The Family Business Board

Volume 1

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Table of Contents

Introduction

More than ever before, large family businesses and those that aspire to grow large need an effective board. Reasons include the demand for rapid innovation, the need to compete for outside talent, and a growing urgency to prepare for leadership succession and transfer of ownership across generations. It is estimated that with the transition of the boomer generation, 40 percent of current leaders of family-owned companies will retire in the next five years.[1] Volumes 1 and 2 are designed for leaders and owners of family businesses who are looking to help the company meet these challenges either by building a board or by advancing the capability of the one they have.

Principles

This first volume covers fundamental principles for defining board purposes and designing board structure. Examples of basic building blocks are included that can be adapted to meet the needs of companies at different developmental stages in the life of the business and of the generations of family owners. This volume focuses primarily on two challenges that lead family businesses to build a more professional board: growing complexity (of the company and family) and change (in markets, technologies, and business models). The second volume, subtitled Governance for Continuity and Growth, is a resource for advancing board effectiveness.

Since the first NACD handbook on family business boards was published in 2004, the body of knowledge and research on governance of family firms has grown enormously. (See the "Further Reading on Family-Business Governance" section on page 48 for a list of important publications on this topic, including recent books and the bimonthly magazine Family Business: The Guide for Family Companies.) More than 100 universities have developed family business programs as part of their business schools. Major accounting firms—including KPMG, Grant Thornton, and PwC—and executive search firms—including Korn-Ferry and Egon Zehnder—have undertaken family-business research, and international networks of family-business owners and advisors have grown significantly.[2]

As a world leader in corporate-governance education for public company boards, NACD recognizes the importance of family-owned or family-controlled companies. Family business does not always mean "small business." The top 100 family-owned or family-controlled companies in North America generated $1.6 trillion (11%) of $14.6 trillion GDP in 2010.[3] By 2014, two of the top-ten Fortune 100 public companies (Walmart and Ford) were family-controlled as were nearly 15% of the S&P 1500.[4] Worldwide, many of the largest companies are family-owned or family-controlled (Samsung, Toyota, Ikea, Hyundai, Fiat, Michelin), and the largest part of the economy for many regions is dominated by family businesses, including Central America, Malaysia, and Saudi Arabia.[5]

As their companies grow larger and more complex, directors of larger private and family-owned companies are attracted to NACD programs, looking to learn from peers and from best practices of public company boards, often wanting to learn how to select and manage independent directors and operate their boards by the highest standards of oversight and accountability. But as these discussions develop, there is diversity of opinion on what constitutes the best architecture for effective corporate governance. One type doesn't fit all situations. In countries with strong tribal cultures, e.g., India and Saudi Arabia, the use of outside independent directors is rare even for the largest family businesses. The model of family-business board governance presented in this handbook represents "best practices" as informed by the experience of many successful family business leaders and directors in the United States. It provides the reader with a solid starting place, recognizing that as family businesses become more global in reach and as the speed of change increases, new adaptive models of governance will emerge.[6]

Definitions

In this handbook the term family-owned business refers to a company or group of companies that are wholly owned by members of the same family, while family-controlled businesses are publicly traded or private-equity-backed companies in which the family members control the business by having a relatively high percentage of voting stock, thereby enabling the family, when voting such stock as a group, to determine the direction of the company. These businesses may also have a family foundation that dispenses charity and a family council as an advisory group made up of family members for the purpose of discussing ownership and family matters. But although these may take the form of a board—having a chairperson, meetings, committees, and the like—the term board is reserved for the usage that follows.

A board of directors for a family-owned or family-controlled business has fiduciary responsibility for the company.[7] In some cases, voting membership on these boards is reserved for family directors only, often with an advisory council or "board" of independent professionals informing discussion and decisions. However, the term professional board of directors as discussed in these handbooks refers to those boards that include one or more fiduciary directors who are independent of the family and their businesses. While some readers will have boards that do not yet include independent directors, this is the standard for genuine objectivity essential for a board's effectiveness and value. In family businesses, it is the inclusion and use of qualified independent directors that establishes clear differentiation between an advisory group serving family owners' interests and a corporate board focused on seeking the highest potential for the business, in balance with the best interests of all shareholders.

Benefits of an Effective Board

Participants in NACD's programs for family businesses often describe an effective board as one composed of contributors who have valuable skills, who focus more on where the business is going than on where it has been, and who operate as a cooperative team. In the early stages of getting comfortable with having independent directors, owners often comment about the importance of listening to other perspectives. As one founding chairman put it: "We know our business best, but we don't always know what is best for our business." Family executives often mention the benefits of more disciplined planning and accountability for performance. "Presenting at board meetings raises the game for our management team," one CEO commented, "and I am always willing to be accountable to knowledgeable people." For him there was a crucial difference between being held accountable by his father and an experienced group of independent directors versus by a group of less-objective family members.

At the NACD programs we have facilitated, participants often cited the following benefits of an experienced board:

- Provides an experienced and objective sounding board and thought partner for the CEO
- Brings perspective, skills, and experience that are highly relevant to the company's goals
- Provides oversight that builds trust with key stakeholders, including lenders, suppliers, and key customers
- Reinforces trust of shareholders not active in the company that the interests of all shareholders will be respected
- Enables the company to attract and compete for top outside talent, boosting confidence that the family business is a good place to build a career
- Provides top managers with greater objectivity in performance reviews, and ensures compensation that is based on market and standards
- Assures a sound process for company leadership development and succession
- Seeks to understand the family's shared vision, core values, and long-term objectives so that these inform company strategy and board decisions.

Perhaps the most frequently heard comment among family business directors at NACD conferences is that when the stakes are very high for a company and timely strategic direction is needed, a good board can make a critical difference; and the building of that board should have started several years in advance of the crisis. We hope this handbook and the volume to follow give you practical ideas, clarity, and confidence to be proactive so that you are able to build the board that the business and family will need before the need is vital.

CHAPTER 1

Opening the Boardroom Door

Family-owned companies traditionally draw directors only from the family. Founders and heirs alike are often reluctant to reveal any of the details of business activities to outsiders. To invite strangers into the family boardroom, be it a formal boardroom setting or at the kitchen table, is simply not acceptable. In short, many companies operate with a sign on the boardroom door reading "Family Only."

Yet a case may be made for opening up that door to outsiders. After all, a primary role of a board is to provide direction. This is the message of state corporation statutes, which typically say that the business of the corporation will be "managed under the direction of a board of directors." Family business advisors generally agree that the best direction comes from a board that includes at least one individual who is independent of the family.

If the board is to truly function as the owners' representative and to fulfill its obligation "to promote the best interests of the corporation and its shareholders in directing the corporation's business and affairs,"[8] then it should function as an entity completely separate from management. Does it make sense to have management making decisions at the management level, only to be rubber-stamped by the board? Of course not—this would be a waste of valuable resources available to ownership.

The "family-only" attitude prevents family businesses from gaining the many benefits an independent board member can offer. Leading family advisors have offered some of the following reasons for opening the boardroom to outsiders. Independent directors can:

- Open a "window to the world" and be a source of new ideas simply by virtue of their non-family status
- Share experience in running profitable businesses (especially valuable for new, first-generation family businesses)
- Provide specialized professional expertise (such as accounting, law, or marketing) not otherwise available to the family, except through outside consultants (In most cases, directors are less expensive than consultants and also more readily available when specific issues arise involving their expertise, thus keeping pace with the need for prompt decision making.)
- Mediate or arbitrate disputes within the family
- Enhance the company's ability to obtain needed financing
- Provide a public-company perspective (if the family is considering taking the company public and recruits a public-company director)
- Expand the company's networking system
- Build up a positive reputation for the company and its products and/or services to circles beyond the family's own connections
- Expand the company's knowledge of the market, including its competitors
- Reduce the likelihood of conflict or unhappiness among owners by providing a non-family sounding board or voice in important decisions, such as succession planning
- Serve as a bridge between the older and newer generations.

In essence, directors are the knights of the family business roundtable. They are there to protect the owners' investments and to grow and benefit the company as a whole. In consideration of these benefits, the family may begin a colloquy concerning the creation of a working board of directors that includes some individuals who are outside of the family. During this discussion, specific concerns may arise:

- Where and how do we find good directors?
- What do we pay them?
- Will we give them any of our family-owned stock?
- What if the director doesn't work out? How do we get rid of him or her?

(These and other questions are addressed in Chapter 3.)

What Kind of Board?

All U.S. corporations are required under standard law to have a board of directors, referred to as a statutory board. Company owners considering the creation of a new board of directors, or restructuring an existing board of directors, can consider several types of statutory boards, ranging from the "all-in-the-family" type to the independent type. In addition, they can consider an advisory board (sidebar, page 7).

The all-family board. This governing group, composed entirely of family members, is still a common form of board among family-owned businesses.

The family-dominated board. In this board, most directors are family members, and the remainder are part of the management or advisory team (who if not family themselves are certainly family-dominated).

The partially independent board. This working board contains only a few independent directors. The majority of this board usually consists of family members and/or management representatives. This is the type of board most favored by family businesses at all phases, from start-up to established company. It works well under the theory of "try it, you'll like it"—that is, sometimes it takes a period of time to get used to having an outsider participate in what has previously been the exclusive domain of the family.

The independent board. This working board contains a majority of individuals with no relationship to the family, to employees of the company, or to the company itself). This type of board is most favored by investors, lenders, insurers, regulators, and self-regulatory organizations (stock markets). Companies listed on the New York Stock Exchange and Nasdaq must have a board composition of at least 50 percent independent directors. Despite exemptions for controlled companies (in which 50 percent or more of the stock is held in the hands of one owner), some controlled companies may wish to have independent boards on a voluntary basis.

NYSE rules also require that listed companies have audit, compensation, and nominating/governance committees composed entirely of independent directors. Nasdaq has similar rules but with less formality for the nominating function.

Many family-business advisors believe it is best to move from an all-insider board to an independent board. Common sense would dictate that wise decisions are made after considering many points of view. To have the family making a decision at the family level and adopting it at the board level by a family-dominated board raises the question, Why have a board?—except as a rubber stamp and to satisfy state legal requirements. The same can also be said for the management-dominated board: management makes a decision at the management level and then rubber-stamps it at the board level.

Should We Have an Advisory Board?

Some family businesses find it useful to supplement their statutory board with an advisory board. This is a separate and distinct entity, usually consisting entirely of independent outsiders. It is not the legally constituted board as required by the corporate or business code of the state in which the business was incorporated or the limited liability company was created. Advisory boards are typically composed of individuals chosen by the family and/or management for the sole purpose of giving advice, as opposed to providing oversight. Such boards usually meet when requested by the family, management, or the legal working board for the purpose of providing expert advice on certain issues. Tenure is often simply a year, rather than the longer terms one sees in statutory boards. The advice given is just that—advice; it may or may not be put into place, as the advisory board cannot decree policy, which is one of the important functions of the legal working board. Advisory boards are most common in scientific and high-technology industries, but they are becoming more popular for all kinds of businesses.

Stages of Boards

In the course of its life through multiple generations, a family business will typically move through the types of boards described above in a series of stages. For example, a business may move from an all-family board to a family-dominated board or partially independent board and then finally to a majority-independent board.

The advisory board usually emerges at some point during this evolution. For example, a firm may begin with an all-family board and then add a trusted advisor to the board. It may then be time to form an advisory board. Advisory boards are often used as a preliminary stage or "farm club," using baseball terminology, for eventual promotion to a working statutory board.

It is important to note in this context that advisory boards should never be used as a substitute for a working statutory board. If an advisory board acts like a statutory board and makes key decisions, it will be held liable for those decisions just as if it were a real board. A truly effective advisory board has a specific purpose and disbands upon completion of that purpose. But Robert K. Mueller, an early chairman of NACD, has noted:

> Advisory boards are appealing to companies and directors alike—they offer all of the glory of board service with less of the guts it takes to face major liability. But to keep good advisory board members, companies must bestow "TLC" as well as titles. An engagement to join an advisory board is like an engagement of love. It is a period of occupation without possession. You contract to advise even if nothing happens to your advice. If it were not for the admiration of those who come to us for advice, we would not join an advisory board. Another analogy is that an advisory board is like the healthcare profession. It is but one of a few activities that strive to destroy the reasons for their own existence.[9]

CHAPTER 2:

Duties and Responsibilities of Directors and Boards

As mentioned earlier in this handbook, a key function of a statutory board of directors is to provide oversight. The principal duties and responsibilities of directors, as expressed in state corporation laws and in judicial decisions, include the duty of care and the duty of loyalty.

Duty of Care

In making decisions, directors must take into consideration all relevant and material facts that are reasonably available for their consideration. If the director acts in a reasonable manner and makes a good-faith effort to investigate and gather information prior to making a decision, the courts generally will not second-guess the director—a judicial principle known as the business judgment rule.

When the board delegates its responsibilities, it may reasonably rely on information, reports, and recommendations provided by officers, other agents, and committees on matters delegated to them. However, the board retains the obligation to oversee its delegates and to act in good faith and become reasonably familiar with its sources of advice before relying on such advice.[10] In many states, the duty of care is contained in corporate or business codes. In states where it has not been codified, such as in Delaware, this duty is nonetheless recognized and enforced as a part of the so-called common law—that is, law that exists as a result of judicial decisions rather than legislation.

A closely related duty (considered part of the duty of care) is the duty of attention or obedience. This duty requires a director to attend meetings, come to meetings prepared, and keep himself or herself adequately informed.

