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Key Issues for Directors

The following is an updated list of key issues for directors:

1. Anticipating attacks by activist hedge funds seeking strategy changes by the company to boost the price of the stock, and developing business, financial and legal strategies to avoid or counter them.

2. Recognizing the explosive nature of the executive compensation question, developing specially tailored executive compensation programs to minimize criticism, properly documenting the discussions and decisions of the compensation committee, and disclosing fully all elements of the compensation. At the same time, cutting through the public and political gadflies' criticism of executive compensation to enable the company to attract and retain the best available executives and reward outstanding performance.

3. Understanding that Sarbanes-Oxley and other post-Enron reforms should not cause the board 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.

4. Developing and following due diligence procedures designed to establish the due diligence defense to personal liability claims predicated on misstatements or omissions in SEC filings. It was weakness of their due diligence defense that led to the personal liability settlements by the Enron and WorldCom directors.

5. 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 accommodated. Limits on executive compensation and splitting the role of Chairman and CEO are examples of proposals that should be resisted. The effort being led by some academics to impose management by referendum must be resisted, if the corporate system as we know it is to be preserved.

6. Regularly reviewing that the CEO and senior management are setting "tone at top" that stresses professionalism, integrity, transparency, legal compliance and high ethical standards.

7. 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.

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. When an investigation is warranted, 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 officers and regular advisers.

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