

(On)board sovereignty –

Towards a first exploration of onboarding practices of newly-elected SMI board members



Linus Flammer

Recent graduate from the University of St. Gallen. Master thesis focus on Onboarding Practices within Boards of Directors in the Swiss Market Index (SMI). Now working as Strategy Consultant predominantly in the fields of Industrial Products and Services.

1. Introduction

Boards of directors are operating in an increasingly exposed working environment characterized by higher performance expectations, and with more pronounced corporate governance requirements contributing to this. These demands manifest themselves in increased transparency requirements on the part of institutional investors. In 2019, for example, the world's largest asset manager BlackRock communicated «We may vote against (...) the independent chair or lead independent director, members of the nominating / governance committee, and / or the longest tenured director(s), where we observe (...) a failure to promote adequate board succession planning».¹ Support at the annual general meeting is thus made directly dependent on whether succession processes are adequate at the board level.

Public scrutiny of boards of directors of listed companies started in the 1980s, when so-called «corporate raiders» increasingly targeted passive boards. From that point on, institutional investors began to monitor boards more closely and demanded a more extensive disclosure of board practices. An example often cited in this context is the full-page ad in the Wall Street Journal in 1992 by activist investor Robert A. G. Monks, who labelled the boards of Sears, Roebuck & Company as «non-performing assets».² Calls for more transparent board practices were also made in 2012, when JP Morgan's multibillion-dollar trading loss due to a credit default swap became public. Two billion dollars were lost at the time because the board overlooked substantial risks in the trading system. It was later revealed that none of the three board members who formed the bank's risk committee possessed any professional work experience on Wall Street for the past 25 years, and that one person was even a museum director.

1 Niles, S. V. (2019). Board Development and Director Succession Planning in the Age of Shareholder Activism, Engagement and Stewardship. Harvard Law School Forum on Corporate Governance. <https://corpgov.law.harvard.edu/2019/06/07/boarddevelopment-and-director-succession-planning-in-the-age-of-shareholder-activismengagement-and-stewardship/>.

2 Van den Berghe, L. A. A. & Levrau, A. (2004). Evaluating Boards of Directors: what constitutes a good corporate board? Corporate Governance: An International Review, 12(4), p. 461.

Several authors have previously addressed the experience, information and transparency gaps among larger boards of directors.³ Serious knowledge gaps among boards of directors of financial institutions during the financial crisis were thus far identified⁴, and generally also a lack of expertise and the ability to process information properly in various cases at the board level.⁵ Despite this obvious shortcoming, proprietary board onboarding and training programs were found to have had little impact and thus added little value.⁶

This brings the importance of an appropriate organization of onboarding programs to the fore. In view of the required transparency of companies as well as the importance of a successful information policy, the question arises: What initiatives do companies pursue to provide their board members with the necessary level of knowledge to let them successfully perform their role from the very beginning?

Onboarding programs at board level have only been studied sporadically at the international level and never in Switzerland. Since the Swiss Market Index (SMI) comprises the largest listed Swiss companies, which are thus under increased public scrutiny and must regularly comment on their corporate practices, these were defined as the study group. Answers to this initial interest are sought on the basis of two primary questions:

1. Do SMI companies have an onboarding program for new board members in place?
2. If onboarding programs exist: How are they designed and what are internal prerequisites for their successful implementation?

2. Prior research on board onboarding

The question of the training and targeted preparation of new board members for their mandate has so far been raised by different authors with varying degrees of conciseness.