Duty of Loyalty

In their business-related actions, directors must be loyal to the corporation, putting this loyalty ahead of any other interests. Directors cannot personally benefit from any action they take on behalf of the company. If they have potential conflicts of interest, they must disclose them and recuse themselves from any votes on such matters.

In some cases, potential conflicts could prevent the director from being considered independent. It is also possible that these conflicts could prevent the director from being effective as a board member. Directors must represent and protect the interests of the company and all of its shareholders. The bottom-line definition of this particular duty is that the company comes first.

Related Duties

A related duty under the duty of loyalty is the duty of good faith. This duty prohibits a director from acting with any kind of improper motive. This particular duty may arise out of a situation in which the director does not have any personal financial interest, but he or she performs in a manner that is not in the best interests of the company (e.g., voting not to sell the company for the reason that the director wants to retain his or her board seat).

Yet another related duty is the board's duty of full and fair disclosure, which pertains to both the duty of care and the duty of loyalty; it does not exist as a separate duty.[11] Under this duty, board minutes should be accurate and should reflect important events, such as disapprovals. The duty also applies to individual directors. All information provided to the company (or to the family) must be stated truthfully.

These are common-law duties that have become a part of our law through judicial decisions, and they are generally recognized by the courts in every state.

The Work of the Board

As part of their general duties under state and common law, boards must perform certain work or delegate it to board committees. The following is a partial list of duties generally expected of the board under most corporation statutes.[12]

Election of officers. The board must determine the positions and functions of officers as well as select officers.

Loans, guarantees, and other assistance to employees and officers. The board must approve loans to, the guaranty obligations of, or other assistance to employees and officers. But beware: under the Public Accounting Reform and Investor Protection Act of 2002—more commonly known as Sarbanes-Oxley—boards of public companies are not permitted to make loans to officers or directors. Furthermore, under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, companies must disclose whether any employee or board member holds or was granted any financial instrument to hedge against a decrease in the value of the company.

Director compensation. Director compensation must be fixed by the board.

Officer, director, employee, and agent indemnification. Under certain circumstances, the provision of indemnification to directors, officers, employees, and agents must be determined by the board.

Stock issuance. The board must approve the issuance of stock.

Issuance of stock options and rights. The board must approve the issuance of stock options and rights.

Declaration of dividends. Any dividends of a corporation must be declared by its board.

Amendments to charter; adoption and amendment of bylaws. The board must approve charter amendments and, except for certain incidental amendments, submit them to the stockholders for approval. Most corporate charters give the board the power to amend the company's bylaws.

Retirement of stock. Only the board can retire shares of stock that are issued but that are not outstanding.

Reduction of legal capital. Only the board can reduce the corporation's legal capital.

Mergers and consolidations. The board must approve any proposal for a merger or consolidation and, except for certain incidental transactions, recommend the transaction to the stockholders for approval.

Sale, lease, or exchange of assets. The board must approve the sale, lease, or exchange of all or substantially all of the corporation's property and assets, and submit the transaction to the stockholders for approval.

Dissolution. The board may adopt a resolution to dissolve the corporation but must submit it to the stockholders for approval. However, board action is not required if the stockholders entitled to vote on dissolution consent thereto unanimously.

Interested director/officer transactions. In general, board approval is required for approval of all transactions in which officers are interested, including the compensation of officers.

Derivative litigation. The board must consider a shareholder demand that the board initiate derivative litigation.

Furthermore, boards may take on broader functions within the corporation, including the following duties:

- Approving a corporate philosophy and mission.
- Selecting, monitoring, evaluating, compensating, and, if necessary, replacing the CEO and other senior executives; and ensuring management succession. (This does not often occur in the family-owned and family-controlled company without the agreement of the family, but it can occur where the board is given such authority by the family.)
- Engaging with management in the development, review, and implementation of the company's strategic and business plans, including developing a depth of knowledge of the business being served; understanding and questioning the assumptions upon which such plans are based; monitoring the success of the plan; and helping to adjust it as needed.
- Reviewing and approving the corporation's financial objectives, plans, and actions, including significant capital allocations and expenditures.
- Reviewing and approving material transactions not in the ordinary course of business.
- Monitoring corporate performance against the strategic and business plans, including overseeing the operating results on a regular basis to evaluate whether the business is being properly managed.
- Ensuring ethical behavior and compliance with laws and regulations, auditing and accounting principles, and the corporation's own governing documents. In some cases this may involve establishing a program for legal compliance.
- Assessing its own effectiveness in fulfilling these and other board responsibilities.
- Performing such other functions as are prescribed by law or assigned to the board in the corporation's governing documents.[13]

In general, boards are permitted, but not required, to appoint committees to assist in the management of their responsibilities.[14] Implicit in these statutory and common-law duties are other duties and responsibilities that have evolved through a history of best practices and tradition in family-owned enterprises.

The directors of a family-owned company might do any of the following to add value to the enterprise:

- Create governance guidelines, a code of ethics, and conflict-of-interest rules and policies; and help to create vision and mission statements that maintain the family's legacy.
- Adopt a family employment policy.
- Make certain that there is a succession plan in place in the event of the death, disability, or departure of the company's leader.
- Monitor the performance of management on behalf of all owners (i.e., the family).
- Serve as a good-will ambassador for the company beyond the family both in a business sense and a social sense.
- Render advice to the family from an independent perspective.
- Make certain that there are open lines of communication within the family and the company.

These actions are not necessarily legal "duties." But they are generally considered to be effective—or leading—practices. Family businesses would be wise to use their boards for these purposes.

CHAPTER 3

Creating the Board

Creating a new board or revamping an old one requires understanding the purpose of the board and then turning that purpose into a reality.

Understanding Board Purpose

Before attending to details of size, composition, compensation, and so forth, it is important to know why you want to build a board. The previous chapter explained why some companies want to have working boards. Knowing which of these reasons are most relevant to your case can help you build or improve your board. Perhaps you want a good listener from outside the family to serve as a sounding board. Maybe you want to improve your expertise in a specific industry and/or region, for example, telecommunications in the Asia-Pacific region. Finally, one of your goals may be to improve your access to capital by finding someone with contacts, experience, and/or visibility in the financial markets.

Understanding Board Type

Another preliminary step is to determine what kind of board you want. Will you strengthen your statutory board by adding independent members and following leading governance practices? Or will you focus first on building an advisory board for expertise while keeping your statutory board small in number and scope? Either approach can work. The important thing is to plan. Knowing the purpose and type of board you want can prepare you to attend to the following details.

The Size of the Board

Before seeking directors, it is important to determine the size of the board. Often the company bylaws will include a provision that gives a range for board size, for example: The board of directors shall be made up of no less than X directors and no more than Y directors. Normally, the board then decides whether it will, from time to time, have the minimum number of directors, the maximum number of directors, or some number in between. Then again, the bylaws can always be amended to increase or decrease the size of the board by revising the minimum and/or maximum provisions. Keep in mind that it is much easier to add directors than to remove them.

There are two basic approaches to board size. One is to have a relatively small board (with fewer than 7 members), making minimal use of committees. The other is to have a larger board (with as many as 12 members), making maximum use of committees. Surveys of board size in public companies typically demonstrate a correlation between board size and company size. Nano-cap companies (with less than $50 million in market capitalization) have an average of 7 board members, while the average for mega-cap companies (with more than $200 million) is 12.[15]

Given the relatively small size of most first- or second-generation family businesses, boards will typically have 5–7 members. This is, in fact, advisable, since this smaller size should allow for efficient decision-making. Larger boards can also work, but they require active committees for important functions such as audit, compensation, and governance.

In setting the board size, consider the types of expertise that will most benefit the company (e.g., do we need someone with financial experience or marketing experience?). If none of the family or management has any experience with the type of expertise needed, then independent outsiders with such experience may be sought to provide this expertise.

Another important question to ask is What kind of team do we want to create? An important part of the answer will not relate solely to expertise but rather will address the variety that can flow from diversity of gender and race on the board. Does your board include women and minorities? If not, it might be time to examine the process for director nominations. The goal here is to create a well-rounded board with the very best individuals available. True pursuit of this goal should result in a diverse board without any special effort to achieve diversity; however, in some cases such an effort may be needed.

When the question of size has been determined, then you are ready to move on to the next step in the process, namely, Where do we find the directors who will meet our criteria?

The Makeup of the Board

After determining board purpose, type, and size, it is time to get into details of board makeup. This means first determining how many insiders (family members and management people) versus outsiders will serve. Then the actual designation of family directors, management directors, and independent directors can occur.

One of the questions most asked of consultants to family businesses is, How many independent (outside) directors should I have on the board? Companies listed on the NYSE and Nasdaq must have a majority of independent directors and, with some exceptions, all-independent committees for audit, compensation, and nominating/governance. These requirements, combined with a general sentiment that boards must be independent of management, have led most major public company boards to be entirely independent, with the exception of the CEO. For the family-owned business, this approach is unlikely to have great appeal. However, there is great merit in bringing in strong, independent voices for the good of the company and all its owners.

Ideally, a board would include two or three independent members to start. A single independent director might feel isolated and be reticent to express viewpoints that are contrary to the (majority) family's position. With a compatriot, his or her comfort level is likely to rise. In addition, adverse opinions tend to have a greater impact on the eventual decision of the board when they are voiced or supported by more than one person. In this regard, it is important that the family hear the pros and cons of board issues before settling on a course of action.

Finding Independent Directors. The best-known and most often used methods for finding directors are:

- Suggestions from family members;
- Suggestions from executive management who are non-family;
- Recommendations from bankers, lawyers, accountants, community leaders, and friends;
- Recommendations from other directors of the company;
- Recommendations from investors;
- Recommendations from organizations that maintain candidate registries;[16] and
- Professional director search firms.

Director nomination procedures vary widely. Consider the varying styles of the 11 family businesses outlined in a classic McKinsey & Co. study.[17] The most common approach used by the companies in that study was to have the family branches pool their holdings and elect a block of board members. In one company, the board selected new members, then sought approval by an inner family committee comprised of about 30 members, and then sought formal approval by an assembly of shareholders. In another company, board members were elected from a list of candidates at a meeting of all shareholders, using a one-share one-vote approach.

Using Job Descriptions. Being a director is not a job in the traditional sense, as directors are fiduciaries rather than employees. Nonetheless, they can benefit from "job" descriptions that describe what they are supposed to do for the board. If an independent director is chosen because of his or her expertise, then the company should provide that director with a job description describing what is expected of him or her in both general and specific terms. These expectations are often referenced in a welcome letter that refers to a company document. For example, "As a member of the audit committee, apart from your general duties as a director, you will be expected to serve as the company's financial expert and advise it on financial matters. If you are nominated by the board to chair the committee, you will fulfill the responsibilities described in "The Audit Committee Chair Role at ABC Family Company." (For an example of such a job description, see Appendix A, Sample Corporate Position Descriptions.)

Compensation of Directors

Director compensation varies according to the role of the individual. Outside (independent) directors are always compensated, and as a general best practice, family members who serve as directors are compensated as well. Director pay is a common method of providing family members with additional funds beyond dividends, which are taxed both at the corporate level and at the share-ownership level. It also conveys the message that directorship is a job with serious responsibilities. By contrast, non-family managers normally receive no compensation for board service, because it is presumed that their employee compensation covers board service as well.

When it comes to payment of independent or family-member directors, all directors should be equally accountable and compensated as performing peers. Statutory directors have the same duties of loyalty and care, and they function as a group. Therefore, they should be—and traditionally have been—paid at the same rates for similar work. The same approach is used on advisory boards, reflecting the fact that the advice provided by advisory boards comes from the group, not from a collection of individuals.

Directors usually receive compensation at identical rates in the following manner:

Board retainer fee (for their availability to the company at any time during a 12-month period). The director must be "on call" and maintain reasonable availability to receive this fee. All directors are paid the same retainer fee.

Per-meeting fee (to compensate for their attendance at each meeting of the board and the board committees). The director must attend the meeting in order to receive this fee. In most cases, all directors are paid the same per-meeting fee.

Chair fee (for chairing the board or a committee). This may be a fixed retainer or a per-meeting fee. In some cases, boards determine that service on some key committees will require substantially more work than service on other committees, so members of these committees (for example, the audit committee) may receive additional compensation for their work. According to the 2013–2014 Director Compensation Report published by NACD in 2014, most public companies (more than 80 percent across all size categories) paid some sort of additional compensation for key committee service in 2013, with the most common boost going to the chair position.

There is no standard method for determining the level of compensation for each pay element. However, boards can consider the following options in making their determinations:

- Matching the amount of fees paid by peers (competitors) if this information is readily available;[18]
- Consulting a compensation specialist;
- Basing it on the hourly compensation of the CEO, with a multiplier of the minimum number of hours expected from the director;[19] and
- Basing it on the hourly compensation the director receives from his or her business. (NB: This approach works well only if the board has just one independent director. The rate of pay should not differ from director to director unless the directors serve in different capacities.)

