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Bridging Board Gaps—Again

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A review of a blueprint on board change 15 years later reveals the areas where corporate boards have made strides and where significant gaps remain.

By Lawrence A. Cunningham

THE CORPORATE GOVERNANCE FAILURES OF THE EARLY 2000s, including the collapse of Enron Corp. and Lehman Brothers, provoked elaborate reforms of governance structures, procedures, and processes. The Sarbanes-Oxley Act of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 revamped important aspects of corporate governance. Audit committees and compensation committees received expanded power and direction, internal controls were bolstered, and regulatory oversight was enhanced.

Although some of the reforms were controversial, many observers appreciated the effort. However, even proponents recognized the need to focus more on board functions. They were concerned that prevailing practices fell short of the potential value directors could contribute to the organizations they serve.

To assess and narrow these gaps, a group of corporate governance luminaries collaborated to produce a blueprint for board change.

The 15 participants represented a variety of perspectives, ranging from corporate directors, such as Ken Daly, then serving as CEO of NACD, to judges, including William T. Allen, retired chancellor of the Delaware Court of Chancery known for the landmark *Caremark* decision, and E. Norman Veasey, retired chief justice of the Delaware Supreme Court. Underwritten by the Rockefeller Foundation and convened under the auspices of the University of Delaware's John L. Weinberg Center for Corporate Governance and Columbia Business School, the group identified seven gap areas warranting substantive attention in *Bridging Board Gaps: Report of the Study Group on Corporate Boards*, published in 2011.

After nearly 15 years and other turbulence—from the COVID-19 pandemic to geopolitical upheaval—a reexamination of the report and its recommendations is illuminating. It reveals that while many gaps have narrowed, others still endure or have changed as related debates have evolved.

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In revisiting each of the original recommendations, we can see that the group members were sage but not entirely prophetic. Directors can use the following updated guidance to step back and assess these gaps themselves, preparing the companies they serve for the future.

Purpose

Then: When it comes to purpose, the ideal board should focus on the creation and protection of sustainable, long-term value for shareholders, according to the report. The reality the study group found in 2011, however, was that many boards did not have a sense of their own purpose and concentrated instead on process, which often led to too much focus on compliance instead of strategy. The report recommended that boards better understand their purpose, which is to help the corporations they serve create sustainable, long-term value for shareholders.

Now: The words "sustainable" and "long term" in the statement of purpose for boards show that the study group was ahead of its time. Today, even the staunchest proponents of stakeholder capitalism recognize that the interests of other constituents must be rationally related to the long-term interests of shareholders. The purpose gap persists, however, for different reasons.

Over the last 15 years, there may have been an increasing emphasis on process, as the report calls out, and a diffusion of focus away from long-term shareholder value toward other priorities, such as reducing greenhouse gas emissions and elevating workforce diversity, while not always tying these priorities to business impacts. Adding to the complexity is more recent pressure for companies and boards to take a stand on political issues.

Recommendation: Boards should focus on creating long-term value for shareholders. This involves shaping business strategy to optimize growth and profitability. While boards should consider relevant social or environmental factors, these should always be evaluated through their direct impact on the company's financial well-being. Additionally, boards should guide their companies and CEOs to avoid taking public stands on political issues unless those issues lie clearly within the company's sphere of interest.

Culture

Then: As laid out in the report, the ideal board should work with management to be visible beacons of the company's ethical values, prioritizing and proactively promoting these as representatives of the corporation and its shareholders. In reality, the study group said that many boards concentrated on selecting executives and board members with ethical values but neglected to nourish board engagement with leaders and their organizations in service of culture. To ensure the right "tone at the top," the report said, boards should strengthen engagement between management and the board to serve the long-term interests of the business and shareholders.

Now: The concept of culture and the ideal of optimal board-management relations remain valid. There has been an uptick in board engagement with management and shareholders, as noted by Russ Banham in his 2024 article, "Shareholders: The New Rules of Engagement." Yet, the concept of "ethical values" is far more contentious today than it was 15 years ago, in light of intense debates in recent years concerning a corporation's proper purpose.

Recommendation: Boards should cultivate culture by fostering strong engagement with management, aligning the "tone at the top" with the company's long-term interests. Rather than fixating on values, which have become relative and contentious, boards should promote a shared understanding of core principles and strategic objectives. This approach should be grounded in a commitment to integrity, emphasizing behaviors that support the company's financial success and earning it a reputation as a pillar of society.

Leadership

Then: On an ideal board, the report said, the chair should lead rigorous discussion and decision-making on essential issues, such as strategy and risk. To ensure independent review of such matters, executive sessions should be held regularly. Realistically, the study group found, the board chair—often also the CEO—may have focused too much on operational matters instead of guiding the board at a higher level.

As a result, full board meetings may have been driven by lackluster agendas and superficial discussions of important topics, which placed a great burden on executive sessions, brief and perfunctory as they can be. The report recommended that boards by default have an independent chair, recognizing that there are situations when a board may choose to combine the CEO and chair roles. In these situations, the report recommended appointing a lead director with the power to convene meetings and "generally act as a first among equals."

