



Here's a tip from the sixth edition of our popular publication [\*\*\*The Public Company Handbook\*\*\*](#), which is an easy-to-read guide that provides practical insights regarding legal and other board management issues facing public—or soon-to-be-public—companies.

Unlike some more costly aspects of Sarbanes-Oxley, executive sessions of independent directors, as a group or as a committee, serve a vital governance function at virtually no cost. In light of the NYSE and Nasdaq mandates requiring executive sessions of non-management and independent directors, companies should adopt a practice of routinely holding executive sessions of independent directors at each Board meeting.

The NYSE and Nasdaq have few specific requirements as to the timing, format and substance of executive sessions of non-management directors. An ideal format is to schedule an executive session as the final agenda

item at each regularly scheduled Board meeting. Some Boards, however, prefer to break out executive sessions as separate meetings entirely.

The lead director and fellow non-management directors set the tone for these meetings. Before each session, the lead director will develop an agenda based on matters up for consideration at the regular Board meeting or current pressing concerns. While directors usually do not have authority to make decisions while in executive session, they can reach a consensus and carry the discussion back into the formal Board meeting. A good chair or lead director will work with both management and fellow directors to use executive sessions to address critical Board issues over the course of the year.

Executive session proceedings can be informal, sometimes without an agenda. Minutes, if taken at all, generally reflect only the attendees and time of the meeting.

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