

# A primer: the ins and outs of board meetings for the small and private company

*In any company, most of the activities and functions of a board of directors are focused on, and conducted in, 'the Board Meeting.' The tone and content of this meeting is critical to the level of governance and ultimate value of having a board. Yet outside of the board's inner circle, few people know what typically goes on in one, much less how to organize and effectively conduct one.*

**BY DENNIS CAGAN**

**T**he board meeting. I doubt that there could be any specific company function and venue that are as synonymous as *the board of directors* and *the board meeting*. In fact, in terms of the general awareness of most employees in private companies, and even most executives, you would be hard pressed to find any that could name something a director actually does beyond attend the *board meetings*. In addition, unless you have attended a board meeting as a member, guest or presenter, it may be hard to imagine what actually goes on in one!

Many people will advise that managing your board is about individually managing your directors. Certainly it is critical that you have individual interaction with each one, and pursue the opportunity to impart your issues to them, unfettered by general board discussion. It is also very important to be able to listen to their individual input without others listening in. However, in managing your board, center stage is the *meeting* itself. The board meeting is the primary way that boards function, and the dynamics between the directors, and between directors and management, is crucial. The information here is intended to help make your board meetings effective, productive, and valuable for everyone involved - especially management, directors and the shareholders (owners) who selected the board.

## Meeting Frequency

One of the first questions asked about a board, right after 'Who is on it?' is how often do they meet. A board cannot be effective if it doesn't get together regularly. Some boards meet monthly, especially early-stage or fast growing companies where a lot can change in a short time. I like this approach when the company is young and there are frequent shifts in the business and the marketplace, and the company's execution is not really perfected yet. A comparable scenario is when perhaps the firm has been stable but now the market or competitive landscape is rapidly changing for some reason. In this situation one approach that works well is a board meeting in person once per quarter, with the other two meetings that quarter by teleconference. However for many mature private companies, a monthly board meeting can be overkill. One alternative is twice a quarter. The idea is to have one meeting mid quarter and one meeting after the quarter has been completed. This works well for a public company when the board needs to review the quarterly numbers before they are reported to the public. I think eight meetings a year is a great heartbeat for a board and this schedule works well for all kinds of companies. Some boards only

meet once a quarter. I generally encourage those boards to meet over the phone for an update in between the face-to-face meetings. Those update calls/meetings are less formal than a full board meeting, but they keep the board engaged in the business and connecting with each other. It is important to determine the board meeting schedule a year in advance. This helps everyone plan their time to insure their availability. Of course there will always be cases when a last minute meeting is needed to discuss or approve some time sensitive issue.

## Meeting Structure

Board meetings can last anywhere from a few minutes to many hours. Typically they should last two to three to four hour hours. Depending on how current everyone is and the magnitude of issues up for discussion, more time may be necessary. However, more than three hours of intense discussion will typically be overkill. You should always schedule a little more time than you feel will be needed. It is far better to end early than to have to rush the discussion, short-change another topic, or overrun everyone's schedule. Whether the chairperson or the CEO runs the meetings, it is much better when they are kept on schedule and on topic.

Board meetings should be discussions. They should be interactive. There should certainly be some structure, but in my experience they begin to lose their value if they are too rigid. Don't let your board be just a formality or a *rubber stamp*. Some CEOs and chairpersons make the mistake of driving the board line-by-line through the agenda, cutting off meaty discussions in the name of staying on schedule. The purpose of board meetings is not only to inform and educate your advisors, but to seek their views and advice - which requires that they be given sufficient time to talk and discuss. Getting through the agenda on time should only be a secondary goal. Board meetings should contain a large interactive component.

There are a few techniques that I've observed over the years that I like a lot. The first is that the board *deck*, the pre-prepared management presentation - usually a PowerPoint (©2013 Microsoft Corporation) is usually sent out at least three or four days in advance. The deck should include all the important financial and operational information and key performance indicators (KPIs) for the board to review in advance. These often take the form of a 'dashboard' that the board has helped shape over time into an effective tool for keeping the performance pulse of the enterprise. It should also tee up any big discussion items selected or required for that meeting so that the board can start to think about them in advance. Depending on each company's situation, condition and tradition, it may not be necessary for the board to go through a line-by-line review of the financial and operational results in the meeting. The CEO or chairman can ask the board members if there are any questions on the numbers, and time should be set aside in the event that a consensus of members would like to have a discussion of the operating results.

