

Efficiently Exercising Your Fiduciary Responsibility

By: Aaron L. Castle – VanOverbeke, Michaud & Timmony, P.C.

According to popular belief an effective exercise routine only takes 15 minutes a day, but is it possible to exercise your fiduciary responsibility as trustees in the same amount of time? In an effort to increase the effectiveness (and lessen the pain of) lengthy meetings, many retirement boards have implemented a practice of setting time limits on presentations from professional service providers; usually 15 – 20 minutes for prepared comments with 5 – 10 minutes reserved for questions. Accordingly, proper preparation and execution by all those involved is crucial to making the most of the limited amount of time set aside for such matters.

It is apparent that the presentation process is most beneficial and efficient when those involved have a firm grasp and understanding of the process itself and the various roles involved in that process. For purposes of professional service provider presentations the participants in the process can generally be narrowed to those of: (1) Presenting professionals; (2) Other (i.e., non-presenting) professional advisor(s); and (3) the Board of Trustees. In light of the foregoing, the following four-step routine is suggested to help maximize the benefits of the presentation process.

Step 1 – Do Your Warm-Ups

Professional athletes and fitness experts don't go into a game or their work-out routine without first warming-up. The same rational applies in this context; proper preparation by all reduces the risk of injury to the plan.

“Before anything else, preparation is the key to success.” – Alexander Graham Bell

Trustees: In fulfilling your fiduciary responsibility as Trustees preparation should be your primary concern in advance of presentations. A general understanding of the particular topic of presentation along with a preliminary review of any informational materials provided in advance will be helpful. Rely on your Professional Advisors to provide you with some basic background info with respect to the Presenter(s) and/or service(s) being presented to the Board. Set goals in advance with respect to what you want to achieve from the presentation process.

“By failing to prepare you are preparing to fail.” – Benjamin Franklin

Presenters: Presenters must rely on the Board's Professional Advisors to provide them with a basic presentation routine, as well as sufficient information to prepare presentation materials and get an idea of a Board's goals and expectations. Advance copies of any presentation materials will be valuable to Trustees' ability to prepare.

“Chance favors only the prepared mind.” – Louis Pastuer

Professional Advisors: Professional Advisors play a key role early on as they will have a familiarity with all parties involved and are in a position to assist both the Board and the Presenter(s) with preparation for the presentation. Think of yourself as each participant's own personal trainer. Depending on the type of presentation, it may be helpful for the Professional Advisor to provide the Board with an "advance screening" detailing background information, historical data, personnel, etc., on the particular Presenter(s). Likewise, a preliminary discussion with Presenters about the makeup and dynamic of the board will assist with their preparation. In the spirit of objectivity it may also prove helpful to lay some ground rules in advance to establish a level of cohesiveness between presentations.

Step 2 – Lose the Weight

I had a rather colorful law professor who used to tell his classes during exam preparation to follow the K.I.S.S. ("Keep It Super Simple") rule when writing exam responses. A similar approach seems to work for the presentation process. Overly complex and convoluted presentations quickly lose the interest of the audience resulting in an unhealthy situation for everyone involved.

Trustees: A Trustee's job is easy at this point in the process; all you need to do is listen. If Trustees have done their homework in advance, they should have an idea of what they want to hear from the presentation(s). If you aren't getting what you would expect out of the process then ultimately is the Trustees' responsibility to dig deeper and expand the extent of the exercise.

Presenters: Avoid an information overload. Presenting information that is relevant, relatable and understandable should be a Presenter's primary responsibility. A long-winded discussion of your company's corporate structure, client list or other products/services may ultimately be an exercise in futility. Likewise, discussion of standard deviation, sharpe ratio, sector rotation, etc., is likely too complex an exercise for the limited amount of time. A brief introductory history of the company and the individuals who will be assigned to the client's account, followed by an explanation of the specific service(s) being considered should be addressed. Be sure to work into the discussion any unique characteristics of the company, its representatives, and the services that you feel are especially tailored to the Board's needs and goals. Don't forget about fees. Save the board the time and discomfort of having to raise the question of fees and briefly address the topic during your presentation.

