

ADVISORY BOARDS

Martin E. Gilligan, Jr
Principal at Martin & Associates

A. OVERVIEW: A small company is often at a disadvantage in evaluating opportunities or in resolving problems due to its small size and lack of broad experience and resources. By establishing an Advisory Board, the small business CEO or Key Executive can overcome and circumvent that disadvantage.

1. Unlike a formal Board of Directors, an Advisory Board is not picked nor named by the shareholders or by major lenders. It is selected by the CEO / Key Executive to serve at his/her pleasure and to benefit him/her by providing access to the Advisory Board Members' experience, knowledge, and network. An Advisory Board is primarily a sounding board for that CEO / Key Executive on topics picked by them (i.e. Financial Planning, Market Assessment/Planning, Technology Development/Commercialization, Organizational Changes, and any Other Key Topic being considered by the CEO / Key Executive).
2. Also unlike a legal Board of Directors, the Advisory Board has no fiduciary responsibility and their advice is non-binding and they do not take any corporate responsibility or liability for the actions taken (or not taken) by the CEO / Key Executive.
3. Since the Advisory Board has no power to decide and can only react to questions or suggestions posed by the CEO / Key Executive or investigate subjects named by the CEO / Key Executive, the open and honest back-and-forth-communication between the CEO / Key Executive and the Advisory Board is vital. A thin skin reacting to criticism, or resistance to new ideas, or predisposed market/product ideas, is almost guaranteed to cause the failure of an Advisory Board that, by definition, is focused on the non-standard (i.e. out of the box) ideas and on possible changes or improvements.
4. Since the input from the Advisory Board is intended to serve and assist the CEO / Key Executive, who must pay intense attention to the contents of the meetings, not the form, there should be another person, trusted by the CEO / Key Executive, who actually administers and runs Advisory Board meetings as the Facilitator.
 - a. The Facilitator should be selected on the basis of interpersonal relationship and administrative skills and may be from any level of the organization that is trusted by the CEO / Key Executive – including other managers/supervisors, salaried employees included in the administration of policies and company goals, and secretarial/administrative support personnel.
 - b. Facilitators should NOT take substantive positions on subjects being considered by the Advisory Board. He/she should schedule meetings, frame issues, assure effective participation, accurately summarize positions, identify and resolve conflicts, tensions, or disagreements, and, above all, take accurate and thorough notes that do not distort, personalize, diminish, or over-emphasize the ideas comments presented.

- c. The idea is not to cover up or conceal disagreements or avoid arguments, but rather to bring them to the CEO's / Key Executive's attention in a way that is educational and which is a fair representation of each side of the thought-process. The entire idea is for the CEO / Key Executive to be able to make considered and effective decisions based on the input from the Advisory Board, including the positives and negatives presented.

B. SETTING UP & ADMINISTERING ADVISORY BOARDS: In addition to many of the normal requirements to participate in any planning or strategic meeting, there are two traits that are absolutely vital to participation in an Advisory Board: 1) the ability to discreetly handle Company confidential materials; and 2) a good working relationship with the CEO / Key Executive for whom the Advisory Board has been convened. The personality "match" is very important – not in the sense of that they like one another personally or always agree, but that they can deal with and work with one another in an honest and straightforward way – the element of professional respect.

