

# the Corporate Governance I a d v i s o r

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## PROXY SEASON

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### Tips for Preparing Director Bios for the Proxy Statement & Web Site

*By Susan Ellen Wolf*

Gone are the days when one of the easiest parts of proxy drafting was the director biography. It used to be that you could update ages and changes in employment from the prior year. The Web bio was simply a link to the proxy statement bio. In today's environment, if that is all you do, you are letting your board down.

Many audiences—including investors, regulators, employees, activists, media, and plaintiff litigation counsel—closely scrutinize all public information about the board. Your goal is for the substance and format of the director bios to best position each director with

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every key audience. That requires considering whether changes in the company, the industry, or the audience's perspectives merit a change in the type, detail, and format of information provided.

This article describes a robust process for drafting the director bios to accomplish the goal of best positioning each director with every key audience. The steps are not difficult, but they require advance planning and more manpower than was needed in past years.

### **Step One: Identify Key Audiences**

You want a list of each key audience who may consult your director bios.

First on the list are your company's institutional investors. Understand the investors' priorities for a strong board, but they will not be the same for each investor. Having a year-round engagement with top institutional investors is helpful in this regard. So is specifically asking questions about your investor's perceptions of your company board's strengths and challenges.

Second on the list are the key financial analysts (buy and sell side) for your industry. If you are not familiar with the analysts, ask the company's investor relations executive or chief financial officer. Note the analysts' views on the strengths and challenges for your board and competitor boards.

Third on the list are your company's employees. A company with a large percentage of unionized workers will want to show the labor force expertise of directors. A company in an innovation industry (technology or medical research, *e.g.*) with a large percentage of professional workers will want to show board members who understand the innovation process.

Fourth, think about the regulatory and litigation environment for your industry. A pharmaceutical company might want to highlight the experience of its board in product safety, efficacy, and new drug approvals. An automobile

company might highlight the experience of its board with quality processes, automotive safety, environmental issues, and consumer protection matters. Ask your litigators whether regulatory settlements for other companies in your industry have included adding board expertise in a particular discipline.

Fifth, consider activists that are involved with your company, other companies in your industry, and other companies of a similar size and circumstance. What skills do the activists tout when seeking to add nominees to a board? What attributes of sitting directors do they attack?

Sixth, think about the proxy advisory firms that will report on your proxy materials and recommend how investors should vote. For most US listed companies these include ISS and Glass Lewis. Whether your own board agrees with the attributes these firms list as important in a given year, it will pay to highlight your best match with their priorities in your director bios.

Last, you might feel you don't need to consider the media, because your company might not be in the media spotlight today. However, any company is only one incident away from a media firestorm. Once the media coverage begins, it is too late for action if something in a director's bio is not worded optimally. It pays to ask for input from your company's media relations experts early in the proxy statement drafting process.

### **Step Two: Identify Strategic Direction & What Board Skills Match the Company's Current Circumstance**

Think about where your company is heading and what investors are hoping to see. Is your company in a turnaround situation, experiencing high growth, adding or shedding business lines, or changing its geographic footprint? You will want to highlight different board strengths and skills, depending upon the unique circumstances in a given year. As a result, using a prior bio, or

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the same bio used by another company that the director also serves, may not highlight the skills that are most relevant to your current audience.

For example, consider Director A, who is a partner at Major Recruiting Firm. She is on two boards, Consumer Products Company and Medical Device Company. Her work at Major Recruiting Firm is described differently in each company's proxy statement, based on the differences in the circumstances at each company.

Consumer Products Company is a well-established global player that is under attack from activists who would like to see the company split into three companies. Director A's bio in Consumer Product Company's proxy statement reads:

Director A has enjoyed a 20-year career at Major Recruiting Firm. She led the recruiting practice for large cap consumer products companies at Major Recruiting Firm for a decade. She now leads Major Recruiting Firm's board leadership center and assists with CEO and Board Chair succession. Her expertise in global staffing and leadership development provides valuable insights to the board, including:

- On the nominating committee, helping assure the board includes members with expertise in each of the company's major product lines; and
- At the full board, contributing to the process for executive development and succession planning, adding knowledge of workforce cost management and evaluating executive performance.

Medical Device Company is a high growth company only five years past its initial public offering. It started in Europe. Its business is expanding rapidly, particular in the United States, Japan, and China. Director A's bio in Medical Device Company's proxy statement reads:

Director A has enjoyed a 20-year career at Major Recruiting Firm. She opened the

office of Major Recruiting Firm in China, which provided services to all industries, including medical devices. She now leads Major Recruiting Firm's board leadership center and assists clients with CEO and Board Chair succession. Her expertise in global staffing and leadership development provides valuable insights to the board, including:

- On the compensation committee, assisting in structuring compensation to attract and retain top scientific talent; and
- At the full board, contributing her knowledge of the markets and human resource practices. Her deep knowledge of the markets and human resources practices in China is of particular value, because China is a critical market in the company's strategic expansion plan.

