CORPORATE COUNSEL

Analysis

When Overlapping Directors Sit on Boards With Opposing Governance Policies

At least one overlapping director is a former in-house counsel. James Johnson, retired general counsel of Loop Capital Markets and former assistant GC at the Boeing Co., sits on the board of Ameren Corp. and of Hanesbrands Inc.

By **Sue Reisinger** | April 30, 2020

A new study on corporate political transparency shows that at least 85 directors hold overlapping positions on two or more boards of companies that have different policies on the issue.

The Center for Political Accountability shared its study with Corporate Counsel, which tried to explore the dilemma facing directors. The center helps produce the **CPA-Zicklin Index**, which scores Standard & Poor's 500 companies on their political transparency and accountability.

The 2019 index ranked companies in five tiers, with 20% of the highest scores in the top tier, and 20% of the lowest scores in the bottom tier. The score is primarily based on whether the company has a publicly stated policy on disclosing political spending, and how broad that policy is.

The **new study** looks at directors of the top-tier companies and identifies when they also sit on boards of bottom-tier companies.

For example, David Taylor is chairman of the board, president and CEO of Procter & Gamble Co. based in Cincinnati. P&G is a top-tier company on the index.

But Taylor also sits on the board of Delta Airlines Inc., which is a bottom-tier company, where he is joined by P&G director Francis "Frank" Blake, who is the nonexecutive chairman of Delta's board. Neither Taylor nor Blake returned messages seeking comment.

Bruce Freed, president and co-founder of the center, said overlapping directors such as these may be "exposing their companies to serious risk."

Freed explained, "Either directors of top-tier companies are not fulfilling their fiduciary responsibility by pressing the lower-tier company to manage the risk posed by corporate political spending by adopting political disclosure and accountability policies, or the directors of bottom-dweller companies are not learning from the practices of the top-tier companies on whose boards they sit."

At least one overlapping director is a former in-house counsel. James Johnson, retired general counsel of Loop Capital Markets and former assistant GC at Boeing Co., sits on the board of top-tier Ameren Corp., an electric and gas utility in Missouri and Illinois.

Johnson, who serves on Ameren's corporate governance committee, is also a director on bottom-tier Hanesbrands Inc., an apparel company based in Winston Salem, North Carolina. An Ameren spokesperson responded to a request for an interview with Johnson by saying, "Our folks have decided not to participate."

Corporate governance consultant Eleanor Bloxham, who asked for the center's study, sees the overlap of directors as a problem. Bloxham is founder and CEO of The Value Alliance Co. and the Corporate Governance Alliance.

Bloxham told Corporate Counsel, "People argue that sitting on multiple boards is a good idea" so directors can carry best practices from place to place.

"Are they bringing their knowledge of best practices into the boardroom and are they making sure all their boards are operating at a high level?" she asked. "Looking at political disclosure is one lens on that question. It tells us something both about the director and the company."

She cited the overlap of three directors on the boards of top-tier Danaher Corp. and bottom-tier Fortive Corp.

Washington, D.C.-based Danaher manufactures and sells medical, industrial and commercial products and services. Fortive, based in Everett, Washington, was spun off of Danaher in 2016 and is composed of instrumentation and industrial technologies businesses.

Danaher's two co-founders, brothers Mitchell and Steven Rales, sit on both Danaher and Fortive's boards. Steven Rales has been chairman of the Danaher board since 1984.

Another Danaher director, Alan Spoon, is chairman of Fortive's board. Neither Danaher nor the Rales brothers chose to comment on the record.

Maria Patterson, clinical associate professor at New York University's Stern School of Business, told Corporate Counsel the overlapping directors "is an issue. Maybe not a problem, but an issue." Patterson is also a retired partner of The Law Offices of Patterson & Aschheim.

Patterson explained, "Questions about political spending and disclosure of political spending should be driven in the first instance by the board. It is a little disappointing that a director of a board that is highly ranked is not pushing the board of a company that is low-ranked to look at these issues."

One reason Patterson has heard for why companies don't want to disclose "is that they're concerned it will become a cudgel that various stakeholders can hit them with. My answer is you are really being foolish because it might come out anyway, and imagine how bad that will be" when it looks like the company was trying to hide it.

She said her personal view is that "it is good risk management and good governance to disclose because political spending can just blow up in one's face."

Michael Cornfield, an associate professor at George Washington University and research director of its Global Center for Political Management, offered similar thoughts. Cornfield's research also involves social media and its impact on reputation.

"My research shows that given the speed, scope and randomness of information diffusion through social media, the best way to protect a company's reputation is the day before something breaks," Cornfield said. "By which I mean having information in a prominent place on the company website and social media pages which explains its campaign contribution policies, criteria, and donation record."

If a company does not disclose, but an embarrassing contribution becomes public, “post-break information supplied the day after by the public relations department or crisis team will get discounted—and derided—as defensive,” he added.

Here are other key findings from the center’s study:

- At least 18 companies in the top tier have directors who also serve on two or more companies ranked in the bottom 20%.
- Two companies, Bank of America Corp. and Newell Brands Inc., have four directors who also serve on four bottom companies at the same time. Neither Bank of America nor Newell returned messages seeking comment.
- Besides Procter & Gamble and Danaher, one other top firm, Target, has three directors who serve on bottom companies.

One of them, Target director Melanie Healey, is also a director for five other companies, according to her LinkedIn page. One of those companies is top-tier Verizon Communications, while another is a bottom-tier company, Hilton Worldwide Holdings Inc. Healey did not respond to a request for an interview.