Association of Corporate Counsel

Tuesday, October 21
11:00 am-12:30 pm

512 Care & Feeding of the Board: "On-Boarding" and Continuing Education

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Faculty Biographies

Raymond Agran

Raymond Agran is a partner in the business department of Saul Ewing’s Philadelphia office. His practice focuses on mergers and acquisitions, securities, venture capital, joint ventures, partnerships and strategic alliances, intellectual property licensing, distribution agreements and general commercial law, with particular emphasis on counseling emerging growth companies and documenting private equity transactions of all types. He is a member of the life sciences, venture capital/private equity and intellectual property and technology practice groups.

Mr. Agran brings to Saul Ewing 25 years of corporate and commercial work experience, representing publicly traded and private companies, their founding entrepreneurs, and those investing in them. Immediately prior to joining Saul Ewing, Mr. Agran was a solo practitioner who advised clients regarding the negotiation and documentation of mergers and acquisitions, intellectual property licensing, entity formation (including agreements among equity holders) and general commercial contract matters, while also pursuing an entrepreneurial opportunity of his own. Prior to that, Mr. Agran was a partner at two large Philadelphia-based law firms, at which he was chair of their respective venture capital/technology company practice groups.

Mr. Agran received a BA from Yale University and is a graduate of Columbia Law School.

Heather T. Boone

Heather Travis Boone is general counsel for Trinity Capital Corporation, a financial holding company headquartered in Los Alamos, NM. Ms. Boone also serves as general counsel for its subsidiaries, Los Alamos National Bank (LANB) and Title Guaranty & Insurance Company. Ms. Boone's practice focuses on corporate law, corporate governance, regulatory reporting, litigation, and general guidance for the financial institution and subsidiaries. Ms. Boone is also very active in her company's Malcolm Baldrige National Quality program and Quality New Mexico, a Baldrige-based state quality program.

Prior to joining Trinity Capital Corporation, Ms. Boone worked in human resources at Los Alamos National Laboratory and practiced commercial litigation at Strasburger & Price, LLP in Houston.

Ms. Boone is currently the chair for ACC's Corporate and Securities Committee. She is also a member of the Texas and New Mexico Bar Associations, and serves as a member of the New Mexico Bar Association's bench and bar committee.

Ms. Boone received her BA from Trinity University and is a graduate of Washington & Lee University School of Law.

Claudia S. Toussaint

Claudia S. Toussaint is general counsel, corporate secretary and chief ethics officer for EMPARQ Corporation in Overland Park, KS. In her position, Ms. Toussaint is responsible for the company’s legal affairs as well as corporate governance and legal support for the board of directors. Ms. Toussaint also oversees the company’s ethics and compliance program. Ms. Toussaint previously served as vice president, corporate secretary and chief ethics officer.

Prior to joining EMBARQ, Ms. Toussaint served as vice president, corporate governance and ethics, and corporate secretary for Sprint. She also served as an attorney for Sprint Corporation and its operating subsidiaries in roles of increasing and varied responsibility. Additionally, Ms. Toussaint was an attorney at the Los Angeles office of Morrison & Foerster LLP.

Ms. Toussaint received a BA from the University of California, Los Angeles and is a graduate of the University of California, Hastings College of the Law.

Overview

Approaches to keeping your directors interested in and learning about your company and issues pertaining to the board's role at your company.

- Recruiting process
- "On-boarding" process
- Continuing education program

On-Boarding

- Implementation Steps
  - Invest in the Process
  - Create a Timeline
  - Develop a Fiduciary Calendar
  - Measure Success
  - Seek Feedback/Intervention
  - Capture Lessons Learned for the Future

Selection/Recruitment

- Overview – *Changing Dynamics*
- Selection Considerations
  - Qualities of Prospective Directors
  - Use of the Nominating Committee
  - Use of a Search Firm
  - Role of the CEO and Other Executives
  - Development of a Strategic Selection Matrix
- Skill/Regulatory Requirements
  - SOX – Audit Committee Financial Expert
  - Compensation Expertise

On-Boarding

- Orientation
- Key Elements of an Effective Program
  - Strategic Planning
  - Content - Defining Deliverables
  - Participation of Key Constituents
  - Integration
  - Communicating the Culture
  - Experiencing the Company's Operations

