

Bare Bone Board Basics - for the Private Company
Episode #6 – Recruiting & Remunerating Directors & What Directors
Should Do Before Saying “Yes”
June 8, 2022

Panelists

Will Clarke • Lori Marcus
Tate Pursell • Jonathan Friedland



About the Episode - Recruiting & Remunerating Directors & What Directors Should Do Before Saying “Yes”

- What qualities and qualifications does an excellent corporate director have? Industry experience? The ability to commit the necessary time? Raw intellect? Courage? Integrity? Who decides? What is the role of the nominating committee?
- How does a company go about recruiting new board members? What is the role of executive search firms? If you are a director-for-hire, where are you best off to look for board opportunities?
- Once candidates are attracted, how are they vetted? What are the interviews like? And what should board candidates consider before accepting an offer to serve on a board?
- Finally, what does the compensation landscape look like in the private company context?
- These are the principal questions this sixth episode of *Bare Bone Board Basics* will address.

Bare Bone Board Basics – for the Private Company

1. [Series Overview & Preview – Welcome to the \(Boardroom\) Jungle](#)
2. [Public v. Private & Fiduciary v. Advisory: Different Boards for Different Situations](#)
3. [Where the Board’s Duties Stop & the C-Suite’s Duties Begin: An Overview of a Board’s Functions & Fiduciary Duties](#)
4. [How to Conduct an Effective Board Meeting](#)
5. [Committees of a Board & Work Between Board Meetings](#)
6. [Recruiting & Remunerating Directors & What Directors Should Do Before Saying “Yes”](#)
7. [Special Issues Require Special Attention: Retaining Experts & Conducting Investigations](#)
8. [Soft Skills Workshop: Leadership, Communication & Trust](#)
9. [Enterprise Risk Management](#)
10. [Going into Executive Session](#)
11. [The Workings of the Audit Committee](#)
12. [The Workings of the Compensation Committee](#)
13. Advising Companies that Are or May Be Insolvent

Disclaimer

The material in this webinar is for informational purposes only. It should not be considered legal, financial or other professional advice. You should consult with an attorney or other appropriate professional to determine what may be best for your individual needs. While the webinar producers and speakers take reasonable steps to ensure that information presented is accurate, they make no guaranty in this (or any) regard.

Webinar Faculty

- Will Clarke
- Lori Marcus
- Tate Pursell
- Jonathan Friedland

Overview

- Search for new board members is thoughtful and carefully planned
- Generally takes place in confidence
- Company's Governance Committee typically runs process (usually in collaboration with CEO)
 - Services of an executive search firm are sometimes used

Key Phases of the Board Selection Process

- Having a good strategic plan
- Defining skills needed to achieve the strategic plan objectives
- Conducting “skill gap” analysis
- Defining search criteria
- Confirming & executing the search strategy
- Interviewing & selecting candidates

The Role of the Governance Committee (a/k/a/ Nominating & Governance Committee)

- Generally responsible for making recommendations to the board regarding:
 - Size, composition & functioning of the board and
 - Candidates to fill board positions
 - Compensation of board members
 - Organization and responsibilities of board committees
 - Succession planning
 - Potential conflicts of interest involving board members
 - Selection of executive officers of the company
- In addition, usually responsible for developing and maintaining corporate governance policies and overseeing the evaluation of the board

Generally Useful Experience

- Running a business
- Strategic planning
- Mergers and acquisitions
- Accounting and financial control requirements

The “Skill Gap” Analysis

- What experience does the board and management think is needed?
- What do existing directors bring to the table?
- What is Company’s planned direction for next several years?

Director Skills Matrix

Assists with identifying the key skills, backgrounds & experience necessary of board candidates

Sample Skills Matrix

Table 3 Board skill set matrix

Experience / Skills	Director							Candidate			
	#1	#2	#3	#4	#5	#6	#7	A	B	C	Etc...
	CEO	CPA	VC	VC	DR	VC	DR				
Accounting / financial expert											
Business / governance experience (years)											
Strategic planning											
International											
Prior audit committee experience											
Prior compensation committee experience											
Prior executive committee experience											
Prior governance/nominating experience											
Our industry											
Banking											
Capital formation											
Capital markets											
Financial services											
Information technology											
Legal & securities regulatory compliance											
Real estate											
Risk management											
Securities analysis											
Software											
Technology											
Value creation											
Washington experience											
Workout and turnaround expertise											
Outliers:											
Bankruptcy											
Change agent											
Other criteria important to you											

Source: <https://corp.gov.law.harvard.edu/wp-content/uploads/2013/05/TCB-Director-Table3.png>

Defining the Search Criteria

- Form the strategic plan and the skills gap analysis, identify the 4-5 most important skills and focus on those, and then add:
 - General, industry, and board experience
 - Employment status
 - Currently employed v. retired
 - Age
 - Geography
 - Diversity

What Does a Good Board Member Look Like?

