Boards Review Resignation Policies

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By Amanda Gerut

Highly publicized incidents involving directors in recent years have raised questions about whether boards' resignation policies should be triggered by significant changes in directors' personal lives in addition to changes in professional circumstances.

Moving to another country, involvement in a lawsuit, or headline-grabbing allegations in a messy divorce are all changes to a director's personal circumstances that could potentially require a director to tender a resignation under such policies. The board doesn't necessarily have to accept the resignation, but it gives the nominating and governance committee and the full board the opportunity to consider whether and how the director's circumstances could negatively impact the company and shareholders.

A policy that specifies personal and professional circumstances "addresses in a broad way any number of changes in the life of a director that may or may not have an impact on the company on whose board he or she serves," says **Aubrey Harwell**, chair of the directors and corporate governance committee on the **Piedmont Natural Gas** board.

Among boards that currently have resignation policies, most such policies are triggered when a director's professional status changes. Such provisions have been common, but not widespread, for more than 10 years, says **ISS** special counsel **Patrick McGurn** in an e-mailed response to questions. For example, a new job or retirement is often the catalyst for a resignation.

Piedmont Natural Gas' policy, which is much more detailed than most, requires that a director submit a resignation "in the event of any significant change in personal or professional circumstances that should reasonably cause a re-examination of the director's continued membership on the board, including retirement or a change in principal job responsibilities, a permanent residence relocation to a community different than that at the time of election, or other significant situation such as any situation that could bring negative attention to the company," the provision states. The resignation must be submitted to the directors and corporate governance committee, and a final decision is made by the full board via majority vote. The policy has been in place for years, says Harwell.

The need for a policy similar to Piedmont's has been underscored by a few high-profile incidents in recent years that illustrate the potential for negative attention to be paid to a company as a result of negative attention paid to a board member.

In August, the **Hewlett-Packard** board was subject to a barrage of unwanted attention when then-CEO and Chairman **Mark Hurd** attempted to quietly settle sexual harassment charges with a marketing consultant while reportedly leaving the rest of the HP board in the dark. Last spring, former **Morgan Stanley** director **Charles Phillips** chose not to stand for reelection after making headlines when a woman with whom he later admitted having an eight-year affair publicized their relationship on several billboards across the country, including one in New York City's Times Square that stated, "You are my soulmate forever."

A handful of other boards have policies that appear to be prompted by changes in both professional and personal circumstances, including **AEP Industries, Darden Restaurants** and **Marsh & McLennan**, disclosure shows.

For the Piedmont board, the underlying premise of the resignation policy is that Piedmont's market area includes North and South Carolina and parts of Tennessee, Harwell explains. The board believes that it should have representation in each of the geographic areas in which the company markets, and be represented by skill sets that include finance, operations and energy. If a director moves from Tennessee to London, for example, the board and company lose representation in that area as well as ties to the community and personal and political relationships.

As for personal circumstances, the company works hard to maintain a culture of transparency, honesty and integrity, he says. If a director is convicted of a crime or involved in a divorce in which his or her spouse makes allegations of infidelity or violence, for example, the director's actions could call into question the culture of the company.

"My view is that every corporation should have some language or some policy similar to that which Piedmont has," says Harwell. "If something [significant] happens to a given director and causes the company upset, it can damage the company's reputation."

"If the headline reads, 'John Doe, director of XYZ Corporation, is charged with horrible crimes'… and the headline continues to be 'John Doe director of XYZ Corporation,' then that company has an obligation to its shareholders to do something about that," says Harwell. "What are you going to do if you don't have a written policy?"

Karen Kane, a board consultant, says the board's conversation about the issue could be very helpful.

"Most board members would prefer that a fellow director resign if his or her behavior reflected negatively on the board and company," says Kane in an e-mail. "They'd rather not have to police one another. A policy enables them to maintain the collegiality of the boardroom."

Other boards have opted not to ask directors to tender a resignation after a change in personal or professional status, but have codified policies about keeping the board informed about changes.

Peter Georgescu, a director on the boards of **International Flavors & Fragrances** (IFF) and **Toys 'R' Us** and the former chairman and CEO of **Young & Rubicam**, says the IFF board doesn't ask for the director's resignation if the director's circumstances change, but instead requires that directors keep the board informed about changes. The two major concerns the board has regarding changes in the lives of directors are conflicts of interest and the ability to maintain the strong time commitment required to serve on the board, says Georgescu. The policy would also include anything that is perceived as negatively affecting the company.

Additionally, he says, the IFF board has an in-depth, annual director evaluation process that determines whether directors continue to be suitable for the board.