November 28, 2011

Key Issues for Directors 2012

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. 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 2012, 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 navigate the dramatic changes in the domestic and world-wide economic, social and political conditions, in order to remain competitive and successful.

2. Coping with the increase in regulations and changes in the general perception of business that have followed the financial crisis. Once it was said, "The business of America is business." Today, it could be said, "The business of America is government, and a dysfunctional government at that."

3. 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 activist demands while at the same time furthering the best interests of the corporation.

4. Organizing the business, and maintaining the collegiality, 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.

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

6. 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 members.

7. 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 to discuss governance and business proposals.

8. Developing an understanding of 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 planning to deal with crises, and because the board cedes control to outside counsel and consultants.

Martin Lipton