Professional Advisors: The role of a Professional Advisor throughout a presentation should be similar to that of a referee. If you've provided the Presenter(s) with a format/routine for the presentation, make sure that they are following the format and addressing any specific information you feel is of particular importance. Similarly, try to keep the Trustees involved in the process by encouraging questions and dialogue with the Presenter. Try to avoid an overly "fit" Trustee from monopolizing the conversation or taking over the presentation process.

Step 3 – Less Cardio (Prepared Comments), More Heavy Lifting (Answers)

Oftentimes a well orchestrated Q&A session is more beneficial than any amount of prepared comments. The question and answer process gives Board members and Presenters the ability to have some direct interaction and, to an extent, provides the Board with an opportunity to control the “workout” of information for a short time. It provides Board members with an opportunity to get a better sense for the Presenters on both a professional and personal level. Presenters that are able to provide thorough, on the spot and responsive answers to questions tend to stand out from the crowd.

Trustees: Don't let a Presenter off the hook if you think they've left something on the field. Ask the Presenter to briefly touch on the subject if you feel it was omitted or to explain in more detail if any part of a presentation wasn't clear. Don't be afraid to ask questions about fees, fiduciary responsibility, and performance.

Presenters: Stick to the program. Answers to Board questions should be simple, clear, concise, and most importantly responsive to the question presented. Inconclusive answers will only raise more questions that may go unasked. Refer Board members to relevant portions of any presentation materials that may provide responsive information. Finally, don't be afraid to provide Trustees with a more detailed and responsive answer subsequent to the meeting if information of data isn't readily available at the time of the presentation.

Professional Advisors: Professional Advisors should also be involved in the question and answer process. As previously suggested it may become necessary for the Professional Advisors to act as a referee if a line of questioning gets everyone off the program. Furthermore, if a presentation seemed lackluster, it may fall to the Professional Advisors to motivate the Presenter and/or the Board with more in depth Q&A.

Step 4 – The Cool Down

Just like a lengthy workout session shouldn't come to an abrupt end, the end of a well organized presentation should never come as a surprise to those involved. A presentation's conclusion should do much more than simply tell the audience that your presentation is over. It's that last impression that can linger the longest.

Trustees: Efficient meetings are beneficial for everyone involved. Nevertheless, it is important for Trustees to remember that efficiency is secondary to your fiduciary responsibility to act in the best interest of plan members and beneficiaries. Thus, if you feel for any reason that a presentation or report was insufficient, please speak up. If necessary, ask the Board to waive/extend any time limitations or restrictions with respect to one or more Presenters. Ask the Presenter(s) to elaborate or address any specific information or issue that you feel may have been omitted or lacking from the discussion. Ultimately, the Board has the authority to determine how to conduct its meetings and how to conduct its presentation routine.

Presenters: Maximize the limited amount of time you have. Don't get so far off the subject that you don't have time to conclude your presentation. Try to address questions in a way that brings you back to your presentation materials, or defer providing an immediate response if your prepared comments will subsequently answer the question.

Professional Advisors: To use another sports analogy here, Professional Advisors should act as the timekeeper during the presentation process. In a situation in which the Board may be hearing multiple presentation(s), the timekeeping and procedure should be as objective as possible from one presentation to the next. A five (5) minute warning proves helpful in providing Presenters ample time to conclude presentations. Additionally, if a Presenter is cut off in the midst of discussion due to time constraints, don't hesitate to ask the Presenter to briefly conclude their comments. While maintaining efficient meetings is a priority, an assembly line like approach may not be beneficial if it creates the appearance of running someone out the door for taking too much time.

By design, Boards are comprised of various individuals of various backgrounds representing various interests and ideas. The natural result of this variety is some level of conflict and chaos. To overcome the inherent chaotic nature of meetings, there must be a method of control that does not stifle the meeting process, especially its creative and interactive character. A presentation process that is well-organized will increase the chances of a smooth, effective decision-making process thereby making it easier for Board members to feel a commitment towards both the process as well as whatever outcomes result. While all Board decisions ultimately derive from a vote, it is often the fiduciary exercise preceding a vote that leads to a positive result, and positive results make for a healthier plan.

IMPORTANT NOTE: This summary is intended to be informational only and is intended to provide a general overview. Reference should be made to relevant laws and regulations in addressing specific questions. This information should not be considered the rendering of legal advice or other professional services and Trustees should consult with their plan professionals regarding the implications of the matters contemplated herein.