1. Each Advisory Board session should have a very clear-cut Objective and an unambiguous time line of activity leading to a conclusion/recommendation. Unlike legal Boards, the Advisory Board should be made up of Members who have special skill-sets, distinct professional capabilities, product/market experience, management experience, and industry contacts that specifically benefit the CEO / Key Executive in whatever challenge he/she is facing at that time.
 - a. The Objectives and Topics of an Advisory Board may (indeed should) change as progress is made. In a larger company, there can be any number of Advisory Boards in operation simultaneously. In a small business, the CEO / Key Executive will find it very difficult to stay ahead of an effective and focused Advisory Board, especially if he/she also has to deal with an active Legal Board of Directors, and there is a potential "fatal danger" in delegating too much of the interface with Advisory Board Members to the Facilitator – the wrong person is being educated and supported!!
 - b. Most Advisory Boards are "Ad Hoc" – that is, they only address a specific subject and are only established for a limited duration, usually less than a year. A "Standing" Advisory Board is more of a policy group and usually comes into play when there are several Advisory Boards working or where there are long-term policy questions to be answered. The major danger with a Standing Advisory Board is that it can very easily conflict with, or interfere with, the activities of the Legal Board of Directors. That is almost always guaranteed to turn out to be a negative development for the CEO / Key Executive.
2. Once a Topic or Objective has been selected for a particular Advisory Board, the CEO / Key Executive and Facilitator must spend time thinking about who will be the right people to ask to join the Advisory Board.
 - a. Big names can be a bonus in terms of credibility; however they often have agendas that may or may not match the Companies and are almost always short of time (and

- may also demand significant financial stipends). Lesser known, but truly knowledgeable, experienced, and respected individuals will have the added advantage of being able to spend much more time on the Advisory Board topics, especially if those topics overlap their own area of interest or expertise, and will normally be willing to work for nominal meeting expenses or without charge.
- b. The Facilitator should present prospective Advisory Board Members with a review “package” that clearly outlines the time demands, the policy on handling Company confidential information, ownership of new developments, the role of the Advisory Board in making operating decisions, and the exoneration of Members from any liabilities for actions taken or not taken as a result of Advisory Board advice. This package should also clearly state the Company’s policy on compensating (or not) the Advisory Board Members – including meals, travel expenses, phone conference calls, meeting stipends, retainers, stock, etc. – and including ability to list that Membership, publicity, and a forum to express professional views that are compatible with the Company’s.
 - c. Typical focused Advisory Boards are comprised of from five to nine Members so that there will always be a “working group” comprised of a simple majority (i.e. 3 or 5 per the above), but also so that everything does not come to a stop if everyone shows up and the large size of the group makes it unwieldy.
 - d. If the prospective Member expresses willingness to participate, the Facilitator must confirm his/her selection with a formal invitation letter from the CEO / Key Executive that must be accepted and returned by the prospective Member in writing.
3. The Facilitator must prepare for Advisory Board meetings with no less diligence than would be used in preparing for the Legal Board of Directors meeting. Agendas should be routed in advance of meetings or conference calls by at least one week. Since the Advisory Board is focused in its Objective, each meeting / conference call should be focused on only one or two key aspects of the Objective so that there is opportunity to thoroughly develop comments and ideas.
 - a. Once the Agenda is determined and approved by the CEO / Key Executive for a meeting or conference call, any available back-up or explanatory materials should be routed in enough time to allow them to be read prior to the meeting. This is especially true if there is an idea or proposal to be considered by the Advisory Board that is new or has any controversy or divergent opinions associated with it.
 4. During the meeting or conference call, the Facilitator must always encourage and strive for honesty in the comments made by Members. It is the Facilitator’s job to facilitate an honest and no “false modesty” or no “political correctness” attitude among the Members that are always within the bounds of professional meeting conduct and civil discourse.
 - a. As the Advisory Board meetings/conference calls take place, the Facilitator will notice those who are verbal, those who are written, those who react, and those who

