Case Commentary

by David J. Berger

Should John join Benchmark's audit committee?

Allegations of accounting irregularities should not stop John from becoming a director.

Even in this day and age, it's still a real tribute to be offered a position on the board of a company like Benchmark. It's all the more impressive to be offered the chairmanship of the audit committee. Unfortunately, as John's discussion with Philip indicates, the decision to accept such a position is not easy. I share Gordon Telford's positive view of board service: As a general rule, the benefits of saying yes far outweigh the risks—provided you're willing to do the job right. To figure out what he wants, and whether he can do the job right, John needs to ask himself four questions.

The single most important one would be, "Do I have time for the position?" Just a few years ago, it was not uncommon for boards to meet four or five times a year, with committee meetings beginning in the morning and everyone finishing up before lunch. Today, any director of a large public company like Benchmark should probably plan on devoting 100 to 150 hours per year in normal situations. This would not cover committee work, travel, and the crises that inevitably arise. As the CFO of a public company, John is undoubtedly working crazy hours already. He needs to decide whether he is willing to make this additional commitment.

Assuming he has the time for some kind of board service, John must then ask himself, "Is Benchmark the right kind of company for me?" Allegations of accounting irregularities at the organization should not stop John from becoming a director, but he should find out more about how the board and management analyze such irregularities and whether the company's decision-making process is consistent with his professional and ethical standards. He should also check with NetRF's counsel to determine whether his presence on the board would create any conflicts of interest. Because Benchmark cannot afford to have the newly appointed chair of its audit committee resign, the board would surely go along with any reforms he proposes, thereby protecting him from professional embarrassment (or worse).

If John can reassure himself on these points, he must then ask himself, "Am I comfortable playing the role I'm being asked to play?" It's not enough that John has financial and accounting expertise and that Benchmark needs an audit committee member. John should think about whether he would be bringing the right expectations to the job and whether he has the right personality for it. For example, would he be comfortable in what is primarily an oversight role at Benchmark after having exercised operating responsibilities as CFO of NetRF? His tangle with Charlie Duer suggests he may not be. And would he be comfortable asking the kinds of elementary questions new board members must ask in order to learn how the company operates? Again, John's hard-headedness and financial sophistication suggest he may not. However, John does seem as though he'd be willing to ask questions that management does not want to hear, which is necessary for being a good director.

The final question John needs to ask himself paraphrases Nikita Khrushchev during the Cuban Missile Crisis: "Is Benchmark prepared for the worst?" To find out, John needs to use his financial expertise and search several quarters of Benchmark's balance sheets for any potential issues. He also should have counsel determine that Benchmark's D&O policies and indemnification agreements would protect him should he be sued as a director.

Even in today's business environment, directors who put in the time, act in good faith, and have the skills necessary to understand the company's business incur minimal risk of personal liability. They also realize intangible benefits from their board service, some of which can be quite valuable. In John's case, these would include exposure to a wide variety of business issues, the opportunity to build personal and professional networks—and perhaps the chance to have some fun.

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