### **Step Three: Provide Detail about the Information You Want to Convey**

It can be frustrating when investors seem to ignore information that is included in the proxy statement. To avoid this, make the information clear, and do not assume the reader is starting with any foundational knowledge. Doing so often requires that you provide enough detail to make sure no one misses information, as shown in the following example.

**Too Concise:** Director A is a retired partner of Big Four Accounting Firm and is an accounting and financial expert.

**Better:** Director A is a retired partner of Big Four Accounting Firm. He led the US audit practice for our industry. As a result, he has first-hand knowledge of the accounting and auditing best practices and trends for our industry, as well as expertise in accounting and auditing.

**Best:** Director A retired as a partner of Big Four Accounting Firm after a 30-year career

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there. He led the firm's US audit practice for our industry and served as vice chairman of the firm's mergers and acquisition services team. This substantial experience allows him to add auditing, accounting, financial, business, and leadership expertise to our board. In particular:

- Knowledge of audit and accounting best practices and trends in our industry informs his work on our audit committee;
- Knowledge of capital structures and capital markets transactions in our industry informs his work on our finance committee;
- Experience in mergers and acquisitions due diligence and integration informs our board's work to evaluate and oversee major transactions;
- Knowledge of our industry informs his contributions to the board's work on strategy and business development; and
- Work with many different client boards and committees informs his contributions on leadership and governance practices.

### **Step Four: Design and Format Are Important. Do Not Skimp on Design Services**

Jamming everything about directors into one long paragraph will guarantee that few people will read it. There are excellent design companies that can help ensure your proxy statement will be as easy to read as possible and that important information is easy to locate. The design that is best for one company may not lend itself to the information another needs to convey.

Following are some general guidelines to help make your director disclosure as easy to use as possible:

- (1) Do include pictures with proxy statement and web bios.

- (2) Do customize the web bios so the design is easy to see on the screen. Consider adding a video with each director speaking. Videos are appreciated as a way for interested parties to become better acquainted with directors.

- (3) Don't include only the information required under Securities and Exchange Commission (SEC) rules. Also, tie the information about each director's strengths to your company's strategic goals.

- (4) Don't be afraid to repeat information. The SEC staff recently has encouraged companies to make their proxy statements shorter, but it is a mistake to skimp on information about the strength of your board to save a page or two. I saw one powerful example that repeated certain information about directors in three places. First, the director's main areas of expertise were listed under the director's picture. Next, expanded information on how the director's expertise applied to the board's work was included in the bio. Finally, a spreadsheet showed the main areas of expertise that were most important to the company. The spreadsheet listed those directors with experience or expertise in each area of expertise.

- (5) Draft for the reader with the least knowledge, not just for securities lawyers familiar with the SEC rules. Write in plain English (the SEC's *Plain English Handbook* is an excellent guide). A college student working part-time at ISS may do a first analysis of your proxy statement. A clerk at an investor may screen your proxy statement for certain issues. Make it easy for every reader to find and understand both the information that is of interest to them and the most important messages you want them to take away.

- (6) It is helpful to have a variety of readers give you candid feedback on early drafts of the bios. Don't just ask them to rate it as excellent, average, or poor. Spend time asking if they took away your key messages from what they read.

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## Step Five: Take Care When Including Information about Hot Topics in Bios

Companies sometimes stretch to show their board composition addresses every current issue. Cybersecurity is a good example. While it is an issue of general concern today, if you are going to include it, show the reader how it relates to your company's business. Don't include it unless it is a major issue for your company and your industry. Moreover, don't stretch to make it seem as if a director is an expert in an area in which his knowledge is only cursory.

Example. Director A is a retired senior official from the US Department of Homeland Security. He is on the board of two companies, Pharmaceutical Company and Utility Company. Here are the differences in thorough proxy disclosures about Director A's contributions to board work on cybersecurity at each company.

### Pharmaceutical Company

Director A's work at the Department of Homeland Security allows him to contribute to:

- The science and technology committee's oversight of many issues, including protocols for governments stockpiling our products for various potential national and global responses to biological or chemical warfare, particularly treatment for Anthrax; and

- The full board's oversight of enterprise risk management, particularly protection of intellectual property from misappropriation and safeguards against product counterfeiting.

### Utility Company

Director A's expertise in terrorism threats based on his work at the Department of Homeland Security adds unique expertise to our board's work, including oversight of:

- Preparedness for a physical attack on our nuclear generating facilities;
- Systems for preventing the theft of nuclear fuel; and
- Systems for preventing a cyber-attack to overtake controls at our nuclear facility or the computer systems that govern our delivery of power across the grid in XYZ State, which includes two significant metropolitan areas.

In conclusion, take the time and resources to describe in detail your board's strengths and expertise as they relate to your company's business and strategic goals. Doing so will allow others to appreciate your board as the strategic asset that it is. Doing so will also prepare you for the inevitable scrutiny that is part of today's environment for all publicly traded companies.

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