
4. Introductory meetings with current board members & relevant stakeholders are set up in advance of the start date

COMPANY RESPONSIBILITIES

☐ Complete contracting process, including tax & direct deposit details

☐ Set up new user in board management software

☐ Send pre-read materials (examples listed below):

- Welcome Packet
- Organizational Diagrams
- Board & Leadership Biography
- Educational Videos
- Other Relevant Cultural Materials

☐ Assign "Board Secretary" as the new Director's immediate line of inquiry

☐ Elect "Buddy" for board mentorship program, provide contact details to new Director and encourage mentor to actively reach out and inquire about any questions, comments, or concerns before first meeting and throughout their onboarding.

☐ Organize introductory meetings with key stakeholders and current board members including the CEO and board chair

☐ Send companywide introduction email for new Director, with their biography attached

☐ Provide new Director with an onboarding journey overview placemat

☐ Ensure Director understands this is a continuous and evolving process and questions early on are highly encouraged

DIRECTOR RESPONSIBILITIES

☐ Complete all contracting and payment steps including direct deposit and tax forms

☐ Review pre-read materials and become familiar with the company

☐ Develop key questions and clarifying points that need to be answered prior to start date

MONTH 1

Pre-Onboarding	Month 1	Month 3	Month 6

PHASE OVERVIEW

1. Director attends cultural orientation training sessions, meets with key stakeholders, and is briefed on financial statements, strategic goals, company culture, and key systems and processes

COMPANY RESPONSIBILITIES

☐ Schedule 1-on-1 user training for board management software within the first 1–2 weeks

☐ Liaise with HR department alongside the board chair or nominating and governance committee chair to assist in company cultural awareness training with new board member

☐ Upload onboarding materials to board management software user portal (examples listed below):

- Board Meeting Schedule
- Guidelines for Corporate Governance
- Finance/Compensation Overview
- Management vs. Board Responsibilities
- Boardroom Dynamics Overview

☐ Organize 'social' meetings so new board member can properly acclimatize and foster trusting relationships with management and board members

☐ Continue to organize recurrent touchpoint meetings with key stakeholders and relevant, non-executive team members

☐ Provide new member with agenda before upcoming board meeting and offer "deep dive" on any topics they would like to gain more insight on ahead of the meeting

DIRECTOR RESPONSIBILITIES

☐ Meet with Buddy

☐ Review onboarding materials provided

☐ Meet with key stakeholders

☐ Attend cultural training

☐ Complete user training for board management software before first meeting

☐ Begin to develop relationships with current directors, executive leadership, and key stakeholders

☐ Understand interactions with the various areas of the business

☐ Proactively reach out for introductions and to inquire about any questions or concerns

MONTH 3

Pre-Onboarding → Month 1 → **Month 3** → Month 6

PHASE OVERVIEW

1. Director should feel comfortable reaching out for informal and formal feedback from current board members and to provide any feedback on the onboarding experience

2. Director should be continuing to ramp up and become an active and impactful board member

3. Director begins to develop substantive inroads and functional relationships with executive leadership

COMPANY RESPONSIBILITIES

☐ Board Secretary provides guideline document for performance review (for example, a 6-month Performance Board Questionnaire or other director assessment documents) to Director to align expectations

☐ Conduct reflection "touchpoint" meetings

☐ Meeting with focus on director experience and assimilation

☐ Meeting with focus on director performance and opportunity to provide feedback

☐ Continue to organize collaborative events for Director to socially interact with company team members

☐ Provide director access to all committee materials

DIRECTOR RESPONSIBILITIES

☐ Reach out for formal and informal feedback

☐ Continue to develop and foster relationships with executive leadership and management

☐ Continue to learn about company culture and leadership dynamics

☐ If applicable, travel to regional offices for continuing education and building deeper connections is encouraged

☐ If possible, study committee meeting materials, attend all committee meetings, and develop an understanding of the topics and dialogue between committees and management

MONTH 6

| Pre-Onboarding | Month 1 | Month 3 | Month 6 |

PHASE OVERVIEW

1. Director is considered fully onboarded and trained to speak knowledgeably on company products, processes, and systems

2. Director is able to effectively navigate and negotiate within the organization

COMPANY RESPONSIBILITIES

☐ Board Secretary administers the 6-month Performance Board Questionnaire (if integrated into the process) to current board members and Director