- Skills that fit the strategic needs of the company
- Intelligence
 - Current - Contemporary viewpoints about relevant business operations
 - Analytical - Ability to dissect complex issues into clear critical elements that can be evaluated, prioritized & addressed
 - Incisive - Can cut to the heart of a matter
- Character
 - Confident - Willing to exercise judgment & take responsibility for decisions
 - Committed - Motivated by a long-term considerations
 - Even-tempered- A calm and dispassionate manner

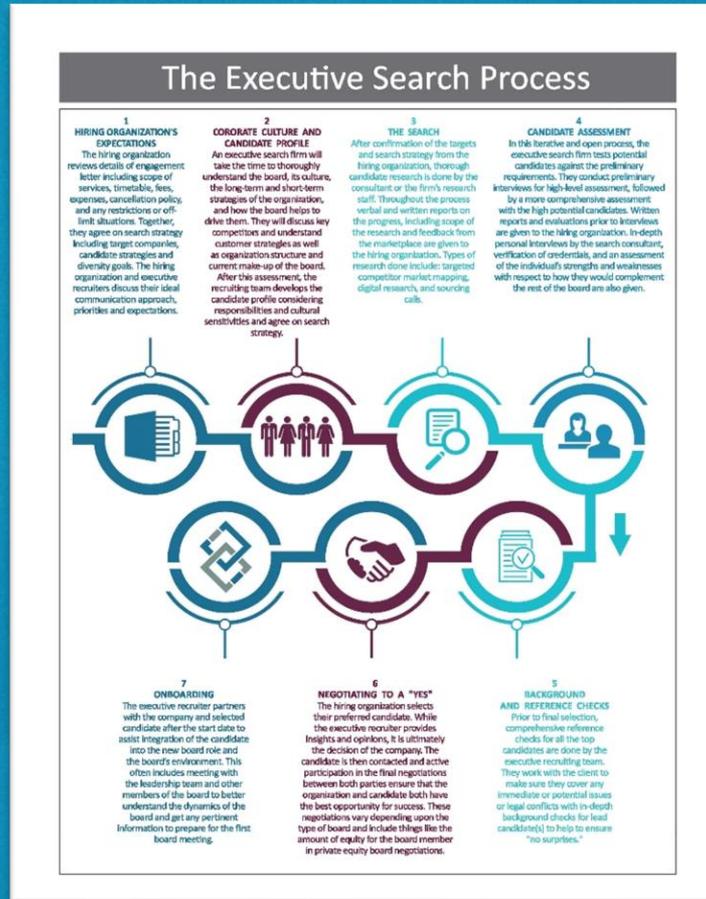
What Does a Good Board Member Look Like (cont'd)

- Style
 - Collegial
 - Persuasive
 - Effective Communicator
 - Willing and able to disagree in an agreeable way

The Search: How to Identify Director Candidates

- After board defines the search criteria, it determines the method it will use to identify possible candidates
- Common ways to identify director candidates:
 - Personal relationships
 - Word-of-mouth
 - Board member associations, e.g., PDA, Executive Forum, ACCD
 - Industry trade associations
 - Referrals from outside professionals
 - Executive search firms

Role & Process of the Executive Search Firm



Source: <https://cdn.uconnectlabs.com/wp-content/uploads/sites/31/2019/01/BlueSteps-Board-Guide.Mays-BSchool.pdf>

Shortlisting / Screening

- Board will then need to decide how it wishes to screen candidates
- Entire Board may review candidate resumes (if there are very few) *OR* first screening interviews may be conducted by nominating committee chair or another director
- Result = Shortlist of qualified candidates for full interviews

Interviews (‘Peer-to-Peer Conversations’)

- Candidates will likely be interviewed by:
 - Members of the governance committee
 - Board chair
 - Certain executive management
 - Key inquiry: is it the right “fit”?

