



Challenges in Board Leadership

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Editor's Note: [Jeffrey Stein](#) is a partner in the Corporate Practice Group at King & Spalding LLP. This post comes to us from Mr. Stein, [Bill Baxley](#), and [Rob Leclerc](#), and is based on a report from the Lead Director Network, available [here](#).

All directors share the responsibility of helping a board resolve challenging board issues. Lead directors, however, frequently guide the board through critical situations. Although there are many different issues that a board may encounter that are well suited for a lead director's involvement, a lead director often plays a key role in resolving the following four challenges: (1) handling individual director performance issues, (2) responding to an underperforming CEO, (3) bringing new directors on board, and (4) preparing for lead director succession.

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 November 1, 2011 to discuss their role as lead directors in these and other challenges. Following this meeting, King & Spalding and Tapestry Networks have published a *ViewPoints* report [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 LDN meeting, as described in the *ViewPoints* report.

1. Handling individual director performance issues

It is inevitable that some directors will not meet the demanding performance threshold required to serve on a high performing board. Members had the following suggestions regarding how to identify and address individual director performance issues:

- *Strengthen the director evaluation process.* Members believed that making the annual director evaluation more robust would help identify performance issues at an early stage. Directors suggested that confidentiality is critical in having a robust, candid process and employing outside counsel to conduct the evaluation process would increase the confidentiality of the process.

- *Provide regular, year-round assessment in addition to the annual review.* Boards often take too long to respond to signs of director underperformance, which some directors thought was driven in part by over reliance on the annual evaluation process. Directors recommended providing regular feedback, outside of the evaluation process, to identify and correct performance issues more quickly.
- *Discuss performance issues with other board leaders.* Members suggested that director performance concerns should first be raised with the board's "thought leaders", who are often the CEO and committee chairs. Directors cautioned against raising director performance issues with the full board prior to funneling these concerns through the proper board channels, as a full board discussion risks causing personal animosity and distracting the board from its other duties.
- *Factors that can complicate the response to performance issues.* Directors discussed several factors that can complicate how the board handles underperforming directors, such as board size, prior exceptional contributions of the director, and external pressure for director removal. While members acknowledged that these complicating factors require careful deliberation and a thorough grasp of the facts at hand before taking any action, members commented that board seats were not entitlements and directors must always consider what will be best for the company. Taking appropriate action with respect to an underperforming director will often lead to improved performance by the entire board.

2. Responding to an underperforming CEO

Members noted that they spend a substantial amount of time discussing with the board the CEO's performance. Directors discussed the following:

- *Communicating dissatisfaction.* Members commented that the lead director should not be the only person who speaks candidly with the CEO. If the lead director is the only director who expresses concerns to the CEO, then the CEO may not comprehend how the full board actually views an issue.
- *Develop or remove.* Determining whether to continue developing or to replace a CEO is one of the most difficult challenges that a board will face. While it may not always be practical for a board to continue to develop a CEO, some members reported success in transforming a CEO who originally had performance issues into a high performing leader. If a board determines that it should continue to work on developing a CEO, directors agreed that addressing performance issues early was critical to the rehabilitation process.

- *Complicated removals.* Several factors can complicate the transition to a new CEO. The board's prior approval of the CEO's failed strategy, severance obligations, and the lack of an identified successor are among the issues that may lead to a complicated transition process. Directors acknowledged, however, that none of these factors should prevent a board from acting decisively, though they must be considered in the transition process.

3. Bringing new directors on board

Directors agreed that recruiting new directors is becoming more difficult, yet at the same time more important. As boards increasingly focus on matrices that list the attributes they are seeking, they should not lose sight of the critical criteria for any new directors—really smart people who have good judgment. Members discussed the following emerging recruitment best practices:

- *Never stop recruiting.* Unforeseen departures can create difficulties for a board. Accordingly, directors recommended that boards keep potential directors in the recruitment “pipeline,” even when the board is not in need of new members.
- *Expand the board if a compelling candidate emerges.* Given the increasing difficulties in finding outstanding directors in today's environment, some members reported that their boards were expanding beyond their identified target size if compelling candidates became available.
- *Invest in orientation.* Members agreed that efficient orientation programs will save significant time for management and other directors. Engaging outside counsel to conduct the director orientation program was identified by one member as being particularly effective.

4. Preparing for lead director succession

Members also discussed how long they should serve as lead director, factors that complicate transitions and how to select and train their successor. Among other matters, directors noted the following:

- *Appropriate term is situation specific.* Members agreed that although there is no ideal tenure for lead directors, rotations of one year or less generally are too short for the lead director to become comfortable and successful in the role.
- *Choosing the right successor takes time, judgment and care.* Although composing the board with individuals that could all serve as lead directors would be ideal, such a goal is not always achievable. The unique leadership responsibilities of a lead director and the

temperament and experience required to perform the job require the board to devote appropriate attention to finding the proper individual to serve as lead director.

- *There is no consensus on how to train a successor.* Directors were divided on how to train their successors, if at all. Informal mentoring of the candidate by the current lead director may be enough, though some boards are also considering more formal programs, including electing vice lead directors or vice chairmen.

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