

How to Engage Shareholders When Selecting New Directors

Clarity, respect and communication—the hallmarks when CalPERS and UnitedHealth collaborated to add a director to the company's board. By Michele Hooper and Anne Simpson



Michele Hooper is an independent director for UnitedHealth Group and chairs the nominating and corporate governance committee. Hooper also serves on the board of NACD. Anne Simpson is senior portfolio manager of investments and director of corporate governance at CalPERS.

One of the most important responsibilities assigned by a board of directors to its nominating and corporate governance committee is the job of finding, vetting and nominating candidates to become new directors. The competency, appropriate skills, experience and compatibility of directors is of critical importance to the successful oversight of every public company. The election of directors to the board is also viewed as a fundamental right of shareholders, meant to help ensure the board's accountability. It is no surprise then that greater shareholder participation in the selection of director candidates and the nominating process is a high-visibility corporate governance issue, one that can often be a source of contention between boards and shareholders.

As part of the settlement of certain litigation, UnitedHealth Group and CalPERS reached an agreement: UnitedHealth would further open to shareholders the process to select a new member to its board of directors. UnitedHealth and CalPERS worked together to develop a protocol that respected the responsibilities and role of the board's nominating and corporate governance com-

mittee in identifying, vetting and nominating a director candidate, while allowing for significant and meaningful participation by shareholders. CalPERS was engaged by the company as an active participant in the board's process with the responsibility of voting its consent to the director candidate chosen through this process once the board's deliberations were complete.

Our purpose here is to describe our shared experience and the foundation of best practices that enabled us to work well together. We particularly want to highlight those approaches that allowed us to keep the process moving forward successfully in an atmosphere of collaboration and cooperation, rather than confrontation.

The Process Matters

First and foremost, it is necessary to establish clear steps supported by consensus and move forward at a deliberate pace. This will result in a more positive outcome for all of a company's constituents. It is better to let such a process run its natural course rather than rushing to meet artificial deadlines.

Communication should adhere to a regular, frequent schedule and not be left to happenstance

or initiated only when there is pressing need for information. It is also important to have the right people actively engaged and leading the process. (Each of our meetings involved both of the authors.) This free flow of information and the frequent exchange between CalPERS and UnitedHealth built a framework of trust that was critical to our joint success. Regular updates also allowed us to identify and correct misunderstandings quickly before they could inadvertently undermine the trust and cooperative spirit that was being built.

Respect, Communicate

UnitedHealth embraces regular communication with shareholders' and believes in the positive effects of soliciting their perspectives. In 2006, prior to the agreement with CalPERS, UnitedHealth's board established a nominating advisory committee comprised of four individuals associated with shareholders and one member of the medical community. The nominating advisory committee provides a forum through which shareholders can participate in the search for director candidates by the board, as well as a means to broaden the

pool of potential director candidates. This committee (1) provides input on the director skills matrix developed by the nominating and corporate governance committee, (2) suggests potential candidates for consideration by the nominating and corporate governance committee and (3) reviews and provides feedback on qualifications of candidates under consideration by the nominating and corporate governance committee. The nominating advisory committee has met with UnitedHealth's chairman of the board, the chair of the nominating and corporate governance committee and the CEO of the company once or twice a year since late 2006.

The Skills Matrix

In devising a process with CalPERS, the natural starting point for the director search was a thorough review of the skills matrix that had been previously created by the nominating and governance committee. The purpose of UnitedHealth's skills matrix is to assist the corporate governance and nominating committee in considering the appropriate balance of experience, skills and attributes required of a director and to be represented on the board as a whole. It was developed after considering the company's near and long-term strategies and identifies skills and attributes that assist the board in exercising its oversight function.

A well-designed skills matrix can only occur if the company's overall business strategy is well understood and the necessary skills for board members who, of course, must oversee the attainment of those business goals are included in the skills matrix. We found that a robust discussion with shareholders about the board-level skills necessary to help the company achieve its long-term strategies and consideration of shareholders' feedback from those discussions provides valuable input to the corporate governance and nomi-

nating committee. At a minimum, a clearer understanding among shareholders of where the company is going and how it intends to get there leads to broader consensus on the skills to be sought in candidates for the board.

The skills matrix must be considered a living document that is regularly reviewed, updated and compared to the skills of the current board members. Markets evolve, business needs change and a company—including its board of directors—must remain nimble enough to respond quickly and efficiently to new demands and shifting market priorities. UnitedHealth's skills matrix has two sections—a list of core criteria that every member of the board should meet and a list of skills and attributes desired to be represented on the board as a whole, with a goal of having members of the board possess one or more of the collective skills and attributes listed. The skills matrix is periodically reviewed and updated by the corporate governance and nominating committee as necessary.

