

## NACD Event Highlights

April 12, 2011 Breakfast Event

### *A New World of Governance for Non-Profit Boards*

#### **Event Overview**

Every nonprofit organization is unique, and the same can be said for their boards of directors. Underscoring this point, moderator Elizabeth Mora, Chief Financial Officer at Draper Laboratory, set the stage for the NACD New England Chapter's April 12, 2011 Breakfast Event by saying, "When you've seen one nonprofit organization in terms of its governance structure . . . you've seen one nonprofit organization."

Recognizing the perils in making broad-brush observations about the nonprofit sector, the ensuing panel discussion then focused on the key governance themes, issues and challenges shared in common by even the most disparate nonprofit organizations. Four seasoned panelists drew from their broad range of nonprofit board experiences in highlighting best practices for addressing these concerns.

#### **Panelists**

Chairing the April 2011 NACD New England Breakfast Event and introducing the panelists was W. "Chip" Phinney III, Ph.D., attorney with the law firm of Mintz Levin. The four panelists serve as directors on numerous New England region for-profit and nonprofit boards:

Samuel B. Bruskin is a trustee of the Boston Symphony Orchestra and a director of Opera Boston. He is a retired partner of Choate Hall & Stewart, where he practiced tax law for more than 30 years and frequently advised nonprofit organizations, including the Boston Symphony Orchestra. Mr. Bruskin has also served on the boards of the Concord Chamber Music Society, Youth pro Musica and Belmont Day School.

Sandra L. Jesse is Executive Vice President and Chief Legal Officer for Blue Cross Blue Shield of Massachusetts. She also serves on the boards of the Longy School of Music, Boston Harbor Island Alliance, the Landmark School, and the New England Legal Foundation. She is past president of the Boston Bar Foundation and was one of the first appointed commissioners to the Massachusetts Commission on the Status of Women.

Alison Taunton-Rigby, Ph.D., OBE, is a trustee of Children's Hospital, a director of NACD New England and a former director of the Massachusetts Biotechnology Council. She also serves as a director of Abt Associates, Healthways and RiverSource Funds. Dr. Taunton-Rigby is the founder and CEO of RiboNovix, Inc., and has worked as a senior executive in the biotechnology industry for more than 25 years, including positions as CEO of Aquila Biopharmaceuticals, Cambridge Biotech, and Mitotix Inc., and senior executive roles with Genzyme and Biogen.

Pamela Carrington Scott is a trustee of Salem State University, a director of the Boston Club, and a director of the United Way of Massachusetts Bay and Merrimack Valley, where she co-chairs the

Governance and Nominating Committee. She has also served as an overseer of the Tuck School of Business, President of Girls, Inc. of Lynn, and a director of Celebrity Series of Boston. Ms. Scott is President and CEO of LVCC, Inc., a director of Danvers Bancorp, and has more than 30 years of experience in the financial services and investment management industry.

### **Key Themes, Issues and Challenges for Nonprofit Boards**

- The evolving role of the nonprofit director. Just as directors of for-profit organizations have a fiduciary responsibility to maximize the flow of retained earnings to shareholders, nonprofit directors must ensure that their organization's bottom line remains positive and that surpluses are plowed back directly into delivery of the institutional mission.

Years ago, nonprofits tended to seek out individuals with philanthropic and fundraising backgrounds to serve on their boards. Today's more challenging regulatory and business environment impels nonprofits to focus on attracting directors with expertise in finance, corporate governance, compensation, mergers and acquisitions, and risk management.

Issues related to board composition – such as director recruiting, term limits, compensation and succession planning – have thus become increasingly important for nonprofit boards.

- The adoption of higher standards for nonprofit board governance. The current controversy surrounding compensation for directors of Massachusetts nonprofit health insurance companies illustrates that nonprofit boards operate under far more intensive scrutiny – public as well as legal and regulatory – than only a few years ago.

To maintain legitimacy in this environment, nonprofit boards must ensure that their internal processes are beyond reproach and, as a result, they are increasingly adopting governance best practices drawn from the corporate world.

Redrafting of bylaws, formal board self-assessments, greater attention to committee productivity, as well as energized meeting agendas with more time allocated to strategic affairs, are changing the way nonprofit directors think about and execute their responsibilities.

- Responding to new kinds of strategic challenges. Today's nonprofit directors face challenges that are shockingly more complex than those confronted by their predecessors a generation ago. New IRS rules, for example, require nonprofit directors to formally review, approve and certify the organization's Form 990 tax returns.

Heightened public skepticism about the quality of nonprofit governance has prompted greater focus on adherence to director conflict of interest policies, despite the internal frictions that such policies can cause. In the aftermath of the 2008 financial crisis and market collapse, boards are looking more closely at their endowment investment policies and oversight procedures.

At a time when the public tends to question the leadership of institutions generally, nonprofit boards are thinking more seriously about managing reputational risk – often by adding formal risk assessment activities into the board's expanding list of responsibilities.

In addition, nonprofits – particularly smaller or local organizations – face mounting pressure from internal and external stakeholders to consider mergers with neighboring nonprofits as a way to reduce overhead and strengthen service delivery.

### **Questions from Participants**

The event concluded with a series of attendee questions from the floor covering topics including:

- Director term limits – latest trends and best practices; how to keep valuable board members engaged with the organization after their terms expire;
- Conflicts of interest – permissibility of arm’s length transactions; alternatives to removal of a director with a conflict of interest;
- Board and management succession planning – best practices for organizations with high-profile leadership;
- Director incentive plans – applicability to nonprofit world; appropriate structure;
- Role of the executive committee – relationship to full board; steps to ensure alignment between executive committee and board; and
- Mergers and consolidations – circumstances leading directors of smaller nonprofits to consider consolidating their operations with neighboring organizations.

### **Upcoming NACDNE Breakfast Event**

Chip Phinney closed the April 12<sup>th</sup> session by reminding the audience about the Chapter’s next breakfast event: *The Board in Time of Crisis*. The event is scheduled for Tuesday, May 10<sup>th</sup> at the Newton Marriott Hotel.