- think on their feet. It is the Facilitator's job to make sure that each Member participates in a way that is conducive to thorough and honest commentary, even if that means allowing some Members to contribute after the fact via "afterthought" memos and e-mails. The key in that case is to make sure that all Members receive any "afterthought" comments, questions, or ideas.
- b. The primary "reward" a Facilitator and the CEO / Key Executive can give an Advisory Board Member is to not waste their time or take their input lightly. Where credit is due – be sure to give it to the individual (s) who deserve it.
5. Minutes must be quickly published to be useful. Minutes for an Advisory Board meeting are NOT like those published for a legal Board of Directors meeting. They can be summary and even bullets. They are not legal documents. The idea is to capture the gist of market or technical or project or other ideas, especially in the case of opposing views or various options, so that it will be correctly remembered and available for future reference. Making a tape recording of Advisory Board meetings is usually not a good idea since it captures too much detail to be a useful reference, has an inhibiting effect on some participants, and is rarely referenced for good or positive reasons.
- a. Keep the Advisory Board well-informed but don't inundate them with minutiae – only send them things that relate to the topic at hand. Over-loading an Advisory Board with data is a quick way to turn them "Off" or to render them ineffective.
 - b. The CEO / Key Executive must constantly keep an eye on the correspondence flow among the Members and the Facilitator to make sure that the trees are not getting lost in the forest. Personal one-on-one conversations outside of Advisory Board meetings about idea flow and the "mechanics" of the Advisory Board meetings are always valuable to be pursued by the CEO / Key Executive. Commentary articles point out that the "life" of most Advisory Boards is less than six or eight meetings. It is a challenge to keep them fresh.
6. When the Advisory Board has achieved its Objective, disband it. Do not make membership a "roll-over" affair. Even if the same Members are wanted (and want) to return, do them the courtesy of closing the prior Advisory Board along with sincere thanks and any rewards that were promised. Then a new Advisory Board can be put in place with a fresh start. All it will take will be an acceptance of a new invitation letter referencing the prior Advisory Board package.
- a. The beauty of this approach is that it becomes easy to add new members and to graciously discontinue Members who (for whatever reason) don't "fit" anymore.
 - b. If a Member consistently does not participate and becomes an obvious "bad choice" then the CEO / Executive must bite the bullet and replace him/her. This is where the Advisory Board coming to an end is a blessing. If a Member has become disruptive or a negative influence, then the CEO / Executive must take action and resolve the problem or relieve them of their assignment no later than the end of the session.

7. At the end of the session, recognize each Member's participation. Usually, there is some kind of kick-off dinner or luncheon and some kind of summary ending dinner or luncheon. For a small business without much budget, this may be the principal reward to the Members; however, the CEO / Key Executive (and the Facilitator as well) must remember that the Advisory Board Members do get many tangible benefits over and above any financial rewards and should never be apologetic about the inability to pay substantial fees. The benefits to Advisory Board Members may include:
 - a. Expanded professional contacts;
 - b. Exposure to new ideas and different perspectives;
 - c. Contributing to a new product/service that will benefit an industry or society;
 - d. Discovering new customers or technical allies for themselves and their own goals;
 - e. Personal satisfaction and professional growth;
 - f. The opportunity to publish ideas and results in conjunction with the Company.

8. A "sample" Advisory Board package is attached.

[SAMPLE ADVISORY BOARD INVITATION PACKAGE – ON COMPANY LETTERHEAD]

DATE: _____, 2011

TO: _____ (name/title)
_____ (company/association)
_____ (address, city, state, zip)

RE: Membership in the XXXXXXXXX, Inc. ____ (Objective Name) _____ Advisory Board

Dear _____:

Thanks for being so receptive to helping XXXXXXXXX, Inc. (“XXX”) continue its efforts to be an effective force in _____ (describe the business area of concern) _____ and in _____ (describe the objective being sought to be achieved) _____.

As a Member of our _____ Advisory Board, we will ask you for your opinions, your experience, and your public support on topics on which we achieve a consensus. Our Advisory Board Agreement is attached for your review, including a statement of the problem facing all of us and a recent blog on the same subject. Your signature below indicates your acceptance of that Agreement.

As a _____ Advisory Board Member you will be associating with some of the outstanding and influential practicing and academic professionals in the world who have distinguished themselves by their commitment to _____. Benefits to you include:

- a. Expanded professional contacts;
- b. Exposure to new ideas and different perspectives;
- c. Contributing to new and/or improved products that will benefit society and an industry;
- d. The opportunity to publish and promote ideas and results in conjunction with XXX; and,
- e. A strong personal satisfaction from improving the brain health of our many student athletes.

Thank you for taking the time to review this request. Hopefully, you will be able to respond affirmatively and join us; however, regardless, we would appreciate any comment you care to make on this very important subject.

Sincerely,

President & CEO

Yes, I will be glad to join the _____ Advisory Board and I agree to abide by the attached Ground Rules.