☐ Continue to organize collaborative events for Director to socially interact with leadership/team members and build deeper connections

☐ Continue to provide support to Director as needed

DIRECTOR RESPONSIBILITIES

☐ Participates in 6-month experience touchpoint

☐ Review goals and performance feedback with peers and Board Secretary

☐ Provide feedback on ways to improve key processes and smooth out pain points experienced during on-boarding

Approaches to Strengthening Committee and Full-Board Evaluations

Pearl Meyer

"Are we doing a good job?" An informal process aimed at answering this fundamental question is long outdated. Best practices are evolving in real time. Ensuring that committee and full-board evaluation processes also evolve is key in order to arrive at an accurate and useful assessment of the board's performance, including its culture and dynamics.

> **Instructions:** Boards can use this tool to advance their evaluation processes for committees and the full board. Effective evaluations of the board and each of its committees should have five key elements.

1. **Comprehensive:** Includes all aspects of committee and board structure, leadership, and processes. A comprehensive assessment will address each of the following issues and topics, with additional relevant current issues.

Issues	Topics
Committee and Board Structure	▶ Number of members ▶ Number and focus of committees ▶ Mix of skills and experience ▶ Diversity (gender, racial/ethnic, experience, background, education, etc.) ▶ Diversity of opinion
Committee and Board Processes	▶ Number and length of meetings ▶ Relevance and timeliness of material ▶ Candor of discussions ▶ Ability to achieve consensus ▶ Willingness to question and deliberate ▶ Balance between oversight and operational involvement

Issues	Topics
Committee and Board Leadership	▶ Facilitation of discussion
	▶ Communication
	▶ Relevance of agendas
	▶ Leadership style
	▶ Inclusiveness
	▶ Preparedness
Interaction with Management	▶ Exposure
	▶ Candor
	▶ Rapport/trust
	▶ Consistency of expectations
	▶ CEO and executive evaluation process
Succession Planning for the Committee and Full Board	▶ Documented process
	▶ Chair rotation
	▶ Depth of bench for leadership positions
	▶ Network of potential directors
Overall Committee and Board Performance	▶ Governance
	▶ Perceived strengths
	▶ Perceived areas of improvement
Committee and Board Preparation	▶ Meeting preparedness
	▶ Knowledge of the business, issues at hand
	▶ Board Education
Representative Current Issue(s)	*Examples:*
	▶ Pandemic impact
	▶ New regulation
	▶ Market volatility
	▶ Labor concerns

2. **Interview-driven:** Surveys can provide standardization and simplicity, and they do that basic job quickly. However, with reliance on such tools as the only input, it is impossible to capture nuance, cultural considerations, and clarifications. Critical, qualitative issues that need to be addressed are unlikely to surface without person-to-person communication. Surveys can augment the interview process but should be secondary to fulsome conversations.

3. **Third-party:** A trusted, independent assessor is encouraged. This facilitation can support open and candid dialogue, as well as more accurate evaluations of findings. For example, a disagreement between directors on a current issue may come to light through a survey. A skilled assessor can dig deeper to understand if this is simply individuals who don't see eye-to-eye on a stand-alone topic, or if there is a deeper, more significant rift among the board or committee.

4. **Action-oriented:** An "on-paper" assessment alone cannot drive meaningful change. Any committee and/or board evaluation must be accompanied by an action plan that outlines opportunities to improve the board/committee culture and/or governance. Again, the identification of such actions is highly unlikely through a survey-based process alone.

5. **Candid and transparent:** All assessments should be made available to the full board and full committees, preferably by the neutral third party.

TIMING

Most boards, and some committees, do ensure that a process, however basic, exists. But for most, there is room to improve, spending more time on the tone and tenor of board culture and performance.

Of course, time is a valid concern. It is possible that boards and committees may not be able to—or want to—participate in a fulsome evaluation process with multiple tools and facilitators on an annual basis. For many, that may be okay. However, there should be an identified marker that will drive a deeper-dive assessment on a specified periodic basis. This marker can be some defined, significant changes in board membership, financial performance lows and/or highs, or simply a set number of years. In the interim years when written assessments are the primary tool, these surveys should include sections not just on "what we do" but also "how we do it." A series of open-ended questions that explore issues of board or committee dynamics, leadership, candor, etc. can provide information that leads to open and ongoing discussion and improvement.