The second technique I like a lot is when the CEO puts out a list in advance of the three or four things that are "keeping me up at night." This can be a way of teeing up the discussion items for the meeting, or it can just be a good way for the board to quickly get an insight into the CEO's state-of-mind. One approach to this is using the "keeping me up at night" slide to show the items that were on the slide the prior meeting and the items that are on the list currently. This shows

### **Authors Note:**

*In May I had the honor of being a keynote presenter at the Private Company Governance Summit in Washington, D.C. There were about 30 speakers in total. Someone asked me what I thought of the information presented by the others. I said that in my opinion no one said anything wrong. It made me realize that I believe, (a) there are usually several right answers and approaches in any situation, but (b) there are definitely many wrong ones as well. The information in this article is what I have found works over my 44 years of serving on tech boards of directors.*

issues that have been "resolved" in the time since the last meeting, those things that have not been resolved, and the new things that have popped up.

Most meetings I have participated in made some attempt to follow *Robert's Rules of Order*, however it is always a very light touch, and I have yet to encounter an expert. This is definitely a case of the personal preference of the chairperson. Having no rules of engagement is a formula for pandemonium; and too much rigidity can be both time consuming and tedious.

### **Meeting Agenda**

There are certain traditional agenda categories. These include approval of minutes, CEO's review/overview of the preceding period, operations report, finance, sales, marketing, compensation, committee reports, technology/product discussion, strategy/special items, resolutions, old/new business, and more. There can also be a less functionally related, more issue related, perspective. This might look like numbers, customers, people, product(s), capital, market place, competition, etc. Over time a board will refine its own approach to its agenda. Consistency is important in that it lends itself to better tracking and milestone alignment.

One of the principal work products of a board meeting is minutes. There are many acceptable formats. Very few directors, or even attorneys, get hung up on this. The most frequent difference of opinion comes on content – more or less? Minutes may become *discoverable* should the company ever be engaged in litigation. In a very closely held firm this may not be an issue, but in a more widely held, or public entity, this is an important consideration. It is generally considered to be best practice to include enough detail in the body of the minutes to document that certain topics were considered and discussed. However, it is not generally advisable to include too many specifics or details, as this could potentially compromise company confidential information should the minutes become public.

Another consideration that gets varied opinions is which non-board members should be invited to the meeting as guests. There are of course certain infrequent meetings when it is not appropriate to have any guests, save corporate counsel. There are also usually certain segments of each meeting that should be limited to directors only. Then there is an executive session when even non-independent directors (management) should be excluded. There is more on this topic later. However, I consider it good practice to expose a wide range of company executives to the

#### ***A Tale of Two Founders***

*Entrepreneurs, who succeed in starting companies, and securing outside investors, often face a challenge when their firm grows, and in the investor's opinion the founder's skills are no longer up to the requirements of their current position. This scenario is often gruesomely chronicled in the business press. Here are two such tales.*

*Lance founded his firm with a partner. He was the business brains and his partner was the technical talent. Over 10 years the company had about nine different rounds of venture capital investment. There were almost 20 different VCs involved. The board of nine was Lance, seven VCs, and I. Over the course of about 10 years the board fired Lance as CEO three times. Each time he reverted to chairman of the board. A replacement CEO was brought in. Lance still worked hard and constructively on business development and strategic alliances. Twice the new CEOs did not work out, and twice Lance was brought back as CEO. Lance stepped up. The third time the replacement CEO succeeded in taking the company public and all were rewarded accordingly.*

*Sal founded his firm alone. He recruited a good team, developed their product, and got traction with some customers. The company then attracted term sheets from two pairs of VCs. He selected the pair that I felt would be the less forgiving under pressure. He found out what that meant. Things were not going well at one point. The board 'promoted' Sal to chairman and relieved him of his CEO duties. He remained active in a business development role, however his actions proved very disruptive to operations and he did not cooperate well with the new CEO. He frequently interfered with both sales and operations employees. After being reprimanded a few times, the board had no choice but to terminate him completely. The company was ultimately sold, but failed to return anything to shareholders.*

board. Having several different managers present to the board on their specific areas of responsibility over the course of the year best does this. In addition, discussion can be scheduled of a particular subject or business area, and several executives can be present for the discussion and board questions. I see tremendous value in this. The employees get exposed to your board. This sends a strong message of professionalism and openness to outside ideas. It supports a positive culture. They of course also get direct feedback from your knowledgeable directors. For the directors' benefit they get on-going exposure to your best and brightest. This gives them insight into potential roles for these folks and aids in succession planning at all levels of your organization.

### **Executive session**

One of the most important techniques I've observed over the years is the executive session of the board, usually at the end of the meeting. This is when the Board meets without the CEO and other management board members or guests in the room. This allows for a discussion of the meeting and what the key takeaways are. If this is done consistently it simply offers a more open forum for the independent directors to talk openly, and when or if there actually is a delicate issue, the session can be conducted without unnecessarily alarming anyone. The executive session can be five minutes or it can be a half hour. Sometimes there is very little to discuss; sometimes there is a lot. The CEO should be briefed on the executive session – either by the board afterwards, or by the Chairman or lead director shortly after the meeting ends. This is an opportunity for the board to provide feedback to the CEO on the business, the team, his own performance, and the strategy. Boards should not miss this opportunity to provide feedback and in a healthy relationship the CEO should demand it of them.