No, I will not be able to join, but thanks for asking.

_____, _____
(Signature) (Printed Name)

Cc: _____, Advisory Board Facilitator

_____ **Advisory Board**
Ground Rules

The XXXXXXXXX, Inc. (“XXX”) _____ Advisory Board (“M/DAB”) has been established to continue XXX’s efforts to be an effective force in reducing and (hopefully) preventing the incidents of _____, in _____ related activities – especially among kids and teenagers, boys and girls, participating in club, league, and school sports – but also continuing XXX’s front position in professional sports.

The challenge facing XXX and other responsible _____ manufacturers, specifying organizations, athletes, and their families are presented in the attached white paper on the subject of, “_____.”

Participation by in the _____ Advisory Board is purely voluntary and may be terminated at any time by written notice. Participation in meetings, conference calls, video-conferences, or presentations will be as scheduled by the _____ Advisory Board Facilitator and/or the President/CEO of XXX.

1. An agenda, including any included back-up materials or drafts, for each meeting, conference call, video-conference, or presentation will be distributed at least three (3) days prior to any of those actions.
2. Minutes of each meeting, call, conference, or presentation will be provided to the Members as quickly as possible after each action. These will not be “legal” minutes but rather “sense of the Board” notes to capture the major elements of discussion and any consensus that was developed.
3. Participation by _____ Advisory Board Members will be purely advisory and on a good faith basis. XXX will not have any duty to act on (or not act on) any comments, suggestions, recommendations, warnings, or any other input by _____ Advisory Board Members; at the same time, the operation and management of XXX is completely separate from the _____ Advisory Board and Members will not incur any liability, responsibility, or blame for actions taken or not taken by XXX’s management, whether as a result of, or in disregard of, actions or comments by the _____ Advisory Board Members.
4. _____ Advisory Board Members understand and agree that the topics discussed during meetings, conference-calls, video-conferences, and presentations may include XXX Proprietary and/or Confidential information and, **to the extent that such information is clearly identified as Confidential and/or Proprietary when it is presented or is marked as “Proprietary” or “Confidential” when distributed,** the Member will respect and protect such Proprietary and/or Confidential information with the same degree of care as they would exercise in protecting their own confidential information.
 - a. Any of the alleged Proprietary and/or Confidential information: 1) which is available in the public domain in the form presented, 2) which is already known by the Member through legitimate means and which can be shown to have been known prior to disclosure by XXX, 3) which was provided to the Member by a third party with the right to do so, or 4) which is required to be disclosed in conjunction with a legal action to which XXX has been given reasonable written notice, are not included in this Confidentiality Agreement.

- b. Likewise, any information or commentary provided by the Member and which is clearly identified as being Proprietary or Confidential to himself/herself or to a third party at the time of disclosure and/or distribution will be treated as Proprietary or Confidential by XXX. Generally speaking, XXX does not seek to discover information that is proprietary or confidential to a third party and discourages such disclosures as inappropriate.
- 5. Unless announced in writing and in advance of a meeting, conference-call, video-conference, or presentation, each Member will bear his/her own communications, travel, meal, and professional expenses.
 - a. Special events, technical/product presentations, conference participation, or other venues during which, or in which, Members participate with XXX personnel to reinforce and support findings, recommendations, or conclusions may be able to be reimbursed by XXX if such reimbursement is agreed in advance of any expense being incurred.
 - b. Direct expenses associated with follow-up or implementation actions related to a specific project or action item developed during an M/DAB meeting and assigned to a Member may be subject to reimbursement if such reimbursement is agreed in advance of any expenses being incurred.
 - c. Approval of any and all expenses, stipends, or costs must be in writing and approved by the President/CEO of XXX prior to being incurred.
- 6. _____ Advisory Board Members are independent contractors and are not employees or agents of XXX and have no authority to commit, accept, or authorize on XXX's behalf any business, professional, or industry position, item, or expense. Likewise, XXX has no authority over Member, except to set the Ground Rules pertaining to their role as an M/DAB Member, but only to the extent such roles affect XXX.