Interaction processes at the board level have so far gone unnoticed in conceptual and theoretical research, despite their central importance to the value contribution by boards of directors. The reason for this lies in arguing that board-level interactions represent only a subset of group processes that receive limited attention in management literature. To researchers' surprise, however, these processes were not analyzed in any detail, as it was assumed that by knowing the demographics of a group, one could automatically infer the nature of the processes within the group.⁷

Further research addresses the scope of human capital and emphasizes that the speed and scope of an onboarding program for new board members brings significant benefits to a company.⁸ It is also postulated that corporate governance research should rather examine the experience, education, and individual human capital of board members instead of member independence, especially when evaluating and nominating new members.⁹ Other authors questioned the scope of induction programs and challenged to what extent board members have the necessary knowledge to perform their role and make a real contribution.¹⁰

In any case, practitioners emphasize the importance of interactions within the board during the onboarding process. According to the authors, such interactions follow the premise of creating «robust board dynamics».¹¹

In spite of the apparent relevance of onboarding practices, no scientific or practice-based study on the prevalence of onboarding programs has yet been published on Swiss companies.

3 Cossin, D. & Caballero, J. (2014). A practical perspective: The four pillars of board effectiveness. <https://www.imd.org/research-knowledge/articles/the-four-pillars-of-board-effectiveness/>

4 Pirson, M. & Turnbull, S. (2011). Corporate Governance, Risk Management, and the Financial Crisis: An Information Processing View. *Corporate Governance: An International Review*, 19(5), p. 468.

5 Cossin, D. (2014). «Governance Risk: A Guide for Investors», in: Baker, H. K. & Filbeck, G. (Hrsg.). *Investment Risk Management*. Oxford University Press, p. 3.

6 Cossin, D. (2015). Board Education. <https://www.imd.org/researchknowledge/articles/board-education/>

7 Macus, M. (2002). Towards a Comprehensive Theory of Boards – Conceptual Development and Empirical Exploration, p. 14 – 15.

8 Klein, H. J. & Polin, B. (2012). «Are Organizations On Board with Best Practices Onboarding?», p. 263.

9 Volonté, C. & Gantenbein, P. (2016). Directors' human capital, firm strategy, and firm performance, p. 140.

10 Ruigrok, W., Peck, S., Tacheva, S., Greve, P. & Hu, Y. (2006). The Determinants and Effects of Board Nomination Committees, p. 120.

11 Cossin, D. & Caballero, J. (2015). A practical perspective: Onboarding. <https://www.imd.org/research-knowledge/articles/onboarding/>, p. 2.

3. Switzerland-specific legal bases

The duties and activities as an SMI board member are defined by various legal sources. On the one hand, there are legally binding legal bases such as the Stock Corporation Act in the Code of Obligations (CO), but also criminal law, tax law/social security law and debt enforcement and bankruptcy law. For boards of directors of listed companies, the provisions of the Stock Exchange Act, the Listing Rules (LR) of the Swiss Infrastructure and Exchange (SIX), and the Remuneration Ordinance additionally apply, resulting in further obligations for board activities. On the other hand, there are legally non-binding recommendations (so-called «soft law»), such as the «Swiss Code of Best Practice for Corporate Governance» (SCBP), published by Economiesuisse. In addition, the so-called «company-autonomous legislation» creates further framework conditions for board activities. This includes articles of association and organizational regulations, which the company itself constitutes in order to define the activities of the board of directors.¹²

The SCBP comments on the appropriate introduction, i.e. onboarding, of new board members in section 13.¹³ Under the passage «The Board of Directors should plan for the succession of its members and ensure that they receive further training», the Swiss Code specifies:

«The Board of Directors should ensure that newly elected members receive an introduction appropriate to their functions as well as further training with respect to their responsibilities.»

In contrast, the Code of Obligations and the SIX Transparency Directive do not prescribe a formal introduction for new boards of directors. The expert committee of the «Corporate Governance» working group headed by Böckli, Huguenin and Dessemontet suggested at the time of the partial revision of the Stock Corporation Act that the board of directors of a listed and economically significant non-listed company should comment on training at the top.¹⁴ For this reason, it was formulated in paragraph 5 lit. c¹⁵:

«Die fünf Hauptpunkte, zu denen der Verwaltungsrat einer wirtschaftlich bedeutenden Gesellschaft nach Auffassung der Arbeitsgruppe im Rahmen seines Grundsatzbeschlusses Stellung nehmen sollte, sind die folgenden:

5. Besondere Aufgaben für den Verwaltungsrat als Ganzes oder für einzelne Mitglieder oder Ausschüsse in den Bereichen:
 - a. Revision und interne Kontrolle;
 - b. Organentschädigungen und -kredite;
 - c. Nachwuchs sowie Aus- und Weiterbildung an der Spitze.»

