

# The Posse Foundation: Implementing a Growth Strategy

### Director Appointment

Who do you appoint? **Who do you appoint?**

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### Committee's:

**Audit Committee:**  
Essential role:  
• Act as bridge between the independent external auditors and the board

**Remuneration Committee:**  
Essential role:  
• Responsible for overseeing the remuneration packages of board members

**Nominating Committee:**  
Essential Role:  
• Reduce the possibility of a dominant director pushing through their choice

### Agenda

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- Introduction
- Directors
- Board Structures
- Functions Of The Board
- Board Committee
- Conclusion

### Delegation

Tasks

Effectiveness of the Board

Efforts

### Directors

Corporate director = another company not a human being

Associate director = not legally board member

Nominee director = nominated by shareholder to represent interests

Shadow director = not formal board member, BUT can put pressure on decision making

Governing director = dominant power in private company

Cross-directorship = director of firm A is director in firm B (and vice versa)

### Board Structures

Unitary board

Executive Director Board

Non-executive Director Board

Executive Director Board

Non-executive Director Board

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### Functions Of The Board

Accountability

Strategy Formulation

Supervising executive activities

Polymaking

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### Director Appointment

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Who do directors represent?  
 • Shareholders  
 • Stakeholders  
 • The Company

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 • Stakeholders  
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Their Duties & Roles

### Committee's:

**Audit Committee:**  
 Essential role  
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**Remuneration Committee:**  
 Essential role  
 • Responsible for overseeing the remuneration packages of board members

**Nominating Committee:**  
 Essential Role  
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### Delegation

Tasks

Responsibilities Of The Board

Effectiveness

### Directors

Corporate director = another company, not a human being

Associate director = not legally board member

Non-executive director = nominated by shareholder to represent interests

Shadow director = not formal board member, BUT can put pressure on decision making

Co-sitting director = dominant power in private company

Co-directorship = director of firm A is director in firm B (and vice versa)

### Board Structures

Ordinary boards

2/3 non-executive director board

Minority non-executive director board

2/3 non-executive director board

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### Functions Of The Board

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### Conclusion

- Different board structures imply different power hierarchies
- The type of "director" defines the corresponding tasks and duties
- The board of directors has different dynamic functions to fulfill
- Committees play an integral role in ensuring correct dispersion of control, accountability and due diligence.
- Correct delegation of Tasks and function is crucial in CG.

# Introduction

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**The Washington Times** FRIDAY, OCTOBER 1, 2004 25 cents

Merck stock fell \$12.07, or nearly 27 percent, to \$32.90 in heavy trading on the New York Stock Exchange yesterday. Merck dragged down the Dow Jones Industrial Average, which was off by 56 points.

### Merck recalls Vioxx

#### Heart risk found in arthritis drug

TRENTON, N.J. (AP) — Merck's blockbuster arthritis drug Vioxx, the blockbuster arthritis drug taken by 2 million people, was pulled from the market by its maker yesterday after a study found it doubled the risk of heart attacks and strokes. Experts advised patients to immediately stop taking Vioxx and talk to their doctors about alternatives.

"Given the availability of alternative therapies, and the questions raised by the data, we concluded that a voluntary withdrawal is the responsible course to take," said Raymond V. Jenner, chairman and chief officer of Merck.

The withdrawal is a serious blow for the New Jersey company, the world's third-largest drug maker. Vioxx accounted for \$2.5 billion in worldwide sales in 2003 and has been taken by 2 million people worldwide.

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Merck's recall of its Vioxx painkiller surprised pharmaceuticals in the United States and Canada, leaving questions from concerned patients and doctors looking for alternatives and trying to get information about the drug.

Vioxx, which is also prescribed for acute pain and described for its potential to prevent cancer, was prompted by a three-year study aimed at showing the drug could prevent the recurrence of potentially cancerous polyps in the colon and rectum.

Participants taking Vioxx for more than 18 months were found to be twice as likely as those given placebos to have a heart attack, stroke or other heart complications.

The Food and Drug Administration said there were early signs of potential problems with Vioxx. A Merck heart risks study led to warnings about the drug's label in 2001, and the FDA has been monitoring problems that have been reported since then.