Now: Robust debate continues over whether to combine or separate the chair and CEO role. The report, while offering a default preference for separating the roles, contained a separate statement from skeptics of such a default position. These skeptics favored a context-dependent approach. It seems likely that a poll of an equally distinguished group today would show a similar difference of opinion.

Recommendation: Boards should evaluate the leadership structure on a case-by-case basis, considering a company's unique needs and board strengths. While the default preference for separating the CEO and chair roles remains valid in many cases to assure effective board oversight of executive leadership, boards

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should assess the specific context and dynamics of their organizations before deciding. If the roles are combined, boards should appoint discerning, independent lead directors with clear authority to assure oversight and diffuse power. Regular and earnest executive sessions should be held, regardless of the chair's role, to foster independent oversight and ensure that critical issues are resolved.

Information

Then: The report noted that the ideal board should learn from a variety of internal and external sources, including reports from third-party analysts and managers within the company beyond the senior leadership team. The reality, the study group found, is that boards in 2011 often relied mainly on information from the executive leadership team, and they engaged with mid-level managers only when more senior leaders brought them to meetings or when the board reached out to these mid-level managers for exceptional reasons.

As the report noted, directors should periodically review the format and content of company-relevant information to ensure that these resources adequately inform the board and its committees on everything important for corporate growth and health. Directors have a need to regularly receive comprehensive, plain-English reporting on the risks the company faces, with the importance of each risk designated. To avoid overwhelming the board, additional information belongs in appendices, the report said.

Now: From *Caremark* to *In re Boeing Co. Derivative Litigation*, information flows are the vital essence of corporate board work, input, and oversight. Boards today seem more attuned to this than ever. On the other hand, however, if the volume of information has increased, it can be more difficult to discern the significant from the distracting. The NACD 2025 Trends and Priorities Survey, the results of which were published in the *2025 Governance Outlook* report, reveals that 73 percent of respondents agreed the sheer number of issues an individual director must monitor has increased over the past five years, and 74 percent have noticed an expansion of board agendas. There has been substantial litigation in Delaware on related matters, including more lawsuits seeking information (i.e., books and records requests) and alleging failure of information reporting systems under the *Caremark* standard.

Recommendation: Boards must strike a balance between receiving comprehensive information and avoiding information overload. To ensure that directors are properly informed, boards should work with management to streamline reporting, prioritizing critical data that directly impact corporate performance and risk. Information should be presented in plain language, with relevant context, and include an assessment of risks, their potential impact, and how they are being managed. While it is important to provide

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ample detail, boards should direct that nonessential information be placed in separate appendices to avoid distracting from key strategic discussions. Additionally, boards should periodically review their information flows to ensure that they are focused, timely, and relevant, adjusting the process as needed to align with changing priorities and risks.

Advice

Then: Ideally, the report noted, the board should regularly seek external advisors' perspectives with management support. However, in reality, the study group said, boards and management in 2011 hesitated to spend corporate funds on such independent advisors to examine and provide secondary opinions on the decisions of managers and their own advisors. This may have been because boards assume that managers and their advisors have all required expertise, and managers are unlikely to dispel that assumption. The report pushed directors to use third-party experts to advise on issues where the board believes outside perspectives would improve board decision-making.

Now: In recent years, boards have increasingly retained outside consultants or advisors on topics such as cybersecurity and climate science, as well as for general board training and education programs. The 2011 report preceded current debates on specialist directors, however, and it may be wise for directors to maintain generalist capabilities with broad knowledge while turning to external specialists for counsel in particular subject areas such as cybersecurity.

Recommendation: Boards should continue to recognize the value of external advisors, particularly in specialized areas where in-house or board expertise may be limited. While maintaining a diverse set of generalist skills on the board, directors should feel empowered to seek external counsel on complex or technical issues, such as cybersecurity, regulatory changes, or industry-specific challenges. Engaging with third-party experts can provide fresh perspectives, enhance decision-making, and help the board stay ahead of emerging risks. Above all, engagements should be used strategically to strengthen, not supplant, the board's own expertise and judgment.

Debate

Then: Debate, disagreement, and even dissent are essential ingredients of good boardroom culture, according to the report. That said, many boards tried to avoid dissent by emphasizing collegiality and the perceived importance of unanimous votes, according to the

Principles from the NACD *Future of the American Board* Report

In 2022, NACD convened a group of directors and governance experts that created a set of 10 principles as a framework to guide boards to become better stewards of long-term value creation for their stakeholders. The principles in this report, especially those listed below, can help boards as they bridge the continuing gaps noted in this article.

Corporate Purpose: The company's purpose, as defined by the problems addressed and the needs filled by its goods and services, should drive its behavior, shape its governance, and position the company to create sustainable long-term value.

Corporate and Board Culture: Governance structures and practices should position the board to provide oversight of corporate and board culture, with the objective of promoting integrity, inclusion, and responsibility.

Objectivity and Oversight: Governance structures and practices should position the board to provide objective judgment and active oversight, supported by board leadership that is distinct from management.

