Harvard Business Review

BEN W. HEINEMAN, JR.
Ben Heineman has held senior positions in business, law, and government, is a senior fellow at Harvard's Law and Kennedy Schools, and is author of *High Performance With High Integrity* (Harvard Business Press, 2008).

For Dimon and Board Leaders: Function Matters, Not Form

By: Ben W. Heineman, Jr.
May 17, 2013

One of the dumbest corporate governance issues is whether to split the roles of Board Chair and CEO. That debate is now playing out on the front pages of business sections (print and online) as shareholders will decide next week in a nonbinding vote whether to take the chairman of the board title away from JP Morgan CEO Jamie Dimon.

This is a reprise, for the zillionth time, of the pointless push by governance types to call the senior director "chairman of the board" rather than "lead" or "presiding" director and to deny the CEO the chairman of the board title. (Dimon, of course, is today Chairman of the Board and CEO of JP Morgan; Lee Raymond is JPM's "lead" director.)

What is lost in virtually all stories and commentary hyping the Dimon election is an answer to the basic question: what is the function of the lead director? It is this issue of function, not form (i.e., what title that senior director carries), which is crucial.

It has been a governance verity, if not always a reality, that a strong board should provide oversight and constructive criticism to the CEO and other company leaders.

Since Enron, this basic principle has been implemented in most companies by designating one director to be first among equals, whatever her title. That director performs at least the following core roles (as I have discussed in detail elsewhere):

- Chairs the meetings of the directors, now regularly held without the CEO being present (either before or after the regular board meetings). As chair, that director elicits from the other directors any and all issues of concern that do not emerge when the CEO is present. That director, with the advice of the other directors, then determines how best to communicate those concerns to the CEO — and follow up.

- Leads the board in setting the agenda of the highest risks and opportunities facing the company, which the board should understand in detail — and the key systems and processes for mitigating or exploiting those risks and opportunities. A best practice: that director should work with the board and the CEO in the fall of Year 1 to identify the top 15 risks and opportunities that should be covered in-depth at board meetings in Year 2 (with the obvious flexibility to add issues as events warrant).

- Ensures that the materials presented to the board — or the discussions at the board meetings — fairly and honestly present the hard issues and the credible options and trade-offs that are at the core of the priority risks and opportunities. This allows directors to make real, substantive comments, rather than trying to fight through management obfuscation and obscurantism.

- Leads the board in setting meaningful operating objectives for the CEO and top business and staff leaders in the broad areas of commercial performance, integrity promotion and risk management.

- Leads the board in translating those operating objectives into meaningful cash and equity present and deferred compensation structures for near, medium and longer term results in all three dimensions — and that provides for hold-backs or claw-backs if the CEO or senior officers seriously underperform or are guilty of bad acts.

- Ensures that board oversight during any particular year focuses rigorously both on the highest priority risks and opportunities and on the secondary, but important operating objectives outside those priorities.

If these are the core functions of the director as first among equals, then whether that director is called "Chairman of the Board" or "Lead Director" or "Presiding Director" doesn't matter. This is a critical *internal* position, not an *external* one. And if the top director needs to speak or meet in public on rare occasions, the *role* of senior director, not the title, provides foundational credibility. Function, not form, is what matters.

What also matters, of course, is *who* the director is in that lead role. Does she have the respect of the board? Does she have the respect of the CEO and top business leaders? Does he have the skills to carry out the functions to provide proper oversight and guidance without micro-managing? The wrong director as "chairman of the board" won't carry out the key functions properly. The right person as "lead director" (who actually

leads) will discharge the functions effectively. The personal qualities of that senior director, not her title, are everything.

Any substantive issues with CEO Dimon or current JPM lead director Lee Raymond aren't going to be fixed by changing Raymond's title to Chairman of the Board, and taking that title away from Dimon. The vote on the shareholder proposal to strip Dimon of the Chairman tile may be an indirect way of chastising him for past mistakes (most prominently the losses due to the trades of the "London Whale"), but it has nothing to do with the proper functions of the senior director in the future. Indeed, this dust-up symbolizes one of the failings of the governance movement: a tendency to focus on formalism rather than substance.

###

http://blogs.hbr.org/cs/2013/05/for_dimon_and_board_leaders_fu.html