

How to handle the disruptive director

Like a rogue elephant, unless restrained a rogue director can do serious damage — so don't wait too long before employing one of these actions. **BY RICHARD CLARKE**

BOARDS TYPICALLY WELCOME a healthy airing of different ideas and opinions. But frequently a director will consistently hold different views from the majority and refuse to change them. This rogue director's intractability is disruptive — leaving the board to either accede to his views or come to a screeching halt.

While always an issue, the disruptive director is a more common problem today than five years ago. As a board member and advisor, I've personally witnessed a major increase, as has my colleague Dee Soder. It's so common a problem we just refer to this intractable disruptive director as DD. Whether the increase is due to a greater prevalence of new directors, sociological trends, demographics, or more numerous authoritarian personality-types isn't as important as how to handle the DD — the lone board member whose actions and views consistently differ from the majority. How precisely does one handle a fellow board member who is seemingly unconcerned with the majority's perspectives and doesn't yield to reason?

Frequently the DD's behavior isn't an issue and other board members just go along with his desires and views, in effect reinforcing bad behavior — and setting the stage for costly, major conflict on more important matters! Thus when CEO succession or other critical matters are discussed, the DD can cause havoc. Often

the board accedes to the director rather than fight, even at significant cost and despite opposing views of the majority. Since 2006 we've been called in on over 25 governance problems; only three did not involve a bully director who has disrupted the board and hurt the company.

Three basic control measures

During over 40 years on over 20 boards, I have utilized three basic actions to control the disruptive director. These work whether the board is public or private, corporate or private, large or small. Like a rogue elephant, unless restrained a rogue director can do serious damage: in addition to potential loss of money, customer perception, strategic changes, and negative media, good directors frequently resign (albeit their true reason is rarely voiced). So don't wait too long before employing one of these actions:

1. Request a meeting with the board leadership (the chair, CEO, or chair of the governance committee). I recommend individual discussions, starting with the board leader you know best or the most thoughtful person. Depending on the makeup of the board, talking with only one individual may be best. Present your concerns objectively, basing them on what's best for the company and the functioning of the board. Omit personality conflicts and personal slurs. If you have a history of disagreement with the DD, we strongly recommend having another director with you. This meeting should be in person — travel to the chair or CEO if necessary. Only if the time frame is too far out should the discussion be on the phone. Email should not be considered. Request that leadership address this problem directly with the disruptive director, keeping you and others out of the conversation.

2. If the board leadership is reluctant to approach the DD, recommend engag-



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ing an outside board consultant to measure the effectiveness of the board in total as well as each individual director. Caution: use a group or person known for discretion and without ties to the DD. The feedback by the board leadership to each director can then be used to request changes in the DD's behavior. There are times when the chair, CEO, or governance chair is reluctant to talk directly to the DD. Perhaps he or she wasn't persuaded by your comments, more evidence is desired or, more often, one of them is the issue. If he or she is the problem or there's a reluctance to pursue, the next best course is to suggest a consultant during a board meeting. If this course is necessary, we recommend pre-selling the idea

and having a person or group in mind. Generally it is best to provide two options.

3. Generally one or the other approaches above will be successful. However . . . There are times when board leadership is not sufficiently experienced or strong to address issues regarding personal characteristics and actions of its directors. We don't live in an ideal world and sometimes the board leadership cannot or does not want to deal with the disruptive director issue, even indirectly. When the issue is recognized but need for action is rejected, I have requested and been given permission to approach the director myself.

Should you be forced into this situation, remember to be objective, meet in a neutral space, don't get sidetracked by minor disagreements, and have a goal in mind (don't just focus on his/her personality). Advice re other difficult conversations apply: don't start if you're stressed or tired, avoid meals as waiters always arrive at inopportune times, leave on a positive note, and never, ever back someone into a corner. Or get into one yourself.

These methods do work

Don't expect miracles — remember that behavior is slow to change. I haven't always achieved success in correcting the habits of the rogue director but have been in situations often

enough to have confidence that one of these actions will resolve the issue positively. Recognize that resolution can sometimes lead to the director's resignation, either by his choice or a request from the board leadership. However, this has occurred only once over many years of service on boards of directors.

When your best efforts to resolve the problem fail, your ultimate option may be to stand down. Certainly some directors wished they had resigned before the bully DD caused the company to swim into troubled waters and the directors in turn to lose values, reputation and money. How and when to make the decision to resign and implement your departure is the subject for another article! ■

Try preventive measures first

A game plan for boards that find themselves with one or more directors who are 'pains in the neck.'

BY STEPHEN A. YODER

DEALING WITH A DISRUPTIVE DIRECTOR is not unlike dealing with a chronically aching neck that disrupts one's life: both preventive and ameliorative measures must be taken to handle the "pain in the neck."

Preventive Measures

Selection: It goes without saying that one way to avoid a disruptive director is not to invite him or her to serve on the board in the first place. In most cases, whatever bad behavior is now being played out on your board by a particular individual has already surfaced somewhere else, and someone knows about it.

I recall one time the board of a publicly traded company was considering adding a particular individual to its board. No search firm was involved. The corporate secretary was assigned to do some due diligence. In one due diligence call, an existing director told the corporate secretary that he had heard that the candidate was prone to outbursts during meetings of another high-

profile governing body. The corporate secretary and board chair discounted that piece of information because there were other reasons that the company really wanted to bring this candidate on to the board. It turns out he was equally susceptible to outbursts on the new board, a trait not at all shared by other directors.

The lesson learned here is to seek out and then listen to those whose judgment you trust on interpersonal relationships, particularly those who are already on the board. Perhaps a search firm would have uncovered this trait, but I doubt it.

Term Limits: Term limits can serve as probation periods for new directors and to provide escape routes from having to cope with directors who have become disruptive after a period of "normal" behavior. Your company bylaws or other governing document, such as a board or committee resolution, might expressly provide that the director's first term is automatically the only term unless the chair or his designee, such as the nominating committee, recommends otherwise (check with your SEC disclosure counsel as to whether this must be disclosed if you are a public company). If your company has a classified board, you might place a new director in the class with the shortest time remaining.

Another way both to reduce expectations that board service is forever as well as to part ways with a problem director is to include a requirement for directors to tender their resignations upon any change in professional positions. Such changes might not necessarily coincide with the onset of disruptive behavior, but it is not unheard of for a director



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