### **Committees**

The board of a public company requires certain committees. The private company fiduciary board does not. However if the goal is to replicate standard governance there are typically committees. Committees are used to reduce the amount of time necessary for the board to address detailed matters. The objective is to have board members on a committee for which they have more in-depth expertise than perhaps other directors have. The committee is used to pre-review its designated matters and make an informed recommendation to the full board. This does not diminish the board's responsibilities, but does serve to streamline business.

The first committee is always Audit/Finance. Without getting into any detail here, it oversees finance, most importantly accounting in general and audits in particular. Usually second is Compensation, which monitors and pre-approves all compensation issues – employees, board members and other relevant considerations. Generally they set certain standard parameters to be approved by the board, and themselves pre-approve specific situations as their charter sets forth. Recently a newer committee has emerged: Governance. Their oversight may include regulatory matters, succession, recruiting of employees and directors, and board policies and procedures in general. Other committees may include strategy, technology, M&A, and others deemed key to the company's success and the boards' responsibilities.

### **Phone Meetings and Special Meetings**

Governing documents for most entities provide that board meeting may be conducted by teleconference rather than in person. Face-to-face has many advantages, of course, but short notice and convenience may not always be two of them. Regularly scheduled meetings that are

held via telephone should be conducted through a teleconference bridge, and may go through the normal graphic presentation, like a PowerPoint that was delivered in advance. They may also utilize a web-based audio/video collaboration connection tool like GoToMeeting (©Citrix Online, LLC.). It is helpful to keep these meetings somewhat shorter than regular ones, and more effort needs to be made by the chairperson to mediate between the parties wishing to speak. Care should always be taken to ask if anyone else has comments before moving on to the next subject. Some directors, like me, tend to say less during phone meetings, showing the restraint to avoid saying something that has already been adequately articulated by another director.

Special or unscheduled meetings may be held at any time, in-person or by phone. The board should have an effective method of notifying everyone in accordance with the company's governing documents, and everyone should properly RSVP. Such meetings require the same procedures and minutes as any other meeting.

## Voting

Arguably the most tangible product of a board meeting is a vote. It takes some amount of experience, and often advice of counsel, to discern what requires a vote, and what may work better as simply guidance. Voting probably represents the board's strictest adherence to Robert's Rules of Order. Items up for a vote require a formal resolution. It is very important to have a clear statement of the resolution, agreed upon by the board, stated in the minutes. The most common misconception I encounter regarding voting is that all votes must be unanimous. Why? I have no idea where this concept originated, but it is of course generally false. Only Written Consent must be unanimous. There are certain votes, stipulated by the company's governing documents,

which may require a 'super majority' (more than 51%, e.g. 66.67%), like an acquisition or financing transaction. There may also be a specific term of a class of preferred stock that requires the vote of a director representing that class. However, only these special cases require anything more than a simple majority. There will certainly be things that everyone agrees on, but constructive dissent is healthy. Sometimes, when everyone has properly reviewed an issue previously, but no vote was taken (perhaps being postponed waiting for some additional information), it may be efficient to get a board vote without a meeting. This is called Written Consent, or Unanimous Written Consent. This procedure allows the distribution of the resolution via email, FAX, or letter, with the board responding with their vote in kind.

When in doubt, go ahead and conduct a vote. Keep in mind that the definitive nature of a vote serves both to give management clear direction, and to demonstrate to outsiders that the board faithfully fulfilled its fiduciary responsibilities to review and rule on key issues.

## Summary

In summary, board meetings should not be operational reporting sessions with information flowing one way. They should not be solely for the benefit of the board. They should be for the benefit of the CEO, the senior team, and ultimately the owners. I've always loved the idea of a "kitchen cabinet" and to me that is what a great board meeting should feel like. The best boards

### ***They Hate Me***

*Leonard was a seasoned CEO, but he had a strong inclination to want to please everyone. One afternoon we were leaving a board meeting that had been held in the offices of one of the leading Silicon Valley law firms. Len walked out with a frown and promptly kicked the tire of his rental car hard stating, "They hate me!" I said, "What are you talking about?" He said, "That last vote proves that those VC directors all hate me." Trying to understand I said, "Len, you won on that issue, the vote was 5 to 4." He quickly responded, "Well, those 4 still hate me"*

act as a team of experienced, skilled, engaged, and helpful advisors and meetings should be a place and a time for that group to provide the most help and assistance they can. It is the CEO and Chairperson's job to make sure that happens, and on a regular basis.



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