A Resolution for Governance Experts

By Adam J. Epstein

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Every week I sit with small-cap board members who are confused by what they read in governance books and articles and hear at conferences. Sometimes I mention various experts who board members should consider reading or events they should consider attending, and the response is often the same: "Why would I do that, those people and events are just not focused on the unique challenges we face in small-cap boardrooms?" They're often quite right.

In the United States, nearly all governance thought leadership is focused on Fortune 1000 companies. The problem is that this content isn't as applicable to the boardrooms of this country's other 14,000 public companies as governance experts think. It's why I'm asking these experts to resolve in 2019 to better tailor their advice to the bulk of public company directors.

For example, at a recent conference, a well-respected boardroom expert remarked: "Boards should strongly consider having standalone risk, strategy, and cyber committees; it's fast becoming a best practice." Well, that might be true in large, public companies, but it's inapt for the vast majority of public companies that only have a handful of independent board members who already serve on each of the three, standard committees.

A director recently handed me an article discussing why "[a]ll boards should have a well thought out strategy—that's revisited annually—for communicating transparently with proxy advisors." That's perfectly fine advice for the largest 1,000-2,000 public companies, but proxy advisors don't even cover the public companies that are predominantly owned by retail investors. It's always shocking for large-cap board members to read this, but most public company board members don't care at all about proxy advisors—and neither do their investors.

A speaker I heard last year told a large audience of board members that, if they believe their company might be on the radar screen of activist investors, they should begin to assemble a "fight team" that includes specialized lawyers, crisis communicators, and proxy solicitors. For small-cap companies—where 85 percent of shareholder activism takes place—the overwhelming majority of those companies can't afford to add any of those third-party fighters to their team.

I recently asked a board member whether the conference they attended was helpful with respect to gaining a better understanding about how to more efficaciously search for new board members. His response was instructive: "Adam, the entire session was about how to choose and oversee large executive recruiters. It felt like I was in the wrong room. Do they seriously not know that most public companies can't afford to use search firms for board seats, and don't?" My answer was equally succinct: "No, unfortunately, they don't know that."

And, at a recent conference, a central part of a session on managing cyber risk was a lengthy discussion of best practices around managing and interfacing with chief information officers and chief information security officers. Unfortunately, most small-cap public companies in the United States have neither.

The list of examples can go on. And this issue is arguably getting worse as business media myopically focuses all attention on 500 public companies.

Let's be clear about what happens when the majority of board members in the United States—that is, small-cap board members—find the governance advice they read and hear confusing or inapplicable. They tune it out. And, it's hard to blame them. So, if you're a governance expert who would like more people to pay attention to what you write and say, always insert the words "large company" before the word "boards." If you omit those words, your thoughts and advice risk being unsuitable for an enormous cross section of public company board members, because corporate governance isn't one size fits all.