

## ACCOUNTABILITY AND TRANSPARENCY

Are Your Corporate Governance Practices Putting You at Risk?

### So, You Want to Join a Board?

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## So, You WANT TO JOIN A BOARD?

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*Panel:* Steve Barth, *Foley & Lardner*  
Maureen Hurd, *Core Business Solutions/Beal Associates*  
Laurie Benson, *LSB Unlimited*  
Kris Rappe, *Waterstone Financial, Inc.*  
Peter Underwood, *Regal Beloit Corp.*

*Time: 10:45 a.m. – 12:00 p.m.*

### A. Preparing to Become a Director

1. Why do you want to join a board?
2. Of what type of entity do you want to be a director – public, private, non-profit?
3. What prior board experience have you had and on what types of boards?
4. What expertise and skill-set can you bring to a board so that you can “add value”?
5. Have you had any board training and do you understand the duties of a board?
6. Do you have a board-focused CV?
7. Do you have references?
8. Have you consulted with a director search firm or other experts?

### B. The Process of Becoming a Director

1. Search firm
2. Networking
3. Specific targeting/contacts
4. Cold calling/direct contacts
5. Increasing your “visibility”

### C. The Interview Process

1. Board focused CV
2. Background research and diligence
3. The interview process

4. Questions that you should ask
  5. Follow-up
- D. What are Boards Looking for in New Candidates?
- E. Attributes of a Value-Added Director

## WHAT YOU SHOULD CONSIDER BEFORE JOINING A BOARD OF DIRECTORS

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1. Post-Enron/SOX (et. al.) - Much More Scrutiny Now by Individuals Before Joining Board – Applies to Private Companies too
  - a. Substantial Additional Time Commitment
    - First year [100-125 hours] – learn the business/onboarding
    - After [60-80 hours]
    - More for public companies
  - b. Duties/responsibilities – dramatically expanded
  - c. Potential significant liability risk – financial/reputational
  - d. Compensation doesn't match the time/commitments/risk
  - e. Detriments can now outweigh the benefits
2. Before Joining a Board – Questions to Ask
  - a. What do the owners want to do with the company (and, who are the owners)?
    - Dividends vs. growth
    - What are goals/expectations/long-range plans
    - Do shareholders have divergent goals?
  - b. Why are you being asked to join?
    - What perspectives are you expected to bring to the Board?
    - What expectations does the owner have of you?
  - c. Why do you want to join? What benefits will you receive (other than a little money)?
    - Other experiences, ideas, intellectual capital that can help you professionally/your business
    - Contacts/relationships
    - Don't do it as "favor" – or for the money
  - d. What time commitment will be required to be effective?
    - How often will Board meet and how long will meetings last (and where will they be held)?
    - Can you meet often without feeling taken advantage of?
    - What committees?
    - What amount of time will it take to learn the business/industry?
    - What amount of time between meetings will it take?
    - What amount of time will be needed to prepare for meetings?
  - e. Ask "the Basics" about the Company:

- Business strategy – growth, etc. – Where is company going and how can you help?
  - Financial history/prospects
  - Any recent company/stock value appraisals?
  - Any history of financial trouble, restatements, litigation?
  - Are financial statements audited (by who)?
  - Type of industry – risk levels – volatility
  - Integrity of CEO/management/financial staff
  - Shareholder demographics
  - Stock ownership of management
  - Other Board members – talk to them
  - Healthy atmosphere on Board? Can you be critical? Will your honest advice be appreciated/implemented?
  - Open/honest – sharing of opinions
  - Inside/outside mix – How will you fit in?
  - Type of Board - rubber stamp vs. strategic asset
  - Audit Committee? Other committees?
  - Who are the Company's accountants/lawyers/bankers
  - D&O insurance/indemnity/litigation history
  - Compensation
- f. Related party transactions/conflicts
- g. Shareholder demographics – broadly held?
- h. Gut feeling
- i. Limited service [one-year term?]
- Term Ltds.
  - How could you gracefully depart if desired.