In the end, however, a specific regulation on training at the top did not find its way into stock corporation law.

12 Schenker, U. (2015). Verwaltungsrat in der Praxis–Rechtliche Anforderungen., p. 6–8.

13 Economiesuisse. (2016). Swiss Code of Best Practice for Corporate Governance., p. 11.

14 Müller, R., Lipp, L. & Plüss, A. (2014). Der Verwaltungsrat. Ein Handbuch für Theorie und Praxis., p. 722.

15 Böckli, P., Huguenin, C. & Dessemontet, F. (2003). Expertenbericht der Arbeitsgruppe «Corporate Governance» zur Teilrevision des Aktienrechts., p. 73–74.

4. Onboarding as an indirect requirement for liability prevention reasons

Less on the basis of a legal obligation, but rather out of preventive considerations against possible liability and to avoid liability proceedings, various measures for new board members are recommended when accepting, exercising and resigning from a mandate: In particular, the specific company should be analyzed in detail before accepting a mandate. This includes, among other things, the financial situation, the portfolio of products and services, the delegation of management functions and the accounting system. The designated board member should also ask himself self-critically for what reasons he was nominated for the office and whether he can provide the required value contribution.

In any case, the responsibility of a board of directors is divided into a private law component and a public law component: While the private law responsibility is regulated in Art. 752-761 CO and assesses the board member from the perspective of the governing body, the board of directors may be liable under public law for two reasons: On the one hand, it may be held liable for public law claims, which includes the liability for withholding taxes, for value added taxes as well as for social security contributions. On the other hand, it can also be held liable for criminal offenses under federal as well as cantonal law. There are numerous «special laws» that contain norms that punish even a minor inattention. On the national level, on the other hand, civil criminal law and administrative criminal law apply.¹⁶

Directors are furthermore liable for their activities if the following specific conditions are met: Damage, breach of duty, adequate causal connection between breach of duty and damage, and fault, whereby slight negligence is already sufficient.¹⁷ In many accountability processes, a lack of knowledge of the respective company is furthermore put forward.¹⁸

5. Empirical findings on BoD independence and industry knowledge in SMI boards

In empirical studies, companies with more experienced independent directors were found to be valued at a premium compared to companies with less experienced independent directors. Sectoral knowledge on boards was identified to be one of the most important determinants in ultimately generating value for shareholders («shareholder value»).

The shift towards nominating independent directors is exacerbated by several drivers: As anecdotal evidence, SOX regulations, and New York Stock Exchange and Nasdaq listing standards require a majority of independent directors, or institutional investors such as the California Public Employees' Retirement System (CalPERS) demand that the CEO be the only «insider» on a board: These regulatory developments, as well as pressure from investors, limit the availability of company-specific knowledge on the board of directors. For these reasons, the public's focus is increasingly shifting from the independence criterion to the criterion of industry knowledge as a board member.¹⁹

This is another reason why the sectoral knowledge of board members is of specific interest. Since it can be shown that firms with industry-experienced external board members are valued at a premium compared to firms with less experienced board members, industry experience at board level can be interpreted as a valuable corporate governance mechanism.

Since one of the basic motivations of onboarding programs at the board level is to familiarize new members with the characteristics of the respective industry, the effective industry knowledge in SMI boards was of particular interest. Therefore, to partially approach the validity of onboarding programs, the curricula vitae of current board members in the SMI were analyzed and contrasted with the industry affiliation of their respective board seat in the SMI.²⁰

16 Müller, R. (n. d.). Verantwortlichkeitsprozesse gegen Verwaltungsräte., p. 2 – 3.

17 Schenker, U. (2015). Verwaltungsrat in der Praxis – Rechtliche Anforderungen., p. 114.

18 Müller, R. (n. d.). Verantwortlichkeitsprozesse gegen Verwaltungsräte., p. 5.

19 Drobetz, W., von Meyerinck, F., Oesch, D. & Schmid, M. (2015). Board Industry Experience, Firm Value, and Investment Behavior, p. 1, 3.

