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Activists Demand 'Board Refreshment,' but Companies Say a Long-Tenured Director Can Be Indispensable

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Long-tenured corporate directors appear to be an endangered species, often derided as complacent and blind to new ideas.

In recent years, many longtime members of boards of directors were swept out in a wave of “board refreshment” to accommodate DEI goals or activist investors.

And institutional investors and proxy advisers tend to agree that a decade in the boardroom does a dinosaur make.

But as companies look back on this year’s proxy season, a school of thought is gaining momentum in corporate governance circles that it’s worth keeping at least one long-tenured director on board.

Helping fuel the conversation is the disruption brought by a new presidential administration. Sweeping regulatory changes include a tariff war, the likes of which companies haven’t experienced in decades.

“We are hearing from clients that they’re really relying on some of their long-tenured directors

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in the boardroom who really have that seasoning and have seen the company through crisis periods before,” said Beth Sasfai, a partner at Cooley and co-head of the firm’s corporate governance and securities regulatory practice.

A longer-tenured director also can be valuable at companies where a large capital investment plays out over many years—someone who was around when those decisions were made.

In addition, that long-tenured director can serve as a repository for lessons learned from a long-ago merger or acquisition, such as integration snafus that arose.

Beth Sasfai, a partner in the New York City office of Cooley.

"I have seen long-tenured directors absolutely be additive," said Sasfai. "Like, 'Hey, we did these two deals over my tenure and XYZ did not work. We need to learn a lesson from this, and here's how we really ought to think about integration,'" she said.

Such wisdom gained from hard knocks may help explain the findings of a 2021 study by five university researchers, which was recounted in a Harvard Business Review story published last December.

In reviewing S&P 1500 firms, researchers found that just over one-quarter of companies had a small number—usually one—of independent directors serving 15 or more years.

Interestingly, the performance of those firms was 6.5% higher than firms without any long-term independent directors.

"The reason is long-tenured independent directors protect the firm from making big, value-destroying mistakes," wrote researchers Stefano Bonini, Luminita Enache, Mascia Ferrari, Kose John and David Gaddis Ross.

Besides being "gatekeepers of institutional memory," long-tenured directors often have the credibility to keep CEOs accountable, they wrote.

That knowledge and experience may be particularly valuable at companies in regulated industries, "where knowledge about governmental processes or regulatory developments is firm-specific and hard to acquire."

But the researchers underscored that positive effects were not found at companies with several long-tenured directors. "The key is to have only one or two."

Sasfai agrees, noting risks such as loss of objectivity, potential resistance to change and skill sets that are out of sync with today's challenges.

"But I think when you really see those kinds of issues, often it's more you're looking at an entrenched board that almost doesn't value refreshment generally. You may have four or five of those directors who are extremely long-tenured."

But even making the case for keeping one or two long-tenured directors isn't necessarily an easy task, particularly given the influence of institutional investors.

The California Public Employees Retirement System, in its proxy voting guidelines, states it may withhold votes from directors who've served more than 12 years "on boards that lack diversity and do not make firm commitments to improving the board diversity in the near term."

Cooley's Sasfai said clients who appreciate the value of a long-term director haven't asked her whether they should be getting rid of that long-timer.

Rather, some companies are asking how they can convey to investors that they value independence and board refreshment—and that having one or two long-tenured directors doesn't necessarily come at the cost of independence or company performance.

"We have been spending some time lately working with companies on thinking about effective disclosures that they may put in their proxy statement," she said.

This could include details about the company's director-evaluation process, skills assessment and the process for making sure boards have the right mix of directors.

"I have seen some companies now are really thinking about, 'How do I use that biography to show that this director is really valuable, especially my long-tenured director. What have they done? What experience specifically have they had that really adds to the board?"

The usual practice of making general comments, such as that directors are independent "really maybe doesn't tell you what you want to know."

Sasfai's team also has been advising on how to engage with key investors "rather than kind of holding your breath and hoping they're not going to ask you why your lead director has 20 years" at the company.

"Let's just hit it head-on. Talk to them about why that particular director is valuable and is independent, and then also making sure that they're at the same time talking about how they manage board refreshment."

Some companies do a great job of putting those directors forward in conversations with key investors to show them how engaged they are, how "plugged-in" they are to the strategy and operations, said Sasfai, who spent two decades at Verizon, including as senior vice president and deputy general counsel.

Sasfai said most large, institutional investors are open to hearing about why one or two long-term directors are valuable to the company.

"I have one client who recently had a conversation with their top institutional investor and actually said, 'Listen, this particular director has been here through three CEOs. They are not beholden to anyone. They are in fact the most vocal person in the boardroom because they're comfortable in their role and feel like they can really push back.'"