

Reference checking of board candidates: Why? When? How?

Whether a first-time or seasoned director, some form of reference and background checking is vital to ensuring that the best people are sitting at the board table.

BY MADELEINE CONDIT AND SHEILA PENROSE

Board directors take undue risk if they do not define what behaviors and personal attributes a new director should have, together with the credentials and experience required, when they develop a “wish list” of potential candidates. So why is personal reference checking not done consistently?

Why do this?

Sheila Penrose: There may be a belief that someone of the stature to be considered for a board seat does not need to have checks on their educational qualifications, legal proceedings, credit history or personal reputation. After all, they are your peer. Also:

- Reliance on references from those in the boardroom may give comfort on character and behavior . . . but that's not sufficient.
- A request for references may offend candidates, while checking references without a candidate's



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knowledge may breach trust, which is key among directors.

- And there may be concern about reference checking by a search firm.

“Who knows this person?” tends to be the last question asked in making a board candidate choice. There’s usually a connection of five (or less) degrees of separation!

Madeleine Condit: Sheila’s comments reflect the discomfort many directors feel in reference checking personal characteristics of individuals, especially if known to a current board member; over 80% of corporate directors state they had some connection with a current director prior to their nomination.

- From my perspective, boards began to take reference checking more seriously as shareholders became involved with board composition and its effect on creating long-term value.

- After the 2009 SEC Proxy Enhancement required disclosure of the consideration of diversity, background, qualifications and any legal actions of nominees, the reference checking process became more formalized but not necessarily thorough.

What are boards checking for?

Condit: In today’s economic environment, shareholders and consumers expect boards to be transparent in their governance practices. Regardless of recruiting a new director or evaluating the current director’s performance, shareholders expect the best people to be sitting in the boardroom.

- One of the most critical steps in determining the most qualified person to be a new director is reference checking.

- Board referencing is different than a reference check for a new position. A job reference check generally focuses on how a person met financial and growth goals in a structured business environment through management, innovation, and motivation. An individual being considered for a board has generally achieved recognition as an astute businessperson or as an expert in a specific area.

- A board is comprised of people who bring relevant expertise to a company; therefore, the board will be reference checking for an individual to not only bring relevant skills but the ability to express a constructive, independent viewpoint.

- Reference questions should be designed to ensure the individual knows it is the responsibility of directors to discuss and deliberate issues significant to the shareholders and they have been involved in making decisions in a collaborative and consensus process.

- Reference questions should also go beyond business experience to discuss integrity, judg-

Questions to ask in a reference check

- How does the individual demonstrate that they appreciate and respect the differing roles of management and the board?

- In your experience, how does the individual contribute to healthy dynamics in the boardroom or in a business environment? Can you give a couple of examples?

- How does he/she handle pressure? How does he/she deal with a contentious issue? Do you see any reason for concern?

- Have you seen any situations where the individual has been in a conflicted situation? Perhaps a client overlap, a new board or executive role, access to information? How has he/she handled it? Has he/she been forthcoming on disclosure of potential conflict situations or issues that might compromise or embarrass a company?

- What issues have we *not* discussed that are important for an engaged, thoughtful director of high integrity?

— Madeleine Condit and Sheila Penrose

ment, energy, commitment and respect for a company’s culture and reputation.

- An important question in reference checking a “professional director” or a candidate where there is an interlocking relationship with a current board director is whether they can truly bring a new perspective.

- Whether a first-time or seasoned director, some form of reference and background checking is important because boards have their own unique culture.

Penrose: The importance of a company’s reputation to shareholders, the financial markets and customers is paramount and directors must reflect the company’s direction, culture and values. . . which means, among other things:

- Alignment with the strategic goals of the company.

- Understanding the art of consensus building even when holding the minority view.

- Personal and professional integrity that mirrors the business ethics and social responsibility policies of the company. (*See sidebar above for some key questions to ask.*)

When do you ask for a reference?

Penrose: All potential candidates must be aware that the board will be conducting references as part of the recruitment process, once they express a serious interest in being considered.

- Thoroughness is particularly important when recruiting for a board leadership role, such as board chairman.

- Social media and investor activists may ampli-

Who to select as a board reference

The most meaningful references are from people who will give a comprehensive perspective on how you:

- Collaborate with and challenge others.
- Handle responsibility under pressure.
- Listen to other points of view and build consensus.
- Bring your experience to bear in a concise and relevant way.
- Conduct yourself in public settings.

Consider carefully those people who:

- Are known and respected in business, preferably for their service as directors.
- Have sat on a business or not-for-profit board with you.
- Know your track record on an executive management team or as a key employee.
- Are colleagues who have made complex business decisions in group settings where you differed from the majority but were responsible for a team solution.
- Know how you assess business risk in light of corporate culture and social capital.
- Have seen you balance personal and business pressures.

— Madeleine Condit and Sheila Penrose

fy a misstep in the recruitment process, or one that relied solely on assurances from current directors, which can impact the stock price and damage the reputation of a company.

So nominating and governance committees need to incorporate reference checking into their director recruitment process — before launching a search. Hard as it is to recruit the right board member, it might be hard to have them leave the board if something emerges and thorough reference checking was not done.

Condit: A board seat is a long-term commitment in time, energy and emotion that cannot be taken lightly; therefore, it is important the candidate has time to consider references that will provide the most comprehensive overview of their ability to fulfill the board's expectations.

- It is imperative that reference checks be conducted on all candidates, whether known to the current board members or not. There is no longer a “small” professional or personal inconsistency in an individual's behavior.

- It is important that candidates know early in the recruitment process that they will be asked to provide references.

- Either the search firm or a member of the nominating and governance committee should provide guidelines to the candidate(s) covering such areas as the issues that may be explored, references to

talk to, and when in the process the references may expect to be contacted. (See accompanying sidebar for guidance on selecting a board reference.)

How to conduct reference checks

Condit: Regardless of whether a board uses a search firm or not, the nominating and governance committee and general counsel must be involved in the following ways:

- Developing the questions asked of each reference.
- Stipulating the type of relationship the references should have to the candidate.
- Receiving and reviewing an in-depth copy of each reference check conducted by a search firm.
- Making an informal inquiry by a current director after the candidate is made aware of a connection.
- Always conducting a credit, felony and education check when a DUI, bankruptcy, messy divorce, or incomplete credential may emerge. None of these situations need to eliminate a candidate but the board should be aware of a potentially embarrassing situation that may become fodder for the media or an activist investor.
- A Google or social media search cannot replace talking to people who know the candidate.

Penrose: I agree, and would add that the board and nominating and governance committee should:

- Ensure that the committee has a clear process for recruiting new directors, including reference checking.
- Make it clear to candidates early in the recruitment process that checks will be conducted as a matter of good governance and transparency, not a lack of trust.
- Recognize that the company may have clients who require checks on directors to meet their own compliance or due diligence procedures — a practice common for government contractors and financial institutions.
- Understand that a third party can act as a buffer. Search firms will typically include reference and other checks as part of their recruiting assignment.
- Accept that recruiting a new director is a two-way street: a board candidate may ask for references on current members of the board and management.

Consider reference checking as an insurance policy. You hope an adverse event doesn't happen but want to have taken precautions if it does. ■

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