20 Taking The Refinitiv Business Classification (TRBC) as categorization means.

Across the study, the following values could be observed:*

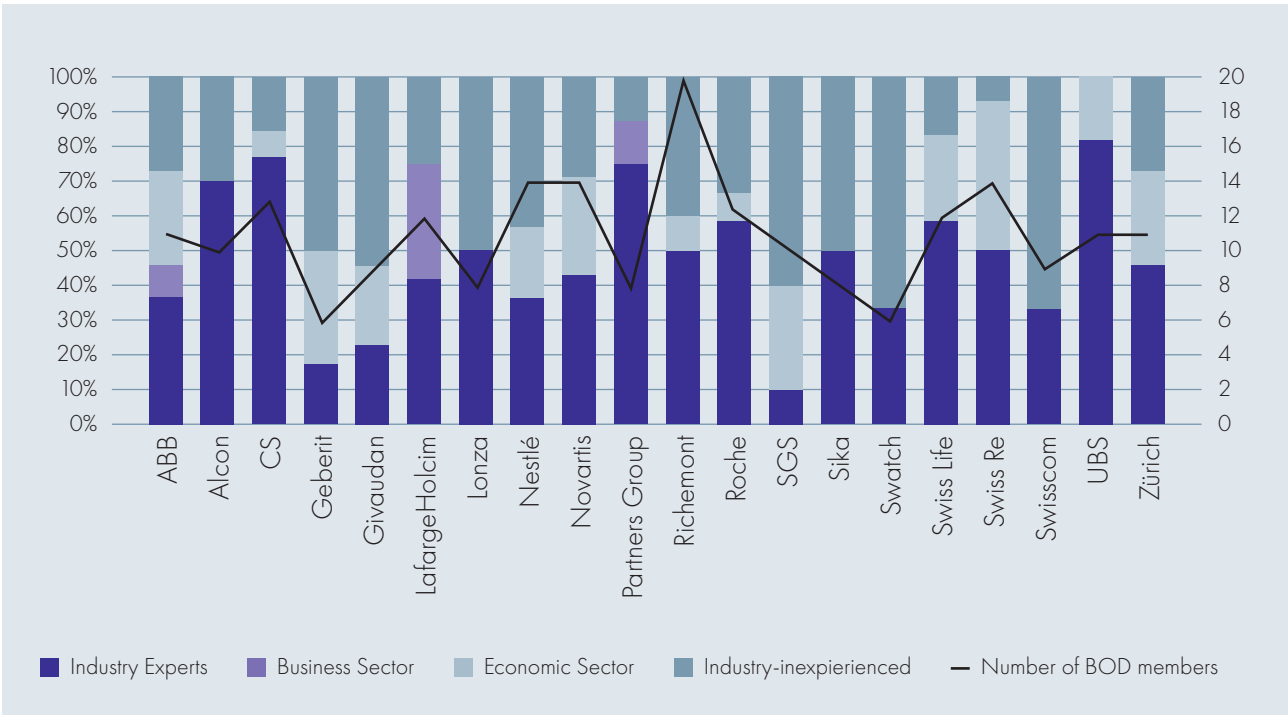
	BoD members	Organizations	Industry expert (in % of BoD)	Business sector (in % of BoD)	Economic sector (in % of BoD)	Industry inexperienced (in % of BoD)
Total	218	1182	105 (48.2%)	6 (2.8%)	35 (16.1%)	72 (33.0%)
Average	10.9	59.1	5.25 (46.9%)	0.3 (2.7%)	1.75 (15.1%)	3.6 (35.2%)
Minimum	6	29	1 (10.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Maximum	20	102	10 (81.8%)	4 (33.3%)	6 (42.9%)	8 (66.7%)

* December 14 2020 was used as reference date

Overall, it can be seen that the boards of directors can be roughly divided into two larger camps with industry experts and industry inexperienced members. Across all SMI companies, just under half (48%) of all board members are so-called industry experts.

