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Executive Exchange

Private Equity Portfolio Company Corporate Governance

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Private Equity Portfolio Company Corporate Governance

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Panelists

- **Gabor Garai - Moderator**
Partner, Foley & Lardner LLP
- **Jim Wilder**
Director, Housatonic Partners
- **Thomas Parro**
President, MERK Capital Corporation
- **Troy Noard**
Partner, PSP Capital

Cybersecurity

- The Board's Role
 - Accept Responsibility for cybersecurity
 - Set expectations for management
 - Understand your company's risks
 - Assess current cybersecurity practices
 - Plan and rehearse

Problem

- Your CTO informs the Board that hackers have just raided the company's internal IT systems and have accessed certain Personally Identifiable Information about your customers.

Director Independence

- A layer of independence can be added to a Board by employing truly independent directors and outside consultants.
- Independent guidance is particularly important in the context of M&A, executive compensation and other extraordinary transactions.

Problem

- The Company is in a difficult financial position, and the CEO presents the Board with a financing proposal from a third party that would significantly dilute the PE Fund's investment.
- The PE Fund has also made a competing proposal.

Management Fees & Valuation

- Management Agreements often dictate that the portfolio company pay a fee if the agreement terminates before its stated expiration date.
- In the exit stage, conflicts in valuation can be a concern with respect to management fees, or if there are opportunities to misuse valuation to distort past performance.

Problem

- A Private Equity Fund has a “Management and Monitoring Agreement” (with a separate fee for the management and the monitoring portion) with a 10 year term with the portfolio company.
- See recent SEC penalties against Blackstone.
<http://www.bloombergvew.com/articles/2015-10-07/sec-finds-that-blackstone-charged-too-many-fees>

Corporate Formalities

- Courts tend to focus on the observance of corporate formalities when determining director liability.
- Courts are less likely to find a director liable for bad decisions if the director devoted adequate time and effort in making informed and documented decisions.

Problem

- A Private Equity Fund is the major stockholder in the portfolio company. The company is considering an “inside round” and needs to determine whether it is fair to the other investors.