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role, duties & composition

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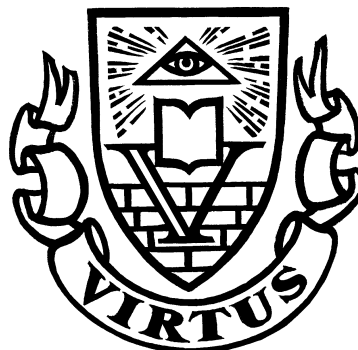
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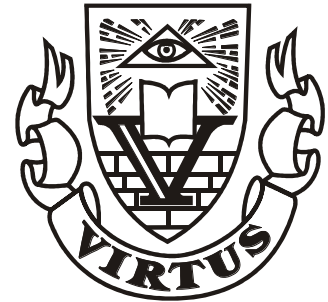
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CORPORATE BOARD: ROLE, DUTIES AND COMPOSITION

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PIVOTAL QUESTIONS IN SEPARATING THE CHAIRMAN FROM THE CHIEF EXECUTIVE ROLE

Patrick R. Dailey

Abstract

Separation of the Non-Executive Chairman role from the Chief Executive role continues to gain global acceptance. Prescriptions for separating these roles are most entirely focused on policy and structural matters. Little attention has been focused upon the interpersonal dynamics which determine the initial acceptance of the separation and its ongoing success.

Pivotal Questions focuses upon a Board's interpersonal dynamics crucial to the role separation. Pivotal Questions supplies guided questions that are the catalysis to dialogue that if not considered, might derail the intended success of the separation.

Keywords: Non-executive Chairman of the Board, Board dynamics, Board evaluation, Separation of the Chairman from the CEO role, Board governance, Role of the Chairman of the Board

Introduction

Sitting atop every public corporation is a structurally flat, largely non-hierarchical organization staffed with part-timers. These current and former titans of command and control organizations come together, perhaps, for a half dozen regular meetings annually in the high stakes application of participative management to govern public corporations as their company's Board of Directors.

The effectiveness of every board is guided by statutory regulations, best practice advice, and the interpersonal dynamics amongst board members. There is increasing attention upon policy manifestos, structural design, and regulatory solutions to corporate governance ills. Yet the impact of interpersonal dynamics, the so called "soft side factors", upon board effectiveness continues to be neglected. Too often, exceptional board leaders flounder a bit in board processes due to a lack of competence with the interpersonal elements that are intended to foster exceptional board synergy, that *magic* that every board member wants to feel and be a part of.

The growing *global* momentum for separating the Chairman from the Chief Executive role fits the above commentary nicely - lots of focus on policy and structure; little focus on the interpersonal dynamics involved in negotiating, implementing and living with the split.

Pivotal Questions provides Boards and their advisors a pragmatic agenda to consider the dynamics of the split and then better implement the separation of the Chairman role from the Chief Executive role. The approach is pragmatic. The belief is that candid discussion by the Board of those pivotal issues impacting the role separation can prevent dysfunction and deliver an outcome that is acceptable to all the constituencies - each board member, the Chairman, the Chief Executive, Presiding Director, and key senior management.

***Pivotal Questions* assists Boards explore crucial issues affecting the split.**

Pivotal questions is a menu of candid, direct and sometimes uncomfortable questions that dig in to those crucial issues that often derail the separation of the Chairman role from the Chief Executive role. Good intentions and some courage will lead you, the board leader, to choose those pivotal questions that your board wishes to explore. The process is constructive discussion. The payoff is board synergy that just may deliver that *magic* that boards strive for.

The left column of the table categorizes the various roles a Chairman plays in business oversight and governance. The right column provides the menu of pivotal questions. Pivotal questions have been vetted by Board Chairs, members, and professionals. By design, there are no formulaic prescriptions about correct vs. incorrect choices for the split. Choose those topics and questions that are material to the success of your board.

