TRENDS IN THE RECRUITMENT AND SELECTION OF DIRECTORS

TOP TAKEAWAYS

1. Companies are facing increased scrutiny of the activities taking place in their boardrooms. A substantial amount of corporate governance reform impacting the boardroom is currently under consideration, coming from a variety of sources, including federal legislators and the SEC. Institutional shareholders are demanding more transparency and engagement. The increased scrutiny and the changes to the proxy rules merit board attention with respect to evaluating the existing board composition as well as the succession planning.

2. The SEC recently changed the proxy rules applicable to public companies to require disclosure of, among other things, (i) whether or how the nominating committee or board considers diversity in identifying director nominees, and (ii) the specific experience, qualifications, attributes and skills that led to the board's conclusion that a person should serve as a director.

3. The SEC's new proxy rules have not yet changed the composition of most boardrooms, but it may be too soon to understand the true impact of the new disclosure requirements. Current directors believe that the real value to investors of the new disclosure requirements is that boards will now be more accountable with respect to their practices/processes relating to the nomination and recruitment of directors.

4. As companies consider the competencies that may be underrepresented on their boards, search firms may be helpful to narrow searches based on specific criteria. Additionally, other resources outside of the traditional search firm context exist, including firms that focus on the promotion of women and minority candidates, and these firms may be able to assist companies in locating "non-traditional" director candidates who bring novel and fresh perspectives to the boardroom table.

5. Time commitment is a significant issue for public company directors. On average, directors now put in 222 hours per year with many reporting that the workload is expected to increase with the recent focus on the board's role in risk assessment.

6. Shareholder advisory services and institutional advisors and institutional advisors urge that all or almost all directors be independent based on more stringent factors than those required by the stock exchanges. Companies should consider whether commercial relationships between directors and the company will result in negative implications from RiskMetrics or otherwise.

7. Data indicates that 2009 total direct compensation for non-employee directors was essentially flat, which may be creating a pent-up demand for increases in director compensation. While most directors state that they are not incentivized to join a board based solely on the compensation package, boards need to be cognizant of the opportunity cost relating to the time commitment associated with a directorship.

8. Because D&O insurance policies are not form documents, directors should closely review their policies with respect to, among other things, policy limits, exclusions, the existence and terms of the "Side A" coverage and the impact of a bankruptcy of the company. Additionally, directors should understand how the indemnification provisions in a company's organizational documents work as those form the basis of the protections offered to the directors.