Continuing Education

- Overview – Defining the Needs and the Goals
- Resources and Frequency/Timing
  - Internal:
  - External: generic versus company tailored
- Content: Topic Areas and Sources
  - Financial Reporting
  - Legal, Compliance and Regulatory
  - Corporate Governance Perspectives
  - Compensation and Succession Practices
  - Experiencing the Company's Operations
  - Understanding the Industry

Practice Suggestions

- Selection/Recruitment
- On-Boarding
- Continuing Education

Effective Board

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Reinventing the Board: Planning for Director Succession

By Dennis Carey, Dan Hesse, and Nayla Rizk

The best boards regularly evaluate their company's strategy in light of new market developments and competitive threats. This evaluation often takes place during annual strategic planning retreats, as well as during regular board discussions. Though not a universal practice, more and more boards are beginning to use these strategic reviews to revisit their organization's succession plan. Since the passage of the Sarbanes-Oxley Act, many boards have improved their processes for examining the requisite skills for the CEO and consider how shifts in the business model, or the decision to enter new markets, could affect the necessary experience and competencies for senior leadership.

But what about boards themselves? What too few boards do today—and what more should do—is regularly review their own makeup in light of the company's strategic direction and identify the competencies which would be valuable in future directors. As a result, they miss an opportunity to infuse the board with fresh perspectives relevant to the organization's future.

When boards do have an opportunity to invent themselves wholly—for example, when a company is taken public, being spun off from a parent, or being rebuilt after bankruptcy or other crisis—some directors have seized the opportunity to shape the composition of the board to reflect the direction, challenges, and opportunities of the company's next phase.

Ed. Note: For more on director succession issues, see 'The Report of the Blue Ribbon Commission on the Governance Committee: Best Practices and Key Resources,' to be released this Spring.

Director Summary: Just as boards regularly discuss the company's strategy, they should also regularly assess the experience and backgrounds needed on the board to support this strategy. While this is especially important when rebuilding or expanding a board, directors should also be ready to take advantage of the opportunity presented when vacancies occur.

EMBARQ—A Case Study

EMBARQ, the local communications business of Sprint Nextel Corporation, went public on the New York Stock Exchange as a standalone company in May 2006. In advance of its separation, EMBARQ engaged Spencer Stuart to help recruit six new directors for the board—taking full advantage of the opportunity to "build from scratch."

To ensure that the board would include directors with as many of the desired competencies and experiences as possible, Spencer Stuart created a matrix, expanding on a model used by Sprint Nextel. The criteria for the ideal business experience and industry expertise of the EMBARQ board were based on several considerations:

- As a new board in a highly regulated industry, subject to governance requirements of both the stock exchange and the Sarbanes-Oxley Act, it was important to recruit directors with significant large public company board experience, including directors equipped to chair the audit, compensation, and governance committees. Experience running a large organization and a large team—ideally, active or recently retired CEOs—was also a high priority.
- As part of a dynamic and evolving industry, it was important that the board include directors with experience at companies with significant operating complexity—directors who understand the difficulty in changing the culture and skills of the workforce; changing measurement systems and other operational elements; and communicating these changes to Wall Street, while simultaneously improving the customer experience. It is one thing for directors to say, "You have to make this change," if they have only read about the issues in magazines or textbooks. It is something else if directors actually have done it.
- Motivated by the belief that a successful company has a board that represents its clientele and customer base, it was important

for us to recruit a board that reflected a diversity of ideas as well as diversity in gender and ethnic composition. When different points of view are represented, and boards can look at situations from many angles, they tend to come to better decisions.

- High on our list of priorities was finding directors with a diversity of industry expertise, particularly in areas such as media and entertainment; marketing and brand development; and customer relationship management in the services industry—all directions where EMBARQ is headed as technologies converge and the telecom industry must compete with others, such as cable companies and content providers.

As we considered who should be on the board, we thought about where the business is headed, the skills that exist among the management team, and the skills and areas of expertise the company does not have. We zeroed in on areas where a particular skill, area of expertise, or background would be helpful as the company plotted its strategy.

Because of the very strong telecom services industry experience of the EMBARQ management team, we chose not to recruit board candidates with telecommunications services experience. Ultimately, we recruited directors from the entertainment, consumer, technology, and services industries. Together, the new board is able to provide perspectives on the convergence of technology, communications, and media—an important trend for the company's success in the future—and it brings proven business leadership to the table.