Certain industry-specific patterns emerge on closer inspection: The banks and investment companies Credit Suisse, Partners Group and UBS all show a large number of industry experts, starting with at least 75% at Partners Group. At the insurance companies Swiss Life,

Swiss Re and Zurich, about half of the board members are industry experts. Similarly, at the pharmaceutical companies Lonza, Novartis and Roche, about half of the board members are industry experts. It is also interesting to observe that at the consumer goods manufacturers Geberit, Richemont and Swatch, a significant proportion is made up of people with no industry experience in each case (50%, 40% and 67% respectively). These results suggest that a large proportion of SMI boards are likely to benefit from an onboarding program related to industry adoption.



6. Research results

As there is no study available on the onboarding practices of new board members in the SMI, and thus no comparative values exist, this study's survey was primarily exploratory in nature.

Out of the 20 SMI companies contacted, 13 responded positively to the inquiry, ultimately resulting in a participation rate of 65%. The survey was held with the respective responsible professionals for the onboarding program, in most cases corporate secretaries and partly also legal counsels.

Survey participants have been in their role for an average of 8.4 years, with an average length of stay in the company of 17.2 years. This implies that the position of secretary of the board of directors is only held after a certain period of time in the company and tends not to be taken on as a first position. It can be argued that the position of secretary of the board of directors is a function that is often filled internally, owing to the participation in board meetings and access to confidential information.

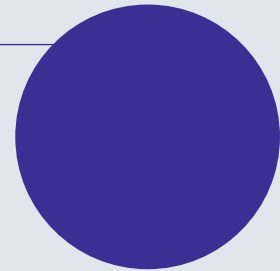
While all survey participants affirm the existence of an onboarding program, such an onboarding process is only carried out in a formalized manner in under two-thirds of cases.

One survey group with four participants conducts the onboarding program uniformly for all new board members. The other survey group comprising nine participants makes a distinction and divides the onboarding into a general and a role-specific part.

Soliciting feedback and reviewing the onboarding program happen across both groups mostly on an ad hoc basis; both feedback loops for board members and a review of the onboarding program are not conducted in an institutionalized way in most cases.

Existence of an onboarding program for new BoD members

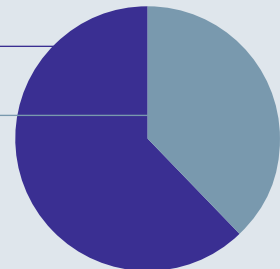
Yes 100%



Existence of a formalized onboarding program for new BoD members

Yes 62%

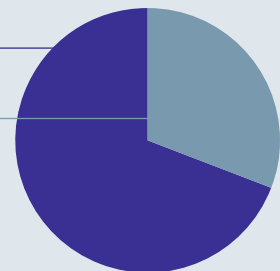
No 38%



Distinction between a general and a role-specific onboarding program

Yes 69%

No 31%



This can be interpreted as onboarding programs do not take place that often and therefore do not require a systematic review; these reviews might take place more when it is required and when a new onboarding needs to be organized.

At the end of the survey, an attempt was made to capture the personal assessment of the onboarding organizers by means of so-called «Likert scales». At 92%, almost all participants consider onboarding programs to be important. At the same time, however, only around 60% of participants are satisfied with the current status of their respective onboarding program. It was also interesting to observe that 92% of the participants believe that onboarding programs allow new board members to make a valuable contribution more quickly, but only 69% of them believe that the current onboarding program is perceived positively by the boards of their companies.