Chairman Roles and Responsibilities	Pivotal Questions
<p>Stress-test Strategy</p> <p>The Chairman takes the lead in facilitating Board debate and arriving at consensus decisions regarding strategic proposals presented by management. The Chairman adds additional value by bringing sector relevant experiences, strong strategic planning skills, and a rolodex of outside contacts with bankers, investors, and competitors.</p>	<p>Fresh Thinking</p> <p><i>Will new ideas flourish with your Chairman? Will your Chairman be a catalyst for taking the Board and management beyond “familiar” thinking and traditional ambitions to “fresh” thinking about the vision, realities, and opportunities for the business? Or, will new and divergent ideas be deftly shelved or bludgeoned with not-invented-on-my-watch instincts and controls?</i></p> <p>Future Focus</p> <p><i>Can your Chairman guide the company into the future? Do care, intellect, experience and persuasiveness blend together into a formidable board leadership capability? Or, does the appointment essentially boil down to the appointment of an honorary figure head respected for substantial contributions in the company’s past?</i></p> <p>Breadth and Range</p> <p><i>Will your Chairman stress-test strategic proposals? Is your Chairman thoroughly informed, professionally up-to-date, and conversant about sector best practices, customers, competitive innovation, threats, and the Board’s duty of care obligations? Or, do discussions rarely go beyond discussion of financial matters and stock price implications?</i></p> <p>Deal Guidance</p> <p><i>Does your Chair have the “juice” to access the best advisors and attract “most favored” terms and conditions? Do your Chairman’s external relationships provide the company with the “first look” or the “last look” on deals? Do doors open? Or, will your Chairman largely be an insider with limited external “pull” who relies on others for deal acceleration?</i></p>
<p>Monitor Risk and Business Performance</p> <p>While the full Board is accountable for monitoring the company’s operational and financial performance, its long term viability of the business, and timely, transparent, and full disclosure to shareholders, the Chairman often takes the “point” in the Board’s fulfillment of its risk management responsibility for</p>	<p>Risk Appetite</p> <p><i>Does the Chair’s risk appetite align with the CEO’s? Where will there be friction? Does the Board agree with the balance point the Chairman will guide the company to follow between high risk pursuits versus risk avoidance inclinations?</i></p> <p>Availability</p> <p><i>Will your Chairman be reachable and available? Is your Chairman prepared to invest upwards of 500 hours per year or more to Board business? Can your Chairman devote even more time as major events materialize - acquisitions, disposals, key hires, major capital commitments? Or, will your Chairman’s</i></p>

<p>shareholders. With Dodd-Frank legislation, these accountabilities become more significant.</p>	<p><i>availability be more of an “on call” commitment?</i></p> <p>Solo Act</p> <p><i>Is it clearly understood among board members that risk and performance monitoring is not the sole responsibility of the Chairman? Will board members tend to relinquish or neglect their individual monitoring of risk and performance and come to rely upon the Chairman as the solo “watch dog”?</i></p> <p>Respected Advice</p> <p><i>Will the business advice offered by the Chair to management be respected? Can your Chair “make the case” for changes and adjustments to protect the fiscal quarter or take advantage of emerging competitive opportunity? Or, is your Chairman’s advice largely historical and general?</i></p> <p>External Credibility</p> <p><i>Can your Chair tap external networks for intelligence and influence these networks? Does your Chairman have substantial visibility and credibility outside your company to make things happen with customers, regulators, and competitors? Are your Chairman’s external networks well-developed, diverse, and productive? Or, is your Chair’s influence and credibility limited and/or in decline?</i></p> <p>Access to Information</p> <p><i>Will the communications channels between the Chair and internal company contacts be clear and wide open? Will there be open access and full disclosure to your Chairman by company contacts designated to provide information used by the Chairman in his/her periodic monitoring of operational and financial information? When would “need to know” restrictions ever be imposed?</i></p>
<p>Oversee Governance Policy and Practice</p> <p>Best practice places the Chairman as a key champion of good governance policy and practices. The Chair is expected to possess well-developed corporate governance experience plus broad-based understanding of current statutory requirements issued by the SEC, IRS and other regulatory bodies. Best practice also suggests that the Chairman takes initiative for Board member selection and assimilation.</p>	<p>Board Relationships</p> <p><i>Will Board members perceive they are colleagues of the Chairman or essentially, subordinates? Will the Chairman foster collegial Board relations – both inside and outside the Board room? Or, will the Chairman bully members, throttle robust questioning and discussion, and muscle his/her decisions through to final voting?</i></p> <p>Board Purpose</p> <p><i>Will the Board function largely as a ceremonial body or a proactive, advisory force? Will your Chairman steer the attention and contribution of your Board away from a body that is largely content to review and approve management actions toward a body that challenges, provokes, shapes, and guides the management team?</i></p> <p>Reputation Management</p>

