

## Pre-IPO Companies Face Talent Imperatives How—and Why—to Focus on Boards and the GC Function

For private companies that have an IPO on the horizon as a potential capitalization strategy, it is important to put in place a strong board of directors and executive team. That's true whether the company is private-equity owned or founder-controlled. But although this strategy attracts a good bit of attention, especially in the year or so before an initial public offering seems achievable, many companies fall short of what is possible at this stage because of two key omissions on the talent front.

The first relates to board composition. Because companies tend to think in narrow terms—primarily focused on financial performance—they overlook the opportunity to holistically focus on building the best board, not just for the short run, but one that will be best-equipped to help guide the company as it meets longer-term challenges and pursues strategic objectives.

The pre-IPO stage of board-creation offers a unique opportunity to get this right as there may never be another chance to think through every single seat at the table. This is the time to conceive of what a

strong board for this company would really look like—and how should it work, in order to be most effective. What is the company's future vision? What kind of board and directors will help it achieve that vision?

The second, all-too-common omission on the talent front is a failure to focus sufficiently on the General Counsel ("GC") function. Having the right GC on the executive team can add incalculable

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value to a pre-IPO corporation. But just as there's no one-size-fits-all answer to who that GC should be, it's also not clear to many organizations when they should

recruit a GC and what the right balance should be between external and internal counsel.

From our unique vantage point, the two of us have seen firsthand, throughout our careers, the toll that these talent omissions can exact upon corporations, and we've also seen the value of adopting a more strategic, proactive and comprehensive approach to pre-IPO talent matters.

### The Right Board for an IPO

Many board searches, whether for a pre-IPO or a public company, start the same way—with the organization's expressed desire to recruit a sitting or recently retired CEO. That's not surprising since chief executives clearly benefit from the presence of their peers in the boardroom who have "been there, done that," and such directors can add credibility and comfort, both to private investors and to the public markets.

But experience tells us that simply aiming to build a board dominated by CEOs can ultimately be limiting, especially if these directors bring similar perspectives, backgrounds

and even behavior patterns to the boardroom. In contrast, a group of directors who contribute an appropriate mix of active and retired board directors; different industry and functional leadership expertise; gender, age and racial diversity; and behavioral styles that include consensus-builders, strong communicators, good listeners as well as seasoned leaders, all have a potential role to play in achieving optimal financial performance while maintaining collegiality—and ultimately, creating a highly effective board.

With respect to board composition, companies should look for a search partner that understands two essential matters: First, the company's progress and current stage along the journey from private to public; then, and equally important, how, why and when to align corporate governance and the board recruitment strategy with the current corporate strategy. Of course, conditions will be fluid and continue to evolve, both inside the company and in the overall marketplace.

But the right search partner will work closely with the corporation to customize a plan to build the best board for the company's specific pre-IPO requirements. In a founder-led company, the focus will be on preserving the control of the founder while giving any other major investors an adequate voice with respect to significant decisions on matters such as investments, acquisitions, dispositions and capitalization. In a PE-owned company, the objectives will be different, with a tightly controlled

focus on performance, so as to ensure maximum value at the point of exit.

Other major constituents such as lenders will want to ensure adequate governance as a check-and-balance to minimize the risk of their investment in the venture. As the timing of the potential IPO grows closer, the focus will by necessity shift to having a governance structure in place that will pass muster with the public capital markets, so as to facilitate market receptivity for the offering.

Whatever the specific situation for the pre-IPO company, ensuring the accuracy and integrity of financial reporting and disclosure is a must. As a result, recruiting an independent audit committee chair who meets the SEC definition of "financial expert" is a must.

The importance of putting the right person in this seat sooner rather than later can scarcely be overstated. Having a strong and effective audit committee and chairperson will facilitate the process of working with the many corporate advisors involved in the IPO process, such as auditors, investment bankers and external lawyers, and will enhance the credibility of the offering with investors.

But although it will be essential on day one of the corporation's life as a public company that it have an independent audit committee up-and-running, it's also the case that other independent directors in areas such as compensation and governance will soon need to be

added to the boardroom mix. During the company's first year as a public company, board composition must continue to evolve from investor representatives to independent committee chairs and a majority of independent directors.

It's worth noting that the types of investors in a company can also affect its governance decisions—and therefore, its requirements in terms of optimal board composition. Whether investors are large institutions or smaller funds that may be activist in nature or highly focused in terms of strategic priorities can all make a difference.

Here again, a search firm's deep-seated grasp of the company's longer-term strategy will ensure that the recruitment of independent directors delivers optimal results. Whether the company's growth-oriented strategy involves entering new markets, new geographies or making acquisitions, having the right mix of skills and experience in the boardroom to accomplish that strategy is critical.

For any company going through this process, it is essential that their search partner understand the attributes and dynamics of successful boards, so as to help identify any gaps in current composition and chart a strategy for filling those gaps, both during the first year that follows an IPO and beyond. Executive search consultants who themselves have served on public boards can bring to this challenge an invaluable, insider's understanding of

boardroom dynamics and complexities.