## SAMPLE COMMITTEE-SPECIFIC EVALUATION QUESTIONS

▶ How are we integrating oversight of our nontraditional responsibilities?

▶ Do our charters appropriately reflect the areas we oversee and how we self-govern?

▶ Do our agendas reflect careful prioritization of emerging issues, while maintaining our core responsibilities?

▶ How successfully are we interacting with management? And do we have access to the right teams/individuals?

▶ How well are we interacting with/coordinating with the full board?

▶ How well are we interacting with/coordinating with committees that may have overlapping responsibilities (e.g., compensation/human capital and nominating/governance with respect to board succession; audit and compensation/human capital with respect to incentive-plan measures and financial performance)?

Model Individual Director Evaluation

Russell Reynolds Associates

As directors' commitment has increased to accommodate the evolving demands and higher expectations of performance placed on boards, directorship has increasingly become seen as a profession. As such, directors should be evaluated with a renewed sense of rigor to ensure they are contributing positively toward the board's overall culture and performance.

> **Instructions**: Through this resource, boards can implement best practices in conducting individual director evaluations. This model will aid in establishing a thorough director evaluation process, conducting the assessment, and providing initial and ongoing feedback to individual directors.

Phase 1: Design Feedback Process	Phase 2: Gather Feedback	Phase 3: Deliver Feedback
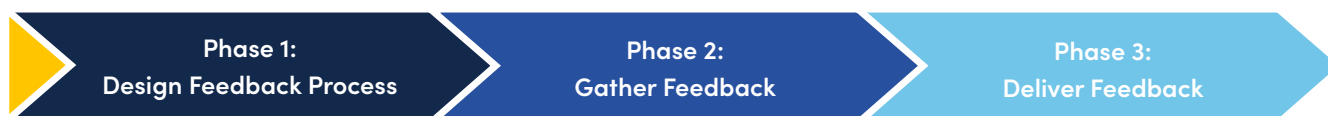
PHASE 1: DESIGN

DESIGNATE LEADER:

▶ Determine who will lead the evaluation and who will participate in the delivery of feedback.

- The chairs of the board and the board committee responsible for governance issues are typical internal leaders for these processes, increasingly supported by an outside evaluation expert (at least every two to three years).

- An externally led approach can bring objectivity and credibility to the process. It also helps in collecting feedback on the board leaders who often face challenges in receiving candid feedback on their own performance.

- Decide how feedback will be shared and clearly communicate to participants at the onset. If an outside party is used, clarify who will be privy to what information (e.g., board and/or committee chair will receive anonymous summary of themes). Providing live feedback just between the external expert and director is advantageous and creates a safe space to receive feedback.

STRUCTURE THE EVALUATION:

▶ Determine how to collect data on director performance—qualitative (often interview-driven), quantitative (often survey-driven), or both.

- The director evaluation process can be highly sensitive, and participants may be uncomfortable grading their peers. Framing as a "feedback" process instead of an "evaluation" may ease concerns and encourage openness. While surveys can have value in measuring progress over time, participants are often much more comfortable, engaged, and transparent with an interview-style process.

- Plan for interviews to be conducted on a confidential, no-attribution basis.

- Determine who will provide feedback on individual performance. Provide notification several weeks in advance on the process, timeline, and expectations for anonymity.

- Solicit a self-assessment from each director, which can provide helpful context on performance and generate buy-in to the ultimate recommendations.

PHASE 2: GATHER

▶ **Facilitate Evaluation:** Conduct the interview-style evaluation conversationally, seeking to understand how the director discharges their responsibilities, adds value, and contributes to board culture. Feedback should illustrate how the director is "showing up" and meeting established expectations for director behavior.

- Ask the same general set of questions to ensure consistency (except that board leaders will have a few additional questions). Begin with self-assessment, and then proceed with the same questions for each director.

- An external expert can extract substantial data from spending limited time on each director. Seek examples but be cautious of anonymizing.

▶ **Synthesize Themes:** In a succinct report (if used), organize key themes.

