

Board Blow-Ups Driven by Disputes Over ‘Processes’

[Agenda](#)

An Information Service of [Money-Media](#), a Financial Times Company

Published on May 18, 2009

By Katie Wagner

Some public boardroom clashes this year have been the result of disagreements over board processes, underscoring the importance of making sure there's full board agreement on procedures.

These blow-ups occurred in boardrooms at Gentiva Health Services, Amerisafe, Great Wolf Resorts and Ariad Pharmaceuticals.

For more than a decade boardroom processes have been among the most popular causes of boardroom disagreements. Such disputes could become more common. In stressful situations like the current economic crisis, the last things boards attend to are processes, says William Klepper, a management professor at the Columbia School of Business.

Since May of last year, 78 director departures resulted from “disagreements,” according to research by Audit Analytics. That's fairly consistent with the number of director resignations citing “disagreements” from the 12 months prior to last May, according to the firm. It's likely that an increasing percentage of those disagreements are over board processes, says Klepper.

“The house is on fire, the business is failing, the conditions in the marketplace are in flames and everyone's running out in different directions,” Klepper says. “Usually when we're in that kind of crisis mode, the last thing you think about is how we're doing.”

Boards can prevent getting into these situations by being more aware of their dynamics and how important it is to manage them, Klepper says. To assist with managing dynamics, he suggests that boards appoint one of their directors to serve as what he calls a “chief process leader.” This person would be responsible for attending to the processes of the board, knowing the strengths of its directors and leveraging those strengths.

“Now more than ever, you have got to be process-oriented, because tension and stress is so high in the marketplace that it is creating a lot of stress and a lot of tension on boards,” Klepper says.

Boardroom disputes based on processes predate the financial crisis. Between 1995 and 2006, 40% of disputes were based on boardroom process, according to a 2008 study by Anup Agrawal of the University of Alabama and Mark Chen of Georgia State University.

Of course, boardroom disputes are often caused by several factors. Four Ariad Pharmaceuticals directors left the board on Dec. 1 because of disagreements over several actions taken by the board, according to a Form 8-K filed on Dec. 5. A Dec. 1 letter to Chairman and CEO Harvey

Berger, included in the 8-K, from the resigning directors states: “Our resignation is prompted by your self-interested, combative and obstructionist actions.” The letter also lists the resigning directors’ “vigorous disagreements” with Berger over “fundamental matters of corporate policy, professional ethics and proper standards of corporate governance.”

Other popular categories of disputes that have led directors to leave boards are problems, such as excessive option grants to the CEO or management’s seeming to pursue its own interests; and corporate strategy and financial policy, such as disagreement over the direction of the company or the company’s having moved away from research and development to the detriment of shareholders, according to the study by Agrawal and Chen.

Their study suggests that boardroom conflicts are usually manifestations of power struggles between management and directors. These disputes are more likely to occur at firms where CEOs are more powerful relative to board members, independent block holdings are high, or the balance of power between the CEO and directors has not yet clearly emerged, says the study.

Klepper, on the other hand, says directors leave boards when members are split on an issue and are unwilling to compromise. The letter from the resigning directors to Ariad Pharmaceuticals’s board says the “recent actions” of the company’s chairman and CEO caused “a split on the board.”

The number of filings disclosing director departures due to any kind of disagreement has increased since a rule from the SEC became effective in August 2004, say experts. The rule requires a company to disclose when a director departs from a board due to a disagreement, even if the director does not request that the matter be made public.

Boardroom disputes can reveal serious issues facing a corporation, according to the study by Agrawal and Chen. That’s a potentially positive impact. But the study also indicated the following negative impacts: large and significant stock price declines upon the revelation of conflicts (which happened at Gentiva, for example), poor operating and stock price performance in the years surrounding a dispute, and a higher likelihood of suffering a stock market delisting during the post-dispute year.