

# BANKER & TRADESMAN

THE FINANCIAL SERVICES AND REAL ESTATE WEEKLY FOR MASSACHUSETTS

## 'Give Me A Break'

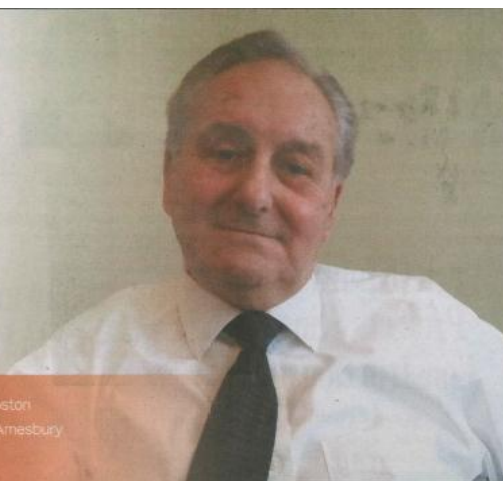
BY MATT BROWN | BANKER & TRADESMAN STAFF WRITER

R. Robert Popeo has been an attorney for his entire professional career in the practice of law. He is chairman of the board of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo and in January took over the presidency of the National Association of Corporate Directors' New England chapter.

Here, the high-profile litigator talks about how the duties, responsibilities, compensation and prestige of board service has changed in recent years.

### R. Robert Popeo

**Title:** Chairman of the Board, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, Boston  
President, National Association of Corporate Directors, New England Chapter; Amesbury  
**Experience:** 50 years



**Q:** How are boards different now than they were in the past?

**A:** Well, it starts with the landscape changing considerably, both as a result of federal law and regulations, as well as third-party activist groups and advisory organizations influencing shareholders and giving them the ability to influence the direction of companies. And that is for good and for bad. You are trying to run a corporation from a value perspective, and what Dodd-Frank did, and first of all, what Sarbanes-Oxley did, was change the landscape. It put a tremendous burden on directors for corporate compliance. And to make it more telling, Dodd-Frank required you to file a [form] 404, which says 'Within the last 90 days, I took a look at our internal controls and satisfied myself that they are adequate for me to make the representation that our financials are accurate.' Good luck, Jack Welch, with 237,000 employees.

We have in some sense converted our CFOs and CEOs into compliance officers, even though you have compliance officers, and it is a tremendous burden on the corporation. I will tell you, I spend more time today in boardrooms than I do in courtrooms, and I'm a litigator... It is not getting easier. It is getting worse, because you now have one of the key management issues for the board is risk management. What does that mean? To somebody like [New York] Senator Schumer, it means one size fits all, you just have a risk management committee and that's all. Well, if you think the risks of, say, Genzyme, are the same as the risk of TJX, you don't understand the differences in corporate America.

**Q:** Are there industries for which boards are more powerful or more important?

**A:** The larger the corporation, obviously, the more influence the board has because there isn't the kind of delegation, and this presents an enormous dilemma. Here are the pressures the board has: First, it's coming from federal law, which says the board must be independent. Well, there's 51 percent right off the bat. And you need gender diversity, you need ethnic diversity, you need specialists. Some of the most knowledgeable people in your company are those that are in the company. They've been there for 30 years, they know something, but they can't sit on the board.

Boards should be focused on skillsets. The idea of picking up the best athlete is a nice thought, but it just doesn't work anymore, because if you need somebody who is skilled in the pipelines of biotechnology, you'd better go out and get that person, and it doesn't matter if that person is white, black, Jewish, catholic. None of that matters. Gender doesn't matter. It matters what the skillset is, or you're not fulfilling your fiduciary duty.

And boards, in seeking new board members, have to have an evaluation, not only of what their current needs are, but whether or not their current board is fulfilling the current needs. You think that's easy?



**Q:** Is it easy or difficult for firms to find board members at all?

**A:** It used to be very easy. If you go back 10 years, a board member could get by by simply showing up at a meeting, having coffee with his friends and picking up his check. Those days have long since gone.

**Q:** And that check was probably pretty nice.

**A:** That was pretty nice for what you did. Now, you get much more, and it's inadequate. You spend days preparing. I sat on a number of public company boards, and one of them, it took me two full days to prepare for a board meeting. And I didn't even feel adequately prepared for the committee meetings because of the accounting issues, the number of subsidiaries and really trying to understand that interplay and how it drove shareholder value. I got off the board. And I was just a board member.

Large corporations don't want their CEO serving on a number of boards anymore. They want them concentrating solely on their company, and if they permit them to serve on maybe one other, that's a given. But it used to be that boards used service on other corporations' boards as a means of enhancing the CEO's salary and you wouldn't have to report it. Average board compensation now runs about \$240,000, and that's before you start talking about your committees at your large, Fortune 100 companies.

**Q:** Is that to say the quality of board candidates has decreased?

**A:** It's hard for me to make the generalization right now, but it appears that the pool of qualified candidates has decreased.

**Q:** How has regulation impacted corporations in recent years?

**A:** It is an infrastructure of regulations that has impacted on the very things they are supposed to cure. It impacts profitability, it impacts efficiency, it impacts on planning, innovation – all the things you look for to make a corporation competitive, to make it profitable. We exist in a world of competition. The days when we [would] compete with U.S. corporations alone are long since gone. Why is it that we have companies here in Massachusetts who are building their large plant in Brazil, or China? We have regulations that not only are onerous, but are too time consuming. If I can build a plant in Brazil in 14 months and that same plant is going to take four or five years here because they have six government agencies that have to pass on it, I'm going to Brazil.



## 5 THINGS PEOPLE DON'T KNOW ABOUT THE FINANCIAL DISTRICT, ACCORDING TO R. ROBERT POPEO:

1. It is home to some of the most important companies in the region – Fidelity Investments, Putnam Investments and State Street Bank, to name only a few.
2. Two buildings in the Financial District are listed on the National Register of Historic Places, South Station and the Custom House.
3. From the top of One Financial Center on a clear day you can see Mt. Monadnock, NH, the wind turbines in Hull and the Blue Hills.
4. The Federal Reserve Bank Building is the third tallest building in Boston.
5. Dewey Square may be thought of as just the site of Occupy Boston, but those in the Financial District know it for its great food trucks and a terrific farmers market.