Pay varies by company size. For example, the average annual retainer at a large private company (with more than $1 billion in sales) might approach $100,000 per year, with some $70,000 as an annual board retainer, another $20,000 in board and committee meeting fees (when applicable, and assuming at least four board meetings and four committee meetings), and then some $9,000 per year for chairing a committee.[20] By contrast, this same package for smaller, family-owned companies averages $30,000 plus travel expenses, with about $20,000 in a board retainer and the rest in meeting fees (when applicable), plus a chairman's fee.[21]

Some directors prefer stock. In many family companies, however, stock is gold, and the families will not share it with outsiders. In these cases, when directors are paid stock, they receive phantom stock or stock-appreciation plans as compensation. These plans tie all or part of the director's compensation to the company's stock and its value. Phantom and stock-appreciation plans do not involve the actual issuance of stock to the directors, yet the director is treated as if he or she owned company stock. This entitles them to dividends and appreciation in the value of the shares, which they sell back to the company when they terminate their director status. Some companies issue a second class of stock that is non-voting.

Whatever form it takes, compensation should be fair and bear some reasonable relationship to the demands on the director's time. Keep in mind that if it becomes apparent that compensation is a prospective director's prime requirement, then that person probably should not be selected to serve on the board. However, business owners will get the value and quality of director service that they are willing to pay for; cut-rate honorariums can discourage directors from contributing the hard work, rigor, and discipline needed from the board, particularly when the company needs their help dealing with challenging situations.

Removing Directors

Directorship should not come with automatic tenure. Every board should know how it plans to remove directors who no longer serve the needs of the company. One of the great advantages that a family business has is that the family, owning all or the controlling share of the company stock, can remove non-family directors at will. As a result, the family business is not wedded to any previously selected director. Nonetheless, the process of removal can be a delicate matter, so the board should establish a policy that includes reference to evaluation, orientation, and education.

Evaluation

All boards should have a procedure in place to evaluate themselves and the CEO at least once a year. Some boards assess their overall performance, and some perform individual evaluations of both directors and the CEO.

A board evaluation asks: Do we have the right people, culture, issues, information, and process?

Bottom line, the questions to be addressed in a board evaluation take a big-picture look at the board and its focus, specifically:

- Do we do the right work? Is the board doing the work that is appropriate for its role, its capabilities, and its resources? This means focusing on the activities and issues that will help the company maximize shareholder value.
- Do we include the right people? Do the directors have the appropriate skills, knowledge, and capabilities to get the work done? Do they have complementary work styles and interact well enough to collaborate effectively with each other?
- Do we consider the right information? Do directors study and understand relevant information in order to spend their time effectively and make informed decisions?
- Do we have the right work process? Is the work organized so that the right people are enabled to do the right work?
- Do we have the right culture? Does the board encourage a culture that promotes candid communication and rigorous decision-making? [22]

Here are some additional questions to consider when evaluating board performances:

- Is adequate time allotted to discuss every issue of importance?
- Who dictates the terms and flow of the discussion?
- Does the chairman or CEO set the agenda and take up most of the airtime, or are other directors, particularly independent directors, encouraged to take the lead and frame the debate?
- Is candid dialogue encouraged or frowned upon?
- Is the atmosphere in the boardroom (level of formality, degree of candor) conducive to good discussions? [23]

The goal is to determine whether the various parts are functioning well or whether changes need to be made. The earlier any problem is discovered, the quicker it can be remedied.

In evaluating individual directors, many boards find it best to start with self-evaluation among individual members (expressing questions as "I") before moving to peer evaluation (expressing questions as "he/she"). A Blue Ribbon Commission report on director evaluation published by NACD suggests the following questions for board members:

- Do I prepare adequately for board meetings?
- Do I attend board meetings on a regular basis?
- Am I sufficiently aware of the issues and concerns affecting the company and the industry in which it operates?
- Do I have a good understanding of the company's strategic direction?
- Do I take courageous, constructive stands at board meetings when necessary?
- Am I honest and open when presenting my concerns or opinions to the board?

Candidate Interviews

Every candidate should be interviewed before he or she is offered a position on the board. The interview may be conducted by the CEO; the chairman; the nominating/governance committee, if the company has one; and/or family representatives.

The interview should allow the candidate to obtain information about the company and the company to obtain information about the candidate in order to determine whether they are a match. This process, of course, involves exchanging numerous questions and answers. Examples of such questions are given in Appendix B.

Each side of the table will be seeking certain information: Family members will want to know the candidate's background and experience, and whether he or she fits the mold for the type of expertise sought. Honesty, integrity, intelligence, cooperativeness, inquisitiveness, good communication skills, and a pledge of time and commitment are the major requisites for becoming a director of any company. Meanwhile, the candidate will want to know about the company, the family, and what is expected of him or her as a director. The potential director will also want to know about the company's governance culture.

Director Education

In order for the company to get full value out of its directors, particularly the independent ones, it must educate them about what the company does (products and services) and what its directors do (governance best practices). A director's manual, in either paper or electronic format, is an ideal tool for this purpose[24] and should at a minimum contain:

- A copy of the articles of incorporation or charter
- A copy of the bylaws
- A copy of the committee charters
- A brief history of the company
- A summary description of the company's directors and officers (D&O) insurance coverage
- A summary of the director's indemnity as provided by the company
- Names, addresses, and phone numbers of officers and other directors.

(For additional elements of the director's manual, see Appendix C.)

Other good written materials include:

- In-house publications (if available) about the company's business activities and employees; and
- Publications dealing with corporate governance and the duties and responsibilities of directors, and of boards generally.

The company can also provide "live" education by offering training led by managers or other people knowledgeable about various aspects of the business, such as sales, advertising, and accounting; and by providing continuing education on what a director should and should not do, or just on being a good director. Educational programs may be offered in-house by the company or by outside organizations, or off-site in the form of workshops and seminars.[25]

Using Committees

Most boards use committees, parceling out various agenda items to small groups of directors who can define the issues, study them, and then make recommendations for action to the full board.

Small boards—for example, with 7 members or fewer—may find it difficult to have committees, but even they can designate two committees with three people serving on each. If a board does make use of committees, the following are the most common:

The audit committee. Most companies, public and private, want board-level oversight of their financial reporting and internal controls. It is generally recommended that this be done through a committee composed entirely of independent directors. Standards for public company audit committee independence have evolved over time, from a majority-independent standard for companies listed on the NYSE in 1977 to an all-independent standard for NYSE and Nasdaq companies following November 2003 rules promulgated under Sarbanes-Oxley.

The compensation committee. In some companies both executive and board compensation is reserved for or limited to the family, which may or may not request that the board approve its recommendations. Other boards have committees to set executive and director pay, and in recent years many of them have been appointing all-independent committees. As of November 2003, this is a requirement of the NYSE and the Nasdaq.[26]

The nominating/governance committee. Some family-business owners consider the nomination of board members to be the prerogative of the family alone. This is directly contrary to the current practice of public companies—to have independent directors nominate new board members and to charge those same directors with governance matters, such as ethics codes, conflicts of interest, bylaw changes, and board procedures. The NYSE requires listed companies to have an all-independent nominating and governance committee, with certain chartered responsibilities, and the Nasdaq has a similar requirement.[27] (For an example of governance guidelines, see Appendix D. For an example of a charter for a nominating and governance committee, see Appendix E.)

Most small family businesses function quite well with just two committees, namely, audit and nominating/governance. Although private companies are not required to follow the rules imposed by Sarbanes-Oxley, the NYSE, or the Nasdaq, it is good to be aware of these requirements in case the owners ever decide to take the company public.

Remember that committees only make recommendations to the board. It is the board that makes the decisions resulting in policy.

Using Board Advisors

Seek the very best professional help available in constructing or reconstructing the board of directors—lawyers, accountants, lenders, and family-business consultants. Asking fellow family-business owners and trusted advisors for recommendations can help to narrow the choices.

CHAPTER 4

The Board, the Family, and Management

The board of the family business departs from the usual role of directors as representatives for the interests of shareholders. In public companies, shareholders can number in the millions, making it is impossible to gauge the desires of the majority on a regular basis. By contrast, family businesses usually have a small number of shareholders, and directors can meet with them any time to learn their concerns as well as their aspirations for the company. But proximity isn't everything. As an article in *Inc.* magazine observed, "a family business can be described as an interaction between two separate but connected systems—the business and the family—with uncertain boundaries and different rules."[28]

The Board's Role

Family members who appreciate the value and work of the board look to independent directors as sources of experienced, expert advice and protective oversight for their business. The advice that good owners seek focuses on achieving the highest potential of the business and achieving the common goals of the shareholders.

Whether they serve a public but family-controlled company or a private, family-managed company, the major responsibilities of the board include advising management on strategy, empowering management to own the strategy, and then monitoring management's performance. In these responsibilities fiduciary directors are responsible first to the company and then to the best interests of all shareholders. It is important that all directors recognize and preserve the distinction of director and managerial roles. Management runs the company. Directors do not manage the company, but they offer support and challenges that enable managers to sharpen their strategy and raise their game.

Family Directives

As a first step, as mentioned in Chapter 3, the prospective director should talk with family members about what the family expects of a non-family director. One of the most important questions to ask is whether the family expects the independent director to concentrate on what is best for the company or what is best for the family. The answer could well be that what is best for one is also what is best for the other, but this is not always the case.

As an example, the board may at some point need to vote on whether to pay a dividend in a certain amount to the family shareholders, or whether to use all or a part of the funds to buy new equipment and conduct some research. The first choice would benefit the family, while the second choice would benefit the company.

In defining expectations for outside directors, the family may want to establish some ground rules for board participation. If a candidate is uncomfortable with these directives, he or she should not accept election to the board. As part of a prospectus to share with director candidates during an interview, it is helpful to draft a statement of purpose for the board, specifying expectations for directors and family commitment to supporting board effectiveness. The exercise of creating and approving such a document may enable the family to come to a consensus on its goals for the board, a shared vision for their ownership of the company, values that are core to their company's success, and other expectations.

Goals

Directors should insist on guidance from the family concerning business goals that it wants to achieve, such as:

- Expanding the company through mergers and acquisitions;
- Preparing the company for future family generations;
- Going public, and/or
- Improving the value of the company for its eventual sale to third parties.

There also may be some subgoals, such as:

- Creating a viable succession plan;
- Providing good financial counsel to younger family members;
- Improving the board by finding strong directors with diverse backgrounds and expertise;
- Serving as an intermediary between the family and management; and/or
- Providing strategic advice to management.

Clarifying goals in this manner can help to make board service goal-oriented.

Based on its work over the years with a wide variety of family-owned enterprises, the consulting firm McKinsey has identified five attributes of an enduring family business. These traits, which must "work well and in synchrony," are as follows:

- Harmonious relations within the family and an understanding of how it should be involved with the business;
- An ownership structure that provides sufficient capital for growth while allowing the family to control key parts of the business;
- Strong governance of the company and a dynamic business portfolio;
- Professional management of the family's wealth; and
- Charitable foundations to promote family values across generations.[29]

Communication

Excellent, regular communication is critical to the success of any company and the effectiveness of its board. Independent directors of family businesses should strive to routinely communicate with the family. This communication may be with individual members; but as the number of family members owning or participating in the business grows larger, it is vital that a more formal organization is created, apart from the board, so that the family has a forum for discussion, education about ownership issues and responsibilities, and a means for speaking to the board with an informed, collective voice.

Social Events

Healthy relationships and honest communications are not built solely on business discussions, but they are further improved through social events. The family owners should plan events that allow them to get to know the independent directors in a casual setting. Some of the most common methods for accomplishing and building on these relationships are:

- Dinners or receptions before or after scheduled board meetings, where family-member directors, family-member managers, and other family members, can interact with the independent directors and non-family executives;
- Lunch breaks during board meetings attended by non-board family members;
- Retreats, where the directors retire to an off-site location to discuss business issues such as strategy and forward planning, while also including discussion sessions with the family and shared social activities; and
- Family council meetings, where the directors are invited to hear about shared family-owner goals and to meet informally with family members who do not participate in the business as directors or managers. The great value of this kind of organized meeting is that it helps to form bonds of understanding and prepares the way for a more informed and useful dialogue between the board and the family.

Succession Planning

One of the most important ways a board can help a company survive for succeeding generations is to insist that a succession plan be developed and regularly updated. Succession planning should be on the board's agenda from the very beginning.[30] Independent directors and family owners should collaborate on leadership succession, whether it's a board-led, family-supported approach or a family-led, board-advised approach.

Family Employment Policy

As companies and owning families become larger or more complex, it is important to establish a policy defining the responsibilities and mutual expectations for family-member employees and regulating how or if family members may work for the business. Such policies typically establish standards of qualification and meritocracy—reinforcing that a job in the business is not an entitlement, and that all employees, regardless of family status, are expected to be well qualified for their job, fill a needed position, and earn the confidence and respect of other employees through their valuable contributions and hard work. The policy may include requirements for education and experience, methods for accountability, and outline compensation guidelines.

Most important, a policy should be sufficiently clear in detail and be supported by both non-family managers and family leaders. Outside consultants can provide valuable assistance in creating such policies because, in most instances, they have dealt with a variety of plans and can facilitate the private comments, objective conversations, and family education necessary for a sound and well-supported policy. When it is fully drafted, the family employment policy should be shared with the board of directors for comment and follow-up monitoring. From time to time the family should review the policy and revise when necessary.

Advice and Support to Management

In addition to working with the family, independent directors will be working with members of management and of the board. As part of this collaboration, there must be open and active lines of communication maintained among all parties: the board of directors, the chairman, the CEO, and members of the C-suite and senior management.

This communication should not be restricted to board and committee meetings. All parties should speak to each other on a regular basis concerning company issues. A well-informed board should be every company's goal. It not only results in better policy decisions, but it creates the kind of teamwork that every company should strive for.