Rejuvenating the Board

Of course, few companies have the opportunity to build an entirely new board that reflects its business strategy and leadership needs going forward. As a rule, boards of directors tend to be very stable organizations that experience little change in membership from year to year. On average, directors serve eight years—exceeding the average CEO tenure of five years. This stability is valuable because it helps the board maintain its institutional memory; however, too little change can limit the board's ability to provide effective strategic guidance to management.

Director departures or retirements create openings which enable the board to expand or strengthen its skills in certain areas. Historically, it has been common to replace a retiring director with an individual "who looked like the person who left." This represents a lost opportunity to marry the board's capabilities with the direction of the company. Instead, boards should take advantage of natural attrition to recruit directors who can add valuable perspectives about the company's strategic direction. To encourage turnover, some boards have established limits on director age or tenure. Other boards that recognize the need to add fresh perspectives decide to increase the size of the board.

It is one thing for directors to say, "You have to make this change," if they have only read about the issues in magazines. It is something else if directors have actually done it.

On its own, or with the help of a consultant, a board should regularly examine the demographics and professional backgrounds of current board members and identify gaps or voids in the board's composition. As the board reviews topics such as the businesses in which the company competes, strategies to grow profitably, and competitive threats, it is natural to consider whether the board as a whole includes the expertise and skills that it will need to help the company deliver on its strategic vision. If skill gaps are identified, they can be used to shape the search for new directors when vacancies occur or signal a need to expand the board.

Some boards may be reluctant to talk about their own succession, fearing that these discussions inevitably could lead to a difficult decision about whether the current directors continue to bring the necessary experience and competencies to support the company in the future. While such issues can be challenging for directors, forward-thinking boards nevertheless will engage in an ongoing review of their skill sets, relative to their organizations' direction, applying the same rigor they do to CEO succession planning. Through these reviews, they will be able to take advantage of natural attrition on the board to recruit directors with the appropriate skills and experience, and, if necessary, increase the size of the board to add individuals with different experience.

Discussing board succession in this light also may help to create an atmosphere where directors themselves recognize when it may be time for them to leave to make room for a director with much-needed experience. In this way, the board will continually renew its composition to ensure the board as a whole, and directors individually, have the energy, expertise, and experience to guide the organization as it addresses new challenges and market opportunities. ■

Dan Hesse, chairman and CEO of EMBARQ, is on the boards of Nokia and VF. **Dennis Carey** and **Nayla Rizk** are consultants in Spencer Stuart's Board Services Practice.

Integrating the New and Educating the Current Director

By Dorothy K. Light and Richard W. Leblanc

The requirement for independent directors, the new limitations on the number of directorships a person may hold, and the recognized need for change in the boardroom have forced companies into high governance gear. Recruitments are underway: consultants are flocking to the boardroom doors, governance principles are being written and re-written, and new directors recruited.

But none of these steps will work unless the new director is properly integrated. Board structure and composition are just two of the three factors necessary for effective board oversight. Most important is the company's process to create an environment where each board member feels welcomed, oriented, valued, and respected. Getting the new director to that level of competence is the next big challenge. A successful orientation program is key to productive and effective boardroom participation.

Business Orientation

The first and most important piece is to address the basic knowledge of the business. The new director independence guidelines make it more likely that the recruit comes from another industry sector. A common complaint from CEOs is that directors do not "know the business." Typical comments are:

> Directors need to understand the business... They need seminars three to four times a year to upgrade specialized content skills. (CEO)

> Boards don't know enough about the business. They need access to independent advisors, based on their instincts regarding the major issues. They need trade literature... It's all about information. You're so subservient to what management gives you—you're responsive. Director need to know more about the business and the sector. (Former CFO)

> Number one is knowing the business. (Director)

Companies should arrange for all of their directors to be briefed on industry developments and receive industry magazines and newsletters. Directors should have access to key clients and consultants to learn more about the company's role in the industry, their unique and distinguishing contributions, and their potential opportunities.

Properly oriented and educated directors make for better directors, better directors make for better boards, and engaged boards provide strategic value to the CEO and management team. Effective boards give the CEO a thorough strategic workout and keep the CEO from making that one big mistake. Any forward-thinking CEO would or should welcome this sort of input. Designing and implementing such programs is a wise use of stockholder money.

