

Serving on boards gets tougher CEOs busier; new laws put pressure on outside directors

By Robert Luke
August 7, 2005, F1

When Bob Nardelli relinquished his seat on Coca-Cola's board of directors earlier this year, he cited as the reason the heavy demands on his time as head of Home Depot.

What Nardelli didn't say was he probably was expending a lot of time — perhaps more than he expected — serving on Coke's board and two of its key committees, audit and compensation.

Among the issues Coke's directors faced: changing the company's chief executive and dealing with heightened regulatory scrutiny over its accounting practices and internal controls.

Serving two masters — his own shareholders and Coca-Cola's — probably was too much for the Home Depot CEO, say corporate governance experts. That's because new laws and regulations require directors to be more engaged in protecting shareholder interests, or risk the possibility of civil and even criminal sanctions if they don't.

For example, 11 former WorldCom directors agreed this year to pay nearly \$20.3 million from their own pockets to settle claims against them after the telecommunications company collapsed. All served on WorldCom's board of directors during the period in which the company allegedly issued false and misleading statements to the investing public.

"The CEO's job has become a 24-hour job," said Charles Elson, director of the corporate governance center at the University of Delaware. "And the role of a director on the audit committee of a major company is time consuming as well. The two don't mix well."

That's particularly true of companies facing difficulties, Elson said.

"If a company is in transition, it can absorb tremendous amounts of time which, given the challenges that a CEO faces at his own company, he can little afford to expend on another's issues," Elson said.

Nardelli declined to comment on his service on Coke's board, which he joined in 2002.

Nationally, directors spent an average of 19 hours per month on board matters in 2004, including review and preparation time, meeting attendance and travel, according to a Corporate Board Member magazine survey.

Paul Lapidès, director of the corporate governance center at Kennesaw State University, thinks that's too high. He reckons the average director spends about 100 hours annually on his duties. But that can easily double if there's a series of major transactions or if there's a crisis, such as allegations of accounting irregularities or loss of a CEO.

Faced with such demands, fewer CEOs are serving on boards other than their own. And those who do are limiting their number.

"It's simply a matter of time and risk," Elson said.

A review by the Journal-Constitution of the proxy statements of nearly 50 large Georgia-based companies bears that out. Nineteen of the CEOs last year served on no other corporate boards. That compares with 15 in 2001, the year before Congress overhauled securities laws in the wake of financial scandals.

On the other hand, CEOs serving on three or more other corporate boards shrank to six from eight.

More meetings

Other changes are rippling through Georgia boardrooms, the proxy statements show.

For example, boards and board committees are meeting more often. The average number of board meetings rose to seven from six during the three-year period, with audit committees — charged with oversight of financial reporting — meeting nine times on average instead of five.

Meetings are longer. At apparel maker Russell Corp., board and committee meetings used to be held the same day. Now, committees meet the day before to provide adequate time for deliberation, said Floyd Hoffman, Russell's general counsel.

"I think as a general rule most boards are going into much more depth," Hoffman said. "Our board seems to want a lot more detail on our business plans and have asked a lot of questions about our long-term strategy. They have asked for market information so they can better understand the markets we operate in and the trends in those markets."

Among other findings for 2004:

➤ Board turnover was about 18 percent, less than the 30 percent some corporate governance experts had been expecting in the 12 to 18 months after Congress passed the Sarbanes-Oxley Act to strengthen securities laws.

"That [forecast] might have been an overreaction on everyone's part," said Joe Goodwin, whose Goodwin Group has recruited more than 300 directors for public companies, including many in Georgia. "Current board members probably decided they would get more involved rather than getting off. It's always a better option to keep some continuity on the board than to have mass turnover."

➤ Annual cash retainers paid to directors rose to about \$39,000 from \$30,000. That doesn't include fees such as those for chairing committees and attending meetings. And it doesn't include any stock incentives, such as stock options and restricted stock.

➤ Only 11 percent of directors are women, matching the national average.

"Georgia matching the national numbers is really very positive," Lapidés said. "Georgia over the years has been behind."

The boards of United Parcel Service, NDCHealth and Russell Corp. each had three women directors, the most on any of the 46 boards. Three years ago, the maximum was two. Thirteen companies still had no female representation.

➤ Georgia directors are younger, with 74 percent under the age of 65, compared with 64 percent in a national survey conducted last year by Corporate Board Member magazine and PricewaterhouseCoopers.

"We probably have younger companies," Goodwin said. "The younger companies are generally smaller companies. They attract younger board members."

Half of the 46 Georgia companies surveyed are members of the Standard & Poor's Small-Cap 600 index. The rest are members of the S&P 500 and the S&P Mid-Cap 400, plus two real estate investment trusts.

➤ Audit fees paid to independent accounting firms increased by an average 78 percent last year from the previous year at the 15 largest companies.

"That's close to what it is nationally," said Guy Budinscak, Atlanta managing partner at Deloitte & Touche. The increase is being driven by the complexity of required audits of the adequacy of internal controls over financial reporting, Budinscak said.

Michael Rosenzweig, who provides legal advice to corporate boards and board committees, agreed.

"These internal control audits have, in many cases, been more difficult and time-consuming than might have been anticipated," said Rosenzweig, a partner in the Atlanta law firm of McKenna Long & Aldridge.

And that's consumed more hours for both management and directors, he said.

'A lot of time looking'

Lapides estimates that Nardelli, who served on Coke's audit and compensation committees, easily could have spent more than 200 hours on his director duties, or the equivalent of five to six weeks of full-time work.

According to Coca-Cola's 2005 proxy statement, Nardelli and his fellow directors attended 95 percent of all meetings. Coke's full board met eight times. The audit committee met seven times; the compensation committee, 10 times.

"As a member of the audit committee, he would have spent a lot of time looking at allegations of improper accounting and financial reporting," Lapides said. Two federal agencies had been investigating Coca-Cola since 2003, prompted by allegations of accounting and other irregularities that a former Coke employee made in lawsuits against the company. In April, Coke settled with the Securities and Exchange Commission without admitting wrongdoing. A separate Justice Department probe was dropped.

As a member of the compensation committee, Nardelli would have addressed the compensation of Neville Isdell, who became chairman and CEO in June 2004, and the severance package for departing CEO Doug Daft, Lapidés said.

Home Depot's own board has a reputation for hard work. Directors are now required to visit at least 12 stores annually, spending about two days per store, and several corporate business units. The requirement used to be 20 stores per year, ostensibly to spot store trends and better advise senior management.

That requirement prompted one director to quit in 1999. After four years of reconnaissance missions, director Johnnetta Cole stepped down.

"I'm trained as an anthropologist, so there is nothing I believe in more than fieldwork," the former president of Spelman College said at the time.

"But I just couldn't handle it any longer."

GEORGIA'S CORPORATE BOARDS

10: Average board size

59: Average age of directors

34%: Directors serving on no other corporate boards

25%: Directors serving on one other corporate board

16%: Directors serving on two other corporate boards

14%: Directors serving on three other corporate boards

11%: Directors serving on four or more other corporate boards

4%: Directors younger than 45 years

21%: Directors 45-54 years

49%: Directors 55-64 years

24%: Directors 65-74 years

2%: Directors 75-plus years

Sources: Staff research, company proxy statements.