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Key Issues for Directors in 2013

For a number of years, as the new year approaches, I have prepared for boards of directors a one-page list of the key issues that are newly emerging or will be especially important in the coming year. Each year, the legal rules and aspirational best practices for corporate governance, as well as the demands of activist shareholders seeking to influence boards of directors, have increased. So too have the demands of the public with respect to health, safety, environmental and other socio-political issues. In The Spotlight on Boards, I have published a list of the roles and responsibilities that boards today are expected to fulfill. Looking forward to 2013, it is clear that in addition to satisfying these expectations, the key issues that boards will need to address include:

1. Working with management to encourage entrepreneurship, appropriate risk taking, and investment to promote the long-term success of the company, despite the constant pressures for short-term performance, and to navigate the dramatic changes in domestic and world-wide economic, social and political conditions.

2. Working with management and advisors to review the company's business and strategy, with a view toward minimizing vulnerability to attacks by activist hedge funds.

3. Resisting the escalating demands of corporate governance activists, which this year will continue the efforts to increase shareholder power and dismantle takeover protections and include proposals to separate the positions of Chairman and CEO and to lower the percentage of outstanding shares necessary for shareholders to call a shareholder meeting.

4. Organizing the business, and maintaining the collegiality, of the board and its committees so that each of the increasingly time-consuming matters that the board and board committees are expected to oversee receives the appropriate attention of the directors.

5. Developing an understanding of shareholder perspectives on the company and fostering long-term relationships with shareholders, as well as coping with the escalating requests of union and public pension funds and other activist shareholders for meetings to discuss governance and business proposals.

6. Developing an understanding of how the company and the board will function in the event of a crisis. Many crises are handled less than optimally because management and the board have not been proactive in planning to deal with crises, and because the board cedes control to outside counsel and consultants.

7. Retaining and recruiting directors who meet the requirements for experience, expertise, diversity, independence, leadership ability and character, and providing compensation for directors that fairly reflects the significantly increased time and energy that they must now spend in serving as board and board committee members.

8. Working with management to cope with the proliferation of new regulations and changes in the general perception of business that have followed the financial crisis.

9. Dealing with populist demands, such as criticism of executive compensation and risk management, in a manner that will preempt increased regulation and avoid escalation of activists demands while at the same time furthering the best interests of the company.

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