"CEO vs CFO and the Board Must Decide.
Dilemma for the Newco Fiber Network board:

Our Executive is a newly appointed Chairman, President and CEO (CEO) of NEWCO Fiber Networks, LLC (NFN) based on the west coast. NFN is a four-year old early stage Triple Play provider (phone, internet and cable) building high-speed Fiber-to-the-Home communications networks in partnerships with utilities in secondary and tertiary markets. (Think of a B2C FIOS-like service in the home competing against an outdated cable TV only service company).

The CEO had been recruited to the organization in part to raise $25M private equity to fund the new network build-out. If he is not successful he will not receive 33% of his stock options. While our CEO had not raised private equity funds previously, he had led a management buy-out effort and just closed a merger of a $120M NASDAQ public telecom company where the board was controlled by a major European based financial services company. The CEO understands the importance of reputation among financial institutions having rebuilt the financial standing of the public company. In the previous turnaround, his team doubled the credit line, maximized the inventory effectiveness and improved the cash position; making the company a more attractive merger candidate in a deregulating market.

Prior to the CEO's arrival, NFN raised $1M from a strategic network based investor and had just closed a $24M debt facility in the prior quarter. The intent is to repay a $10M loan from the utility strategic partner and fund the remaining construction. The local gas and electric utility is a strategic partner and gave guarantees to the debt provider for performance of this loan. One of the utility's top executives has been appointed to the NFN board of directors along with the midwestern strategic network based investor. The Founder/Chairman and the Vice Chairman are to remain on the board until the company is financed and the board restructured. The remaining board members include a CEO of a tech start-up, a retired senior exec of a regional Bell telephone company, a doctor representing other M.D. investors and a financial advisor. Typically the board meets in person on a quarterly basis.

NFN accomplished much in a short period of time (adding 22,000 new customers in first 18 months) but is earning a poor reputation in terms of customer center responsiveness; answer time is 7.5 minutes and customer abandoned rate is 89%. This poor performance is bleeding over to the electric/gas utility partner that is receiving complaints about NFN's responsiveness and is a negative reflection on the utility's customer relationships. Complaints are reaching the Public Utility Commission regulators. Additionally, it is becoming apparent the operations team can not accurately estimate construction targets and timelines. In short the operations team does not meet expectations.

In his first 10 days with NFN, the CEO is on his maiden visit to the pilot city in the Midwest with his inherited leadership team. On Thursday morning of that week, before returning to home base, he noticed the COO, CFO and the local General Manager in a meeting crafting a letter to draw down the first tranche of $5M from TICX, the new debt provider. There is a certain amount of anxiety as it is estimated the company has one month of operating cash flow remaining. Current estimates are that each fiber mile costs $46,000-$100,000 in construction costs alone depending on aerial or underground burial. In the first quarter of the new facility NFN has not met the performance terms (fiber miles constructed, houses passed and new customers installed) for the draw-down of the next tranche so the exec team was careful in crafting an ambiguous capital request for the CEO's signature. All three execs have previously worked together at another company and were comfortable with this approach, even though NFN was in violation of the debt facility's covenants. As a condition in the new CEO's recruitment, the CFO had been informed he would not be staying after the company is financed. Further, the COO believed he should have been promoted to the CEO position and he is not happy with the board for recruiting the new CEO from the outside. In fact, the COO signaled his resistance by being sick on each of the CEO's recruitment visits to the company prior to the CEO signing his employment agreement. After being briefed on their intentions to mislead TICX, the CEO stopped their discussion. As a separate issue, he learned TICX is scheduled to syndicate the $24M debt facility to another debt provider, XATS, by noon tomorrow. Time is short. His instincts are to immediately stop the drawdown request and inform TICX of his company's failure to meet the terms and conditions of the debt instrument. This requires XATS to be informed by TICX of this "failure to perform" status ASAP. A number of negative repercussions are likely including stopping the loan syndication.

Given the limited time available, the CEO reaches out to several key board members for their support of his plan to stop the drawdown process. The CFO briefed the financial advisor who is a NFN board member and also had been chair of the CEO search committee. The financial advisor disagrees with the CEO and she recommends going forward with the drawdown request. Additionally, she feels there is not a need to inform TICX or the full board of the situation. As additional background, the financial advisor made an early stage investment of $300,000 in NFN and is also receiving a fee on all equity and debt raised for NFN. In her opinion, this is not an issue requiring the board's attention. She recommends continuing the drawdown request as planned. In an informal discussion on this topic another board member fell in line with the financial advisor's recommendation. There is concern that stopping the debt syndication would harm NFN's reputation and substantially hinder the ability to raise funds for this capital-intensive project. The plan is to raise additional equity and debt to continue growing the network city-by-city as cable franchises are obtained in each of 22 cities.

The clock is ticking…it is Thursday afternoon and the syndication is planned to be completed by noon Friday…the debt provider is not aware of the dilemma surrounding the drawdown of the next $5M. Before the CEO boards his plane he calls his outside attorney, performing the role of corporate secretary, to announce a telephonic board meeting for 9AM Friday. The agenda is to discuss the two diverse views, seek alternatives not listed here and make a decision by 9:30AM.

It is now 9AM Friday…