Just as the family will look to the board for advice and support—all keyed to achieving defined business goals and ultimate success—so too will management. One of the key roles of directors is to give advice to the management team and to adopt sound policies and plans for the company. Directors should never wait to be asked for their advice but should give it freely.

Both the board and management must understand that boards do not manage. The board's primary responsibility is to set policy after thoroughly studying the issues and being fully informed as to all of the pertinent facts that could affect its policymaking. No policy should be instituted unless or until the board has been presented with the pros and cons of the issue. There may be hundreds of reasons to adopt a position, but there are always reasons that recognize the dangers of adopting that particular position.

In addition, the board should play an active role in strategic planning. Ideally, rather than present a single plan for discussion, critique, and approval, management should present several strategic alternatives to the board and then work with the board to find the right course of action, shaping a viable strategy together.[31] In the family business, where advice is such an important aspect of board service, the board usually takes a very active role in preparing the strategic plan.

Once the plan has been adopted and made known to management, the board should offer its full support during the implementation phase. The development and launch of new plans must not be adversarial but rather should demonstrate the cooperation and full support of the board and management. When these entities work together, there is a greater likelihood of success.

Areas of Oversight

The monitoring responsibility of the board is not limited solely to policy. There are many other topics that require monitoring by the board, including:

- Financial performance. How is the company doing financially? Are the financial statements correct?
- Compliance with laws. Are we in compliance with the laws and regulations that affect our company and our industry? Are we aware of and do we fully understand them as they relate to our business operations?
- Vision and mission statements. Are they current, and do they clearly reflect the vision and mission of our company?
- Code of ethics. Do we have such a code, and is it understood? Has it been circulated to our employees with adequate explanation? How is it enforced?
- Conflicts of interest. Do the directors understand the legal definition of conflicts of interest? Is there a written policy to prevent conflicts? How is the policy enforced?
- Compensation. Is the compensation paid to company employees fair, and is it based on easily interpreted standards?
- Products and services. What are our products and/or services? Are they competitive in the marketplace? What are our competitors offering?

The board should avoid taking an adversarial stance with regard to its monitoring responsibility. Strive to establish a team effort that is strengthened by the board's advice and support. Once the marching orders are given, management must determine how to achieve the policy while keeping the lines of communication open in case the board's counsel is needed.

Directors monitor the operations of the company by:

- Asking questions;
- Seeking, obtaining, and reviewing written information (studies, reports, opinions) relating to the areas being monitored; and
- Carefully listening to and evaluating presentations by knowledgeable people within the company.

Directors must be assertive in performing their duties and responsibilities. If they do not have enough information or the right information, they should ask for it. They must never forget that they are the eyes and ears of the shareholders and are principally charged with increasing both the company's value and the value of the shareholders' investment.

CHAPTER 5

Legal Liability

There are some words in the English language that strike a chord of fear. In the business world, these include lawsuit, judgment, defendant, and criminal activity—and they can all be summed up in the phrase legal liability.

This chapter deals with the potential liability of directors in a family-owned or family-controlled company.[32] Both Sarbanes-Oxley and Dodd-Frank generated numerous rules impacting boards of directors of public companies, thus increasing the potential for lawsuits in those situations. While most of the governance provisions of those laws do not apply to private companies, there has been a spillover into the private-company realm as expectations of non-public boards have increased.[33]

Filing a lawsuit is easy. The ticket to admission to any court of law is a filing fee, which is usually nominal. On the other hand, courts can and do reject frivolous cases. Furthermore, even if lawsuits are accepted into court, it is hard for a baseless shareholder suit to prevail. The main problem is the "nuisance factor" of paying for legal defense. This is why so many boards settle out of court even if the directors might eventually be found innocent of the charges.

The best insurance against getting sued in the first place is the following:

- A basic understanding of the laws and regulations that most relate to the business so that warning signals will be visible when there is a threat of liability. The board should ensure that a compliance program is in place and monitor its performance.
- A commitment to be fully informed about the issues presented for consideration and action. If directors feel that they do not have enough information to make a decision, they should delay a decision until they get the information they need.
- Careful monitoring of management activities in order to ensure that management and employees are consistently following company policy and complying with appropriate laws and regulations.
- Active participation in the duties and responsibilities of the board, which includes asking questions and studying the issues before making decisions.

Likely Plaintiffs

Plaintiffs in lawsuits against directors may include:

- Shareholders;
- Employees;
- Customers;
- Suppliers;
- Regulators; and
- Community entities (national, state, local).

In cases where the family either owns outright or controls the company, a director should ask himself whether it is likely that the family as an entity or as individual family shareholders would sue a director and under what circumstances. Normally, this does not occur unless the director has been engaged in some fraudulent activity or is directly responsible for legal actions commenced against the company. Instead, the family is more likely to remove a director by vote. Although the prospect of liability to the family always exists, the likelihood that the family as a unit or some individual family member will be a plaintiff is at the lower end of the scale. Directors are also exposed to liability in relation to the other groups described above, but much of this exposure is based on statutory and common-law violations, where care and common sense could provide a shield.

D&O Liability Insurance

Before serving on the board of directors of any company, a prospective director should ask whether he or she will be covered by D&O liability insurance, but the inquiry must go further to include these specific questions:

- What insurance company writes the policy?
- Who is the insurance agent?
- What is the amount of the coverage?
- Does the face amount of the policy cover single incidents?
- What is excluded from the coverage?
- Does it cover attorney's fees as well as damages, and how are they apportioned?
- What is the procedure for filing a claim or seeking a defense?
- Am I fully covered by the insurance up to the limits of the policy? If not, why not?

- Is there a claim deductible? If so, in what amount? And who pays it?

Directors should also request a "plain language" copy of the company's D&O policy and ask private counsel to review the policy in order to make certain that the director has adequate coverage.

Indemnification

A search of the business code of the state in which the company is incorporated or chartered (or, in the case of a limited liability company, where it is organized) will indicate what type of indemnity may be provided by the business entity, and the extent of and requirements for such indemnity. The wording of these statutes varies, so directors should seek the assistance of private counsel as to what the applicable statute provides. They should also request a copy of the actual indemnity provided by the company where he or she serves in order to determine the extent of coverage, as well as the procedures for claiming the indemnity when needed. If the company does not offer such indemnity, the potential director should decline to serve.

By the same token, it must be noted that whatever indemnity is granted or offered, such indemnity is only as good as the company itself. It represents a form of currency offered exclusively by the company that entitles the director to present it at the paymaster's window if involved in a company-related lawsuit or any other action subjecting the director to liability exposure. If the company is financially able, the indemnity will be honored; otherwise, it is worthless. In most instances, the D&O liability insurance funds the indemnity.

Here are some indemnifications a company might offer a director:

- If you are sued by reason of your service as a director, we will pay the defense costs, including your attorney's fees.
- We will reimburse you for any damages awarded by a court against you by reason of your service as a director.
- We will not reimburse you if you are found guilty of a fraudulent or criminal act.

The foregoing are some examples of actual indemnity provisions, but they are by no means complete. Thus the need to read the applicable statute and the actual company-adopted indemnity provisions and to seek a clear interpretation through private counsel is obvious.

Other Antidotes or Shields from Liability

Aside from the D&O liability insurance and the indemnity described above, there are some statutory and common-law remedies available for the director's protection:

The business judgment rule. This is a common-law rule first pronounced by the courts in the latter part of the nineteenth century which in effect says the following: In the absence of fraud, conflict of interest, or other breaches of the duty of loyalty, a director will not be held liable to his or her company, its shareholders, or third parties for any decision or action, if he or she decided or acted in good faith and with a reasonable basis for believing that the decision or action was lawful and in furtherance of the company's best interests and purposes, as long as the decision or action was well informed.

Statutory limitation of liability for breach of duty of care. Some states permit a company, through its articles of incorporation, to eliminate its directors' personal liability for monetary damages to the company and its shareholders for breach of fiduciary duty, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the company or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (iii) for any transaction from which the director derived an improper personal benefit. Such provisions generally apply as a protection against breaches of the duty of care.

Statutory reliance law. This particular law, adopted in most states, provides generally as follows: A member of the board of directors, or a member of any committee designed by the board of directors, shall, in the performance of its duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports, or statements presented to the corporation by any of the corporation's officers or employees, by committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence or has been selected with reasonable care by or on behalf of the corporation.[34] Concealing knowledge that would make reliance unwarranted is not acting in good faith. Also, the wording of such statutes varies from state to state, so directors must familiarize themselves with the precise wording of the statutes in the state in which their company was incorporated, chartered, or officially organized.

Why Serve as a Director?

The risk of being sued has caused many people to question whether they should serve on a board. Certainly the threat of liability exists for all directors and all companies. Yet an educated, attentive, careful, inquisitive director who is fully cognizant of the provisions of the business judgment rule and who both possesses and makes full use of good common sense should prevail. A director who does not possess those qualities should not serve; indeed, he or she presents a danger to the whole board.

Serving as a director is an honorable and respected task. It is the very foundation of our business world, and we must continue to seek and encourage individuals who can fill board positions while performing at the top of the scale. The boardroom is no place for the timid. It is, however, the power center of American businesses and must continue as such in order to sustain our nation's position as the world leader of commerce.

Those who have been privileged to serve as a director understand the gratification experienced as a result of board service, particularly where the company has done well. Success is a goal for everyone, and there is no better place to seek it and celebrate it than as a director.

CHAPTER 6

The Board Meeting

After forming a board, the next task for board leaders is to plan an initial board meeting. What should go into the planning—whether for a new board or a reconstructed one—falls within the responsibility of the family leaders and management. Some things to consider are:

- Date and time of the meeting
- Location of the meeting
- Organization of the meeting (e.g., the election of officers and/or the chairman)
- Preparation of the agenda
- Orientation of directors
- Introduction to the family.

The Director's Tools

To start, directors should be given certain tools that will support and enhance their performance. They should receive access to a board portal or other resource, such as a printed director's manual, that contains board and company information. (See Appendix C for examples of some of the topics and materials to be included in this resource.) Throughout the course of their service, directors will need a regular flow of information. To this end it may prove useful to ask directors:

- What types of information they will need in order to make informed decisions
- How they would like the information to be presented (e.g., financial data in charts and graphs)
- How far in advance of board or committee meetings the information should be provided for review
- Which dates and times are acceptable for the scheduling of board and committee meetings.

The First Board Meeting

The initial meeting will differ in content from subsequent board meetings, as much of that first meeting will be dedicated to organizational matters. These matters will include:

- Election of officers, including the board chairman
- Creation of committees, including assigning tasks to committees and adopting committee charters
- Appointment of committee members and chairpersons
- Adoption of governance guidelines (see Appendix D)
- Miscellaneous administrative measures, such as mechanisms for reimbursing board or director expenses.

Agendas for subsequent board meetings may include such items as:

- Approval of minutes of previous meeting
- Declarations of conflicts of interest that would eliminate a director's participation in some specific agenda item or items
- Committee reports, which may include reports from family councils
- Financial reports
- Old business
- New business
- Confirmation of dates for next meeting(s), including committee meetings.

Among the board's most important responsibilities will be to create, contribute to, or revise the following company documents:

- Strategic plans for both the short and long terms
- A succession plan for senior management
- A family employment policy with a plan for monitoring and enforcing it (see Chapter 4)
- A company mission statement
- A company vision statement
- A legal-compliance policy
- A conflict-of-interest policy
- Written charters for each of the board committees (see Appendix E).

These activities should be given constant attention during the first 12 months of either the organization or reorganization of the board. They are all essential ingredients of best governance practices, and they should receive careful study, discussion, and planning before adoption.

The Role of the Chair

Essential to a successful and productive board is a strong chair. The chair is the leader of the board of directors and the liaison between the board and the family, as well as between the board and management. It is useful to spell out the duties and responsibilities of the chair either in the company bylaws or governance guidelines.

A successful chair will keep the meeting flowing and interesting. He or she will stay on topic and make certain that the most important topics are considered early in the meeting, when members' attention is at its highest point. Attentive to the needs of each director, the effective chair will permit each one to express opinions or question presentations or comments by others. These same criteria apply to the various committee chairs as well.

In many successful family businesses, the chair position is the logical place for a retired family-member CEO. As chair, the former CEO offers continued benefits to the company by virtue of his or her management experience with the business. To move the retiring leader into oblivion can harm the family-board relationship and deprive the board of a valuable asset in its decision-making and policy-setting activities. Transitioning the CEO to the chair role can help to solve generational problems as well—one of the keys to passing the business from one generation to the next.

The Agenda

The agenda for the board meeting is usually set by the board chair and the CEO with input from the directors as well as senior management. Committee meeting agendas should be set by the committee chair with input from the CEO, the board chair, and the committee members. The exact process for putting matters on the agenda for board and committee meetings should be spelled out in the company's governance guidelines. (For an example of an initial agenda for a typical governance committee, see Appendix E.)

Executive Sessions

Boards that have two or more non-management members should set aside time to discuss issues without managers present. Later, the substance of those discussions should be disclosed to the entire board.

Conclusion

Family businesses seeking to build boards can benefit by opening the boardroom door to outsiders. Boards and directors should stay mindful of their duties and responsibilities and related liability issues. With the help of independent directors and qualified advisors, family-business owners can create effective boards that provide advice and support to the family and to management through effective meetings.

As the family and management work with the board and trusted advisors to balance continuity and change, family-owned businesses can bring a lasting legacy to future generations and to society at large.

