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FOLEY'S EIGHTH ANNUAL NATIONAL DIRECTORS INSTITUTE 2009 WEB CONFERENCE SERIES



NAVIGATING YOUR BOARD THROUGH THE STRAITS OF ECONOMIC PERIL

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Priority One – Risk Oversight

- Unprecedented times
- Is the world flat or round?
- There is no “normal” any more
- Important to remember these perspectives when thinking about appropriate corporate governance measures in today’s economic environment
- Perception that undue risk taking was the cause of the credit crisis that has led to our recessed economy

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In the Boardroom, Audit Committee, Compensation Committee and Governance Committee

- Renewed and Intensified Focus on Enterprise Risk Assessment
- Understand key risks and threats to:
 - Company and corporate strategy
 - Segments/Divisions/Subsidiaries
 - Geographic activities
 - Industry
- Key Macro economic/political/other drivers
- IT Systems
- Legal
- Regulatory
- Code of Conduct

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Create Standing Board Risk Management Committee vs. Board as a whole?

- Or, delegate to Audit Committee/
Governance Committee
- Reconsider “Chief Risk Officer” role
- Maintain close coordination with:
 - Risk Management Officer
 - General Counsel
 - Internal Audit
 - Disclosure Committee

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Evaluate Outside Resources

- Rating Agencies
- Equity Analysts
- Independent Financial Advisors
- Independent Outside Counsel
- Independent Industry Expert
- Remember the lessons of Caremark
 - Do you have adequate monitoring systems in place and are you paying attention to red flags?

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Visibility To See Early Warning Signs

- Pulse of the Company and Industry
 - Look to competitors for risk indicators
- Attention to balance sheet soundness
 - Contingent liabilities

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Specific Areas of Enhanced Risk Management and Disclosure

- Disclosure controls review
- Internal controls review
- Accounting policies/transparency review
- Mark-to-market review
- Off balance sheet risks review
- IT Review
- Code of Conduct

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Contingent Liability Review

- Judgmental reserves
- Tax
- Litigation
- Environmental
- Regulatory
- Pension funding
- Goodwill/asset impairment

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Liquidity/Credit Facilities Assessments

- Liquidity maximization/ preservation
 - Leverage ratios
 - Access to credit and liquidity sources
 - Prudent uses of liquidity and capital sources
 - Matching of assets and liabilities
 - Avoid short-term funding for long-term assets
 - Revolver draw down
 - Review of capital expenditures-reprioritize as needed
 - Review of working capital & potential as source of liquidity
 - Understand required pension funding issues created by market decrease

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Liquidity/Credit Facilities Assessments (cont.)

- Credit facility analysis
 - Covenant default avoidance
 - Default trigger analysis and stress testing to avoid covenant defaults
 - Avoid “voluntary” renegotiations
 - Capital expenditures
 - Corporate stock repurchase program
 - Dividend policy
 - Acquisitions/divestitures
 - Investment policies
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Cost Containment Strategies

- Rings-of-fire defense
 - Plans A, B and C already in place
 - SG&A analysis
 - COGS analysis
 - Personnel analysis
 - Facilities analysis
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CEO and Management Team Evaluation & Succession Planning

- Do you have the right “team” to weather the storm?
 - 360° reviews shared with board or governance committee
- “Tone at the Top” more important than ever
- Emphasis on integrity, ethics & transparency
- Communication skills-straight shooting
 - External
 - Internal

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Strategic Planning

- Long-term fundamentals vs. quarterly expectations
- “Smart growth”
 - Opportunistic M&A opportunities
- Balance sheet integrity
- Conservative capitalization
- Well communicated internally and externally

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Executive Compensation Review

- Evaluate whether your executive compensation philosophy and plans “encourage unnecessary or excessive risk that could threaten the value of the company”
 - Assess your executive compensation philosophy and plans against your enterprise risk management framework
 - Evaluate your bonus plans/equity incentive plans

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Executive Compensation Review (cont.)

- Are your financial performance bonus goals balanced between long-term and short-term performance?
 - Are targets easy or hard?
 - What risks are encouraged-compare to ERM analysis?
- Are any of your bonus-related goals tied to corporate integrity or risk mitigation?

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Executive Compensation Review (cont.)

- How much discretion is inherent in bonus plans (or strictly formula driven)?
 - Can formula be manipulated?
 - What is the quality of finance performance?
 - Do you “waive” extraordinary or unusual impacts?

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Executive Compensation Review (cont.)

- Is equity compensation component tied to long-term shareholder value creation?
 - What % of total comp?
 - Performance based or time based vesting
 - Options/SARs now considered “bad” (especially if time-based vesting only)
 - Hold-til-or-through retirement (HTR)
 - Re-pricing of underwater options/SARs
 - Equity grant burn rate
 - With stock prices down, will the number of options you grant go up?
- Compare to peers and comparables that are viewed as “safe”

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Executive Compensation Review (cont.)

- Long-term “at risk” stock ownership requirements
 - What “counts” towards ownership guidelines (options, SARs, restricted stock, performance shares)
 - Policy against using company stock as collateral
 - Policy against hedging
- Compensation consultant engagement terms/oversight
 - Real independence
- Compensation peer group
 - Evaluate peer group
- CEO compensation to average worker compensation multiple smell test
 - Will executive compensation increase despite employee layoffs?

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Executive Compensation Review (cont.)

- Internal pay disparity between CEO and other NEOs
 - Provide proper support and rationale
- Pension plans (SERP)
 - Especially sweeteners like extra service years or inclusion of variable pay
- Executive employment contract review
 - A new focus on the definition of “cause”
 - Automatic renewals/evergreen
- Claw backs

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Hot Button Executive Compensation Issues

- “Say-on-pay”
 - Will be passed by Congress in 2009
- Golden Parachutes
 - Tally sheets
 - Especially tax gross-ups
 - Single triggers
 - New focus on the definition of “change in control”
- Golden Coffins
- Pay-for-failure severance agreements
- Perks (planes, trains and automobiles)
- Rule 10b5-1 selling plans
 - Adopt best practices
- Compensation in a down market-the scrutiny will be more intense than ever

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Shareholder Communication

- Proactive
 - Website
 - Roadshows
 - Webcasted investor conferences/post investor presentations
 - Shareholder “council”
 - Shareholder “blogs”
- Transparent
- Responses to shareholder initiatives/proposals/criticisms
- Earnings guidance
- A new era of MD&A

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Hot Button Corporate Governance Issues

- Majority voting
- Separate independent chairman/ CEO
- Staggered board
- Social Responsibility
- Poison pills
- Say on pay
- Proxy access

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