



The Relationship Between the Lead Director and the CEO

Posted by Jeffrey Stein, King & Spalding LLP, on Saturday May 21, 2011

Editor's Note: This post comes to us from [Jeffrey Stein](#) and [Bill Baxley](#) of King & Spalding LLP; both Mr. Stein and Mr. Baxley are partners in the Corporate Practice Group at King & Spalding. This post relates to a recent meeting of the Lead Director Network, which is described in more detail [here](#).

A strong, productive relationship between the lead director and a company's chief executive officer ("CEO") will support improved corporate performance, as well as a more effective board of directors. Such a relationship between the lead director and the CEO can help a company execute its strategy more effectively, successfully navigate a crisis, complete a major corporate transaction and resolve the multitude of other issues that a company and its board will encounter. However, notwithstanding the increased prevalence of the lead director position and the recent expansion of lead directors' roles, there is little formal guidance as to what practices and procedures are beneficial, or detrimental, to the relationship between the lead director and CEO.

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 1, 2011 to discuss the relationship between the lead director and the CEO. 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 meeting, as described in the *ViewPoints* report.

1. Factors Affecting the CEO-Lead Director Relationship

At the meeting, LDN members discussed the key factors that affect the CEO-lead director relationship, including the following:

- **CEO and lead director experience:** CEOs who are new to a company or who do not have a background in the industry are more likely to seek advice from the lead director,

both in managing the company and in dealing with the board. Lead directors are especially well-positioned to advise the CEO when they have themselves previously served as CEOs.

- **Unique challenges and opportunities facing the company:** Although significant challenges facing a company may strain the relationship between a CEO and the lead director, these difficult circumstances require the greatest collaboration between the two individuals. In these situations, the lead director can help not only by providing objective advice, but also by dealing with key constituencies.
- **Company leadership structure:** Members viewed the various titles given to board leaders (i.e., non-executive chairman, lead director or presiding director) as distinctions without any practical difference. Members agreed that, notwithstanding the views of persons outside the company, these titles do not meaningfully affect the lead director's relationship with the CEO or the lead director's responsibilities on the board of directors.

2. Lead Director Responsibilities and the CEO-Lead Director Relationship

LDN members discussed the lead director's responsibilities and the impact these responsibilities have on the lead director's relationship with the CEO. Members discussed the following topics:

- **Agenda Setting:** LDN members had differing views on whether the lead director should first consult with the CEO or with other directors in connection with setting agendas for board meetings. Some directors advocated setting the agenda based on directors' input and then soliciting the CEO's input. Other directors recommended developing the agenda with the CEO and then asking board members for feedback. LDN members also noted that agenda-setting conversations with the CEO were often good opportunities to discuss substantive issues with the CEO.
- **Facilitating Productive Board Meetings:** Lead directors are expected to encourage and drive high-value discussions at board meetings. LDN members agreed that drawing out differences of opinion and bringing boardroom discussions to a conclusion are two of the most meaningful ways in which a lead director could achieve this objective.
- **Chairing Executive Sessions:** As CEO's play such a significant role in board meetings, directors noted the increasing importance of executive sessions run by the lead director. LDN members agreed that having the lead director play such a strong role in these

executive sessions has had a profound, positive impact on how boards of directors do their work.

- **Communicating with the CEO:** LDN members provide the CEO with feedback after executive sessions, although in different ways. Some members preferred having one-on-one discussions with the CEO after the executive sessions (with these discussions usually conducted face-to-face), while others preferred bringing the CEO back into the conversation with the full board after executive sessions. Beyond this interaction, directors also noted that the CEO typically initiates conversations or meetings with the lead director, which LDN members viewed as a positive practice. Where the lead director initiates the discussions, the CEO may sense unnecessary interference in the performance of the CEO's responsibilities.
- **Evaluating the CEO:** Although a company's compensation committee is typically responsible for the CEO's annual evaluation, LDN members reported that lead directors are deeply involved in ongoing CEO evaluation. Lead directors often work with the compensation committee chair to define the CEO's annual goals, assist the CEO to in developing a self-evaluation and share the board's feedback so that the full board participates in the evaluation process.
- **Terminating the CEO:** LDN members agreed that once there are signs that a CEO's performance is faltering, the lead director should drive discussions about the CEO's situation with the company. If the circumstances require the board to terminate the CEO's employment, then the lead director is often called upon to negotiate such termination with the CEO. Conversely, members observed that the lead director should temper hasty board action if the lead director believes that the board may be moving too quickly to terminate the CEO.

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