APPENDICES

Appendix A — Sample Corporate Position Descriptions
Appendix B — Sample Interview Questions
Appendix C — The "Director's Manual"—Suggested Materials for a Board Portal
Appendix D — Sample Governance Guidelines
Appendix E — Sample Governance Committee Charter
Appendix F — Case Study: Using a Board for Business Renewal
Appendix G — Further Reading on Family-Business Governance

APPENDIX A

Sample Corporate Position Descriptions

Examples developed by NACD

CEO/President*

The CEO/president will:

- Work with the board to develop a long-term strategy and vision for the company that preserves and enhances the value of the company in a sustainable way to the benefit of shareholders and other stakeholders.
- Develop and recommend to the board annual business plans and budgets that support the company's long-term strategy.
- Ensure that the day-to-day business affairs of the company are appropriately managed.
- Work with the board to set the company's financial and operating goals and objectives, and then strive to build a talent-rich leadership team and workforce that can achieve them.
- Foster a corporate culture that promotes ethical practices, encourages individual integrity, and reflects a respect for the value and contribution of all stakeholders.
- Maintain a positive and ethical work climate that is conducive to attracting, retaining, and motivating a diverse group of high-performing employees at all levels.
- Ensure that the company has an active plan for CEO and executive development and succession.
- Ensure continuous improvement in the quality and value of the products and services provided by the company.
- Ensure that the company achieves and maintains a satisfactory competitive position within its industry.
- Formulate and oversee the implementation of major corporate policies.
- Serve as a voting member of the board.
- Serve as the chief spokesperson for the company.

*Some companies split the roles of CEO and president, giving strategic functions to the CEO and operational functions to the president. This description does not include duties of the chair.

Board Chair

The board chair will:

- Lead the work of the board, ensuring the board's full discharge of its duties.
- Preside over meetings of the board, ensuring full participation by members.
- Organize and present the agenda for regular or special board meetings based on input from directors.
- Act as liaison between the board and management. (If also serving as CEO, the chair will delegate this duty to a lead director.)

With support from the corporate secretary and/or general counsel, the chair will:

- Schedule meetings of the full board and committees.
- Ensure proper flow of information to the board, reviewing adequacy and timing of documentary materials in support of any proposals before the board.
- Ensure adequate lead time for effective study and discussion of business under consideration.
- Oversee the preparation and distribution of proxy materials to stockholders.
- Work with the nominating and governance committee to:
    - Establish procedures to govern the board's work. (If also serving as CEO, the chair will abide by such procedures as set by independent directors.)
    - Help the board fulfill the goals it sets by assigning specific tasks to members of the board.
    - Identify guidelines for the conduct of the directors, and ensure that each director is making a significant contribution.
    - Ensure proper committee structure, including assignments of members and committee chairs.
- Together with the CEO, represent the company to external groups: shareholders, creditors, consumer groups, local

communities, and federal, state, and local governments.
- Carry out other duties as requested by the CEO and board as a whole, depending on need and circumstances.

CEO-Chair

The CEO-chair will:

- Fulfill CEO duties set forth in the position description Chief Executive Officer.
- Fulfill chair duties set forth in the position description Board Chair, which notes duties reserved to the lead director whenever the chair serves as CEO.
- Work with the lead director to ensure that all duties of the chair are fulfilled, delegating them to the lead director when deemed appropriate.

Lead Director

The lead director serves the board during periods when the CEO and chair positions are combined, as described in the position description CEO-Chair. The lead director will:

- Fulfill the duties of an board member as set forth in the position description Board Member (Director).
- Coordinate activities of the independent directors.
- Lead meetings of independent directors as presiding director and call such meetings as needed.
- Advise the chair as to an appropriate schedule of board meetings.
- Work with the chair and/or corporate secretary, help to develop the annual calendar of major items for discussion and approval by the board as well as agendas for board meetings.
- Approve the schedule and information sent to the directors for board meetings.
- Advise the chair as to the quality, quantity, and timeliness of the flow of information from company management to the board, requesting inclusion of certain information from management as needed. Although company management is responsible for the preparation of materials for the board, the lead independent director may specifically request the inclusion of certain material.
- Recommend to the chair the retention of consultants that report directly to the board.
- Interview, along with the chair of the nominating/governance committee, all board candidates, making recommendations to the nominating committee and the board.
- Advise the chair of the nominating/governance committee on the selection of committee chairs.
- Assist the board and company officers in developing, revising, and ensuring compliance with the company's governance guidelines.
- Chair board meetings or parts of meetings when the chair is not in attendance (including occasions that may arise for recusal by the chair).
- Be available for communication with the company's major shareowners both at the annual meeting and throughout the year as appropriate.

Board Vice-Chair

The board vice-chair will:

- Chair the board in the absence of the chair.
- Serve as the deputy of the chair, performing any duties requested by the chair, as described in ABC Board Chair.

Board Member (Director)

Note: Board members are not employees. Rather, they are fiduciaries whose work will vary greatly by company and situation. Therefore what follows is not a "job" description. Rather, it is a list of expectations. The board member will:

- Approve philosophy and mission.
- Select, monitor, evaluate, compensate, and, if necessary, replace the CEO and other senior executives, and ensure management succession.
- Review and approve management's strategic and business plans.
- Review and approve the corporation's financial objectives, plans, and actions, including the declaration of dividends, issuance of stock or stock options, and reduction of working capital.
- Monitor corporate performance against the strategic and business plans, overseeing operations.
- Ensure ethical behavior and compliance with laws and regulations, auditing and accounting principles, and the cor-

poration's own governing documents.

- Review and approve material transactions not in the ordinary course of business. Note: Under the law of our state of incorporation, the board alone can make charter amendments; approve a plan of merger or consolidation; sell, lease, or exchange all the company's assets; or dissolve the corporation. These duties cannot be delegated to a committee or to management.
- Perform any other functions prescribed by law or assigned to the board in the corporation's governing documents (charter, bylaws, governance guidelines, and other policies).
- Assess its own effectiveness in fulfilling these and other board responsibilities.

To contribute to these collective actions, consistent with fiduciary duties of care and loyalty to its owners, each director will:

- Prepare for, attend, and participate in all meetings of the board and assigned committees, including any special board or committee meetings that may be convened.
- Serve with diligence as a leader or member of one or more committees as assigned.
- Be available to the CEO and fellow directors for dialogue about the company outside board meetings as needed.
- Receive continuing education inside and outside the boardroom about the company, its industry, and corporate governance, as needed.
- Become familiar with and adhere to the Code of Ethics, the Corporate Governance Guidelines, and any other policies relevant to directors.
- Maintain the confidentiality of all nonpublic information.

Audit Committee Chair

The audit committee chair will:

- Lead the work of the audit committee, establishing effective procedures to ensure fulfillment of the duties of the committee as described in its charter.
- Develop the calendar and agenda for audit committee meetings, ensuring prompt deliberation and action on all items requiring committee approval.
- Preside over meetings of the committee and encourage free and open discussion at committee meetings.
- Report to the board on the deliberations and recommendations of the audit committee.
- Ensure effective information flow to the audit committee from members of management, including the internal auditor, and from external consultants, including the external auditor.
- Ensure that the board and its committees hold discussions on material risks facing the company.
- Ensure that audit committee members have appropriate access to members of management, including the internal auditor.
- Ensure appropriate composition of the audit committee, including the presence of an "audit committee financial expert" as defined by the Securities and Exchange Commission (SEC), consulting as needed with the chair of the nominating and governance committee.
- Ensure that the audit committee receives ongoing education and annual evaluation to remain optimally effective.
- Ensure that the external audit firm and any other external advisors retained by the audit committee are independent and qualified.
- Ensure appropriate frequency and candor of meetings with the internal and external auditors.
- Attend the annual shareholder meeting and respond to questions directed to the audit committee.
- Fulfill any other duties that the board may assign to the committee.

Compensation Committee Chair

The compensation committee chair will:

- Lead the work of the compensation committee, establishing effective procedures to ensure fulfillment of the committee's duties as described in its charter.
- Develop the calendar and agenda for compensation committee meetings, ensuring prompt deliberation and action on all items requiring committee approval.
- Preside over meetings of the committee and encourage free and open discussion at committee meetings.
- Report to the board on the deliberations and recommendations of the compensation committee.

- Ensure effective information flow to the compensation committee from members of management and from external consultants.
- Review and approve the compensation discussion and analysis (CD&A) section of the company's annual proxy statement.
- Ensure that compensation committee members have appropriate access to members of management, including the director of human resources.
- Ensure appropriate composition of the compensation committee, consulting as needed with the chair of the nominating and governance committee regarding member qualifications.
- Ensure that external advisors retained by the compensation committee are qualified and free from conflicts of interest as they advise the board on executive compensation.
- Ensure that the compensation committee receives ongoing education and annual evaluation to remain optimally effective.
- Attend the annual shareholder meeting and respond to questions directed to the committee about compensation matters.
- Fulfill any other duties that the board may assign to the compensation committee.

Nominating and Governance Committee Chair

The nominating and governance committee chair will:

- Lead the work of the nominating and governance committee, establishing effective procedures to ensure fulfillment of the committee's duties as described in its charter.
- Develop the calendar and agenda for committee meetings, ensuring prompt deliberation and action on all items requiring committee approval.
- Preside over meetings of the committee and encourage free and open discussion at committee meetings.
- Report to the board on the deliberations and recommendations of the committee.
- Review the annual proxy statement to ensure the appropriate description of director qualifications.
- Develop and update the company's corporate governance guidelines, consulting with the corporate secretary and/or general counsel as needed.
- Ensure effective information flow to the committee from members of management and from external consultants.
- Ensure that committee members have appropriate access to members of management.
- Establish and follow a process for rotation of committee leadership and membership.
- Ensure appropriate composition of all board committees, consulting with all committee chairs.
- Ensure that the board and committees receive ongoing education and annual evaluation to remain optimally effective.
- Ensure that recruiting firms retained by the committee are qualified.
- Attend the annual shareholder meeting and respond to questions directed to the committee on director qualifications.
- Fulfill any other duties that the board may request of the committee.

Committee Chair, Generic Standing

The committee chair, generic standing, will:

- Lead the work of the committee, establishing effective procedures to ensure fulfillment of the committee's duties as described in its charter.
- Develop the calendar and agenda for committee meetings, ensuring prompt deliberation and action on all items requiring committee approval.
- Preside over meetings of the committee and encourage free and open discussion at committee meetings.
- Report to the board on the deliberations and recommendations of the committee.
- Ensure effective information flow to the committee from members of management and from external consultants.
- Ensure that committee members have appropriate access to members of management.
- Ensure appropriate composition of the committee, consulting as needed with the chair of the nominating and governance committee.
- Ensure that the committee receives ongoing education and annual evaluation to remain optimally effective.

- Ensure that external advisors retained by the committee are independent and qualified.
- Attend the annual shareholder meeting and respond to questions directed to the committee.
- Fulfill any other duties that the board may assign to the committee.

Committee Chair, Special Committee

The committee chair, special committee, will:

- Lead the work of the committee, with the focus and time frame requested by the board.
- Develop agendas for committee meetings, ensuring prompt deliberation and action on all items requiring committee approval.
- Preside over meetings of the committee and encourage free and open discussion at committee meetings.
- Report to the board on the deliberations and recommendations of the committee.
- Ensure effective information flow to the committee from members of management and from external consultants.
- Ensure that committee members have appropriate access to members of management.
- Ensure that external advisors retained by the committee are independent and qualified.
- Fulfill any other duties that the board may assign to the committee.

General Counsel

The general counsel, working as needed with outside counsel and/or supported by the corporate secretary, will:

- Participate in the definition, development, and updating of company policies, programs, and procedures pertaining to legal matters.
- Ensure protected storage of the legal documents of the company.
- Participate in the design and updating of a reporting system that enables company directors and officers to reach informed judgments about the company's compliance with relevant laws.
- Draft, negotiate, and execute company contracts and ensure compliance with them.
- Participate in the identification and monitoring of the company's intellectual property, initiating and/or advising legal actions for protection.
- Advise company officers and directors on their legal responsibilities.
- Give legal advice to company officers and directors when legal matters arise.
- Review and advise on company transactions, ventures, and partnerships.
- Manage any litigation by or against the company.
- Ensure that the company's contractual and other legal obligations are fulfilled.
- Ensure development and compliance with the company's code of ethics, including policies for avoiding conflicts of interest and for ensuring confidentiality of nonpublic material information.
- Manage the company's legal department.
- Select and evaluate outside counsel to the company.

Note: In some cases, the general counsel will also take on the duties of the corporate secretary. See General Counsel-Corporate Secretary.

Corporate Secretary

The corporate secretary will:

- Manage logistics for all board and committee meetings, including the calendar of meetings and board and committee meeting agendas.
- Maintain the board's secure portal.
- Attend all board and committee meetings and record minutes.
- Facilitate communications and information flow between/among the board, committees, and senior management.
- Facilitate the orientation of new directors and assist in director training and development.
- Maintain key corporate documents and records.
- Ensure effective stock issuance and transfer operations.
- Ensure appropriate responses to stockholder correspondence directed to the board.
- Prepare and distribute the company's annual proxy statement.

- Manage logistics for the company's annual shareholder meeting.
- Serve as a focal point for communication and engagement with investors concerning governance.
- Advise the board on its roles and responsibilities, assisting the board in tailoring governance practices to meet the board's needs and investor expectations.
- Facilitate communications between the parent-company board and subsidiary boards.
- Ensure company compliance with state corporation laws, stock-exchange listing standards, and SEC reporting and compliance.
- Maintain all corporate records.