Assessing “Fit”

- Critical to effectiveness of a group is that the members of the group be able to work cooperatively together
- Subjective
- Various techniques used to try to assess a candidate’s compatibility:
 - Formal meetings
 - Social interaction
 - References

The Background Check

- Are there any issues that would affect the prospective director's candidacy?
- Conflict issues

The Director's Perspective – Should You Throw Your Hat in the Ring?

- Why now? Why this one?
- What's your value proposition?
- Do you have the time?
- Does it seem like it could be a good fit?

If Nominated, Should You Serve? *A/k/a* Diligence Questions

- If it is a closely held corporation, meet with 1-2 principal stockholders
- If it is a private equity owned, meet with the managing partner and operating partner
- After signing the NDA, meet with the general counsel to understand any current or potential litigation
- Company risk/reward profile
- Industry risk/reward profile

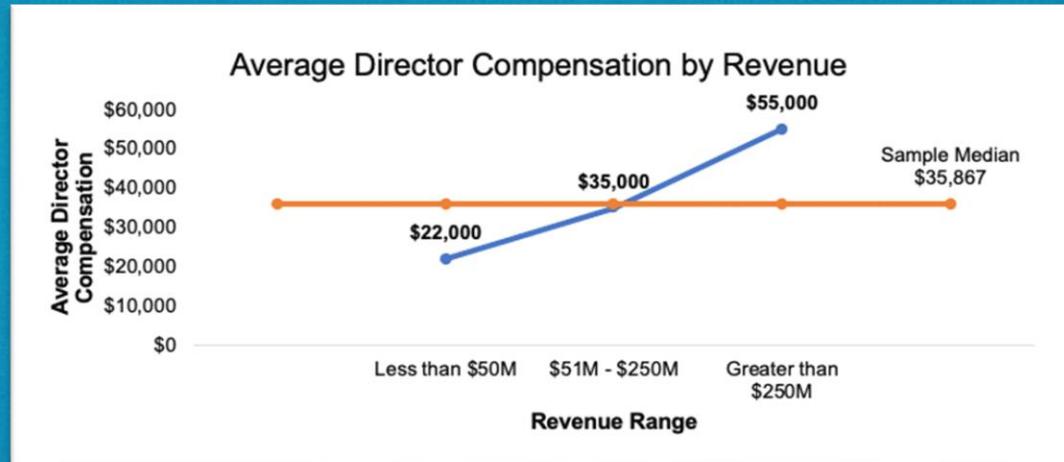
If Nominated, Should You Serve? *A/k/a* Diligence Questions (cont'd)

- Board protections
 - Exculpatory provisions
 - Indemnification agreements
 - Indemnification clause of by-laws
 - D&O insurance

Compensation

- Varies widely, depending in part on company size, industry
- Three forms: cash, stock & options
 - Cash retainers
 - Meeting fees
 - Committee fees
 - Board full value stock
 - Restricted stock units
 - Stock appreciation rights
 - Board stock options

Average Compensation by Company Revenue



Source: Compensation Research Partners 2021 Survey

Compensation by Position

Summary Statistic	Total Compensation by Position		
	Board Chair	Lead Director	Director
Premium over Director	+35%	+15%	n/a
75th Percentile	\$150,000	\$60,500	\$60,225
Median	\$53,275	\$40,000	\$35,867
25th Percentile	\$25,000	\$20,000	\$18,000
# of Orgs	160	71	290

Note: Board chair and lead director premiums are calculated by company rather than by using the summary statistics.

Source: Compensation Research Partners 2021 survey

How to Get a Board Seat

- Work Hard & long; become knowledgeable & respected
- Network appropriately
- Be visible – speak with recruiters
- Prepare – your “elevator pitch” & for interviews
- Create a “board” resume
- Get educated/certified – it won’t guarantee getting a board seat but it will help and help make you a better director

What Does a “Board Ready” Resume Look Like?

