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Key Issues for Directors in 2014

Posted by Martin Lipton, Wachtell, Lipton, Rosen & Katz, on Monday December 16, 2013

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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 reviewing my 2013 issues memo, I concluded that the 2013 issues continued as the key issues for 2014 with a few changes in detail or emphasis. My key issues for 2014 are:

1. Maintaining a close relationship with the CEO and 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 designed to increase shareholder power.
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 dealing with the requests of shareholders for meetings to discuss governance and the business portfolio and operating strategy.

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. Facing the challenge of recruiting and retaining highly qualified directors who are willing to shoulder the escalating work load and time commitment required for board service, while at the same time facing pressure from shareholders and governance advocates to embrace “board refreshment”, including issues of age, length of service, independence, gender and diversity, 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 assure that risk management policies and procedures that are designed and implemented by management are consistent with the company’s corporate strategy and risk appetite, and are functioning as directed, and that necessary steps are taken to foster a culture of risk-aware and risk-adjusted decision-making throughout the organization.