Before the skills matrix was finalized, it was reviewed with the members of the nominating advisory committee and CalPERS along with a few other key shareholders for their views on whether the skills reflected on the matrix adequately captured the skills necessary for oversight of our business on both a near- and long-term basis.

Next, current directors were plotted on the matrix, providing a useful picture of the board's overall strengths and those areas of expertise where the company could use the talents and experience of new directors. These focus areas and skill sets were discussed with the shareholder nominating advisory committee and CalPERS.

In fact, the committee and CalPERS, in separate consideration of the skills needed for successful oversight, not only largely agreed on the overall core criteria for directors, but also came to the same conclusions

when considering the skills to be sought in the newest member of the board.

Identifying the Best Candidates

Development of the skills matrix assured that the qualifications—not the identity—of the candidate became the driving consideration for selection in our process. The nominating and governance committee and CalPERS agreed that neither side was determined to place “their guy” on the board, but rather to find the best person

Ongoing Work Between CalPERS, UnitedHealth Group

The engagement between CalPERS and UnitedHealth Group and the exchange of ideas and approaches on director selection were highly productive for both organizations. Among the best practices learned and put to the test are:

- Establish a straightforward process with clear, incremental steps, agreed to by consensus;
- Don't rush things, but move steadily forward;
- Focus on selecting the best candidate and don't set artificial deadlines;
- Maintain communication, regularly and frequently;
- Make sure shareholders have a comprehensive understanding of the company's near and long-term business goals and its strategy for reaching those goals;
- Establish a skills matrix that accurately reflects the board's requirements for effective oversight;
- Carefully consider shareholders' perspectives and insight on choosing director candidates; and
- Conduct a thorough search through traditional channels while remaining open to a broad range of qualified candidates who can bring fresh perspectives to the board.

*NACD has
13,000 members.
You and your board will
feel like the only ones.*

NACD Concierges ensure your board gets what you need from the resources, research and educational offerings that come with your membership.

NACD
Concierge
Professionals
AT YOUR SERVICE



Call 202-775-0509 to connect with your NACD Concierge or to learn more about this exclusive benefit for NACD Full Board Members.



NACDonline.org/Concierge

The Director's Chair

for the position based on the company's needs as illustrated by the skills matrix. In our search, we agreed on the importance of several skills, including experience in consumer marketing and with technology.

The rising importance of consumerism in health care and the need to interact and engage with individuals, as both consumers and patients—when, where and how they wish to engage—is opening new markets and new channels for the company's UnitedHealthcare benefit offerings. UnitedHealth's business strategy in expanding its Optum health services platform is based on a balanced combination of internal innovation and development and acquisition of established businesses. Oversight of these activities requires strong director competencies in consumer marketing and technology. Given the complexity of our business, both UnitedHealth and CalPERS agreed that it was important to consider a diverse slate of candidates and that only those candidates with the most impeccable records of service and highly desirable industry backgrounds would be considered. While prior board experience was not a prerequisite, familiarity with highly complex business organizations was.

Selecting Finalists

The board committee considered shareholder suggestions and conducted a thorough search through more traditional channels as well. While the nominating and corporate governance committee was developing a slate of potential candidates, UnitedHealth and CalPERS had regular meetings to discuss the characteristics and skills of the potential candidates under consideration. The nominating and corporate governance committee then subjected all candidates to a vigorous screening process that included:

- Review of qualifications against the skills matrix

- Assessment of interest and the availability of potential qualified candidates

- Personal interviews with qualified candidates by relevant board members

Once UnitedHealth's nominating and corporate governance committee identified finalists for the position, they were discussed with the advisory committee and other shareholders (privacy and other considerations precluded sharing the exact identity of candidates). The nominating and corporate governance committee considered feedback from all of these channels in identifying a finalist candidate. After CalPERS signed a confidentiality agreement, executives from the fund interviewed the candidate identified as the finalist, whose business experience provided expertise in technology and consumer marketing and an institutional investor perspective. In order to accommodate various schedules, the authors flew to New York to meet with the candidate at UnitedHealth's offices; Peter Mixon, CalPERS general counsel, participated by video conference. Following that interview, CalPERS notified UnitedHealth of its support for the candidate. With shareholders' opinions and information in hand, the nominating and governance committee then fulfilled its fiduciary duty to shareholders and the company by making the final decision on the nomination.

Positive Proof

Perhaps the best proof of the efficacy of this process is in the final results. In the last four years, UnitedHealth has added five new directors to its board, and each new director appointment has been overwhelmingly approved by annual shareholder votes. The company is delivering a high level of performance for shareholders growing strongly in the face of difficult challenges to the U.S. and world economies, and growth is expected to continue over the next decade. ■