5418 Braeburn Drive Bellevue, TX 77401	TIMOTHY D. BELTON Candidate For Independent Director Strategic Alternatives Committee Compensation Committee	timbelton@att.net Cell: (713) 305-1806
BOARD COMPETENCIES		
<ul style="list-style-type: none">➢ Strategy➢ Financial and Capital Acumen➢ Merger Integration / Restructuring➢ Culture and Performance Development➢ Executive Recruitment and Compensation➢ Nominations and Succession Planning➢ Regulatory Compliance➢ Governance		
DIRECTOR EXPERIENCE AND COMMITTEE INVOLVEMENT		
ZeoGas LLC (Natural gas conversion project developer) ➢ <i>Executive Chairman</i>		2012 – Present
Business Ethics Forum (BOD and C-Suite Peer Group) ➢ <i>Chairman, Board of Directors</i>		2004 – Present
Texas Center for Legal Ethics ➢ <i>Board of Directors, Finance and Audit Committee Member</i> ➢ <i>Chairman, Finance and Audit Committee, Treasurer</i>		2015 – Present 2015-Present 2017-Present
Committee on Disciplinary Rules and Referendum ➢ <i>Public Member by appointment of State Bar of Texas</i>		2018 – Present
Texas Legal (State Bar of Texas Affiliate; Provider of Legal Insurance Benefits) ➢ <i>Board of Directors, Finance Committee Member</i> ➢ <i>Chairman, Finance Committee</i>		2012 – 2015 2012-2015 2014-2015
Texas Education Works (dba Western Academy) ➢ <i>Member of Board of Directors</i> ➢ <i>Chairman, Development Committee</i>		2011 – 2014 2011-2014 2012-2014
State Bar of Texas Board of Directors ➢ <i>Public Member by appointment of Texas Supreme Court</i> ➢ <i>Named by the Chairman as Outstanding Third Year Director</i> ➢ <i>Committees:</i> <ul style="list-style-type: none">□ <i>Nominations and Elections</i>□ <i>Legislative Policy Committee</i>□ <i>New Director Orientation Committee</i>□ <i>Executive Committee</i>□ <i>Chairman, Affordable Legal Services Committee</i>□ <i>Nominations and Elections</i>□ <i>Employment/Salary/Evaluation Committee</i>□ <i>Board Advisor to Bankruptcy Law Section</i>		2009 – 2012 2009-2012 2012 2009-2010 2009-2010 2010-2011 2011-2012 2011-2012 2011-2012 2011-2012 2011-2012
TDECU Holdings, LLC ➢ <i>Chairman of TDECU Holdings, LLC Board of Directors</i> ➢ <i>Chairman of each of TDECU Holdings' four portfolio companies</i>		2010 – 2012 2010-2012 2010-2012

Source: <https://pdboards.memberclicks.net/assets/031121%20PDA%20Houston%20Webinar%20Materials.pdf>

Onboarding New Directors

- Familiarize new directors with the company's business, strategies, and policies
 - Presentations on the business model, key performance indicators (KPIs), profitability and performance
 - Explanation of regulatory and governance issues
 - Overview of operations, challenges, and underlying infrastructure
 - Overview of the company's risk profile
 - Overview of board calendar activities / key processes
- Assist new directors in developing the skills and knowledge required for board service

Onboarding Best Practices

- Meeting with key executives and functional leaders
- Meet one-on-one with directors
- Review prior board materials and minutes
- Visit operations
- Meet with external advisers
- If private equity owned, review the original deal thesis and “waterfall analysis”

About the Faculty

Will Clarke

- Will Clarke is the Founder and President of Clarke Growth and Sustainment Strategies, an advisory firm specializing in guiding startup and early stage companies' business expansion. Will serves as Independent Director for Ascent Solar Technologies, a publicly traded company where he chairs the compensation committee and is a member of the Audit and Nomination/Governance committees.
- Prior to starting his own firm, he led the Global Supply Chain business unit for Atlas Airlines and directed store refurbishment initiatives for Best Buy. Before launching his corporate career in 2015, Will served 25 years as a Naval Officer where he completed 10 deployments on a ship, submarine and two aircraft Carriers in support of war and peacetime operations globally. He attained the rank of Captain (O6).
- Born in Trinidad and educated in NYC Public Schools, Will earned a BSc in Mathematics from the U.S. Naval Academy, and a MSc in Finance and Contracts Management from the Naval Postgraduate School. More recently, he completed the Corporate Governance Program at Columbia Business School.

Lori Marcus

- Ms. Marcus serves as an independent board director on public and private company boards — Fresh Del Monte Produce, Inc. (NYSE: FDP) and 24 Hour Fitness. Until recently she also served on the boards of Golub Corporation (d.b.a Price Chopper/Market 32 grocery stores), Phunware (NASDAQ: PHUN), DDC (DNA Diagnostics Center), and Talalay Global. She is also a board member for SHARE Cancer Support and Vice-Chair of the Board for the MMRF (Multiple Myeloma Research Foundation).
- She comes to board work after a long career as a c-suite operating executive in leading consumer companies — PepsiCo, The Children's Place Retail Stores, Keurig Green Mountain, and Peloton Interactive. Ms. Marcus earned her BS degree in Marketing from the Wharton School of Business, University of Pennsylvania.