## DIRECTOR SELECTION CRITERIA

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- A. Background of Candidate
  1. Professional/personal background/current employment
    - a. Current job duties/responsibilities/time commitments
      - Types of clients, partners, etc.
    - b. Prior jobs/responsibilities
    - c. Business philosophy/style
    - d. Educational background
  2. Experience in particular company's industry
    - a. Knowledge of economic drivers of company's business
    - b. Knowledge of risks / opportunities
    - c. Knowledge of competitive landscape
  3. Experience with other companies (board/management)
  4. Other Boards of Directors
    - a. Public
    - b. Private
    - c. Non-profit
    - d. Time commitments
  5. Governance philosophy
    - a. Understanding of director duties/responsibilities
    - b. Any director educational programs
    - c. View of company's corporate governance policies/charter
  6. Business management experience
  7. Charitable/civic organizations
  8. Any legal "problems"/"skeletons" (current/past)
    - a. Professional
    - b. Personal
    - c. Any bankruptcies
    - d. Any criminal convictions
    - e. Any securities law violations
  9. Intangibles
    - a. Experience, wisdom, integrity, ethics

- b. Analytical ability
- c. Necessary skill sets/experience vis. company:
  - Industry specific
  - Public company
  - Managerial
  - Other boards of directors
  - Financial
  - Technology
  - Governance
  - Strategic planning/succession planning
  - “Fit” with current Board/dynamics/culture
  - Other
- d. Independence / No conflicts of interest
- e. Time commitment
  - Attend all meetings in person
- f. Committees on which you believe you could add value / why?
  - Audit
  - Compensation
  - Governance
  - Nominating
- g. Views of other shareholders/constituencies of company

**PRACTICAL LESSONS AND ADVICE ON BEING AN EFFECTIVE LEADER**

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**A. How Are Board Members Chosen and Evaluated**

1. Selection and Nomination Process
  - a. Nominating Committee process
  - b. Sourcing candidates
    - Individuals known by existing directors/officers
    - Search firms
    - Shareholder nominations
    - Others
  - c. Selection criteria:
    - Background of Candidate
      - (i) Professional/personal background/current employment
      - (ii) Current job duties/responsibilities/time commitments
      - (iii) Prior jobs/responsibilities
      - (iv) Business philosophy/style
      - (v) Educational background
    - Experience in particular company's industry
      - (i) Knowledge of economic drivers of company's business
      - (ii) Knowledge of risks / opportunities
      - (iii) Knowledge of competitive landscape
    - Experience with public companies (board/management)
    - Other boards of directors
    - Governance philosophy
    - Business management experience
    - Charitable/civic organizations
    - Any legal "problems"/"skeletons"
    - Intangibles
      - (i) Experience, wisdom, integrity, ethics
      - (ii) Analytical ability
      - (iii) Necessary skill sets/experience vis. company
      - (iv) "Fit" with current board/dynamics/culture
      - (v) Independence / no conflicts of interest



- (vi) Time availability
  - (vii) Committees on which the candidate believes that she/he could add value / why?
  - (viii) Views of other institutional shareholders/constituencies of company
2. Board and Director Evaluation Process
- a. Self-assessment questionnaire focused on:
    - Effectiveness of Board / Committees in meeting its goals and objectives and adding value
    - The right people
    - The right issues
    - The right information
    - The right process
    - The right follow-through
  - b. Governance Committee process:
    - Chair review of questionnaires
    - Chair communication and discussion with individual directors
    - Self-improvements recommended / discussed with Board

**B. What Makes a Good Board Member and Bad Board Member**

- 1. Attributes of a “Good” Board Member
  - a. Engaged
  - b. Understands Company’s business and industry
  - c. Does her/his homework before and in-between meetings
    - Keeps up-to-speed on Company (watches website) / industry developments
  - d. Attends all meetings in person and asks probative, knowledgeable questions
  - e. Focuses on quality discussion and advice
  - f. Sees the “big picture” – doesn’t micromanage
  - g. Adds true value to management by providing constructive guidance, advice, perspectives and experience
  - h. Adds different or new perspectives
  - i. Helps ensure organizational tone-at-the-top
  - j. Avoids conflicts of interest / maintains boardroom confidentiality
  - k. Remembers who she / he represents
  - l. Not overbearing or self-important
- 2. Characteristics of a “Bad” Board Member

- a. The opposite of above!