"This is not a total surprise," said Dr. Steven Galsbol, acting director of the FDA's Center for Drug Evaluation and Research. Vioxx is part of a class of anti-inflammatory drugs called cyclooxygenase-2 inhibitors that have been heavily touted by the pharmaceutical industry as being more effective and having fewer side effects, particularly on the stomach, than older drugs. Pizer's Celebrex and Hektira are also cyclooxygenase-2 inhibitors. But so far there has been no evidence that these other drugs pose any dangers to the heart.

Officials do not know how Vioxx may be causing the increased risk.

Alternatives to Vioxx include generic pain relievers such as ibuprofen and aspirin, as well as Celebrex.

"There are very few patients for whom there won't be a good alternative drug," said Dr. Steven Abramson, director of rheumatology at New York University Hospital for Joint Diseases.

Dr. Abramson said there was no reason for those who used Vioxx in the past to panic; he said there is no evidence that the elevated risk of heart attack persisted after a patient had stopped taking the drug.

Personal-injury lawyers already have begun circling Merck. Trial lawyer Wayne Cohen said the decision has opened the company up to tremendous legal jeopardy.

Besides possibly knowing about the harmful effects and not acting quickly enough, the company is also vulnerable to huge settlements because the injuries — cardiovascular problems and stroke — are debilitating and costly, said Mr. Cohen, the president of the D.C. branch of the Association of Trial Lawyers of America.

"One hundred million people have used Vioxx and therefore the potential for claimants is monumental," he said. "You also have users of Vioxx that are not injured now but may need to get monitored."

A law firm in Oklahoma City, Pederman & Sherwood, said it had filed the first lawsuit subsequent to Merck's recall of the drug. Within hours of the recall announcement, lawyer Barry Slotnick of New York announced plans to file an unspecified number of federal lawsuits on behalf of Vioxx users.

"It's a disaster for Merck, coming at the worst time," said health care analyst Herment Shah of HKS & Co. in Warren, N.J.

Merck stock price chart showing a sharp decline from \$45 to \$32.90.

Date	Price
Sept. 30	\$45
Oct 1	\$32.90

# Why do directors get appointed?



- Re-appointment on the expiry of a director's term of office



- Appointment to fill a vacancy arising on resignation, death etc.

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- The creation of an additional directorship

# How do directors get appointed?

## 19th Century model



## Modern model



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- **Not feasible** that the shareholders voted the directors
- **Chosen by existing** directors and **routinely approved** by shareholders
- Directors were **chosen from small network** of influence
- **Founder**/chairman/entrepreneur made **suggestions**
- **Still the case** in many **private** companies

- Only **influential** shareholders can have an **influence** on director **appointment**
- **More INEDs** are appointed
- **Existing** directors/management **choose new members**
- **Networks still in existence** but **INED's counteract** the problem a little
- **Little influence** for **small** shareholders

# 'Implications of the Election

Should CEO and chairman be the same person?

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Larry Page

### Separated:

- Check and balance mechanism
- Limits potential Abuse of power



Eric E. Schmidt

### Combined:

- One leader limits conflict (Historically Accurate)
- In the US combination of the two roles is common

Appointing retired CEO's as chairman

- Check and balance mechanism
- Limits potential Abuse of power

- In the US combination of the two roles is common

## Appointing retired CEO's as chairman



Daniel Akerson

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Pro:

- High level of experience, knowledge and connections

Con:

- Potential friction with new CEO's



# Board Structures

## Unitary boards

### All-executive director board

- Top managers = directors
- small firms , start-ups
- No duty distinction

### Majority-executive director board

- non-executive directors:  
in minority
- add expertise, new perspectives  
-> British public listed companies  
until 1970s

### Majority non-executive director board

- non-executive directors > managers
- Managers make strategies
- Management has too much power  
-> USA, UK, advanced economies

### All non-executive board

- not-for profit entities
- Managers provide information only

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### Two-tier boards

Executive board and supervisory board  
-> Europe, Taiwan, China

Examples

• **Germany**

Two parts: *Vorstand* (management board committee)  
*Aufsichtsrat* (supervisory)

• **Netherlands**

Three parts: Representation of Capital, Employees,  
Society

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