Tate Pursell

- Tate Pursell is an operating partner at independent private equity sponsor MSI Capital Partners. He has served on twelve boards, in 2020: SSAI, a manufacturer of advanced military avionics systems, Weiler Corporation, and Barton Group, as past chair of the compensation committee and member of the governance and audit/risk committees.
- Previous roles included group president for PE fund SKM, overseeing four manufacturing companies, operating partner at Cortec Group, CEO of three operating companies of Masco, and earlier executive positions at GE, Forstmann-Little, and Unilever. He was a decorated US Air Force Captain. He also earned an MBA from Washington University and an NACD Governance Fellow Certification. He is a founding member of the NYC Metro of the PDA.

Jonathan Friedland

- Jonathan Friedland is a partner with the Sugar Felsenthal law firm.
- He regularly advises boards of directors and owners of companies in financial distress.
- Friedland has been representing companies in out-of-court workouts, chapter 11 bankruptcy, and controlled liquidations for more than 25 years. He also has broad and substantial experience in acting as outside general counsel to clients and in running both a wide variety of corporate transactions, and a wide array of commercial litigation.
- He is widely recognized as a leading corporate restructuring and insolvency attorney. He has been rated for many years as AV® Preeminent™ by Martindale-Hubbell, 10/10 by AVVO, and 10/10 by Justia. Jonathan is the principal author of two leading legal treatises, and his scholarship is widely cited by legal scholars. He formerly served stints as an Adjunct Professor of Strategic Management at the University of Chicago's Graduate School of Business and as a Clayton Center for Entrepreneurial Law Visiting Professor of Business Law at the University of Tennessee College of Law. More information [here](#).

About the Co-Producers

- This is the sixth episode in a series of webinars produced by:
 - Certain chapters of the [Private Directors Association®](#)
 - [Financial Poise™](#)
 - [Executive Forum™](#)
 - [Vistage®](#)
 - [Private Director Symposium™](#)
 - [ChamberWise™](#)

About Private Directors Association®

- The Private Directors Association® (PDA) is an independent 501(c)(6) founded in 2014 and headquartered in Chicago, IL. PDA is the only national association dedicated to improving private companies' growth and sustainability through governance that adds value.
- Our close to 3,000 members include current and qualified future board members, private company owners, and C-level executives of family-owned businesses, ESOPs, private equity owned, early stage, and start-up organizations.
- The PDA's mission is to:
 - Advocate for and teach board formation and governance
 - Enhance private company value through high-performing boards
 - Advocate for the value of diverse and inclusive boards
 - Create a national alliance of directors, executives, and private company owners interested in board service to learn, network, and identify and attract exceptional board members

The Co-Producing Chapters

- *Bare Bone Board Basics - for the Private Company* is a co-production of Financial Poise, Executive Forum, Vistage, Private Director Symposium, ChamberWise, and the following chapters of the Private Directors Association:
 - Alabama
 - Dallas
 - DC Metro
 - Nashville
 - New England
 - New York Metro
 - Tampa Bay
 - Wisconsin
- Go to <https://www.private-directors-association.org/chapters> for contact information for any of these, or other, chapters.

About Executive Forum

- The Executive Forum is a highly engaged community of executives from leading corporations who share a passion for “what’s next” to drive business growth.
- Its mission is to empower senior executives to reach their fullest career and business potential.
- Since its formation in 1995, the Executive Forum has grown to over 400 members who are the top-most leaders at market moving companies, run portfolios for the most innovative Private Equity Firms and serve as directors on boards --- public, private and non-profit.
- More information can be found at www.executiveforum.org

About Financial Poise™

- The primary mission of Financial Poise™ is to provide reliable plain English business, financial, and legal education to individual investors, entrepreneurs, business owners, and executives, and to help trusted advisors do the same.
- Sign up for our free weekly e-newsletter [here](#)*.
- Learn how to write or speak for Financial Poise [here](#). The antithesis of “pay-to-play.”
- Check out our other webinars [here](#).
- Send any other inquiry to info@financialpoise.com

****Newsletter subscribers are offered a free webinar weekly. Subscribers never receive more than one email per week and their information is never shared.***

Additional Information & Resources

- For more information about this series and to access the PowerPoints and case law referenced in past webinar episodes, visit www.private-directors-symposium.org