

March 25, 2004

Key Issues For Directors

The following is an updated list of key issues for directors, with my personal view as to each:

1. Understanding that the post-Enron reforms should not deter people from serving as directors and boards should not overreact to the new governance requirements and procedures by concentrating on process to the exclusion of the fundamental function of the board to advise on strategy and to monitor performance and risk management.
2. Creating the appropriate relationships between the board as a whole and the audit, compensation and nominating-governance committees so that the work of the committees is not duplicated by the board, but the significant actions of the committees are understood by the board as a whole and are integrated into the overall work of the board.
3. Organizing the executive sessions of the board so that they are meaningful reviews of management performance and management succession plans.
4. Making meaningful use of the annual evaluation process and the nominating committee with a view to achieving the best available board.
5. Regularly reviewing that the CEO and senior management are setting a "tone at top" that stresses professionalism, integrity, transparency, legal compliance and high ethical standards.
6. Cutting through the public and political gadflies' criticism of executive compensation and developing compensation programs specially tailored to each company that enables it to attract and retain the best available executives and reward outstanding performance.
7. Responding to poison pill, destaggering of staggered board, splitting role of Chairman and CEO and other corporate governance initiatives and to withhold the vote campaigns, which are increasingly being resorted to by labor unions and public pension funds and which are mainly for purposes other than improving the company's performance. Unless directors resist these actions, and the threats of these actions, we will have governance by referendum, or threat of referendum, rather than the board of directors.
8. Resisting the trend to establishing a special committee of independent directors to investigate almost all whistle-blower complaints, recognizing how disruptive such investigations are, and being judicious in deciding what really warrants investigation.
9. Resorting to outside advisors only when there is a real conflict or real need for special expertise, and continuing to obtain professional advice from the company's own general counsel and CFO.

Martin Lipton

If your address changes or if you do not wish to continue receiving these memos, please send an e-mail to Publications@wlrk.com or call 212-403-1775.