Agenda and Information: Governance structures and practices should be designed to support the board in determining its own priorities, agendas, and information needs, and to assist the board in focusing on priority issues.

Composition, Refreshment, and Diversity: Governance structures and practices should be designed to ensure that board and committee composition align with changing needs and that directors are competent, committed, and diverse.

Find the full report in the "Governance Resources: Future of the American Board" section at nacdonline.org.

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study group. Board and committee chairs should encourage open discussion and debate, the report recommended, and understand the advantages of disagreement and dissent in improving board decision-making.

Now: Boards today still tend to press for consensus, given the obvious value of unity when setting strategy and policy, but to foster robust decisions, chairs have started to promote debate, as well as disagreement, if not dissent. All boards and the companies they serve are unique, and the optimal environment varies accordingly, although a baseline of civility is in order.

Recommendation: Boards should develop a culture where healthy debate is encouraged, using techniques such as appointing a devil's advocate or adopting the role of a "friendly inquisitor" to challenge ideas and assumptions in a constructive way. This approach can help ensure well-thought-out decisions and mitigate groupthink to yield the best outcomes. Boards should be cautious of a culture of extreme dissent, such as those where directors are appointed by dissident shareholders after a bruising proxy battle, as this can spell dysfunction. Instead, directors should aim for a balanced, respectful approach to disagreement. To maintain a constructive environment, boards should create informal opportunities for socializing outside of formal meetings, forging camaraderie and reinforcing the idea that differences of opinion are part of the shared primary goal of corporate success.

Self-Renewal

Then: The report stated that the ideal board should have directors whose knowledge and skills complement management's own in support of corporate strategy. In addition, directors should undergo continuous education, and board and committee membership should cycle at regular intervals to incorporate new perspectives while preserving continuity. However, with a lack of regular and thorough assessment and education, the study group said, many board members became complacent and remained in their board roles beyond their maximum effectiveness.

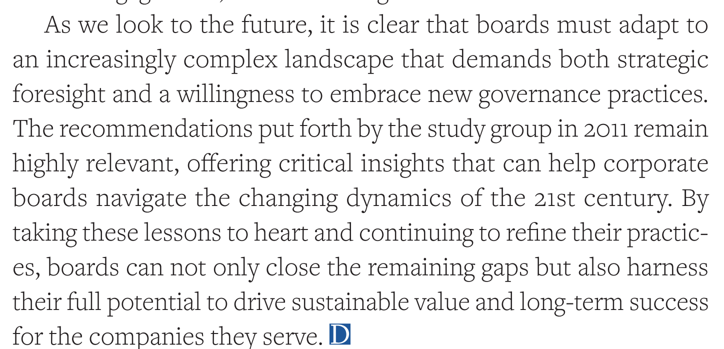
The report recommended a regular and formalized process for full-board and individual director evaluation that should be legally supported and enshrined, with term limits incorporated based on a company's circumstances. The report also recommended that directors receive continuing education relevant to their board service.

Now: We know from company proxy statements that most, if not all, boards today have continuing education programs and processes for the evaluation of both director and board performance. Nonetheless, the complacency risk remains. The most dramatic recommendation the 2011 study group made was its suggestion of term limits for directors, which are still not implemented on most public company boards today. According to DiversIQ's 2024 article, "Board Refreshment, Retirement Age, and Term Limits," only 9.2 percent of S&P 500 companies have term limits explicitly stated in their corporate governance guidelines. However, there are trade-offs between maintaining experience and gathering fresh perspectives to grapple with and many boards strive for a balance of the two.

Recommendation: Boards should recognize that term and age limits are artificial constraints designed to make room for new, potentially more valuable perspectives by removing tenured or older directors who may no longer contribute effectively. However, many experienced directors add significant value, while some newer, younger directors may not bring the same benefit. A case-by-case approach can be more effective in evaluating individual contributions. To mitigate the risk of complacency and ensure that long-serving or older directors do not overstay their effectiveness, boards should consider implementing a policy that includes heightened periodic reviews of directors as they approach certain tenures or ages. This approach allows for more thoughtful assessments of ongoing value and contributions, rather than imposing arbitrary limits.

Preparing for Future Governance Gaps

The evolution of corporate boards since the publication of the original report reveals both progress and ongoing challenges in bridging the gap between the potential and the reality of board performance. While substantial strides have been made in areas such as information flow, outside advisory engagement, and board self-renewal, significant gaps remain, particularly in terms of aligning boards with the long-term purpose of shareholder value, fostering a culture of ethical engagement, and facilitating constructive debate.



As we look to the future, it is clear that boards must adapt to an increasingly complex landscape that demands both strategic foresight and a willingness to embrace new governance practices. The recommendations put forth by the study group in 2011 remain highly relevant, offering critical insights that can help corporate boards navigate the changing dynamics of the 21st century. By taking these lessons to heart and continuing to refine their practices, boards can not only close the remaining gaps but also harness their full potential to drive sustainable value and long-term success for the companies they serve. D

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