- At a minimum, feedback should be delivered verbally, which may be supported with a one-page summary of evaluation themes, strengths, and opportunities.

- Where possible, link feedback themes to established behavioral standards or guidelines. The feedback report may include recommended action steps.

PHASE 3: DELIVER

▶ **Confidential Review:** Feedback reports, if written, should be held confidentially and only reviewed by the director, facilitator delivering feedback, and relevant board leader(s).

▶ **Provide Personalized Feedback:** Facilitator(s) should schedule an individual feedback session with each director to provide a verbal overview of the director's key strengths, opportunities, and action plan.

- When delivering difficult or negative feedback, reframe as an opportunity rather than a criticism. For example, instead of telling a director he "does not engage in strategic discussion," consider reframing: "The board really appreciated your insights on the X issue. They want to see you do that even more, because you helped us look at the problem from this angle."

- Focus on translating the development opportunities into concrete actions steps. The more the process looks through the windshield rather than the rear-view mirror, the better.

▶ **Ongoing Follow-Up:** Where appropriate, relevant board leaders should follow up and track progress over time.

SAMPLE QUESTION GUIDE FOR INDIVIDUAL DIRECTOR EVALUATION INTERVIEW

For each individual board member, starting with yourself, ask these questions

1 What are the director's distinctive contributions to the board? (What do you hope your peers will say are your distinctive contributions to the board?)

2 Are there any opportunities for the director to be even more effective? If they asked you for advice, what would you say? (Are there any personal areas where you think you could be even more effective than you are today?)

3 What is the director's primary subject-matter expertise or skill set, and is that experience and/or recency still relevant, given the strategic direction of the business?

Additionally, for board leaders (board / committee chairs, etc.), ask these questions:

4 Tell us about how the director is succeeding as a board leader. Is her or his committee / the full board working effectively?

5 Describe X's leadership / stewardship style. Are you confident in their ability to continue leading their committee or the board effectively?

6 How could X further improve functionally or behaviorally (e.g., organizing or facilitating the meeting, messaging to management, coalescing the board on the right issues)?

SAMPLE INDIVIDUAL DIRECTOR FEEDBACK SUMMARY REPORT

DIRECTOR STRENGTHS & CONTRIBUTIONS:

▶ **Stakeholder Engagement.** You regularly include various stakeholder perspectives in your questions and advice. You demonstrate strong social awareness that shows understanding of our investor, customer, and labor communities.

▶ **Builds Trust & Respect.** You are willing to help support management outside of meetings and on your own time. You are deeply respected and trusted by the leadership team and offer valuable mentorship behind the scenes.

▶ **Business Judgment.** You bring relevant [Y] experience and [X] skills, particularly your board experience with large companies, which provides insight into [Z] issues.

▶ **Courage.** You demonstrate candor and courage in asserting your point of view. Your peers deeply admire your clear, direct, and steady style, and often seek your advice.

DIRECTOR OPPORTUNITIES & DEVELOPMENT AREAS:

▶ **Courage. Questions Appropriately.** As you have acknowledged, your peers are eager to see you increasingly raise issues in the boardroom rather than behind the scenes. Many find this pattern to indicate your discomfort with conflict.

▶ **Independent Thought.** There is a perception that you are too close to management, which has led to questions of bias and discounting your perspective. Be cognizant of agreeing with management at the onset. Think more on bringing the board along with more balance and transparency in your message.

▶ **Challenge with Purpose.** While it is good that you avoid groupthink, there are opportunities for you to rein in perceptions of stubbornness by bringing balanced support and seeking alignment.

RECOMMENDATIONS & ACTIONS:

▶ Consider opportunities to leverage your influence and relationships to help further align management and the board on the sticking points. While some of this work may need to be done outside of board/committee meetings, wherein you might take on a mediator role, try to bring discussions to the board table more often

▶ Think more about translating management's perspective and demonstrating independence in the challenges you raise to management or the board. Articulate objective evidence that supports your perspective, but remain open to alternative views before making up your mind too quickly.

▶ When the board proceeds with a decision that you disagree with, strive to find consensus where you can and apply your challenge constructively to pressure test and polish next steps. You do not need to surrender your point of view, but you should make more effort to move forward in a productive way.

