

June, 2011

### **A GOOD BOARD IS JUST AS IMPORTANT FOR CLOSELY HELD COMPANIES AND NON-PROFITS**

The Sarbanes-Oxley Act of 2002, subsequent rules proposed by the SEC and now the Dodd-Frank Act have produced many new regulations that have added to the duties of the directors of publicly held companies. While most of these do not apply to the boards of privately held companies and non-profit organizations, they serve to reinforce an age-old principle: *A Board comprised of capable and committed directors can play an important role in the success of closely held companies and non-profits by providing advice and counsel in addition to fulfilling its fiduciary responsibilities.*

**Note:** The owners of some privately held companies prefer instead to form a separate Board of Advisors. In that case, the following points apply to the advisory board.

#### **CLOSELY HELD COMPANIES**

##### **Principal attributes of a good director**

- **Objectivity.** Outside directors who are neither executives in the company nor owners of the business have no ax to grind. They can look at the company, as well as the issues that arise, from a detached, business-like perspective. Frequently they can also mediate differences that may arise among the owners.
- **Experience.** The owners or management of privately held companies usually know the particular business the company is in but they often have limited experience in finance, management and marketing. Outside directors can bring skills and practical business experience in these and other areas.
- **Commitment** to the company and a desire to see it succeed. Directors must be willing to put in the time that may be required.

##### **The role of a director**

While the role of a director in a publicly held company is much broader – and bears considerably more risk – than that of a director in a private company, several components are the same:

- Serving as a sounding board for company management.
- Seeing the forest instead of the trees by not getting involved in operating details – unless requested by management or circumstances require.
- Asking tough questions of management.
- Insisting that the company develop – and implement – a strategic plan.
- Monitoring if the goals of the strategic plan are being accomplished.
- Ensuring that the company also have a succession plan for management and ownership.

## **How to get the most out of the board**

- Hold at least four regularly scheduled meetings. With any less, the directors won't have enough contact to be helpful.
- Draft a report and send to the directors several days before each meeting along with the agenda, financial reports and any other information they should have.
- Seek their help and advice on issues, strategies and plans.
- Do not include the company's accountant or attorney on the Board but do:
  - Give them all reports and material directors receive.
  - Invite them to all board meetings.
  - Encourage them to participate and ask questions in addition to providing the appropriate professional counsel.
- Allow time for open discussion at all meetings.
- Hold an orientation session for new members.
- Communicate with board members between meetings and be available to them.
- Invite them to visit the company's facilities and allow them to talk to employees.
- Pay a director's fee.

## **NON-PROFIT ORGANIZATIONS**

Most of the above points also apply to non-profit boards. However, there are a few additional points to keep in mind.

### **Principal attributes of a good director**

- **Understanding** the non-profit world. It has its own set of complex issues.
- **Give**. The ability to make major financial contributions or, in the absence of that . . .
- **Get**. Raise funds for the organization.
- **Expertise** in strategic planning, management or human relations in order to provide these skills to the organization or to supplement the expertise of the organization's staff.

## **How to get the most out of the board**

- Balance Board membership. Non-profit Boards are generally quite large since many of the members are recruited because they are wealthy and/or prominent individuals whose principal role is to "give" or "get" – or even both. However, these boards also need working members who, regardless of their ability to give or get, devote time and expertise to the organization. Every non-profit board needs a mixture of both types.
- Get ride of any directors who are disinterested or who do not contribute in some way.

Although the responsibilities and risks are somewhat different, a good board is just as important to closely held companies and non-profits, because of their limited resources, as it is to publicly held companies.

*Robert Denney Associates Inc. has provided strategic management and marketing counsel to law firms, companies and non-profit organizations throughout the United States and parts of Canada for over 30 years. Recent Communiques, as well as information about our services, are posted on our web site [www.robertdenney.com](http://www.robertdenney.com)*

