



## The Lead Director's Role in Major Transactions and Board Succession Planning

Posted by Jeffrey Stein, King & Spalding LLP, on Thursday April 15, 2010

**Editor's Note:** [Jeffrey Stein](#) is a partner in the Corporate Practice Group at King & Spalding LLP. This post is by Mr. Stein and [Bill Baxley](#), also a partner in the Corporate Practice Group and co-head of the firm's Mergers & Acquisitions initiative, and relates to a recent meeting of King & Spalding's Lead Director Network, a summary of which is available [here](#).

The lead director's role in major corporate transactions and board succession planning are two topics that are often critical to a company's long-term success. However, although "bet the company" transactions are themselves not new, in view of the recent expansion of lead directors' roles, there is currently little formal guidance or established practices defining the role that lead directors should play in major corporate transactions. Moreover, while *management* succession planning has recently received significant attention, *board* succession planning and the role of the lead director in such planning has received comparatively little attention.

Against this background, the Lead Director Network (the "LDN"), a group of lead directors, presiding directors and non-executive chairmen from many of America's leading companies, met on March 2, 2010 to discuss the lead director's role in major transactions and board succession planning. Following this meeting, King & Spalding and Tapestry Networks have published the *ViewPoints* reports [here](#) to present highlights of the discussion that occurred at the meeting and to stimulate further consideration of these subjects.

The following provides highlights from the meeting, as described in the *ViewPoints* reports.

### Lead Director's Role in Major Transactions

At the meeting, LDN members discussed a number of key responsibilities of lead directors in major corporate transactions, including the following:

- **Working with the CEO and management team:** The lead director's role as an independent, objective adviser can be critical in a major transaction. Conscious of the empirical evidence suggesting that many corporate transactions fail to deliver

shareholder value, LDN members highlighted the need for lead directors to maintain an objective perspective on the transaction. In addition, lead directors often play a valuable role by helping management avoid the extremes of “deal heat” and “deal fatigue.”

- **Facilitating discussion among board members:** Throughout the course of a transaction, the lead director should facilitate the board’s discussion to ensure all perspectives are heard. Specific steps a lead director can take include encouraging open communication between management and the board, maintaining the board’s focus, surfacing board members’ objections or concerns and ensuring the board engages in proper due diligence.
- **Helping the board evaluate a transaction within the company’s strategic framework:** The lead director should assist the board in evaluating transactions from the perspective of the company’s strategic framework. LDN members cautioned against pursuing transactions that did not fit within the “four corners” of a company’s strategic plan, although they encouraged boards to evaluate transactions within the context of the rapidly changing markets where appropriate.
- **Determining whether to form a special committee:** If a board forms a special committee, lead directors should shepherd the transaction process by reporting to the CEO and the board on a regular basis and by responding quickly to transaction developments. LDN members indicated that the lead director is almost always a member of a special committee formed to consider or support a major transaction.
- **Interacting with external advisors:** Lead directors will often be the point of contact between the board and its independent advisors, and they should ensure that external advisors do not unduly influence the board.
- **Communicating with shareholders:** Although LDN members believe that a company’s CEO should be the primary representative when speaking to shareholders in connection with most transactions, in some cases (such as highly publicized or controversial transactions), lead directors may have an important role in reaching out directly to shareholders. The lead director may play an important role in reaching out directly to shareholders if requested to do so by management or if a shareholder requests a meeting with the lead director.
- **Monitoring the success of a transaction:** Lead directors often play an important role in ensuring that the board devotes adequate attention to monitoring a completed transaction. LDN members reported that, at some companies, major transactions are

reviewed periodically throughout the year in executive sessions or board meetings to consider whether the benefits of a transaction are being realized.

### **Lead Director's Role in Board Succession Planning**

LDN members also discussed board succession as well as lead director succession. With respect to board succession, members discussed the following topics:

- **Recruiting beyond the skills matrix:** LDN members encouraged boards to go beyond the traditional “skills matrix” when recruiting directors. In particular, directors noted the need to consider overall board composition to prevent the board from becoming compartmentalized with too many specialists with limited types of expertise.
- **Diversity considerations:** Recently enacted SEC rules will require companies to disclose how a nominating committee considers diversity in identifying nominees for director. Two aspects of diversity commonly mentioned in the LDN meeting were age and degree of international experience. Some members reported having an “activity clause” in their companies’ corporate governance guidelines to prevent inactive directors from remaining on the board.
- **Methods for identifying board candidates:** LDN members cited external search firms, the board’s personal network and external constituencies as three potential avenues to explore in the director succession process. To enhance the effectiveness of external search firms, members suggested building a long-term relationship with a single search firm or consultant and ensuring that the search firm develops an in-depth knowledge of the company.

In addition, although lead director succession is not necessarily top-of-mind for boards, members believed that many boards should begin preparing for the lead director transition, consider the appropriate length of service for the lead director and determine how involved the CEO should be in the transition process.

Additional information regarding the Lead Director Network may be found on the websites of [Tapestry Networks](#) and [King & Spalding](#).