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Key Issues for Directors

The following is an updated list of key issues for directors, with my personal views:

1. Understanding that the post-Enron reforms should not cause boards to overreact to the new requirements and procedures by concentrating on process and compliance to the exclusion of the fundamental function of the board to advise on strategy and to monitor performance. The decision in the Disney case revitalized the business judgment rule and alleviates the concern raised by the Enron and WorldCom settlements that the post-Enron reforms would create new criteria for director liability.

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 director education programs, the annual evaluation process and the nominating-governance 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. Striking the right balance in responding to shareholder corporate governance initiatives, accepting those that do not interfere with management of the business and rejecting those that limit the power of the CEO and the board. Majority voting, which has received very significant shareholder support, is an example of a proposal that should be accepted. Limits on executive compensation and splitting the role of Chairman and CEO are examples of proposals that should be resisted. In general, the effort being led by some academics to impose management by referendum should be resisted.

8. Resisting the trend to having the audit committee or a special committee of independent directors 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. Unless there is a clear reason to doubt the expertise or absence of self-interest of internal advisors, directors are as protected in relying on them as on outside advisors.

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