	<p><i>Are there detectable concerns from Board members that their reputations might be tarnished by the Chair's words or deeds? Are there concerns that laissez faire attention to ethical and governance matters may allow surprises to pop up and divert Board focus, jeopardize the enterprise, or create undo Director liability? Or, is there consistent belief that the Chairman will act to protect, if not enhance, personal reputations.</i></p> <p>Personal Values</p> <p><i>Will the Chair's personal values play positively with stakeholders? Does the Board perceive the presence of a clear moral compass which will impact behavior and decisions within the Board and throughout the company? Are there any practices or beliefs that will need to be "dialed down" or curtailed? Or, are the Chairman's values largely personal and private and within the company's code of conduct policy? Might the Board need to be vigilant about values and ethical interpretations which may be applied differently for certain individuals by the Chair or CEO?</i></p> <p>Practical Independence</p> <p><i>Will the CEO forever be in the pocket of the Chairman? Will there be practical independence in thinking and decision-making between the two individuals? Will the CEO have the courage to disagree? Will the CEO need to be encouraged to disagree and challenge the Chairman? Will the relationship between the Chairman and the incoming CEO likely mature into a respectful partnership? In contrast, what is the risk that a problematic rivalry might emerge?</i></p> <p>Role Distinction</p> <p><i>Has the operating space between the Chair and presiding director been worked out? Are duties and accountabilities clear? Has the Board determined if the presiding director's role is rotational assignment among independent directors versus continuous service by one member? Has the Board inquired about the interest of the presiding director becoming Chair in the future?</i></p>
<p>Manage Board Communications</p> <p>Contemporary Boards are expected to provide increased monitoring and vigilance over business strategy, risk, talent, and operational effectiveness. This contrasts with historic role of Boards of Directors providing advice and, oft times, tacit approval over the plans put forward by management. This new emphasis raises the bar for Chairman to set the tone of Board dynamics, artfully manage relationships, and group decision-making as the</p>	<p>Turf Issues</p> <p><i>Where will hot spots or turf issues likely pop up between the Chair and the CEO? How much control over Board priorities and decision-making prerogatives does the Board detect the Chair and the CEO will <u>independently</u> seek?</i></p> <p>Acceptance by the Inner Circle</p> <p><i>Is the Board's inner circle prepared to accept increased leadership from the Chairman? Will your Chairman move the Board forward in discussion and consensus decision-making or play largely to the inner circle? Will your Chairman be genuinely approachable to all members of the Board?</i></p> <p>CEO's Access</p> <p><i>Does the role split effectively "fence off" the CEO from the</i></p>