7. Discussion and subsumption

Based on the results of this survey, it can be shown that onboarding programs for new board members are in place at all 13 SMI companies. Meanwhile, these onboarding programs are designed very differently: On the one hand, it only follows a formalized structure among just under two-thirds of the participants; on the other hand, one-third of the participants stated that they do not offer a customized program for new board members, even though these members have different professional profiles. This fact gains weight in that, according to the analysis conducted in this paper, one-third of SMI board members are «outside the industry» and consequently should benefit from an introduction to industry characteristics.

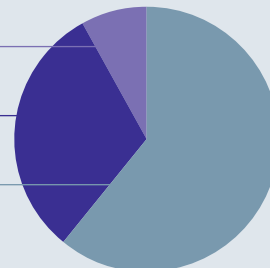
In the author's view, an appropriate industry introduction should definitely be given greater consideration in future onboarding programs. Finally, the results of the survey demonstrate the ability for critical introspection on the part of the participants: While almost all are aware of the importance of onboarding programs, around 40% of the board secretaries locate a fundamental potential for improvement in their individual program structure.

Institutionalized feedback loops for new BoD members

Own answer 8%

Yes 31%

No 61%

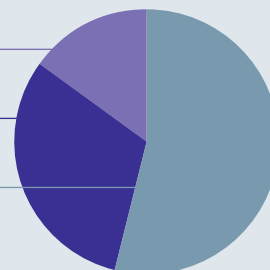


Institutionalized, systematic review of the onboarding program

Own answer 15%

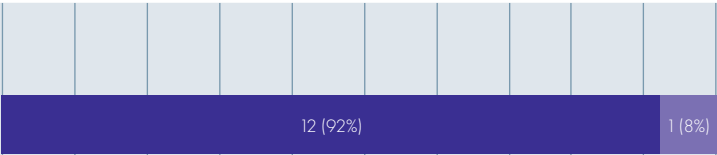
Yes 31%

No 54%

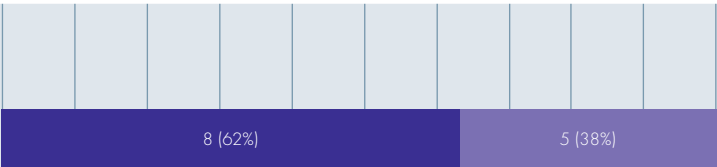


Personal assessment status quo

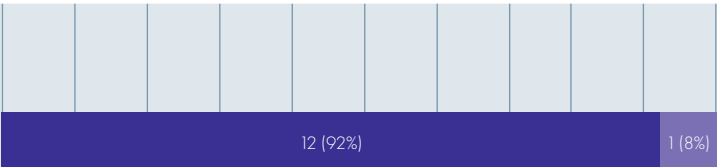
«In my opinion, onboarding programs are important processes for new BoD members.»



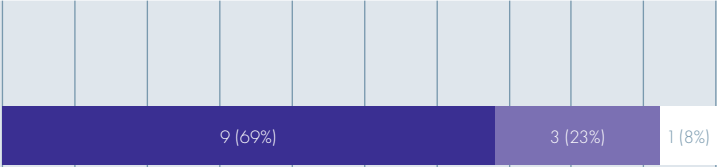
«I am satisfied with the current status of the onboarding program for new BoD members in my company.»



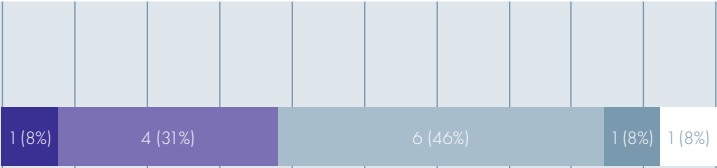
«I believe onboarding programs allow BoD members to make a more active and valuable contribution more quickly.»



«The current onboarding program in my company is perceived as positive and helpful by new BoD members.»



«I am interested in an organized exchange at the board secretary/ general counsel level on best practices in onboarding new BoD members.»



0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

■ Absolutely agree
 ■ Partially agree
 ■ I'm indifferent
 ■ Absolutely disagree
 ■ No answer