



## ***How to Have a Great Board Meeting***

*by Dennis Cagan*

*The tone, content, and conduct of a **board of directors** meeting are 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 a board meeting.*

A meeting of the company board of directors. 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 (and even most executives and shareholders), you would be hard pressed to find any that could name something else 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 goes on in one!

Many people will advise company leaders that managing your board is about individually managing your directors. Certainly, it is critical that you have individual interaction with each director 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 themselves, and between directors and management, is crucial. This article is intended to help make your board meetings effective, productive, and valuable for everyone involved — especially management, directors, and the shareholders (owners) who elected the board.

### **Meeting frequency**

One of the first questions asked about a board — right after “Who is on it?” — is how often does it 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 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. Note, when the chairperson is also the CEO, best practice encourages the appointment of a presiding or lead director, representing the independent board members. This position both speaks on behalf of the independent directors and may also take over in the absence of the chairperson.

Board meetings should favor discussions over speeches, and collaboration over self-interest. It is important to remember that the board has a fiduciary duty of care on behalf of the stockholders. The meetings 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 advisers 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.

I have a few favorite techniques, which I have observed over the years. The first is that the board deck, the pre-prepared management presentation (usually a PowerPoint), 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 if a consensus of members would like to have a discussion of the operating

results. The biggest risk, particularly for the boards of closely held private companies, is that the board meeting devolves into a glorified operations meeting.

The second technique I like a lot is when the CEO puts out in advance a list of the three or four things that are "keeping him or her 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 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, I favor a very light touch. I have yet to meet a real Robert's Rules expert. This is a case of the personal preference of the chairperson. Having no rules of engagement is a formula for pandemonium; 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-oriented perspective. This might include numbers, customers, people, product(s), capital, marketplace, competition, etc. Over time a board will refine its own cadence and approach to its agenda. Consistency is important in that it lends itself to better issue 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. Best practices also include an executive session (below) when even non-independent directors (management) should be excluded. There is more on this topic to follow. However, I consider it good practice to expose a wide range of company executives to the board. Having several different managers present to the board on their specific areas of responsibility over the course of the year does this best. In addition, discussion can be scheduled on 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 ongoing 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 freely, 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 fiduciary board of a private company does not. However, if the goal is to replicate governance best practices, there are typically committees. Committees are used to reduce the amount of time necessary for the entire 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. Historically the audit committee also oversees all forms of risk, although I do not consider that to be best practice. Usually the second committee is compensation, which monitors and pre-approves all compensation issues involving executives, board members, and other relevant employees and important considerations. Generally, the committee sets certain standard parameters to be approved by the board, and themselves pre-approve specific situations as their charter sets forth. Compensation of course includes salaries, bonuses, benefits, and all forms of incentive equity distribution.

Recently some newer committees have emerged. Governance or Nominating/Governance oversees corporate governance details including agency and commission filings, regulatory matters, executive and board succession planning, recruiting of employees and directors, and board policies and procedures in general. Additional committees may include risk, 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. For obvious reasons, this has become the norm since early 2020. However, face-to-face has many advantages, but short notice and convenience may not always be two of them. Regularly scheduled meetings that are held via telephone or video platforms should be conducted through a teleconference bridge and may include the normal graphic presentation like a PowerPoint. They may also utilize a web-based audio/video collaboration connection tools like Zoom, GoToMeeting, Google Meet or Microsoft Teams. 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 or video 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. Normally stated as, "Do I have a motion? Do I have a second? All those in favor? All those opposed?" It takes some amount of experience, and often advice of counsel, to discern what requires a vote, and what may work better as simple 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. There are certain votes, as stipulated by the company's governing documents – Certificate of Incorporation/Formation, company bylaws, and previous board approved resolutions, which may require a 'super majority' (more than 51%, e.g., 66.67%), such as 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 may require anything more than a simple majority.

### *Anecdote: 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 venture capitalist 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 **four** still hate me."

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 awaiting 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, to board members or even stockholders, via email (most bylaws now permit electronic notification for everything), fax, or letter, with the board members (or stockholders) 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.

### **A benefit to all**

In summary, board meetings should not be operational reporting sessions with information flowing one way (management to directors). 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 act as a team of experienced, skilled, engaged, and helpful advisers, 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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