**C. Common Mistakes Board Members Make**

1. Failure to attend meetings
2. Failure to read advance materials or to keep up-to-date on the Company or its industry
3. Failure to ask tough questions / obtain more clarifying information when in doubt
  - a. Failure to seek independent or expert advice if and when needed
4. Closing eyes to red / orange / yellow flags
  - a. Ignorance is not bliss
5. Failure to understand the Company's business / industry
  - a. Market trends / opportunities / risks
  - b. Competitive advantages / weaknesses
6. Failure to understand / monitor key enterprise risks
7. Micromanaging management
  - a. Board's role is oversight, not management

**D. Board Responsibilities Versus Management Responsibilities**

1. Board's role is "oversight" of management
  - a. Establish clear and objective goals for management team
2. Management's role is to manage the day-to-day business and to keep board informed of progress and key developments
  - a. Avoid "surprising" the Board
3. Management's role is to develop and propose strategic plan; Board's role is to assess and challenge the plan, and to monitor its implementation
4. Management's role is to propose each annual operating and capital budget; Board's role is to assess and challenge the budget, and then monitor progress
5. Management speaks for the Company to the outside world; Board does not

**E. Major Issues Facing Public Boards Today**

1. Enterprise risk management
2. Increasing shareholder activism
  - a. Hedge funds / short-termism
  - b. Proxy access
  - c. Say-on-Pay
  - d. Majority voting / annual elections
  - e. Shareholder right to call special meetings
  - f. Separation of COB / CEO
3. Executive compensation (pay-for-performance / encouraging "excessive" risk)

- a. Golden parachutes (tax gross ups / single triggers)
  - b. Accelerated vesting of equity grants upon sale
  - c. Pay-for-failure severance deals
  - d. Perks
  - 4. Increasing globalization
  - 5. Long-termism versus short-termism
    - a. Institutional shareholder base
  - 6. Takeover defenses
    - a. Poison pills
    - b. Supermajority votes
  - 7. Stand-by crisis management plan
  - 8. Succession planning
- F. What Happens at Public Company Annual Meetings and What Has Changed**
- 1. Old Days
    - a. 15 minutes of legal perfunctories
    - b. Lightly attended (by design)
    - c. Often held in inconvenient, out-of-the-way places
    - d. Results not known for weeks / months
    - e. Plurality vote for staggered boards
    - f. Brokers could vote clients' unvoted shares
    - g. Institutions voted with board recommendations
    - h. Mailed annual reports / proxy statements
  - 2. Current Environment
    - a. Shareholder activist input on agenda items
      - Shareholder proposals (formal and informal)
    - b. Opinions / recommendations of corporate governance / proxy advisory firms (ISS / Glass Lewis) to institutional shareholders on how to vote their shares now drive annual meeting votes by institutions
      - "No vote" campaigns
    - c. Majority voting for directors / annual elections of directors
    - d. Say-on-pay / Say-when-on-pay
    - e. Proxy access
    - f. Meeting is now a full-fledged investor /shareholder multi-media show
      - Presentations on the business

- Webcast to 1,000's
- g. Results publicly reported within four business days
- h. Brokers generally can't vote their clients' unvoted shares
- i. Much tougher to obtain shareholders' approval on proposals
- j. E-proxy (web availability of annual report / proxy statement)

**G. Why Should You Join a Corporate Board and What Questions Should You Ask**

1. Why should you join a corporate board?
  - a. Broaden your experiences, perspectives and knowledge base
  - b. Learn from others
  - c. Enhance your social and decision-making skills in the boardroom
  - d. Expanded relationships and contacts
  - e. Opportunity to add value to another company (make a "difference")
2. Questions you should ask before joining a corporate board
  - a. Much More Scrutiny Now by Individuals Before Joining a Board
    - Substantial time commitment
    - Significant duties/responsibilities
    - Increased liability risk – financial/reputational
    - Compensation doesn't match the time/commitments/risk
    - Detriments can now outweigh the benefits
  - b. Before Joining a Board – Questions to Ask
    - Why do you want to join? What benefits will you receive (other than money)?
      - (i) Other experiences, ideas, intellectual capital that can help you professionally/your business
      - (ii) Contacts/relationships
      - (iii) Don't do it as "favor" – or for the money – or for a friend – or to promote a "cause"
    - Why are you being asked?
      - (i) What perspectives are you expected to bring to the board?
      - (ii) What expectations does the Company have of you?
    - What time commitment will be required?
      - (i) How often will Board meet and how long will meetings last?
      - (ii) What committees?
      - (iii) What amount of time will it take to learn the business?
      - (iv) What amount of time will it take between meetings?