New directors should be queried about their comfort level with the financial information and accounting rules. If appropriate, they should be offered opportunities to attend general director orientation programs at universities and association meetings. Privately, the chair of the governance committee should be suggesting educational opportunities, including briefings with experts to bring the new director to the proper competency level.

Director Summary: Designing an effective orientation program for new directors must take into account the nature of the company's business as well as the personalities, strengths, and weaknesses of board members. Encourage new directors to ask questions and understand the board's unique culture.

How do you ask the tough questions without being tough? How do you behave as a director?

Company Orientation Programs

The Basics

The company director orientation program, at a minimum, should include: (i) a corporate governance briefing by the corporate secretary and general counsel; (ii) an introduction to the company, its mission, and values by the CEO and other senior officers; (iii) stockholder communications, accountability and disclosure documents, and access to key analysts who have covered the company; (iv) financial performance of the company and comparative industry data by the CFO; (v) strategy and operations at the division or department level; (vi) human resources and succession planning; and (vii) the legal and ethical environment of the business.

Ideally, time should be set aside at every board meeting for continuing education.

The Tours

Orientation activities should include on-site visits with members of the management team, so that the directors have access and opportunity to communicate directly with the individuals running the business.

Preparations for all site visits or meetings with management should include written materials provided well in advance. The program should be concentrated to maximize efficiency and make wise use of the director's time. The objective of any visits should be to present the risks, as well as the rewards, of the business activity. Instead of Power Point presentations covering materials already mailed to the directors, the visits should be arranged to encourage maximum exchanges of information, time for questions, and quick follow-up on any items raised but not resolved during the discussions.

The Informal Meetings

New directors often note that informal meetings with other directors are most helpful in establishing rapport and understanding the board dynamics. Some directors describe private, off-site lunches as important. Others welcome formal presentations where one or more of the senior directors accompanies the new board members. These opportunities, and initial impressions, will help form performance expectations that are critical to the future participation of the new director.

In designing the new member orientation programs, companies should also be creating formal, comprehensive, continuing education for directors on an ongoing basis. One company publishes an annual schedule of "On the Road" programs where directors can select special visits, tours, or meetings to learn more about a particular aspect of the business.

The Self-Study

The CEO or corporate secretary should provide lists of books, magazines, websites, and resources that may be useful to the new director. Confident CEOs will also identify other individuals (including former board members) who can be approached by the new director at their convenience.

The Individualized Approach

All of these ongoing programs should be tailored to the specific needs, skills, and competency set of individual directors. When designing the educational programs, the corporate governance committee (or its equivalent), the lead director, the CEO, and senior management should be seeking director feedback on their perceived needs for additional information on committee responsibilities and the board's role. Of course, each company's program will be presented against the backdrop of the strategic environment of the business and the industry. The format might also include online delivery and confidential training, off-site.

The Softer Side

An effective orientation program should introduce the "softer" side of board process dynamics and director behavior, the politics, power, mentoring, and other governance "informalities," particularly for younger or newer directors. One chair noted:

> Orientation tells you about the company, not how you should behave. (Chair)

Seasoned directors offered their views:

> Young members need to be counseled on how to raise issues but are afraid to raise them at the meeting. You have a tendency to act alike, depending on the board, like trained seals. It takes courage, but you can do it without being offensive. It could be media training, asking questions without getting personal. (Director)

> How do you ask the tough questions without being tough? How do you behave as a director? How does the board work? What are the dynamics? (Director)

> Peer-directors need to ensure that they mentor their newer colleagues, giving them advice off-line in tactful, diplomatic ways and not by bruising egos. Mentoring relationships should emerge and should be part of a board's informal culture.

Time for social interaction with all members of the board is critical to building rapport. Companies often hold board meetings at different plants or facilities and use those occasions for in-depth business unit reviews and discussions. Others arrange purely social outings which offer opportunities to build consensus and get the members comfortable with each other, their respective experiences, and perspectives.

Executives, management, and shareholders need to understand that if the directors are educated, then directors will be more valuable to them, particularly as strategic assets. Director training and education—all training for that matter—should be considered an investment in a long-term asset.

