Case Notes - Global Tech IPO - Scenario

As an Independent Board Member:

1. Identify and discuss the key governance issues

Key Governance Issues:

* DIsclosure
  + - the details that the promotion of Ms Smith is based on
    - The reason behind the termination of Mr. Tremblay
    - why should the new HR lady replace Mr. Tremblay, no detailed information is provided
    - The previous issue with Ms. Smith is not clarified enough
    - Missing a lot of information for detailed analysis
    - Guy Tremblay is getting fired
      * There is not enough disclosure as to the reasons why he is being let go.
      * Was his performance related to the issues of losing key talent from the company to competitors.
* Board Composition
  + - the CEO becoming a chairman
    - the COO becoming a director switches the board more towards a dependendent board rather than independent
    - we don’t know much about the rest of the board members
      * Number of board members?
      * #Independent vs dependent board members.
    - Succession plan:
      * Maurice Gagnon:
        + Board should look at the skill set that Maurice was bringing to the board.
        + The board should review the competency matrix that is left void by his departure.
        + consider candidates as per succession plan.
        + Maurice Gagnon should have given his resignation to the board & HR committee and not the CEO.
    - Structure
      * Too passive of a board of directors.
        + CEO has too much power,
        + a public company should be run by the board, no the CEO.
      * No structure of board,
      * Need committees in place for governance, audit and HR.
        + There is no fact to support this idea?
    - The CEO is attempting to gain as much control as possible before the company goes public.
* Shareholder Relations
  + - the mentality of a public company is not there
* Committee Effectiveness
  + HR/Nominating Committee / Compensation Committee
    - * The board should have another committee comprised of independent directors.
    - JS
      * Proposition of promoting Jennifer Smith to President & COO.
        + The CEO can propose her as a candidate.
      * Proposition of promoting J.S. as board member?
        + She would be a dependent member.
        + This vote needs to be done by the board members.
        + CEO is pushing the board towards being more dependent rather than independent.

CEO shouldn’t have the right to decide who should be on the board.

* + - * + She served 3 years off tech board of tech other company, and therefore she should not be in that position. How do we know that she would not repeat the same behavior?  
          Has she learned her lesson?

She should stay in the company for a longer time before being promoted as a board member.

CONFLICT OF INTEREST?

board member of another tech company?

* + - Brian Johnson
      * Brian should not decide on his own term of tenure as CEO, this is up to the HR committee as well as the board.
      * Furthermore, Brian should not decide on his position at the board as Chairman, but should be voted in by the board, based on rigorous review of required qualifications.
      * Chairman should be independent.
        + Effective leader of the board.
        + Brian should not be Chairman.
      * Ownership of the company.
        + 31% of the company, (to be 35%)
        + Does the CEO have too much of voting power?
      * 2a)
        + IPO efforts should be led by the board, perhaps, by the corporate governance committee?

Special Committee for IPO?

Board member should be assigned to lead the IPO.

* + - * JS:

Given Stock options but not given PSU, which would tie her performance to the shares she would earn in the company.

* + - * + Conduct a study on the reason of why people may want to quit and work for competitors ?
        + Conduct a study on the reasons that the compensation / salary / company culture are not enough to stop people from leaving the company
        + Base Salary
        + They should have Short-term performance compensation plan
        + Long-term performance compensations (PSU etc..)

incentive to contribute to the company.

* + - * + Conduct an analysis of the market on levels of compensation.

Study of benchmarking of accepted compensations in the industry.

Study of peer group compensation levels for various executive positions.

* + - Anne Price
      * Replace Guy Tremblay as VP Human Resources.
      * Guy Tremblay may be responsible for the issues of hiring of talent.
        + what was the reason for firing?

This is going to cost the company.

* + - * + What is the motivation behind this decision?

Needs to be discloses.

* + - * The CEO needs to disclose
* Board & Management Relations
  + - The mentality of a public company should be put in place
    - Strategy:
* TSX Guidelines for IPO?

1. Describe what you would do for each of these issues.
   1. Before the meeting
      1. Contact other independent members of the board to discuss points of concerns.
         1. Resignation needs to be handed to the board and not the CEO.
         2. CEO is attempting to acquire too much power of the company before going public.
      2. The CEO needs to provide more disclosure on the key reasons for:
         1. the Firing of Guy
            1. Many HR issues, was he the cause?
         2. The Reasons for promotion of Jennifer Smith to President and COO.
            1. Disclose the History of Jennifer Smith in order for her to be considered as COO or board member.
         3. The reasons to hire Anne Price?
      3. Are all the independent directors going together in the same opinion?
      4. Create the committees?
         1. HR & Compensation?
            1. do the committees exist.
            2. CEO is dictating his own compensation,
            3. Committee needs to review its mandate to ensure that proper governance is conducted.

Board needs to decide on CEO compensation.

* + - 1. Audit?
         1. Is an audit committee in place?
         2. what is the mandate?
         3. Has the financials been reviewed when it comes to company ownership (CEO with 31% of company compliant with TSX?)
    1. Perhaps fire the CEO considering his strong influence on the direction of the company.
  1. At the meeting, you, as an independant director should:
     1. Propose that the CEO reconsider his position on the matter of attempting to gain too much control of teh comapny just before going public.
        1. Shoudl the CEO attempt to continue forcing his position, the board should vote on having him tender his resignation.
     2. Compensation
        1. Propose to Perform audit of the Renumeration experts limited company to see whether there is proper oversight in place of the company.
     3. Governance
        1. Propose to Perform an audit on the structure of board to see if the board is compliant with CGA guidance, as well as the CCGG guidances on best practices.
           1. # independent vs # dependent direcotrs.
           2. age
           3. ownership guidelines?