- (v) What amount of time will be needed to prepare for meetings?
- Ask “the basics” about the Company:
  - (i) Financial history/prospects
  - (ii) Business strategy – growth, etc.
  - (iii) Type of industry – risk levels – volatility
  - (iv) Integrity of management/financial staff
  - (v) Stock ownership of management
  - (vi) Any history of financial trouble, restatements, litigation?
  - (vii) Other board members – talk to them
  - (viii) Healthy atmosphere on board?
    - Can you be critical?
    - Will your advice be appreciated/implemented?
    - Open/honest environment – sharing of opinions
    - How can you add value?
  - (ix) Inside/outside mix of directors
    - Other obstacles (background)
  - (x) Type of Board - rubber stamp vs. strategic asset
  - (xi) Audit Committee? Other committees?
  - (xii) Auditors/lawyers
  - (xiii) D&O insurance/indemnity
  - (xiv) Compensation
- Related party transactions/conflicts
- Shareholder demographics
- Gut feeling
- Try limited service to start [one-year term?]
  - (i) How could you gracefully depart in near-term if desired.

## RECOMMENDED DIRECTOR SUCCESSION PLANNING BEST PRACTICES BOARD TALKING POINTS

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### Goals/General Considerations

The goal of director succession planning is to identify, well in advance, the steps to be taken to ensure that the Board of Directors continues to operate efficiently and effectively, provides good counsel and advice to the Company's management and meets all applicable SEC and NYSE/Nasdaq rules, as well as the expectations of the Company's shareholders. A smooth and seamless transition of new/different directors is important to maintain Board continuity. Specific considerations include:

#### 1) Continuity – What Succession Planning is “Really All About”

- a) Three applicable levels: Board, Committee and Committee Chairs (ideally a Chair will always have at least one full year of previous experience on the Committee prior to assuming the chairmanship)
- b) Applicable retirement age/term limits
- c) Periodic inquiries regarding personal long-term desire, willingness and ability to continue to serve on the Board (not just for the next year)

#### 2) Director Recruiting

- a) SOX has *increased the demand* for, and *decreased the supply* of, independent directors
- b) Taking longer than in the past – now, average search is 6-9 months
- c) According to a recent NACD survey, nearly 50% of nominating committees have engaged a director search firm
- d) More candidates are saying “no.” Factors include:
  - i) Increased potential personal liability risk
  - ii) Increased time commitments (200-300 hours)
  - iii) Limits on number of Boards on which a person can serve (imposed by employers and other Boards)

#### 3) First and Foremost, As Always – A “Good” Person

- a) Experience, wisdom, integrity, ethics
- b) Good analytical ability
- c) Ability and commitment to spend the necessary time – personally attend, and prepare for, all Board and Committee meetings
- d) Ability to provide good counsel and judgment (ask insightful questions; not overbearing, but able to challenge management in a constructive manner)

- 4) Independence – “Substantial Majority”
  - Corporate Governance Policy Guidelines say that the Board must have a “substantial majority”/ “majority” of independent directors. Many companies are adopting the stricter independence threshold.
  - a) Current composition.
  - b) Plain English definition of “independence” – no, or only “immaterial”, business relationships with the company
  - c) More stringent Audit Committee rules (basically, no relationship with the company)
  - d) “Super Independence” – standard of ISS/institutional shareholders/courts
    - i) No business, competitive, professional, social, charitable, civic, prep relationships with CEO or management
    - ii) Long-tenured directors
- 5) No Conflicts of Interest
  - a) Must be able to act with no self-motivation or personal gain, other than acting at all times in the best interests of the company and its shareholders (i.e., minority shareholders)
  - b) Duty of loyalty to company and shareholders
  - c) SEC proxy disclosure rules
- 6) Public Company Experience
  - a) Understand duties, responsibilities, expectations, time commitments, environment of a public company board
- 7) Management Experience
  - a) CEO or similar experience – problem solving, multidisciplinary approach
  - b) Been there, done that
- 8) Diversity
  - a) Diversity of gender, race, ethnicity
  - b) Diversity of skills, expertise, background, industry
    - i) Different and fresh perspectives
    - ii) Different ideas
- 9) Number of Other Boards
  - Does the candidate have the necessary time to commit to the board?
  - a) No more than three public company/other boards/less if a currently serving full-time executive
  - b) Other boards constraints – other commitments
  - c) Full time job constraints
- 10) Audit Committee Financial Experts
  - a) Not required, but very desirable to avoid negative proxy statement disclosure

11) Size of Board

- a) Article/Bylaw/corporate policy requirements
  - i) Staggered vs. annual
  - ii) Ability to be changed by Board (within parameters)
- b) Board may be temporarily expanded to help transfer of knowledge/continuity of strategy and advice
  - i) Especially important if a new director is expected to become the Chair of a Committee