



An Advisory Board

Establish one & receive high-quality advice

by: Robert C. Goldberg, BTA General Counsel

Recently, I was fortunate to hear a presentation by Dr. Steven Sheppard. He spoke of “blind spots” that exist in every business. These are often issues that interfere with growth, workflow and efficiency. They are blind spots because, in our day-to-day operations, we are too close to see the impediments. For years, I have suggested having a member of your board of directors who comes from outside the organization. This individual can ask the “Why?” of certain business practices and suggest alternative solutions from the outside.

Being an outside director raises some matters of concern. As a member of a board of directors, an individual has a fiduciary duty to the corporation as well as the shareholders. If an issue arises that the board approved, it is possible that the members of the board will be sued. Likewise, if an event occurs that the board should have been monitoring, liability may be imposed. This exposure can be overcome by directors and officers insurance, but the risk may discourage an individual from accepting the role.

A very viable alternative to an outside director is the creation of an advisory board, which is a structured and collaborative way for organizations to engage with external advisors. An advisory board acts as a sounding board for the owners, directors or shareholders of a company. It is a group of experts who provide advice to the board of directors and members of senior management. Advisory boards have no formal authority and responsibility, and their members are not company directors. Advisory boards do not take part in corporate governance; they only provide advice. Unlike a board of directors, the members of an advisory board are not authorized to act or make binding decisions on behalf of the organization, and they do not have any fiduciary responsibility.

There are steps to be taken prior to establishing an advisory board. The company should have a clear vision and a mission that are followed in all aspects of the business by all employees.

Reach out to your network to find possible members for an advisory board. Your current legal counsel and banker may not be as valuable as someone with no prior knowledge of the organization. Businesspeople who have companies with a similar



structure — sales and service — could provide a wealth of insight. Keep the board small, focused, organized and on subject.

Provide advisory board members with compensation for their time. Compensation can be a set amount for meetings or a yearly stipend. Any out-of-pocket expenses should be reimbursed.

Have an advisory board engagement agreement prepared and entered by each participant. The agreement should establish a term with the ability of either party to withdraw at any time. The expected duties of a member should be set forth. Compensation needs to be stated. Most importantly, there should be a requirement of confidentiality and an absence of any conflict of interest. The agreement should establish the advisor as an independent contractor. This step ensures the individual is not considered an employee of the company entitled to all employee benefits.

An effective advisory board, properly composed and structured, can provide non-binding but informed guidance and serve as a tremendous ally in the quest for superior corporate performance. Nobody can build a great business alone, and whether you are a startup or an established industry leader, having access to high-quality advice can enhance your company. Consider establishing an advisory board to infuse knowledge from outside our industry. ■

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