The Challenges

Designing and implementing *effective* orientation and education programs, however, has one significant hurdle: the ego of the directors and the board. For director orientation and education programs to succeed, they must be tailored to the individual directors' needs and collectively to the board's requirements. In short, orientation and education programs for boards must be aligned with *that* director, on *that* board, in *that* company, and in *that* industry.

To be most effective, the program should be tailored for each director, playing to their weaknesses and knowledge gaps. But obtaining this essential information requires directors to admit shortcomings and what may be perceived, rightly or wrongly, as "weakness." Many directors are reluctant to admit these types of inner developmental needs to management or to their fellow directors, absent strong board leadership and positive reinforcement for doing so. Admitting that a director does not know something would be to admit ignorance and therefore damage the director's credibility needed to operate—supposedly.

This reluctance might be so strong that directors may continue to remain ignorant and not ask for necessary assistance. Directors have remarked:

> There's a great need for financially literate business-people on boards. It's ego. Many are successful businesspeople in their own right and they don't want to be seen as not knowing, not critical. We need some real depth to understand the subtleties and the accounting issues. (Director)

> Most people are too full of themselves to acknowledge that the universe of financial manipulation has become extraordinarily complex, machiavellian, and is changing at a much greater rate than in the past. It's crypto-babble. We need to get rid of the veil of comfort, ego, and embarrassment. It's very difficult to say, 'I don't know what you're talking about and don't understand what I've just read.' (Director)

We need to get rid of the veil of comfort, ego, and embarrassment.

> The new requirement that one director on the audit committee have financial expertise has directors scrambling to redefine their expertise. They are dividing themselves into two groups: 'No way will I be chair...so I'm no expert' and 'Yes, I once reviewed a 10-K so I must be expert.' No one wants to be perceived as inadequate...especially in the boardroom. (Director)

This psychological dynamic is powerful. Companies need to develop a mechanism or process to find out from individual directors what type of developmental assistance is needed, and when, where, and how it ought to be delivered. Board leadership is essential. In some companies, an independent expert may be needed to facilitate and advise the board, especially if comprehensive programs are being devised for the first time.

Board leadership and an enlightened CEO are vital to ensure that a proper learning path—both formal and informal—is sculpted for the incoming director. Education for all directors must be an ongoing commitment. Careful planning and time spent executing an orientation program will ensure that the new directors will be fully integrated into the boardroom and quickly ready to make their contributions to the company. ■

Dorothy K. Light, director of New Jersey Resources, is former vice president and corporate secretary of The Prudential Insurance Company of America. She has recently co-authored a book, *Into the Boardroom: How to Get Your First Seat on a Corporate Board.* She may be reached at dklight@mn.rr.com.

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ACME BOARD ANALYSIS

DIRECTORS *Committee Membership*	SUBJECT MATTER EXPERTISE	Financial	Technology / Telecom	Brand	Consumer / Retail	Business-to-Business	Government / Regulatory Affairs	HR & Labor	Start-up	Media / Cable	BOARD EXPERIENCE	Fortune 500 or Global 500 Directorships (incl ACME)	Total Corporate Directorships (# Public Co Directorships incl ACME)	Audit Committee	Compensation Committee	Nominating & Gov Committee	Finance Committee	OTHER	Age	Adds Diversity	Independent	Active/Recent CEO	In Market (list states)
Director 1 (Company Name) *Audit Committee (ACFE)* *Nominating and Corporate Governance*		X			X					X		1	3 (2)	X		X					X	X	X
Director 2 (Company Name) *Audit Committee*				X	X							1	2 (2)	X						X	X	X	
Director 3 (Company Name) *Nominating and Corp Governance*							X	X				2	4 (1)	X		X	X				X		X
Director 4 (Company Name) *Audit Committee*					X	X						1	1 (1)								X	X	X
Director 5 (Company Name) *Chairman* *Nominating and Corp Governance (Chair)*			X			X	X					2	4 (2)			X					X	X	
Director 6 (Company Name) *Compensation Committee*			X			X						1	2 (2)	X						X	X	X	
Director 7 (Company Name) *Audit Committee (Chair, ACFE)* *Compensation Committee*		X			X							2	4 (4)	X	X	X				X	X		
Director 8 (Company Name) *Compensation Committee (Chair)* *Nominating and Corporate Governance*				X				X				1	1 (1)		X	X				X	X		