BOARD OF ADVISORS: KEY TOOL FOR SUCCESSFUL COMPANIES

Originally published in the Business Resource Guide of the *San Diego Daily Transcript*

William W. Eigner,
Procopio, Cory, Hargreaves & Savitch LLP

Savvy entrepreneurs know that a board of advisors can provide their company with the credibility, contacts, advice and even cash they so desperately need.

Credibility is key to attracting investment. While a company's product or service is critical, investors are equally concerned with a company's management. Most venture capitalists and sophisticated angel investors report that it is not just what a company has, but who they are. Good management is essential and the best way to evaluate management is by their track record. Investors look for managers who have made money for investors in the past. However, if a company's management does not have such a track record, the next best thing is to supplement current management with qualified advisors who have had great successes.

In other words, if you cannot afford to buy the talent, rent it, by recruiting the best available board of advisors.

The company benefits from the halo effect because investors surmise that if the advisors are bright, capable and accomplished, then so must be management. Moreover, if accomplished outside advisors are willing to associate with the company, the company must be worthy.

In addition to credibility, a board of advisors can provide contacts and connections that could take a young company many years to acquire on its own. They can make introductions to potential investors, customers, suppliers, joint venture partners and executives who might never return the company's calls under ordinary circumstances.

RECRUITING ADVISORS

Recruiting a board of advisors requires careful thought. The company should select different advisors for different reasons. Some advisors may be recruited to provide added credibility. Well known leaders in the industry or sector can be especially helpful.

WILLIAM W. EIGNER

For example, when Concerto Networks, a franchisor of information services to small and medium size businesses, wanted to enhance the company's credibility in franchising, it recruited Daniel La Marche, a twelve year board member and former officer of Mail Boxes Etc., and Don Higginson, Executive Vice President for Franchise Operations of The UPS Store, to the company's board of advisors. With La Marche and Higginson on board, would-be franchisees readily accepted Concerto's franchising credentials and the company soon became one of the fastest growing franchisors in its class.

The company's lawyer and accountant can often be the best connections to appropriate advisors. The company should also look to tap suitable friends and family of management. Would-be advisors should be reminded that they are not officers or employees, they have no management responsibilities and they do not make decisions for the company. Therefore, obtaining expensive D&O insurance should be less of an issue to advisors than it should be for directors. However, the company should still offer in writing to defend, indemnify and hold harmless an advisor to the maximum extent permitted by law. This can be provided in the company's charter documents and/or in a separate agreement.

Members of the board of advisors should usually be recruited for a calendar year term and should not be expected to make large time commitments. Advisors should only be requested to make nominal financial investments in the company, if at all.

The company should have an equity incentive plan in place so that it can easily issue stock options to advisors. These options are customarily the only compensation given to advisors, although better funded companies may pay meeting fees and provide other benefits. Options should normally vest over a two or three year term. The size of the board of advisors depends upon the company's needs and its ability to recruit. The typical number is between three and twelve.

SHOWCASING AND UTILIZING ADVISORS

Forming a board of advisors is a waste of time if the company does not properly exploit it. An individual press release with a photo of each new advisor should go to relevant industry publications, community newspapers and the general media. Releases should also go to an advisor's alumni publications. The advisor's biography and photo should be featured on the company's Web site, business plan and private placement memorandum as well. All of this can generate favorable publicity for the company while strengthening the advisor's commitment to the company.

Some companies have quarterly or annual meetings of their full board of advisors, others consult with their advisors as needed. Smart companies know not to waste this valuable resource and realize that an illprepared meeting resulting in undue imposition on the time of the advisors can squander the good will that the company has earned and result in a nightmare of resignations along with harsh, contagious criticism.

Smart companies award an ample number of bonus options as soon as possible to reward and further incentivize advisors who perform especially effectively. For example, if an advisor assists in landing a big contract, the company may be wise to issue the advisor additional options. Not all advisors need to receive the same compensation.

Many companies use their boards of advisors as proving grounds for their boards of directors. Smart corporate insiders like to see someone in action before electing him or her to the board of directors. Directors need to be more capable these days, as the role of the board of directors has grown in importance in meeting the company's obligations to its shareholders and in recruiting, hiring and firing upper level management.

CONCLUSION

Experienced entrepreneurs know that the right board of advisors can enhance their company's credibility and contacts, providing the sage advice that can help their company succeed.

William Eigner is a partner on the Business and Technology Team of Procopio, Cory, Hargreaves & Savitch LLP. Reach him at 619.515.3210 or at wwe@procopio.com.

.