JAECKLE FLEISCHMANN & MUGEL, LLP

BOARD MEMBER BEST PRACTICES

Director Education Program

THE PRACTICE OF CORPORATE GOVERNANCE

Each *Practice of Corporate Governance* session presents an overview and background of the subject from both a regulatory and business perspective. The sessions identify red flags or alerts that Directors should be looking for and provide essential questions Boards should ask. Each session includes suggested best practices, with discussion related to the benefits and drawbacks, and practical templates, tools and documents.

THE BOARD AND ITS ADVISORS

The Sarbanes-Oxley Act recognized that it was increasing the personal liability of the Directors serving on Boards of public companies and emphasized that Directors *should* rely on outside experts as needed to ensure they are properly fulfilling their role. Obviously, there are many advisors from which to chose, as well as cost and control issues.

- What kind of advisors do Boards need?
- When should a Board consider engaging outside advisors?
- Who should select and control the advisors?
- What resources are there for identifying advisory firms?

BOARD STRUCTURE AND INDEPENDENCE :

BALANCING COMPLIANCE REQUIREMENTS AND EFFECTIVENESS

Both the Sarbanes-Oxley Act and new stock exchange listing requirements are driving comprehensive evaluation of Board operations. Directors are responsible to ensure that structure and independence requirements are met. Decisions require striking a careful balance between compliance and real world practicality to ensure a Board operates effectively.

- What factors drive Board size & structure decisions?
- What are the independence requirements of the SEC and the stock exchanges?
- How do you interpret and evaluate Board compliance with regard to the "affiliated person" definition?
- What are the disclosure requirements related to Board operations?

BUSINESS AND INDUSTRY

The new regulatory environment has significantly increased the time commitment for Directors. Efficient management and prioritization of information Directors utilize to position a company relative to its industry and as a guide for their decision making is paramount.

- What information should Directors be provided relative to industry trends and competition?
- What are the best sources for this information?
- What internal reports should Directors be provided?
- What market information will help Directors understand how the investment community views the company?
- How can Directors watch for "new competition" in the making?
- Is there a protocol in place for information management and distribution?

Taking a big picture view of Board process and evaluating Board and Director performance is challenging. Best practice trends suggest that Board evaluations will likely become the norm for publicly traded companies.

Creating Excellence in the Board Room:

Performance Evaluations for Your Company's Board of Directors

- How are evaluations used to address elements that are key to Board effectiveness?
- What are the benefits and drawbacks of Board evaluations?
- What is the recommended protocol for implementing an evaluation process?
- Who is evaluated, how and where do you assign the responsibility?
- What are the parameters for documentation of Board evaluations?
- How do you disclose and use the results?

Both internal and external risk factors contribute to the risk that a company takes in carrying out its business. Identifying risks, managing policies and procedures and reviewing the company's risk profile are the responsibility of both senior management and the Board.

The Directors' Role in Risk Management

- What are the duties and responsibilities of Directors relative to risk management?
- What are the scope, categories and types of risk factors to be evaluated?
- What internal control factors contribute to effective risk management?
- How does risk management parallel with strategic planning?
- What recommended action can Directors take to evaluate the effectiveness of company risk management procedures?

Decisions regarding Executive and Director compensation have never before been under such scrutiny. Disclosure requirements governing Director and Executive compensation require a review and examination of the decision making process and compensation mix.

Director and Executive Compensation

- What are the rules and guidelines for compensation committees and compensation disclosure?
- What are the trends in compensation mix and amount?
- What are the trends related to stock awards and accounting for awards in the form of stock options?
- What are the trends in executive compensation packages and how do you relate compensation with performance?
- Do you need a compensation consultant?

Improving Governance with Planning & Preparation

In order to carry out the oversight duties that Congress, the SEC and stock exchanges now expect of Directors, timely access to complete information and adequate time to review that information are essential.

- What is the best approach for assembling and distributing information to the Board?
- What are the elements of a thorough Board calendar?
- How do you prepare Directors for major decisions?
- What are the most critical activities for the Board calendar?
- What are critical and required obligations for audit and compensation committees' calendars?

Reporting & Disclosure

The Sarbanes-Oxley Act, SEC regulations and NYSE and NASDAQ listing standards have changed dramatically as a result of numerous high profile corporate scandals. Financial reporting and disclosure requirements have increased in detail and scope.

- What reporting and disclosure documents are effected by the new rules?
- How does Sarbanes-Oxley impact company financial reporting and disclosures?
- What additional requirements have been adopted by NYSE and NASDAQ?

Strategic Planning

Healthy tension between Directors and management is an element of productive strategy development and decision making. A careful balance in the inter-relationship of management and Board roles is required in the process.

- What is the strategic planning process from the Board and investor perspectives?
- What are the goals of the strategic thinking process?
- What factors differentiate the roles of management and Directors in the strategic planning process?
- How do Directors evaluate the progress and strength of the plan in place?

Succession Planning

More than simply preparing for the worst, a succession plan is a proactive approach to ensuring a company's future success. It is part of the continuous process of evaluating a company's needs and redefining its corporate vision.

- What are the challenges, necessity, benefits and pitfalls surrounding a succession plan?
- What are the common mistakes in succession planning?
- What is the impact of the plan on corporate culture?
- How do you balance internal and external resources to expand the talent pool and monitor the success of the plan?

Corporations and their Boards are increasingly concerned about the quality of their governance practices and the influence these practices have on their overall performance. Jaeckle Fleischmann & Mugel, LLP and our affiliate Kei Advisors LLC have developed *The Practice of Corporate Governance* program to address the subjects that are of greatest concern to Directors as they carry out their fiduciary responsibilities. The program sections may be presented independently or as a series based on the priorities of the company and board. The first session, *The Board and Its Advisors*, is a complimentary presentation available upon request.

For more information on *The Practice of Corporate Governance* program contact:

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Practice Of Corporate Governance Sessions

- The Board and Its Advisors
- Board Structure and Independence
- Business and Industry
- Creating Excellence in the Board Room
- The Directors' Role in Risk Management
- Director and Executive Compensation
- Improving Governance with Planning & Preparation
- Reporting & Disclosure
- Strategic Planning
- Succession Planning

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