

NACD Event Highlights

April 13, 2010 Breakfast Event

Non-Profit Boards: Managing Mission and Margin

“Survival of the fittest” is not what first comes to mind when thoughts turn to managing a non-profit. But 1,200 to 1,500 registered Massachusetts charities disappear each year, demonstrating the increasingly Darwinian nature of the non-profit operating environment in one of the wealthiest and talent-endowed states in the nation.

In a period of scarce human and financial resources, how can a non-profit board hone their organization’s survival instincts without losing focus on its charitable purpose? Sparked by the insights of three expert panelists, NACD New England’s April 13, 2010 Breakfast Event explored the opportunities and constraints faced by today’s non-profit directors as they struggle to balance mission and margin.

Moderating the panel discussion was Barbara Freedman Wand, partner with the law firm of Bingham McCutchen LLP, managing director of Bingham Charitable Advisers, and a fellow of the American College of Trust and Estate Counsel. Setting the stage for the panel discussion, Wand highlighted the economic, social, legal and regulatory dynamics that are making non-profit governance more challenging than ever before. Introducing the panelists, she discussed the unique perspectives each brings to a discussion about the non-profit board strategy and management and service as a director of a non-profit organization.

Kicking off the panel discussion was David G. Spackman, chief, Non-Profit Organizations/Public Charities Division of the Massachusetts Office of the Attorney General. Spackman’s comments focused on what state regulators consider to be the hot topics in non-profit governance. He spoke first to a topic of equal importance in both the charitable and for-profit worlds: the drive for greater transparency and disclosure in the area of executive compensation.

Although non-profit directors rarely receive compensation, Spackman said, it is not uncommon among charities to find individuals holding dual positions as executives and board members – accompanied by the potential for conflicts of interest and excessive pay and benefits. He went on to discuss the pros and cons of recruiting directors who serve on multiple boards. While they can bring organizational strengths and robust community networking resources, they often face competing claims on their time and the potential for conflicts of interest.

Spackman talked about the drive for increasing volume of information now publicly disclosed by non-profits through sources such as the Attorney General’s office and GuideStar. He cited greater transparency and more educated giving and support as the benefits of this transparency, countered by increased compliance costs and the threat of information overload. Commenting that a charity is more likely to fail than a restaurant, Spackman concluded by theorizing that there may be too many non-profit

organizations. He urged the audience to watch out for “founderitis” and look dispassionately at opportunities for charities of similar sizes to stretch the limited pool of available money by opting for shared services arrangements.

Following Spackman was Joan Wallace Benjamin, president and CEO, The Home for Little Wanderers, trustee of Wellesley College and past member of the Board of Overseers for the Heller School of Social Policy & Management. Benjamin offered a “view from the trenches” into the roles of non-profit directors at both the strategic and tactical levels.

The Home for Little Wanderers is unusual among Massachusetts non-profit human services organizations because of its focus on mergers and acquisitions as its strategy for gaining economies of scale, diversifying its services and service delivery model, and commanding a seat at the public policy and advocacy table. Benjamin described the board structure adopted by The Home following three acquisitions from 1999 to 2002, which includes committees in the areas of investment/audit, finance/real estate, and risk management and governance.

Benjamin cited fundraising, resource generation and budget oversight as key board fiduciary responsibilities. She emphasized the importance of director independence, describing how The Home’s board handles director succession and self-evaluation, as well as hiring, supporting and evaluating the CEO. She highlighted the differences between small non-profits, where directors typically provide day-to-day assistance to the professional staff, and large non-profits with deep staff resources where the primary role of a board member is to provide strategic business insight.

Panelist number three was Daniel S. Evans, corporate partner with the law firm of Ropes & Gray LLP, trustee and chairman of the audit committee of the New England Aquarium, and director of the Cohasset Lightkeeper’s Corporation. Evans discussed the differences between non-profit and for-profit boards and the unique oversight challenges that stem from these differences for non-profit boards. He echoed Benjamin’s remarks in observing that, because non-profit organizations are chronically understaffed, their directors not only help in developing strategy and fundraising, but also directly assist and mentor the professional staff. As a result, he said, non-profit boards tend to be large, which often leads to governance challenges.

Evans observed that non-profit directors are often selected because they bring one or more of three critical inputs: time, talent or treasure. He stressed the importance of structuring the board, managing meetings and other board activities, and shaping directors’ roles to ensure alignment of individual directors’ interests with the operational needs of the organization. He outlined a model committee structure for accomplishing these objectives, commenting on the importance of keeping board members engaged.

Evans discussed emerging legal issues for non-profit boards: including record-keeping to support tax-exempt status, the new IRS Form 990 disclosure obligations regarding compensation and related-party transactions, reporting the taxable business income that non-profits often generate, and prevention of

employee fraud and theft. He concluded by observing that non-profit boards must be sensitive to public relations issues – especially those related to executive compensation and financial stewardship – because of their potential impact on public perceptions and donor support.

Echoing many of the issues discussed by Spackman, Benjamin and Evans, the audience/panelist Q&A session following the prepared remarks focused on the following concerns:

- Voting restrictions on individuals serving as both CEO and director;
- Making board meetings meaningful for directors not inside the three-way concentration of power between executive director, board chairman and major donors;
- Building robust major gift programs focused on individual donors to offset the recent decline in giving by corporations and foundations;
- Preventing inappropriate business transactions between directors or major donors and non-profit organizations;
- Approaches for combining boards of directors when non-profits gain scale through mergers or acquisitions.

NACD New England Chapter President Bill Earon adjourned The April 13th Breakfast Event by thanking the chapter volunteers and board members who assisted in organizing the program. He reminded everyone that NACD New England's next breakfast event, Protecting Yourself and Your Company from Litigation, will be held not on the second Tuesday but on the third Tuesday in May – May 18th – at the Newton Marriot Hotel.