Note: In some cases, the corporate secretary will also take on the duties of the general counsel. See General Counsel-Corporate Secretary.

General Counsel-Corporate Secretary

The roles of general counsel and corporate secretary may be combined. The general counsel-corporate secretary will:

- Fulfill general counsel duties set forth in the document General Counsel.
- Fulfill corporate secretary duties set forth in the document Corporate Secretary.

APPENDIX B

Sample Interview Questions

Questions Director Candidates Can Ask About the Board, the Family, and the Company

Before going into an interview for service on the board of a family-owned company, a candidate may wish to study the following questions to get a good idea of topics to cover in the interview. The questions cover the interrelated areas of the board, the family, and the company. Some topics will arise spontaneously, but in some cases the candidate may want to pose a question. Adapted from A Guide For Directors of Privately Held Companies by Ronald Zall (Washington, DC: NACD, 2011), the list below is specifically tailored to family businesses.

Questions About the Board

1. What are the basic duties and responsibilities of a director in this company? Are they expressed in any written document? If so, may I have a copy of the document?
2. Is there a written job description for the company's directors? If so, may I have a copy?
3. Does the company currently have any written rules or guidelines relating to the operation of the board of directors? If so, may I have a copy?
4. What active committees, if any, does the board have?
5. Do the committees have written charters describing the scope of their activities? If so, what do these charters provide?
6. How often does or will the board of directors meet?
7. How often do the committees meet?
8. How long do board meetings usually last? Committee meetings?
9. Where are the meetings usually held?
10. If you decide to ask me to join the board, are you relying upon any special expertise or experience that I may have acquired? If so, what?
11. What is the term of service as a director in this company?
12. Are the directors elected annually or for staggered terms? If there are staggered terms, what are the terms?
13. Who are the present members of the board of directors?
14. What are their backgrounds (e.g., lawyer, CEO, retired accountant)?
15. What special expertise does each of them have?
16. For what period of time have the other directors served the company as a member of the board?
17. Does the company have rules pertaining to the length of time that a director may serve—in terms of years or age?
18. How many insiders are on the current board?
19. How many of the current directors are family members? Are they also part of the management team? If so, in what capacity?
20. How many of your current directors are independent and how do you define independence?
21. Is this a new board of directors that is being organized, or is it an existing board that is being reorganized?
22. How was I selected as a potential candidate for a director's seat on the board?
23. How were the other directors selected?
24. Is there a formal governance or nominating committee of the board that actually selects directors and elects officers, or is that done primarily by the family?
25. Is or will the performance of the board be reviewed on a regular basis? If so, how? By whom? How often?
26. Is or will the performance of each individual director be reviewed? If so, how? By whom? How often?
27. Will the board have the authority to hire and fire the CEO?
28. Will the board have the authority to independently set compensation for the board, the CEO, and other senior officers?
29. Will the directors be expected to act primarily in the interest of the company or in the interest of its shareholders/owners?
30. Does the company have any active liability-risk-management protection for the benefit of its employees, including the directors?
31. If so, how is the program administered?
32. What communication systems are in place to ensure an easy flow of information among the shareholders/owners, management, and the board?
33. Does or will the board have any input into the company's information flow system? If so, what?
34. How much preparation time does or will the director have for each board and committee meeting?
35. How am I to be compensated as a director of the company? (Note: If this is the principal reason or the most compelling

reason to serve on a board, then you should not serve, and the company would be wise to look elsewhere for a new director.)

36. Do or will the directors meet formally or informally with the family or its duly designated representative(s)?

Questions About the Family

1. Does the family own the company outright, or does it have control only by virtue of its percentage ownership?
2. If it only has control, what percentage does it own?
3. How many family members are owners?
4. How many members of the family are a part of daily management?
5. Is there a family council?
6. Does or will the family council or its duly designated representative meet on a regular basis with the board? If so, how often?
7. Does the family have a plan and/or goals for the company? If so, are they made known to the directors?
8. What are the current basic goals as expressed by the family?

Questions About the Company

1. What is the company's core business? What other businesses is it engaged in?
2. How can I learn more about the business, its products, and/or services?
3. Do you have an education or orientation program for new directors?
4. Do you have a continuing education program for directors?
5. Who are the principal senior executives of the company? How long have they been with the company? What are their goals, both short and long term, for the company? How effective are they as leaders?
6. Generally, what laws most affect the company's operations, which, if violated, could impose personal liability upon me as a director?
7. Has the company adopted a written indemnification policy that indemnifies me for my service as a director? If so, when was it adopted? What does it provide? May I have a copy of it?
8. Does the company carry directors and officers (D&O) liability insurance?
9. If the company has D&O insurance:
    - What is the amount of the coverage?
    - What company underwrites the policy?
    - Who is your insurance agent for the D&O coverage?
    - Who is covered?
    - What is expressly exempted from the coverage?
    - What is the procedure for filing a claim, including time limits?
    - Is there a plain-language summary of the policy provisions? If so, may I have a copy?
    - Is there a deductible or retainer? If so, what is the amount? Does the company pay it?
    - Is the company as an entity covered by the policy?
    - Is a director's spouse also insured?
10. Does the company have a policy or program for keeping its directors informed on issues that could create liability for the directors?
11. Does the company have a strategic plan? What period of time does it cover? Is it evergreen?
12. Is the strategic plan in writing? May I have a copy?
13. How often is the strategic plan monitored by the board of directors?
14. What part, if any, do or will the directors play in creating the strategic plan?
15. Does the company have a mission and/or vision statement? When was it adopted? If so, may I have a copy of it?
16. Does the company have a code of ethics or code of conduct? Does this code include a policy for disclosing conflicts of interest?
17. How is the code of ethics or code of conduct disseminated throughout the company?
18. Is the code of ethics or code of conduct monitored by the board and, if so, in what manner?
19. Can I obtain a current copy of the code?
20. Does or will the board review the performance of the CEO or any of his or her senior staff? If so, and if a review

is being conducted on a regular basis, what is the process for the review and how often is it done?

21. Does the company have a formal succession plan for its CEO and its key senior executives? If so, is it in writing and will I receive a copy if and when I join the board?
22. Is the company audited annually?
23. Who are the outside auditors?
24. Aside from conducting the annual audit, do the outside auditors perform any other services for the company (e.g., tax advice, consulting)? If so, what services?
25. For what period of time has the current outside audit firm served the company?
26. How often is the audit partner changed?

As stated earlier, the foregoing are only some suggested questions for the candidate to ask at the time of his or her interview. The answers generated by the sample questions should enable the candidate to determine whether he or she is willing to serve the company as a director. In addition, the candidate's personal evaluation of the person or persons conducting the interview, in terms of candor, knowledge, and responsiveness, is also a critical part of the interview process and of the final decision.

Questions for the Family or Company Representatives to Ask Director Candidates

During the interview process, director candidates will be expected to answer questions posed by family members or company representatives about themselves. The following are examples of questions that may be asked:

1. What other boards have you served on? When?
2. What boards are you presently serving on?
3. If you have served on any board and are no longer serving on such board, why are you no longer serving?
4. Have you ever served as a director for a family-owned or family-controlled company? If so, what company or companies? When did you serve? Why are you no longer serving?
5. Do you personally know any of the family members? Who? How long have you known them? What is the origin of the relationship?
6. With respect to any boards on which you are currently serving, how many hours per year do you expend in the services of such company or companies?
7. Do you have adequate time to commit to expending at least ____ hours per year as a director of this company?
8. Do you know what business our company is engaged in?
9. Do the business operations of our company create any conflict of interest that would oppose anything in which you are already involved? If so, what?
10. Here is a list of the names and business affiliations of our current directors:
    - Do you know any of them?
    - Do you know of any reason why you could not serve with any of them as a fellow director on this board?
11. What is your business background?
12. Per our governance guidelines, a director may serve until either he or she resigns, is not re-elected, or reaches the age of ____. Are you eliminated for consideration as a director by any of the foregoing guidelines?
13. One of the reasons you have been considered for nomination as a director is because of your perceived experience in ________ or as a _________. Are you willing to provide this company such expertise while serving as a director of this company?
14. Are you now or have you ever been the subject of any regulatory, criminal, or civil investigation or proceedings, or are you aware of any threatened investigation or proceedings? If so, please describe in detail.
15. Are you willing to participate in any continuing education sessions dealing both with the business of this company and the business of being a director?
16. What, if any, educational programs developed for directors have you attended?
17. Have you ever been a CEO, COO, CFO, or senior executive of any company? If so, what company or companies? What was your title?
18. Have you ever been involved as a family member in any family-owned or family-controlled business? What business? When? Please describe your involvement in detail.
19. Can you read and understand financial statements, inclu-

ding profit and loss statements (income statements), balance sheets, and cash-flow statements?

20. Have you ever served as a member of an audit committee? If so, please describe your service in detail.
21. What other committees have you served on? Please describe in detail.
22. Do you have any accounting experience or background? If so, what experience?
23. Do you know the difference between a family-owned and family-controlled business? If so, please describe the difference.
24. Have you ever mediated a dispute between family members? If so, please describe.

Once more, the foregoing are merely a sample of questions that you may ask. You can add such additional questions as you deem appropriate and applicable to your family and your business.

APPENDIX C

The Director's Manual—Suggested Materials for a Board Portal

The following is a list of documents or other items that should be included in the director's manual. The list does not contain all possible documents and information items but rather is intended solely as a starting point for development of the manual. The company should be free to add other documents or items that it believes will be helpful to directors in fulfilling their duties and responsibilities.

Most manuals will be in the form of a secure electronic portal, but if the manual is in hard-copy form, it is best to organize it as a loose-leaf notebook (for easy updating). The notebook, should carry the name of the company clearly imprinted on the cover and/or the side of the notebook, along with the words CONFIDENTIAL AND PROPRIETARY. Directors should treat this material in the most secure fashion.

Suggested contents:

1. Name of company
2. Address of headquarters and other offices
3. Important general contact information (phone, fax,[35] e-mail)
4. Articles of Incorporation or Charter, including all amendments
5. Bylaws and all amendments
6. A brief history of the company
7. A brief description of the company's business, including products and services
8. The mission statement
9. The vision statement
10. Current strategic plan
11. A copy of the company's latest financial information or, if a public company, a copy of the last annual report and Form 10-k
12. List of current directors, including:
    - Name
    - Business address and contact information (phone, fax, e-mail)
    - Home address and contact information (phone, fax, e-mail)
    - The director's business background (current job or previous job if now retired)
13. Director's relationship to the family and/or the founder(s)
14. List of senior officers, including:
    - Title and brief job description
    - Contact information (phone, fax, e-mail)
15. Plain-language summary of D&O insurance coverage
16. Plain-language summary of company's indemnity of the director
17. Term-expiration date for each director (for boards with terms and/or term limits)
18. Names of board committees (e.g., audit, compensation, nominating/governance), including:
    - Copy of committee charter or mandate
    - Current membership of each committee
    - The name of the chairperson of each committee
19. Current schedule of board and committee meeting dates and times
20. The name, address, and phone number of the company's independent auditor and the name of the current audit partner
21. The name, address, and contact information for the company's outside counsel
22. The name, address, and contact information for the company's major lenders
23. The name, address, and contact information for the company's pension/retirement-fund trustees and/or managers.
24. A description of the shareholder base
25. A copy of any shareholder agreements

In addition, each committee will have its own materials. For example, the compensation committee would have a copy of the current and proposed executive compensation plans, making these accessible to other directors at the appropriate times.

Directors should have access to their manuals—whether through a physical book or through electronic devices—at each committee and board meeting.

APPENDIX D

Sample Governance Guidelines

The Mission of the Board of Directors

The Board of Directors represents the interest of the Company and its owners in perpetuating a successful business, including optimizing long-term financial returns. The Board is responsible for determining that the Company is managed in such a way as to ensure this result. This is an active, not a passive, responsibility. The Board has the responsibility to ensure that in good times, as well as difficult ones, Management is capably executing its responsibilities. The Board's responsibility is to regularly monitor the effectiveness of Management policies and decisions, including the execution of its strategies. In addition to fulfilling its obligations for increased Owners' value, the Board has a responsibility to the company's customers, employees, suppliers, and to the communities where it conducts its business operations—all of whom are essential to a successful business. All of these responsibilities, however, are founded upon the successful perpetuation of the Company.

Selection and Composition of the Board of Directors

1. Board Membership Criteria

The Governance Committee is responsible for reviewing with the full Board, on an annual basis, the appropriate skills and characteristics required of Board members in the context of the current makeup of the Board.

This assessment should include issues of judgment, diversity, age, and skills—all in the context of an assessment of the perceived needs of the Board at that point in time.

2. Selection and Orientation of New Directors

The Board itself should be responsible, in fact as well as in procedure, for selecting its own members and recommending them for election by the owners. The Board delegates the screening process involved to the Governance Committee with direct input from the Chairman of the Board and the Chief Executive Officer. The Board and the Company have a complete orientation process for new Directors, established by the Governance Committee, that includes background material, meetings with senior management, and visits to Company facilities.

3. Director Education

Working with management, the Board shall create and maintain a full Indoctrination process for new Board members and for the continuing education of current Board members that includes: (1) extensive written materials; (2) meetings with key management personnel; (3) visits to Company facilities; (4) information concerning the Company's products, services, and business operations; and (5) corporate governance information and training.

