



TOPIC: Role of the Lead Director

SUMMARY: This memo provides guidance on the role of the lead director.

This resource available to: National Association of Corporate Directors (NACD) Members, NACD Faculty

GOVERNANCE PRINCIPLE(S):

Principle V: Independent Board Leadership. *Governance structures and practices should be designed to provide some form of leadership for the board distinct from management.*

Source: *Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies*

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KEY FINDINGS:

A lead director is a board member, usually elected by the independent members of the board, who performs certain duties on behalf of the board. This director often serves as chair of the governance committee of the board. This would be true of either a public or a private company board.

- An official/de jure lead director is a director formally voted to serve in the capacity of lead director and carries this title.
- An unofficial/de facto lead director is a director who by virtue of a key governance position in fact leads the board. Key positions would include chairman of the governance committee, and/ or the director named to preside over the executive sessions of the board (held without members of management present).

Regarding the “presiding director,” current New York Stock Exchange (NYSE) listing guidelines require companies to disclose the name of the person presiding over such executive sessions (which need not be the same person for every session) and to publish contact information for how to reach outside directors. These listing requirements are posted on the home page of nyse.com and the sec.gov. They include a section on the role of the presiding director in executive sessions.

The following is a quote from a Weil, Gotshal & Manges memo regarding NYSE listing requirements:

Non-management directors must meet in regularly scheduled executive sessions (without management). The name of the director presiding at the executive sessions or the procedure by which the presiding director is selected for each executive session must be disclosed in the proxy statement (or, if the company does not file a proxy statement, in the company’s annual report), together with information about how interested parties can communicate with the presiding

director or the non-management directors as a group. If the regularly scheduled executive sessions of non-management directors include non-independent directors, then an executive session with only independent directors should be scheduled at least once a year.

The notion of an official "lead director" is not new. The phenomenon was noted and recorded (simultaneously and independently) by Jay Lorsch of Harvard Business School and Ira Millstein of Weil, Gotshal & Manges in the late 1980s.

Sources: NYSE Listing Guidelines; Weil, Gotshal & Manges

PREVALENCE

The NACD has been tracking lead directors since 1995. Here are highlights from a survey of U.S. public companies, representing a range of sizes and industries.

- 1995: 18% used a lead director
- 1997: 23% used a lead director
- 2005: 38.5% used a lead director
- 2009: 58% used a lead director
- 2010: 66.4% used a lead director

In general, the role of lead director is rising. Prevalence of separate chairs is slightly higher for private companies; also, it is higher for smaller, as opposed to larger, public companies. Approximately half of separate chairs are independent. The others are considered "insiders," and at times are former CEOs. In many family-founded companies, the original CEO moves on to be the chair. NACD recommends the use of a lead director in this case, and also recommends that the former CEO not remain on the board past a transition period.

Source: *2010 NACD Public Company Governance Survey*

ROLE OF LEAD DIRECTOR

A lead director is recommended as a way to represent the independent directors of a board. According to guidance offered by the *Report of the NACD Blue Ribbon Commission on Board Leadership*:

A leader of the independent directors—by whatever name—should be appointed by, and from, the independent directors of the board. In considering the leadership structure at the time of a transition of CEO/chair, each board should consider all of the options described in this report (including a non-executive chair and a lead director).

Source: *Report of the NACD Blue Ribbon Commission on Board Leadership*

ROLE OF THE BOARD CHAIR

The following are sample elements based on the chairman's job description. The Chair:

- Provides leadership to the board, convening and chairing its meetings.

- Establishes procedures to govern the board's work.
- Ensures the board's full discharge of its duties.
- Schedules meetings of the full board and works with committee chairmen to coordinate the schedule of meetings for committees.
- Organizes and presents the agenda for regular or special board meetings based on input from directors.
- Ensures proper flow of information to the board, reviewing the adequacy and timing of documentary materials in support of management's proposals.
- Ensures adequate lead time for effective study and discussion of business under consideration.
- Oversees the preparation and distribution of proxy materials to stockholders.
- Helps the board fulfill the goals it sets by assigning specific tasks to members of the board.
- Identifies guidelines for the conduct of the directors, and ensures that each director is making a significant contribution.
- Acts as liaison between the board and management.
- Together with the CEO, represents the company to external groups: shareholders, creditors, consumer groups, local communities, and federal, state, and local governments.
- Works with the governance committee, ensures proper committee structure, including assignments of members and committee chairmen.
- Carries out other duties as requested by the CEO and board as a whole, depending on need and circumstances.

Source: *Report of the NACD Blue Ribbon Commission on Director Professionalism*

CITATIONS SUMMARY:

- *Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies*
- NYSE Listing Guidelines
- Memo from Weil, Gotshal and Manges
- *Report of the NACD Blue Ribbon Commission on Board Leadership*
- *Report of the NACD Blue Ribbon Commission on Risk Oversight*
- *Report of the NACD Blue Ribbon Commission on Director Professionalism*

ADDITIONAL RESOURCES:

- [NACD Board Advisory Services](#)

For additional updates or insights on this topic visit www.nacdonline.org and use the “search” function, or go to Governance Resources and visit the bookstore.

ABOUT NACD:

Founded in 1977, the National Association of Corporate Directors (NACD) is the only membership organization delivering the insights and wisdom that corporate board members need to confidently navigate complex business challenges and enhance shareowner value. With over 10,000 members, NACD advances exemplary board leadership – by directors, and for directors – by empowering members through education, a forum for peers to share ideas, and an extensive knowledge base of information and publications. NACD fosters collaboration among directors and governance stakeholders to shape the future of corporate governance.