



Register now for your free, tailored, daily legal newsfeed service.

Questions? Please contact customerservices@lexology.com

[Register](#)

Why the “Special Interest Director” is a Bad Idea for Cyber, Climate or Otherwise

Global | April 18 2023

A furtive topic debated in some corporate governance circles: *special interest* directors, those with credentials in specific fields, such as cybersecurity or climate science.

While most still see directors as individuals creating value as a body, some want special interest directors on every board. As alluring as such a change might seem to elevate favored topics, downsides caution against.

Directors are elected to provide general oversight and strategic direction. Boards are best when they exercise collective business judgment on each agenda item put forward, from appointing officers to declaring dividends. Value arises from each member having equal voice and no person having power over another. Even board chairs are merely first among equals, presiding more for coordination than authority.

By law, every director has the same fiduciary duties of care and loyalty, including good faith oversight. On all topics, it's all-hands-on-deck: if cyber or climate are enduring vital challenges, then every director must develop an “understanding” and an “ability to assess” the issues—to quote the regulatory expertise required of audit committee members.

The concept of a special interest director would undermine these strengths. Such a director may be great at spotting and resolving the thorniest challenge in a field—patching a hack or capping a leak.

But if one director is a board's resident cyber or climate expert, others will unduly defer to that person, may skip doing homework or posing questions, and create false complacency. That hurts companies.

Directors are generalists, charged with overseeing managers, who are specialists. A company needs chiefs of finance, investment, technology, human resources, and cyber risk. A parallel board, each member with corresponding oversight, would be micromanagement at its worst and leave gaps in oversight.

Boards must oversee broad enduring topics of business—strategy, financial reporting, succession, capital allocation—not the hot topics of today, which may or may not be important tomorrow. For examples of yesterday's hot topics that are now inert, ask experts in Y2K, CDOs, or Covid.

Inverting the question, if special interest directors are warranted for cyber or climate, why not myriad others. Employee relations, customer service, or shareholder stewardship? A board of a dozen one-issue directors will be weak in each issue overseen by a lone expert and on every subject, from budgeting to crisis response.

In practice, each board develops *thematic* directors. These are people who recurrently offer a distinct perspective, such as questioning the dividend policy, insisting on high hurdle rates, or advocating less red tape. While their expertise may shape their viewpoints, it is their experience, conviction, and business acumen—not their status—that adds value.

The same is true for other director categories, such as those deemed independent or diverse. While such directors may assert status when offering a viewpoint, the winning argument invariably appeals to substance—that “the price is wrong” not “what women think.”

It has become common for companies to display matrices reporting directors’ skills such as market research, engineering, or government affairs. The concept of special directors would fit right in, enabling checking more boxes. But such matrices are tools of limited use, not reflections of boardroom reality: great directors are not those with certain checked boxes, but those possessing breadth of knowledge, wisdom, and perspective.

Boards pressed to favor special interest directors consider this: sponsor a series of board training sessions on the topic, describe the sessions in disclosure documents, and indicate attendance—ideally that every director attended every session. That training would help all directors stay informed, ask good questions, and exercise effective oversight.

Rather than rely on a special interest director, all directors could do more than check their own box: they could add real value.

Mayer Brown - Lawrence A. Cunningham

Powered by
LEXOLOGY.