4. Inviting a Potential Director to Join the Board

The invitation to join the Board should be extended by the full Board via the Chairman of the Board and the Chief Executive Officer of the Company, together with the Chairman of the Governance Committee.

Board Leadership

5. Selection of Chairman of the Board and the Chief Executive Officer

The Chairman of the Board of Directors shall be a nonexecutive in the Company, and he or she shall be elected annually by the Board. The Chief Executive Officer may serve in such position by virtue of a written contract that has been ratified by the Board, but he or she shall be elected to such position by and shall serve at the pleasure of the Board. He or she shall be a member of the Board.

6. Division of Duties and Responsibilities

It is the policy of the Company that the positions of Chairman of the Board and Chief Executive Officer be held by different persons.

7. Evaluation of the Chief Executive Officer

The Chief Executive Officer shall be evaluated by the Board, with the assistance of the Governance Committee, semi-annually.

8. Succession

The Board plans for succession to the positions of Chairman of the Board and Chief Executive Officer, as well as to certain other management positions.

Board Composition and Performance

9. Size of the Board

The initial Board shall consist of eight (8) members, of which four (4) of them shall be independent directors with no affiliation or relationship with the Owners or Management of the Company, three (3) shall be owners, and the last shall be the Chief Executive Officer. The Board determines the size of the Board and may enlarge or reduce its size from time to time if it so elects.

10. Term Limits

The Board does not believe that it should establish term limits at this time. While term limits could help to insure that there are fresh ideas and viewpoints available to the Board, they hold the disadvantage of losing the contribution of Directors who have been able to develop, over a period of time, increasing insight into the Company and its operations and, therefore, provide an increasing contribution to the Board as a whole. If a Director fails to contribute, then he or she should be removed.

11. Election of Directors

Directors shall stand for election each year at the Company's annual meeting.

12. Board Compensation

A Director's compensation shall be recommended by the Governance Committee and then approved by the full Board.

13. Executive Sessions

The Board, but not including the Chief Executive Officer, may hold an executive session at the conclusion of any Board meeting, whether a regular, annual, or special meeting.

14. Assessing the Board's Performance and Each Director's Performance

The Governance Committee is responsible annually to conduct an evaluation of the Board's performance during the preceding year, together with an evaluation of each Director's performance during the preceding year. Each Director shall participate in such evaluations. The results will be discussed with the full Board. The evaluations should include the Board's and each Director's contribution as a whole, and specifically review areas in which the Board and/or Management believes a better contribution could be made. The purpose is to increase the effectiveness of the Board and each Director.

Board Relationship to Senior Management

15. Board Advice and Counsel

Having selected and/or approved the senior management team, the Board acts as an advisor and counselor to senior management and ultimately monitors its performance.

16. Senior Management Attendance at Board Meetings

Both the Chief Financial Officer and the General Counsel shall be expected to attend all Board meetings with the exception of the Executive Sessions. Should the Chief Executive Officer want to add additional people as attendees on a regular or special basis, it is expected that this suggestion would be made to the Board for its concurrence.

17. Board Access to Senior Management

Board members have complete access to the Company's Management. It is expected and assumed that Board members will use judgment to be sure that this contact is not distracting to the business operations of the Company and that the Chief Executive Officer be aware of the contact. Furthermore, the Board encourages Management to, from time to time, bring into Board meetings some of the Company managers and personnel who: (a) can provide additional insight into the items being discussed because of personal involvement in these areas, and/or (b) represent managers with future potential that the senior management believes should be given exposure to the Board.

Meeting Procedures

18. Selection of Agenda Items for Board Meetings

The Chairman of the Board, together with the Chief Executive Officer, will establish the agenda for each Board meeting. Each Director is free to suggest the inclusion of item(s) to be placed on the agenda.

19. Board Materials Distributed in Advance

It is the sense of the Board that information and data that is important to the Board's understanding of the business to be conducted at a Board or Committee meeting be distributed in writing to the Board or a Committee before it meets. It is suggested that this information be distributed at least ten (10) days before any such meeting. Management will make every effort to see that this material is as brief and clear as possible, while still providing sufficient information to permit the Board to make informed decisions and the committees to make informed recommendations to the Board.

20. Board Presentations

As a general rule, presentations on specific subjects may be either written, verbal, or a combination of the two; and such presentations, if in writing, shall be distributed to the Board in advance in accordance with paragraph 15, supra, so that the Board meeting time may be conserved and discussion time focused on questions that the Board has about the material. On those occasions where the subject matter may be too sensitive to put in writing, the presentation will be discussed at the meeting. Any person who is a non-Director and who makes a presentation to the Board shall be informed that he or she must present both the pros and cons of the issue(s).

21. Review and Distribution of Minutes

Minutes of all meetings, both Board and Committee, shall be prepared under the supervision of the Board's Secretary, reviewed by General Counsel, and distributed in accordance with the policy established by the Board of Directors. A draft of such Minutes should be distributed within ten (10) working days after the meeting. Suggested revisions should then be sent to the Board Secretary, the General Counsel, the Chairman of the Board, and the Chief Executive Officer. A final draft of the Minutes shall then be prepared and distributed to the Directors at least ten (10) working days prior to the next meeting.

22. Confidentiality

Confidentiality shall be observed at all times concerning the Company, its business operations, finances, programs, plans, etc., in accordance with policy created by the Board of Directors. This requirement shall apply to the Directors, to senior management, and to all other employees and agents of the Company. The Board, however, may by its action create exceptions in writing (e.g., press releases).

Committee Matters

23. Number, Structure, and Independence of Committees

The current committee structure consists of the Audit Committee and the Governance Committee. There will, from time to time, be occasions on which the Board may want to form a new Committee or disband a current Committee, depending upon the circumstances.

24. Assignment of Committee Members

The full Board shall assign Directors to serve on the Committees, and each Committee shall elect its chairman. The desire of the individual Director shall be made known to the Board before such assignments are made. This process shall occur annually.

25. Frequency and Length of Committee Meetings

Committee meetings will be held during the afternoon of the day immediately preceding a regular, annual, or special Board meeting, but special meetings may be called by the Chairman of the Committee. The length of the meetings will be determined by the meeting agenda and the desires of the Committee members.

26. Committee Agenda

The Chairman of the Committee, in consultation with the appropriate members of Management and staff, including the other members of the Committee, will develop an agenda for each Committee meeting. Such agendas shall be distributed to the Committee members at least ten (10) days prior to the actual Committee Meeting.

27. Committee Charter

Each and every Committee of the Board shall prepare a charter in writing which sets forth the duties and responsibilities of the Committee. The charter shall then be approved by the full Board and may be amended in writing from time to time if necessary.

28. Director Attendance

Any Director may attend any Committee meeting, but unless he or she is a member of the Committee, he or she may not participate or vote.

29. Ex-Officio Committee Member

The Chairman of the Board shall be an ex-officio member of the Audit Committee, and the Chief Executive Officer shall be an ex-officio member of both the Audit Committee and the Governance Committee.

Miscellaneous

30. Major Decisions

It is the general policy of the Company that all major decisions be considered by the Board as a whole.

31. Company Spokesperson

Under the direction and supervision of the CEO, Management shall speak for the Company to all stakeholder groups (i.e., customers, Company associates, communities, suppliers, creditors, government, partners, and joint venturers.)

32. Meetings

The Directors of the Company shall endeavor to meet on a regular basis with the Owners/Members of the Company or with duly designated representatives of the Owners/Members in order to maintain and foster a dialogue about the Company's business status and operations, as well as plans for the future. At a minimum, there should be at least two (2) such meetings per calendar year.

Sample Governance Committee Charter

Governance Committee Charter

Purpose: The committee shall help to ensure that the board-governance system performs well, with specific responsibility for making recommendations to the board of directors on board organization and procedures; performance evaluation of the CEO, the board, and its individual directors; nomination of directors; compliance with laws; and compensation programs for senior management, the CEO, chairman, and vice-chairman of the board and the directors. This committee works closely with the CEO, who shall be an ex-officio member of the committee.

Membership: All committee members shall be directors of the company, and at least three committee members shall be independent directors.

Meetings: The committee shall meet at least four times per calendar year, usually the day immediately preceding the board meeting, at times and places decided by the chairman of the committee after consultation with committee members and with the chairman of the board and the CEO.

Chairman: The chairman shall be appointed by the board of directors on an annual basis.

Duties:

1. Make recommendations to the board and review with it on an annual basis the appropriate skills and characteristics required on the board in the context of the strategic direction of the company in furtherance of its duty to recommend candidates for director positions on the board.
2. Manage the process whereby the full board assesses the performance of the CEO every six months; report the results of the evaluation to the board along with any recommendations for improvement.
3. Manage the process whereby the full board annually assesses its performance, and then report the results of this evaluation to the board along with any recommendations for improvement.
4. Manage the process whereby the current board members are evaluated individually by the board at the time they are considered for renomination, and provide advice to individual board members based on these evaluations.
5. Upon receiving the resignation of any director or the CEO, recommend to the full board whether to accept the resignation.
6. Recommend for board approval a definition of what constitutes an independent director.
7. Recommend to the board the existing board members to be renominated annually, after considering the appropriate skills and characteristics required on the board, the current makeup of the board, the results of the individual evaluations of the directors, and the wishes of existing board members to be renominated.
8. Review with the board on an annual basis the appropriate skills and characteristics required of new board members.
9. Solicit nominations for new directors and screen the list of potential new directors submitted to it by other directors or from any other sources. Decide whether the assistance of a search firm is needed and, if so, choose the firm after obtaining approval of the full board with respect to the search firm's fees and other retention terms.
10. After a review of board candidates and after considering the advice of the chairman of the board and the CEO, designate which candidates are to be interviewed. Candidates at a minimum are interviewed by the chairman of the governance committee, the chairman of the board, and the CEO but may be interviewed by other directors.
11. After the interviews, recommend for board approval any new directors to be nominated. Prior to the final vote of the board on the nomination of a new director, arrange for the selected candidate to meet all existing directors not yet met.
12. Design an orientation program for new directors and consult with them on their progress.
13. Design educational programs for all directors. Working with senior management, through the CEO, design continuing education programs for directors relating to the company's business and recommend programs relating to the improvement of the directors' skills as directors.
14. Recommend committee assignments to the full board for approval. This shall be done after receiving advice from the chairman of the board and the CEO, with consideration of the desires of individual board members.
15. Prepare and submit for full board approval corporate governance guidelines and committee charters and annually review such documents and recommend changes if necessary.

16. Keep abreast of and inform the full board of developments in the corporate governance field which could affect and/or benefit the company.
17. Recommend annually to the full board the compensation to be paid to directors, including the chairman and vice chairman of the board, after first consulting with the chairman and vice chairman.
18. Make recommendations on the structure of board meetings.
19. Recommend matters for consideration by the board.
20. Review with the CEO the functions of senior management and make recommendations on changes.
21. Review periodically with the chairman of the board and the CEO the succession plans relating to the CEO and senior management and make recommendations to the board with respect to the process for the selection of any successor CEO of the company.
22. Review all compensation plans for senior management in consultation with the chairman of the board and the CEO.
23. Recommend the approval of all compensation plans relating to senior management.
24. Review all compliance programs established by management and by the board, monitor performance of the programs on an ongoing basis, and recommend changes to the full board if and when necessary.
25. Review all executive compensation programs.
26. Review on a periodic basis the operation of the company's executive compensation programs to determine whether they are properly coordinated.
27. Establish and periodically review policies for the administration of executive compensation programs.
28. Take steps, if necessary, to modify any executive compensation programs that yield payments and benefits that are not reasonably related to executive performance.
29. Establish and periodically review policies in the area of management perquisites.

APPENDIX F

Case Study: Using a Board for Business Renewal

Crane & Company

This case was presented at a past NACD national leadership conference in Washington.[36] It illustrates a series of board-building steps that can be adapted to enable a family-dominated board to evolve to meet greater challenges. In Volume 2 of this Handbook, we'll look in more detail at how companies like Crane build alignment among directors, management, and family owners to achieve greater competitive advantage.

When Lansing Crane was asked in 1995 to give up his law practice to help run the family business, Crane & Company was facing greater trouble than he or the family-dominated board understood. The 195-year-old company was manufacturing and selling cotton-fiber fine stationery, carbon paper, stock certificate paper, architectural blueprint paper and high-security currency paper. Since 1879 it had been the sole supplier of currency paper for the U.S. government—a source of pride for the family and Crane's employees but a part of the company's business that didn't generate much revenue.

It soon became clear that three of the core product lines were becoming obsolete, while the market for fine stationery was in rapid decline. That would leave currency paper as their only profitable product, but unless Crane could diversify its currency products and incorporate innovative security features to constantly thwart counterfeiters, that business could be lost, too. For Crane & Company to survive, they would need to invest in new technology and equipment, expand currency paper sales to other countries, and develop new product lines to take the place of declining ones. "But we didn't have the know-how to achieve all that," Lanse Crane said, "and our family shareholders had a relatively low tolerance for risk and change."