Source: Russell Reynolds Associates. Used with permission.

Guidance for Boards on Identifying and Addressing Problematic Director Behaviors

Sidley Austin LLP

Sidley Austin LLP provides this information for educational purposes only. It should not be construed or relied upon as legal advice. Given the complexities of law, regulation and practice in this area and the variety of company-specific factors that need to be considered, this information should not be applied to any particular situation without the advice of an attorney experienced in this area of law.

Establishing and maintaining a positive board culture at times requires addressing problematic director behaviors. Problematic director behaviors come in a variety of forms, including these:

- ▶ Acting in an abrasive, abusive or disrespectful manner

- ▶ Monopolizing discussions

- ▶ Unduly interfering in management operations

- ▶ Overstepping one's authority

- ▶ Failing to respect and abide by company protocols and policies

- ▶ Leaking confidential information

- ▶ Failing to disclose a conflict and/or acting on a conflicted basis

- ▶ Taking any action that breaches a fiduciary duty or violates law or regulation

> **Instructions:** This tool can be used by board leaders to identify and address problematic director behavior.

When faced with problematic director behaviors, boards have fairly limited options:

- ▶ **Identification, Education & Coaching.** In many instances, identifying the problematic behavior to the director will be sufficient. If the behavior reflects a lack of understanding about policies or obligations, education may be appropriate and helpful. For behavior reflective of a problematic personal style, offering coaching may also be appropriate. Individual director evaluations can help focus feedback about more generalized problematic behaviors.

- ▶ **Reprimand.** Board leaders should be prepared to address problematic board behavior when it is apparent. If a simple conversation is not sufficient, consult with counsel on how best to address. For a listed company, an actual reprimand for a breach of the code of conduct and ethics avoids public disclosure that the board waived the code.

▶ **No renomination/Resignation request.** The board may decide (absent a specific contractual arrangement) not to renominate a director. If change is needed midterm, the board may request that a director resign.

▶ **Board committee.** If a director will not resign, within certain limits the board may take action to protect the integrity of board decisions from conflicts of interest or other harm by forming a board committee that does not include the director. Advice of counsel should be sought in considering this path.

▶ **Removal.** A board is usually constrained in its ability to remove a director and should seek advice of counsel. Many states only allow director removal by a vote of shareholders. In some jurisdictions, a court may be petitioned to remove a director for fraudulent or dishonest acts, gross abuse of authority, or a breach of duty. In either instance, the removal effort would be public and could cause additional harm to the company that would need to be weighed.

Assessing the Impact of Director Compensation on Board Culture and Agility

Pearl Meyer

The influence of a board's culture on its own baseline performance, as well as its ability to adapt and keep pace with shifting organizational needs, is dependent on a robust mix of institutional knowledge, evolving experiences and skills, and fresh insights. A healthy amount of desired turnover—versus either stagnation or too many disruptive changes—supports an optimal state. Smooth transitions between incoming and outgoing directors should be the norm. All of these conditions can be supported and maintained in part through a board's compensation strategy and policies.

Data show companies have increasingly relied on mandatory retirement policies (used today by 77% of the Top 200 companies tracked in the *2022-2023 Pearl Meyer/NACD Director Compensation Report*, compared to only 20% in 1995) to address board refreshment. In the context of a culture discussion, this approach is rather cold and perhaps lacking in nuance. Thoughtful boards are likely to devise a "carrot" to accompany the "stick." Consider the very important role of board pay in the context of these questions:

▶ How does a board fairly treat individual directors who will be leaving as the result of a turnover exercise?

▶ How does a board encourage and support a culture of routine refreshment?

▶ How does an organization attract best-in-class nominees in an environment where there is competition for the best director candidates?

We believe the answers to these questions must be managed at both the strategy and policy levels.

> **Instructions:** The points below offer discussion starters to begin active exploration of the board's current compensation policy and its potential impact on culture, as well as examples of changes that may encourage needed evolution.

Pay Component	Prevalent Practice	Considerations
Board Cash Retainer **Meeting Fees**	▶ Nearly all public companies (98%) use an annual cash retainer. ▶ By contrast, the prevalence of board meeting fees continues to decrease; now at just 8% of the Top 200.	▶ Meeting fees were originally introduced as an "incentive" to encourage attendance. For public companies, this incentive was replaced by a mandate in the form of a requirement to disclose the name of any director who does not attend at least 75% of scheduled meetings. ▶ Today, the focus on retainer vs. meeting fees reflects the fluidity of communication among board members, management, and advisors.

