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Key Issues for Directors 2011

For a number of years, as the new year approached, I have prepared a one-page list of the key issues for boards of directors 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 matters, as well as the demands of activist shareholders seeking to influence boards of directors, have increased. Earlier this year, in The Spotlight on Boards, I published a list of the roles and responsibilities that boards today are expected to fulfill. Looking forward to 2011, it is clear that in addition to satisfying these expectations, the key issues that boards will need to address include:

- Organizing the business of the board so that each of the increasingly time-consuming matters that the board is expected to oversee receives the appropriate attention of the directors.

- Retaining and recruiting sufficient directors to 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 will need to spend in serving as board members.

- Developing an understanding of shareholder perspectives on the company, as well as coping with the escalating requests of union and public pension funds and other activist shareholders for meetings with the independent members of the board to discuss performance, governance, compensation and director nominations matters.

- Maintaining the collegiality of the board in light of the balkanization created by the mandatory independent committee structure, and maintaining a collegial relationship with senior management that allows the board to play the important role of a strategic partner in light of the constantly increasing focus on the monitoring function of the board.

- Developing an understanding how the company and the board will function in the event of a crisis. Most crises are handled less than optimally because management and the board have not been proactive in discussing how they would function, and the board cedes control to outside counsel and consultants.

- Most importantly, working with management to encourage entrepreneurship, appropriate risk taking, and investment to promote the long-term success of the company, despite the unrelenting pressures for short-term performance.

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