December 1, 2008

Key Issues for Directors

At the end of each year, we list what we think will be the key issues for directors in the new year. Some issues continue to be relevant from year to year; others are new or come to the forefront due to current events. This year the economic crisis affects all the issues. The following is an updated list:

1. The risk oversight function of the board of directors has never been more critical and challenging than it is today. In the context of the current global economic crisis, companies now face risks that are more complex, interconnected and potentially devastating than ever before. The public and political perception that undue risk-taking has been central to the breakdown of the financial and credit markets is leading to an increased legislative and regulatory focus on risk management and risk prevention. In this environment, directors must be mindful of the possibility that courts will apply new standards, or interpret existing standards, to increase board responsibility for risk management.

2. Monitoring balance sheet issues, including leverage, liquidity, debt maturities, share buybacks and dividend policy, in light of the economic crisis, and dealing with the problem of underwater pension and other employee benefit plans.

3. Assuring shareholders and other constituents (including regulators) that the CEO and senior management are being properly evaluated and that there is a frequently reviewed management succession plan.

4. Dealing with executive compensation, not only in light of normal sensitivities, but also to address the current perception that poorly structured executive compensation programs encouraged excessive risk-taking and contributed to the economic crisis. Directors will need to develop specially tailored executive compensation programs to comply with new regulations and to minimize criticism, but at the same time enable the company to attract and retain the best available executives and reward outstanding performance.

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

6. 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 impede the achievement of long-term success and shareholder value.

7. Anticipating attacks by activist hedge funds seeking management, structural or strategy changes to boost short-term stock prices at the expense of long-term value, and developing business, financial and legal strategies to avoid or counter them.

8. Maintaining collegiality and the culture of a common enterprise with the CEO and senior management, while continuing to enhance monitoring of performance, risk management and compliance in response to sharply increased pressure from Congress, shareholders, regulators and employees brought about by the economic crisis.

9. As the current economic crisis grows more severe, navigating the dangerous shoals when a company has solvency issues that create a conflict between the interests of shareholders and creditors.

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