<p>shareholders’ fiduciaries.</p>	<p>Board? <i>Does your CEO trust the Board? Will the incoming CEO have more than just a “show and tell” relationship with the Board? Will phone calls, emails and interaction between any board member and the CEO be channeled through the Chairman? How will the CEO develop informal allies, mentors other than the Chair, and join the inner circle?</i></p> <p>Facilitation Skills</p> <p><i>Can your Chairman work the room? Will the bedrock of your Chairman’s power be his/her questioning techniques which are useful in gathering information and opinion, educating, and leading inquiry? Will these skills deliver well-vetted, well-supported, consensus decisions? Or, will your Chairman be often inclined to dominate business, dictate, or demand Board decisions? Or, simply let discussion drift?</i></p> <p>Constructive Challenge</p> <p><i>Will your Chair challenge individual Board members to step up their contribution? Does the Chairman have the personal courage to constructively challenge Board members to engage and challenge the management team? Likewise, will the Board have the courage to ask the Chairman the tough questions? Or will the threat of damaged relationships, loss of personal credibility, or Board exit cause those tough, necessary questions and challenges to go un-asked or glossed over?</i></p> <p>Withdrawal</p> <p><i>With the Chair’s appointment, will once active and engaged Board members throttle down? Will the appointment of a standalone Chairman cause the rest of the Board to withhold, temper, or rein in their inquiries and challenges to the CEO? How will the Board guard against deferral to the Chair, or subject matter experts and consequently forgo solid board discussion, discovery, and group decision-making?</i></p>
<p>Build Board Competency</p> <p>Board composition and selection criteria change with the changing demands of the business. Board members must continuously add to their professional knowledge base. Boards must operate as effective teams with solid process skills and good rapport - individuals and the team benefit from constructive feedback and at times, candid discussion about adjusting their behavior and improving their contribution. Boards need development and the Chair is expected to insure development happens and be an active participant.</p>	<p>Board Competency</p> <p><i>Will your Chairman shape a strong, contemporary board? Will your Chairman continually refresh and strengthen Board competency with new appointments that bring relevant experiences and diverse thinking? Will Boards members whose skills and expertise is no longer core be asked to depart? Or, will Board selection focus on familiar names with traditional backgrounds that deliver stale and predictable continuity?</i></p> <p>Evaluation and Feedback</p> <p><i>Will meaningful evaluation and feedback happen? Will the scope of Board evaluation be conducted only at the full board level or Committee level? Or, will the evaluation process examine the contribution of each Board member, individually? What process will the full Board use to evaluate the Chairman’s contribution? Do the statements regarding board evaluation included in the proxy reflect the real process utilized or just boiler plate comments?</i></p>

	<p>Difficult Discussions</p> <p><i>Will your Chairman conduct those “difficult” discussions with fellow board members? Will your Chairman, acting with Board support, initiate one-on-one discussion with independent directors about their Board contribution and take action to remediate problems including asking the director to not stand for re-election? Or, will disappointing Board member style and disengagement be glossed over and neglected by the Chair?</i></p> <p>Education</p> <p><i>Will your Chairman support Board education with budget money? Is this a serious priority not a boondoggle that is likely to draw unflattering comments from shareholders, shareholder advisory groups, media and second guessing from employees?</i></p>
<p>Mentor the CEO. Plan Succession.</p> <p>An explicit role of the Chair is serving as a conduit of formal and informal information from the Board to the Chief Executive - all matters are fair game. Likewise, information from the executive is channeled and vetted by the Chair to the Board. These “dance steps” can be tricky. This dynamic is aided when the relationship between the Chair and the Chief Executive is based upon trust, candor and a certain degree of informality. The Chair is more than an “on call” advisor; the Chair is a coach to the executive.</p> <p>The Chair is also responsible succession - emergency and long term planning. To effectively fulfill this responsibility, the Chair must be an effective talent scout, know the talent pipeline and work to develop and ready the company’s leadership pipeline.</p>	<p>Overcoming the “No Confidence Vote”</p> <p><i>With the split, has the CEO essentially received a “no confidence” vote from the Board? Is the Board prepared to deal with political unrest in the management ranks as a consequence of the split? Might an opposition clique to the CEO emerge within the management ranks? How will the Board deal with management seeking out Board members directly for advice and guidance? How will the split limit the candidate pool for the next time the Board recruits a CEO? What is the risk the Board takes of losing the CEO as a by-product of the split?</i></p> <p>Coaching Skill</p> <p><i>Is your Chair equipped from a psychological and personality standpoint to do coaching? Does he/she have the gravitas that commands respect of those being coached? Would he/she be comfortable in the role of a coach? Does he/she have any coaching skills?</i></p> <p>CEO Evaluation</p> <p><i>Can your Chairman be dispassionate? Will your Chairman be capable of taking an unbiased view of the CEO’s strategic leadership, character, operational effectiveness, and financial results into the CEO’s annual performance review process? Or, if the financial numbers are OK, then so too will be everything else regarding the CEO’s contribution?</i></p> <p>Succession Planning</p> <p><i>Will succession planning be a perfunctory exercise resulting in proxy boiler plate? Or, will time and accountability be invested in real progress? Will your Chairman take a “hands on” role in the succession planning process that will identify emergency back fill as well as oversee a long term process of candidate development, assignment management, and vetting?</i></p>
<p>Guide Shareholder Relations</p> <p>With the passage of Dodd-Frank legislation, a new era of</p>	<p>Support from Shareholders</p> <p><i>Do major, long term shareholders believe the Chairman is aligned with their interests?</i></p>

