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A Post-Enron Paradigm for Board Meetings

As major companies during the past 30 years moved away from predominantly local boards, with few outside directors, to national boards consisting of a large majority of outside directors, who were mostly CEOs of comparable major companies, a pattern of board and board committee meetings developed that in many cases involve a working breakfast for committee meetings followed by a board meeting that ends at noon with a buffet lunch attended by only a few directors because most leave for the airport as soon as the meeting ends. With this type of schedule, committee meetings, including the audit committee, are usually limited to one-to-two hours and the board meeting itself to not more than three hours.

Post Enron this will not do. The SEC, the President, and the Congress have criticized directors for not adequately monitoring the corporations they serve; the legal community, including prominent judges, have stated that Enron's short meetings are evidence of failure by the directors to fulfill their fiduciary duties; and the New York Stock Exchange and The Business Roundtable, as well as various organizations representing investors, have advised more extensive agendas for boards and committees and more intensive discussion and review by directors. These agendas and duties make it difficult, if not impossible, to properly discharge the directors' obligations in the four-to-five hour time frame that has become customary at many companies.

In order to provide the time necessary in the post-Enron environment, committees with extensive agendas, like the audit committee, should have their meetings scheduled for early in the afternoon of the day before the board meeting and, to the extent required, meetings should continue through a working dinner. This time frame could also be used for regular meetings of only the non-management directors. The board meeting itself could then start earlier in the morning and continue through a working lunch, with adjournment planned for mid-afternoon. This schedule should permit the consideration and discussion of all that is today necessary to satisfy post-Enron requirements.

In addition, boards should consider the desirability of an annual two-to-three-day board retreat with the senior executives at which there is a full review of the company's financial statements and disclosure policies, strategy and long-range plans, and current developments in corporate governance. Frequently, this retreat is held at a location close to one of the company's operations so as to give the directors an opportunity to become acquainted with a number of the company's operations as the annual retreats are rotated among the company's various locations. During the retreat, meals and social activities should be arranged in a manner that encourages the directors on a one-to-one basis to get to know the senior executives.

Companies should also provide comprehensive orientation for new directors so as to acquaint them with the company's strategy, long-range plans, financial statements, properties and operations, corporate governance guidelines and senior executives. The annual retreat could satisfy a major portion of such an orientation.

Assuming directors make good use of the time, this paradigm, which many companies have already adopted, will improve significantly the functioning of boards and board committees and will ensure that the directors cannot be faulted by regulators or in litigation as to the manner in which they performed their duties.

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