## Adding the Right GC to the Executive Team

Pre-IPO companies often struggle over the question of when to hire a General Counsel and what type of expertise and experience to seek when they do so. Complicating matters is the reality that there's no single profile that will deliver optimal value for all companies

preparing to make the transition from private to public.

Compounding these ambiguities is another unfortunate reality for pre-IPO companies. They may encounter a number of potential pitfalls, any one of which might lead them to delay too long, focus on the wrong priorities or make a poor choice when it comes to this essential leadership hire (see sidebar, "Pitfalls to Avoid When Hiring a GC").

While companies of any size and stage of development may encounter some of these risks, they are of special concern for pre-IPO companies, who will usually have little prior experience to build upon and, yet, must make this decision while operating under significant financial and timing constraints. In these cases, the right search partner will be prepared to serve as a strategic consultant as well as an executive recruiter, helping the company clarify priorities and develop the right game plan.

### Pitfalls to Avoid When Hiring a GC

With extensive experience handling General Counsel searches for corporations in all stages of development, Deborah Ben-Canaan warns of some common pitfalls pre-IPO companies need to avoid:

- **Looking for a quick solution.** Relying upon referrals, whether from the current management team, board of directors, corporate advisors, or other personal sources, can potentially be shortsighted since their networks may be small or the recommendation may be biased. It takes a comprehensive search to find the best candidates.
- **Being indecisive.** Pre-IPO companies frequently want "everything" in a GC—someone who can litigate and do antitrust work and take the company public, while also having some regulatory experience, and so forth. But shooting for the moon can leave a company absolutely nowhere in terms of finding the right candidate.
- **Failing to prioritize.** This is where a seasoned search partner can make a big difference, since clarity is essential in any executive search. The goal should be to prioritize both the hard and soft skills that are needed for the GC position.
- **Ignoring misaligned interests.** Sometimes the CEO will have one set of priorities, while HR or the board may have another, and they might not even recognize that they want very different things. If this isn't worked out in advance, it can and will subvert the search.
- **Dragging heels.** In a highly competitive talent market, pre-IPO companies need to be prepared to act quickly when they find the right candidate at the price they can afford to pay. Avoiding these pitfalls will help make that happen.

The type of business—and nature of the company's growth strategy—will play an important role in defining the target talent profile. If the company operates in a heavily regulated industry, for example, it makes sense to look for someone well equipped to deal with regulatory challenges. On the other hand, for businesses whose growth strategy is IP-dependent, recruiting someone with a strong intellectual property background would be desirable.

Good communication and persuasion skills are a must since the General Counsel will need to interact effectively with all members of the executive team, as well as the external counsel and other corporate advisors, and, of course, the board of directors. The GC must be prepared to function in a fast-paced, growth-oriented environment as a strategic business partner—and not just a legal source. That speaks to temperament as well as expertise. Strong candidates will embody that sense of gravitas and credibility that the markets will expect in a

company as it transitions from private to public.

The target profile will inevitably be impacted by the company's budget, which means that the recruitment process usually involves establishing priorities and making choices. Cost-benefit analysis will underlie this process, and the right search partner will be able to enhance discussions with a deep-seated understanding of this complex talent marketplace. Case in point: A pre-IPO company operating in the life sciences sector might ideally want to hire a GC with strong IP and regulatory credentials. However, it might conclude, given its financial realities, that a strong background in just one of these areas would deliver the most benefit for the budget.

Another key factor is how much the company is already spending on external counsel and what type of balance between internal and external counsel seems advisable, both in the pre- and post-IPO stage. Pre-IPO companies might hope to entice new hires with equity-heavy compensation packages. But, in contrast to the era of the dot.com boom, strong candidates will look for an attractive financial, as well as equity, offer. These days, they will also weigh that equity offer with a skeptic's eye since any number of companies will inevitably end up moving in other directions rather than an IPO. In this regard, a company whose PE owners have proven credentials in bringing their investments public will have a recruitment edge with equity-heavy offers.

As when building the best board, the right search partner can make a big difference by helping corporations clarify their requirements in a GC and then identifying strong candidates and developing a competitive offer. In recent years, demand for well-qualified attorneys at all tiers has been robust. Good candidates will have multiple offers. Pre-IPO companies that aim to recruit successfully must be prepared to act quickly and decisively when it comes to adding the right GC to their executive teams.

### About the Authors

**Sara Hays is a Managing Director and the Co-Leader of North American Board Practice with Allegis Partners.** Prior to joining Allegis Partners last year, Sara served as General Counsel for several pre-IPO corporations (one ultimately went public while the second had to abandon its IPO strategy due to the economic downturn), while also sitting on several public and private company boards. (In fact, she and Paul Williams, who co-leads Allegis Partners' Board Search Practice, have a combined 20-plus years of experience as public company board directors.)

**Deborah Ben-Canaan is a Partner in Major, Lindsey & Africa's In-House Practice Group.** After spending her early career as a practicing attorney at two prestigious law firms, Deborah transitioned 15 years ago to attorney-oriented recruitment at Major, Lindsey & Africa and is one of the most senior partners in the organization. Her activities focus on General Counsel and other high-level searches; she frequently works with companies that are upgrading their GC functions.

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