Pay Component	Prevalent Practice	Considerations

Committee Pay
 	
▶ **Chairs**
 	
▶ **Members**
	▶ Nearly all (96%) committee chairs receive additional compensation—almost always in the form of a cash retainer.
	
	▶ By contrast, the prevalence of additional pay for committee members is decreasing (43% of Top 200).
	
	▶ Most companies differentiate pay among committees (audit receives highest pay, then compensation, then nominating and governance).
		▶ Current differentiation in fees reflects *perceived* workload differences (created in part by the Sarbanes-Oxley Act for audit and the Dodd-Frank Act for compensation).
		
		▶ Does differentiation send an intended or unintended message regarding the relative importance of committees?
		
		▶ The decision to pay committee members may be driven by board demographics:
		
		  ● Additional pay for committee membership can minimize potential resentment over "uneven" workloads.
		
		  ● On the other hand, elimination of committee member pay can facilitate committee rotation and refreshment without creating compensation consequences.

Stock Awards
 	
▶ **Options**
 	
▶ **Restricted Stock**
	▶ The majority of public companies rely on restricted stock vs. options.
	
	  ● Annual grants typically determined as a dollar value
	
	  ● Grants often made at annual meeting date with one-year vesting
		▶ The focus on restricted stock vs. options aligns with the board's fiduciary responsibility to safeguard shareholder investment.
		
		▶ While dollar-denominated annual restricted stock grants are the norm, a company interested in a stronger performance orientation to the pay program could consider these solutions:
		
		  ● Options (no value if stock price does not increase)
		
		  ● Share-denominated awards (grant value increases when stock price goes up/ decreases when stock price goes down)

Pay Component	Prevalent Practice	Considerations
Share Ownership Guidelines (SOGs)	▶ Share ownership guidelines are used by 94% of the Top 200; typically set at 3-5x the annual cash retainer. ▶ Some companies (44%) have holding requirements, limiting a director's ability to sell all or a portion of shares during their tenure.	▶ SOGs are meant to strengthen the alignment between directors and shareholders. ▶ SOGs that are very restrictive (e.g., 100% of equity grants must be held until retirement) can hasten director turnover.
Pay Level	▶ Unlike executive pay, there is a fairly narrow "market range" for director pay.	▶ Narrow market practice leaves little room for pay level differentiation without scrutiny.
Pay Mix	▶ NACD standard is >50% of director pay should be equity	▶ While higher equity percentages can be viewed as more shareholder friendly, when coupled with SOGs and/or holding requirements, the resulting lower cash component can discourage directors with diverse backgrounds.

Source: *2022-2023 Director Compensation Report*
https://www.nacdonline.org/all-governance/governance-resources/governance-surveys/director-compensation-report/2022-2023-director-compensation-report/

If the Board Wants To:	Consider:
Attract non-traditional directors	▶ Offer relatively higher cash compensation ▶ Include initial equity awards ▶ Include annual stipend for director education ▶ Adopt modest share ownership guidelines
Encourage tenured directors to retire	▶ Set minimal vesting periods for equity grants ▶ Implement hold-until-retirement requirements for equity
Retain tenured directors with key institutional knowledge	▶ Provide share ownership guideline relief for directors who reach either a certain age or years of service
Increase formal and/or more frequent rotation of committee members	▶ Eliminate committee member compensation and increase board cash retainer

COMMUNICATING THE BOARD'S WORTH

After strategic deliberation and the crafting of a culturally aligned and supportive pay plan, communication is the next step. After all, a compensation program is only effective if it is communicated clearly and well understood by its participants, including directors.

The modern Compensation Discussion and Analysis (CD&A), a component of a proxy statement, provides a strong and clear rationale for the executive compensation program's design and the decisions made by your compensation committee. Today's most impactful CD&As have evolved into useful communication tools that strike the right balance between marketing an executive compensation program and satisfying critical reporting rules by the US Securities and Exchange Commission. Focusing strictly on the numbers and compliance leaves out the strategy component and could lead to misinterpretation. Think of director pay disclosure in similar terms.

