

# Board of Director Evaluations: Required by Corporate Governance Regulations

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“The organization should describe the processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance. The organization is also encouraged to describe any Board or committee training programs that have been put in place.”

*NAIC Corporate Governance Annual Filing Guidance Manual, October 2013<sup>1</sup>*

The new Corporate Governance Annual Disclosure (CGAD) filing requires, among other points, a narrative documenting how well the Board of Directors performs its responsibilities and duties, and how the various Board Committees perform theirs. If your company does not already have an evaluation protocol in place, here are some essentials.

## Evaluate when?

- The assessment must be performed on an annual basis.
- Preferably schedule this exercise about the same time of year.
- Evaluating late in the year helps newer Board members have the time to gain a sense of their own performance, as well as the Board as a whole.

## Measure what?

In order to know what to evaluate, the company should:

- Document the qualifications and characteristics which they feel would make a person effective at the assigned tasks and accountabilities of Board members.
- Whenever possible, give examples. For instance, how does a member document his/her integrity? What are some of the tough questions Board members should be considering?
- Document the policies, procedures and protocols in place for the Board and each committee. Include such items as succession planning for the company, Board member rotation and replacement policies, diversity and expertise goals, oversight responsibility of the nominating and compensation committee; and expectations for open dialogue, transparency, collaboration and confidentiality.
- Ask the board to measure themselves and their committees against those established standards.

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<sup>1</sup> From the National Association of Insurance Commissioners (NAIC) adopted Corporate Governance Annual Disclosure Model Act and supporting Model Regulation in November, 2014. Insurance department regulators have been introducing legislation to implement annual reporting for every type and size of insurance company.

- Review the work of the standing Board Committees and their charters to assure they are performing effectively and reporting to the full Board as required.
- If new Board members were put in place, determine whether the Board followed established protocols and selection criteria.
- Assess whether the Board participated fully in the financial and strategic planning process for that year, with the cost of initiatives balanced against the cost of risk mitigation.
- Review Board activity related to selecting, monitoring, evaluating, and compensating the company's senior executives that year.
- Determine if the Board has adequate access to all the necessary advisors to perform its oversight responsibility for the key risk areas (the actuarial function, investment decision-making processes, reinsurance decision-making processes, business strategy/finance decision-making processes, compliance function, financial reporting/internal audit processes, market conduct decision-making process, and cyber security functions)?

### **Review what?**

Prior to the evaluation timeframe, the participants should be given materials including at least:

- Board minutes for the year,
- The previous year's evaluation report,
- Board training records, and
- Improvement measures undertaken in that year (and perhaps the year before).

### **Evaluate who?**

The only requirement of the model law is for evaluation of the performance of the committees and of the Board as a whole. Best practices, however, suggest the following.

- Ask each participant to evaluate his or her own performance as a Board member. This part of the evaluation should ask about time commitment, preparedness, willingness to ask hard questions, working as a team, performance of fiduciary care for the company, and if they can make a good-faith statement that their individual votes were for the larger good of the policy-owners and other stakeholders.
- In this section, also ask questions designed to evaluate the individual's contribution to any of the Board Committees in which he or she may participate.
- Your company may also choose to ask each participant to evaluate the other board members by name, confidentially.
- Direct the members' thoughts to the improvement initiatives that were implemented and how those initiatives did or did not result in enhancement of the board's processes.
- Whatever questions are asked on these parts of the evaluation, also add an open-ended question such as, "What else do you want the Chair to know?"

Each Board member's evaluation(s) should be confidential. Access to these individual documents (electronic or hard copy) should be strictly limited to the Chair and a designated analyst or trusted support person. The resulting evaluation report for use by the Board should be an aggregate of the individual scores and comments.

When the Board is reviewing the aggregate report, some key items to discuss:

1. What is the composite score of the Board's self-evaluation?
2. What is the composite score of each of the Board Committee's performance?

3. What are the key takeaways for:
  - a. what the Board and each committee did well, and
  - b. what the Board and each committee need to improve in the coming year.
4. Did the Board achieve its attendance goals or is there an absenteeism issue with the Board as a whole or some members?
5. Did the Board perform its key governance responsibilities such as reviewing by-laws, charters, Code of Conduct, and other core governance documents for any necessary updates or revisions?
6. Did all committees have adequate agendas and minutes, and did they meet frequently enough to perform their oversight responsibilities effectively?
7. If improvement initiatives were put in place during the last two years, did those initiatives remain in place?
8. Did those initiatives actually further the targeted improvement?
9. Did the training provided to the Board meet the stated objectives as a whole?
10. Did the Board and each of the committees, as a whole, fulfill their duties of care to serve the company and its stakeholders?
11. If not, what improvement initiatives should be implemented in the upcoming year?
12. What training objectives and specific topics for training should be set for the upcoming year?
13. What additional expertise should the Board seek for the coming year in new board members, if available, or in new speakers, training or outside expert consultants?
14. What other measurements should the Board take of itself, its committees and its members next year?

### **Regulatory Outlook**

The Corporate Governance reporting requirement is currently in place in only a handful of states. However, a number of jurisdictions will address this requirement in 2016 and a majority of states are expected to pass it in the next three years. Putting the Board and committee evaluation protocols in place now will better position your company to submit a more robust first-year report when it comes due.