Joining A Board: The Porcupine Approach

The Corporate Counselor
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The answer to the question "should I join a board of directors?" has changed in recent years from "I'm deeply honored," to "you must be out of your mind."

Nonetheless, I still advise people to go on corporate boards. They should, however, recognize that it's not an honor. It's not a position of social prestige. It's a hard and risky job. People should make the decision to join a board the same way we've been told in the old proverb that porcupines make love: carefully, very carefully. It is not a snap decision. It's a decision that requires considerable thinking and research.

I am a compulsive list maker. When others ask me whether they should they serve on a board, I give them my list of questions to ask.

First, look at the corporate culture. It makes no difference what the compliance documents say. If there's not a corporate culture of shared values, honesty and decency; it's not going to work. Recently in the New York Times crossword puzzle, the clue was a corporation with a 65-page book on ethics and compliance. The answer? Enron. The culture has to be ingrained in the company, not simply stored in a three-ring binder.

The idea that ethics must be part of the corporate DNA brings to mind Edward Deming, the esteemed guru on quality. He was opposed to quality-control experts. He believed that excellence had to be built into the enterprise and it if were, you didn't need quality-control inspectors. His teaching is relevant here. Look to see if excellence is built into the culture of the corporation, rather than found in "the quality-control experts" such as the lawyers, the auditors and accountants.

Look at the CEO. Is this individual a man or woman of integrity, energy and intelligence? Does this person have a passion for their business or do you think that they will go to the next company that waives a higher paycheck in front of them? Are they like too many athletes more interested in free agency than they are in a legacy? Note that I put integrity first before energy and intelligence.

Is this a board where you believe you're going to be useful? Or are you going to be used? Are you being brought on as a director because they think that with your luster and pedigree they can probably approach business as usual because they have you to parade around in front of their shareholders and regulators?

Look at the audit committee who is on it? "Goggle" them. Look at their backgrounds and decide if the person chairing the audit committee is a person that you would want running your corporation. Does the audit committee have the ability to (not that it must, but if it needs to) hire outside advisers, lawyers?

Check out the compensation committee. I think we've seen enough high-profile examples to know that compensation is a hot-button issue. Professor Bebchuk of Harvard Law School has put us on notice with his book, "Pay Without Performance." You must ask if the compensation committee has the kind of freedom you think it should have. Does the committee have the right to go out and hire compensation experts? Does it look at the cost across the entire corporation to find the true cost of an executive and not simply his or her income? How much influence does the CEO have on compensation? Is it a corporation that historically has been a pay-for-play corporation when you hit 350, you're rewarded, and when you hit 245, you're not rewarded?

Is there a strong conflict-of-interest policy? Is there a policy that, if you're on the board, your firm be it a law firm or other service provider should not be providing services except on an independent competitive bidding process? Are family members of board members appearing in jobs, especially in jobs that seem to have really no ostensible purpose? Is the corporation making large gifts to favored charities of the board? If the corporation does have a philanthropic bent, how is the money given? Too often, we've seen that directors and corporation executives are listed as making huge contributions to charities and we find out that in reality the corporation whom they serve has made the payment.

Do you believe you're joining a board that would fire its CEO? If you answer positively all of the previous questions, you'll get a yes to the last question, which is ultimately the litmus test.

Check out the D&O insurance policy, if and when you've decided to join the board. See what is available and make sure there is the so-called side A coverage for independent directors.

Don't do it on the cheap. It's a difficult job. Even if you do it well, there is still a lot of risk involved. You ought to be well compensated. As a rule of thumb, you should get paid as a key member of an audit partnership or a senior partner in a law firm would be paid. We know from a Korn-Ferry survey that the average publicly traded corporation board director made about $57,000 last year and that many made in excess of a $100,000. If you do your job well and you take on the risk, this is fair compensation.

Be active. But not intrusive. Remember you're a director. Not a manager. The best guide on director's behavior was given to me almost 10 years ago while serving on a university board. My mentor on the board told me to keep your nose in and your fingers out. Sniff around and learn exactly what the company's doing, but keep out of the day-to-day management. If you think you have to get involved in day-to-day matters, then replace managers. Don't insert yourself.