Stakeholders want to be reassured that the board members who are responsible for guiding strategy are doing so in the best interests of shareholders. Communicating a thoughtful board pay approach that has been crafted in order to promote strong cultural attributes while maintaining the just-right mix of director talent has merit externally—but also among the board itself, serving as a way to reinforce the goals of the program and the desired outcomes.

A director compensation program that includes a formal communication component provides an opportunity to show that decisions have been made in a holistic framework—one that ensures board members are being paid competitively, appropriately, and responsibly based on the unique and high value they bring to the boardroom.

Even for private companies that are not required to publicly disclose through proxy filings, a similar exercise makes sense. Documenting the rationale helps inform all directors of the logic behind director compensation and the board's thoughtful approach to the subject.

CD&A GUIDELINES

Creating this narrative can be succinct and straightforward. A simple rule of thumb is to follow the core guidelines used in the CD&A:

1	2	3	4
GOALS	**DESIGN**	**RATIONALE**	**GOVERNANCE**
Outline the philosophy, guiding principles, and objectives that drive the program design	Provide an overview of the pay mix structure; explain why it aligns with shareholder interests and how it supports a positive board culture and optimal refreshment cycles	Summarize the guiding features of the program (i.e., what we do and why and what we don't do and why)	Explain how decisions are made

Guidance for Dissenting Directors

Sidley Austin LLP

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In determining how to vote on a matter, directors are expected to review all relevant information reasonably available, and to deliberate, taking into consideration the perspectives and expertise of fellow directors as the board works to develop agreement about potential courses of action.

Well-functioning boards are usually able to achieve a consensus that all directors can support, only rarely resorting to a majority position that a minority of directors oppose. However, reasonable directors may disagree on important matters from time to time.

> **Instructions:** This tool can be used by directors when they find themselves in disagreement with a majority of the board or a board committee on which they serve.

Directors should freely share their viewpoints in board and committee meetings and seek to influence other directors in deliberations. In the relatively rare circumstances when a director continues to disagree with the position of the board majority after thorough discussion, the director has a range of possible responses:

▶ Continue to try to convince the majority prior to the vote.

▶ Propose that the board table the issue until processes to address conflicts are established, additional information can be provided, and/or experts are consulted.

  ● Consider whether the board's decision-making process is appropriately robust. Have conflicts been disclosed and handled appropriately? Do directors have the relevant information to be able to assess strategic options and come to an informed decision?

▶ If the board is acting on an informed basis and in good faith, and the decision-making process is sound, a director who at first disagrees may be able to support the view of the majority deferring to and relying on the judgment and expertise of the other directors.

  ● Consider one's own assumptions and biases to identify the source of the disagreement.

The director may consider taking one or more of these steps:

▶ Vote against the proposal, but then respect the will of the majority.

▶ Vote against the proposal and request that the dissent be recorded in the meeting minutes to express significant disapproval of the decision. (This may also protect a director from fiduciary liability for the particular decision at issue.)

▶ Seek to have the board reconsider or modify the decision.

▶ Consider resigning.

This last step should be considered in a case of serious and continuing disagreement, particularly where the director believes that management is not dealing with the directors, shareholders, or public in good faith—for example, if information being disclosed by the company is inadequate, incomplete, or incorrect (and seek legal advice about your obligations if the matter involves a potential violation of law)—or the director's point of view is disregarded on a regular basis, such that the director feels he or she is not able to be effective as a director in influencing board decisions.

For a public company, a disagreement concerning the company's operations, policies, or practices that results in a director's resignation or refusal to stand for reelection, if known about by an executive officer of the company, triggers a Form 8-K disclosure obligation. This disclosure must include a description of the disagreement, and any correspondence the director has sent to the company about the resignation or refusal to stand for reelection must be filed as an 8-K exhibit. The company must provide the director a copy of the disclosure on or before the day it is filed and provide the director the opportunity to furnish a letter stating whether or not she agrees with the company's disclosure, and if not, to specify the areas of disagreement. If the director provides a letter, it must be filed as an exhibit to the 8-K (by amendment if the 8-K is already filed) within two days after receipt by the company.

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