Strategy: Strengthen Management Through Board Change with Family Support

Lanse Crane had enough credibility with the family-dominated board to lay out the hard facts and gain agreement that the way forward would have to begin with learning from outside experts, and that this learning path would likely lead to an infusion of additional talent to both the executive team and to the board. First, an exploratory learning process began, using a series of advisors including strategic planners, family business consultants, and executive search firms. That exploratory process made it clear that to achieve the business-renewal strategy, the company would need ongoing advice that could be more effectively (and less expensively) provided by bringing onto the board independent directors with specific skills and industry perspectives. Using a well-developed candidate profile, four independent directors were recruited and added to the board of four well-chosen family members, plus the chairman and CEO. Audit and compensation and governance committees were organized, each chaired by an independent director. A lead director was designated. Soon the perspectives and probing questions of the experienced independent directors, combined with those of the experienced family directors, began to change the board meeting culture, with directors vigorously discussing strategic issues, serving as thought partners with the CEO, encouraging management-team development, and boosting family owners' confidence in the direction of the business.

As the board deepened its understanding of the company's global competitive environment, it became clear that Crane & Company would need to grow and diversify by investing in technology and by making one or two strategic acquisitions to expand capability and market reach. Technology, which had rendered Crane's legacy products obsolete, became the path to innovative new currency products. An acquisition of Sweden's currency and papermaking facilities outside Stockholm established Crane as an international currency company able to offer state-of-the-art products to governments worldwide.

Once the strategic revitalization of the business was in hand, the board and management turned their focus to the need for some family shareholders to obtain liquidity and financial diversification. While this combination of forces often leads to the inevitable sale of many family businesses, the capability of the Crane board, the increasing strength of management and the growing trust of family shareholders enabled a different outcome. A minority private-equity investor was carefully selected to provide capital to grow the company and offer significant liquidity for shareholders. As a result, the growth and liquidity goals were achieved, with the majority of shareholders choosing to stay invested for the long-term.

Lanse Crane offered a thoughtful observation on this process:

> We learned to expect a lot of our directors, and their value has been enormous…. All who serve on our board must be prepared to commit a significant amount of time to the work, somewhere between 200 and 300 hours per year for directors and more for committee chairs. An effective board is a culture where all directors represent all shareholders equally. Family business directors have to understand the business, be prepared to think critically, challenge assumptions, and know how to think as an owner. Directors must understand the difference between the board's role and the roles of management and ownership. When we pick family directors for our board, one of the criteria we use is that the family directors must have the aptitude to be capable directors on anyone's board. That helps assure that board decisions are based on merit. Family entitlement doesn't trump.[37]

Today, Crane & Company has transitioned from a paper manufacturing business to a profitable global technology company. Its currency business makes banknote paper, security features, and printed banknotes for customers worldwide, and its nonwoven products are used in filtration and industrial applications.[38] The Crane family retains control, and the board is composed of both independent directors and family members who are committed to being excellent contributing directors. Management has become more professionalized, utilizing non-family executives in top positions, guided by the family's core values as articulated by family directors and a Crane family council. These values include a long-term perspective and a legacy of dedication to employees and customer service. As Lanse Crane commented:

> Crane needed to change in order to survive and prosper. I believe changing our board in the way we did was an essential condition for our success. Hopefully the company can continue to provide value to our owners, customers, and employees for many years to come. We owe much to our directors for helping to create that future.

APPENDIX G

Further Reading on Family-Business Governance

Aronoff, Craig E., and John L. Ward. *Family Business Governance: Maximizing Family and Business Potential.* Palgrave Macmillan, 2010.

Aronoff, Craig E., Joseph H. Astrachan, and John L. Ward. *Developing Family Business Policies: Your Guide to the Future.* Palgrave Macmillan, 2010.

Aronoff, Craig E., Stephen L. McClure, and John L. Ward. *Family Business Succession: The Final Test of Greatness.* Palgrave Macmillan, 2010.

Family Business: The Guide for Family Companies (1993–), www.familybusinessmagazine.com.

Hausner, Lee, and Douglas K. Freeman. *The Legacy Family: The Definitive Guide to Creating a Successful Multigenerational Family.* Palgrave Macmillan, 2009.

Lane, Suzanne, and Joseph H. Astrachan, Andrew Kyt, and Kristi McMillan, "Guidelines for Family Business Boards of Directors (2006)." *Family Business Review* 19, no. 2 (2006): 147–167.

Montemerlo, Daniela, and John L. Ward. *The Family Constitution: Agreements to Secure and Perpetuate Your Family and Your Business.* Palgrave Macmillan, 2010.

Pendergast, Jennifer M., John L. Ward, and Stephanie Brun de Pontet. *Building a Successful Family Business Board: A Guide for Leaders, Directors, and Families.* Palgrave Macmillan, 2011.

Rosplock, Kirby. *The Complete Family Office Handbook: A Guide for Affluent Families and the Advisors Who Serve Them.* Bloomberg Press, 2014.

Williams, Roy, and Vic Preisser. *Preparing Heirs: Five Steps to a Successful Transition of Family Wealth and Values.* Robert Reed Publishers, 2010.

Endnotes

[1] MassMutual, Kennesaw State University, and the Family Firm Institute, *2007 American Family Business Survey* (Springfield, MA: Massachusetts Mutual Life Insurance Co., 2007), 7.

[2] The Family Business Network (FBN) is the largest international network of family-business owners, with more than 8,000 members located in 58 countries. The Family Firm Institute (FFI) is the largest international association of family-business advisors, with more than 1,600 professionals in more than 80 countries.

[3] Campden FB, "Top 100 Family Businesses in North America," June 15, 2011, http://www.campdenfb.com/article/top-100-family-businesses-north-america. This Campden FB list was compiled with the help of John Ward, professor of family enterprise at Northwestern University's Kellogg School of Management in Chicago.

[4] Claire Zillman, "Eight Family-Owned Fortune 500 Companies," *Forbes*, June 2, 2014, http://fortune.com/2014/06/02/family-owned-500/.

[5] Family Firm Institute, Global Data Points, http://www.ffi.org/?page=globaldatapoints.

[6] Barbara R. Hauser, in *International Family Governance: A Guide for Families and Their Advisors* (Rochester, MN: Mesatop Press, 2009), points out that while the American model for effective boards seeks to differentiate and objectify business oversight in relation to family culture, in other parts of the world, loyalty to ethnic group or local tribe may be a more powerful source of authority, changing the notion of what makes a trusted director "independent."

[7] Note that this definition distinguishes the legally responsible board of directors from a board of advisors. In practice, many family businesses have both; see Chapter 1, "What Kind of Board?"

[8] Corporate Law Committee of the American Bar Association, *Corporate Director's Guidebook*, 6th ed. (New York: ABA, 2011).

[9] Robert K. Mueller, "The Care and Feeding of Advisory Boards," *Private Company Boards* (Washington, DC: NACD, 1995).

[10] Stephen A. Radin, *Business Judgment Rule: Fiduciary Duties of Corporate Directors*, 6th ed. (New York: Wolters Kluwer Law & Business, 2009), citing *Hanson Trust PLC v. ML SCM Acquisition, Inc.*, §781 F.2d 264.

[11] In the case of *In re Wayport, Inc. Litigation*, Cons. C.A. No. 4167-VCL (Del. Ch. May 1, 2013), the court stated that "the duty of disclosure is not an independent duty, but derives from the duty of care and loyalty," adding that "The duty of disclosure arises because of the application in the specific context of the board's fiduciary duties," and that "Its scope and requirements depend on context; the duty does not exist in a vacuum." For a good discussion of this case, see Francis Pileggi, "Delaware Fiduciary Duty of Disclosure Explained by Chancery," *Delaware Corporate and Commercial Litigation Blog*, May 13, 2013, www.delawarelitigation.com/2013/05/articles/chancery-court-updates/delaware-fiduciary-duty-of-disclosure-explained-by-chancery/.

[12] For a more detailed discussion of directors' legal responsibilities, see *Report of the NACD Blue Ribbon Commission: Director Liability* (Washington, DC: NACD, 2013).

[13] This list, which is compiled from a variety of sources, including the American Bar Association, the American Law Institute, the Business Roundtable, National Association of Corporate Directors, and other relevant bodies, appears in *Report of the NACD Blue Ribbon Commission: Director Professionalism* (Washington, DC: NACD, 2013).

[14] See the Delaware General Corporate Law, § 141(c)(2) (Del. Code Ann. tit. 8 § 141(c)(2), rev. 1974); and the *Model Business Corporations Act*, 4th ed., § 8.25 (January 2008).

[15] *The 2013–2014 NACD Public Company Governance Survey* (Washington, DC: NACD, 2014).

[16] See, for example, the NACD Directors Registry at www.nacdonline.org.

[17] Heinz-Peter Elstrodt, "Keeping the Family in Business," *McKinsey Quarterly* (November 2003): 94–103.

[18] For comprehensive data on public company compensation, see *The 2013–2014 Director Compensation Report* (Washington, DC: NACD, 2014). For select private company compensation, see *The 2013–2014 NACD Private Company Governance Survey* (Washington, DC: NACD, 2014). Nearly a third (29.8 percent) of respondents to the *Private Company Governance Survey* conducted in 2013 stated that their companies were family-owned; and of those, 51 percent said that the companies were managed by family members.

[19] A very rough rule of thumb is 10 percent of the CEO's pay could work, since the typical CEO works 2,000-plus hours per year for the company, while the typical director works 200-plus hours. For directors' average time commitment, see *the 2013–2014 NACD Public Company Governance Survey* and the *2013–2014 NACD Private Company Governance Survey.*

[20] *The 2013–2014 NACD Private Company Governance Survey*, passim.

[21] The $30,000 figure is based on a 2012 survey of U.S. private-director compensation among members of Young Presidents Organization, by Lodestar Global, *Private Company Director Magazine*, 1, no. 1, (2014): 29. *The 2013–2014 NACD Private Company Governance Survey* gives a higher number for directors serving companies with revenues of less than $50 million.

[22] *Board Dynamics: How to Get Results From Your Board and Committees* (Washington, DC: NACD, 2012). See also *Director Decision-Making: A Sensible Approach* (Washington, DC: NACD, 2013).

[23] *Id.*

[24] For an example of a book-form board manual, see *The Onboarding Book: A Template for the Orientation of New Directors Including Sample Documents for Boards and Committees* (Washington, DC: NACD, 2012).

[25] For a description of educational offerings from NACD, visit www.nacdonline.org. Through its live programs hosted by NACD Chapters and the national organization, and through webinar and video series, NACD presents several hundred programs per year. In addition, NACD's Board Advisory Services division provides customized educational and evaluation services.

[26] Nasdaq requires an independent audit committee. For compensation and governance committees, it requires either an independent standing committee or the use of independent directors as a group to determine compensation.

[27] *Id.*

[28] "Family-Owned Businesses," Inc., www.inc.com/encyclopedia/family-owned-businesses.html.

[29] Caspar, Dias, and Elstrodt, "The Five Attributes of Enduring Family Business."

[30] For guidance on CEO evaluation and succession, see *Success at the Top: CEO Evaluation and Succession* (Washington DC: National Association of Corporate Directors, 2014).

[31] For a new guide on the board's changing role in strategy development, see *The NACD Blue Ribbon Commission Report on Strategy Development* (Washington DC: NACD, 2014).

[32] For an in-depth discussion of director legal liability, see *The NACD Blue Ribbon Commission Report on Director Liability* (Washington, DC: NACD, 2013).

[33] Andrew L. Weil, Alexander G. Fraser, and Bradley E. Phipps, "Dodd-Frank Affects Private Companies Too" (Corporate and Securities Alert, DLA Piper), Dec. 3, 2013, www.dlapiper.com/en/us/insights/publications/2013/12/doddfrank-affects-private-companies-too-practice. See also: Jim Liddy, "Evolve Corporate Governance to Keep Pace With the Demands of Growth," *NACD Directorship* 40, no. 1 (2014): 64.

[34] Delaware General Corporation Law, Title 8, § 141(e).

[35] The use of faxes has declined in recent years but may be required for certain kinds of communication. For example, some financial institutions have policies that require the use of faxes rather than e-mail attachments.

[36] Lansing Crane and Allen Bettis, "Innovation for Family-Controlled Companies: The Key Role of the Board," presentation delivered at the NACD National Leadership Conference, Washington, DC, 2012.

[37] "Family Business Q&A: Lansing Crane," *Family Business magazine*, http://familybusinessmagazine.com/index.php?/freefeature/single/family_business_qa_lansing_crane.

[38] Ylan Q. Mui, "Crane has provided the paper for U.S. money for centuries; now it's going global," *Washington Post*, Dec. 14, 2013, http://www.washingtonpost.com/business/economy/crane-has-provided-the-paper-for-us-money-for-centuries-now-its-going-global/2013/12/13/9aa4190a-5c39-11e3-be07-006c776266ed_story.html.

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Allen Bettis is a specialist in family-business governance and an advisor to leading business and financial families across the United States, assisting them with their boards, family councils, foundations, and family offices. He brings a unique combination of knowledge of both corporate governance and family dynamics and is a skilled advisor and facilitator. With 20 years of experience consulting with hundreds of family-business owners, boards, and family offices, Bettis is a frequent speaker on family-business topics for NACD and serves on the faculty of NACD's Board Advisory Services. He is an NACD Governance Fellow and past president of the NACD Minnesota Chapter.

Bettis earned a doctorate in counseling psychology from Emory University, developing a special interest in the psychology of achievement in entrepreneurial families. He did postgraduate study in business administration and strategic planning at the University of Denver and in family business advising at the University of St. Thomas. He has served as faculty member for the Governance for Families in Business forum at the University of Southern Maine and for the Caribbean Governance Training Institute, and as instructor for family-business programs at the University of Notre Dame, the University of St. Thomas in Minneapolis, and the Family Business Network in Bogota, Colombia. Bettis also serves as a board member of a private family holding company.