<p>shareholder involvement into the governing policies of public companies has been ushered in. The tenor has moved from passive involvement and limited visibility into Board and corporate operations to active involvement by key shareholders. These shareholders will likely be well informed. They will be powerful. Increased involvement requires more proactive and engaged interaction with shareholders. The Chair sets this direction and may have a growing role with key stakeholders and representing the brand. For many sitting Chairman, this is likely to be unfamiliar and potentially conflicted responsibility with the Chief Executive.</p>	<p><i>Can your Chairman ask for votes and get them? Can the Chairman successfully lead discussion with shareholders about controversial topics and/or deviations from standard best practices that earn their support?</i></p> <p>Showmanship</p> <p><i>Will your Chairman seek the center stage spotlight? Will his/her showmanship be disruptive? Has the Board coordinated the complementary roles the Chairman vs. CEO may have when engaging and interacting with your largest shareholders?</i></p> <p>Presence</p> <p><i>Does your Chairman show well? Is there an adequate stage presence and public speaking skill to preside over shareholder meetings? Can he/she think on his feet? Can he/she deftly handle questions and comments/rants from the floor?</i></p> <p>Combative Instincts</p> <p><i>Does your Chair tend to seek confrontations? What is the propensity of the Chair to duel with media, regulators, bankers, and/or activists' shareholders? Does the Chairman tend to use power to overwhelm or guile and relationships to listen and win over opponents?</i></p>
<p>Purely Personal</p> <p>This section is distinct from the roles presented above. This section deals with personal matters and expectations found to be important in the selection and coaching of the Chairman.</p>	<p>Temperament</p> <p><i>Is your Chairman emotionally prepared to step away from his/her CEO role? Can well-honed command and control instincts and skills learned through career long experiences be transitioned to exceptional advisory, monitoring, and influencing skills as Board Chairman? What help does he/she need to transition from daily business management and control in order to step up to stewardship and oversight responsibilities? Will he/she comfortably serve as Chairman of the Board, or will the role essentially be force fit and awkward? Will the Chair (only) role diminish his/her proud legacy?</i></p> <p>Overconfidence</p> <p><i>Is your Chairman so self-confident that he/she may not take other Board members seriously?</i></p> <p>Resources and Remuneration</p> <p><i>Is your Chairman prepared to accept Directors' wages? How will Board and management respond to requests for office services resources and staff support?</i></p> <p>Retirement</p> <p><i>How long is the Chair expected to serve? Is there an unwritten expectation for duration of service that should be discussed? When does the Chairman's term of service end? Is there a mandatory retirement age? Can it be waived? Which Board member(s) will be designated to discuss retirement or resignation with the Chairman?</i></p>

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Summary

When separating the Chairman role from the CEO, the “soft stuff” is often the “hard stuff”. This corporate terrain is covered with interpersonal trap doors that boards must be alert to perceive and skilled in stepping around.

Best practices that guide the structural design of role responsibilities and dictate policy decisions for separating Chairman and the CEO role are rather straightforward. Yet, the vexing issues that render these splits problematic are most often “soft side” issues - mismanaged initial and ongoing interpersonal dynamics that fester behind the scenes and certainly, out of the minutes of board meetings. Most likely, the problems of a split gone sour are not aired in annual Board evaluations. These improperly managed soft side issues limit the synergy, the real magic, of participative board deliberation and decision-making by exceptional executives. Insidious undercurrents of mistrust, the all-too-often political dramas that play out, and dissolving collegiality among exceptional leaders conspire to produce a toxic working atmosphere. Board service is no longer fun. The governance experiment fails. And, the full Board fails in fulfilling its fiduciary responsibilities.

Pivotal Questions is offered as a preventive against interpersonal dysfunctions which pop up during the initial role separation and the ensuing time period when roles are played out by all the constituencies--the Chairman, the CEO, the presiding director, board members and corporate officers. These blunt, direct, and sometimes uncomfortable questions are intended to tap matters that should be explored and resolved on the front end of the split. Simply, successful role separation fosters the necessary *realism* needed from every Chairman. Likewise, successful role separation fosters the necessary *optimism* needed from every Chief Executive.