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FOLEY & LARDNER LLP

CEO/Chairman Roundtable

2008 NATIONAL DIRECTORS INSTITUTE

CEO/CHAIRMAN ROUNDTABLE

INTRODUCTION

The CEO Roundtable was an engaging peer-to-peer discussion of key issues currently being faced by CEOs held at the seventh annual National Directors Institute hosted by Foley & Lardner LLP on March 6, 2008 in Chicago. The discussion was moderated by Steve Barth, a partner in Foley's Transactional and Securities Group. Featured co-moderators and thought leaders included: Corey Chambas, President and CEO of First Business Financial Services, Inc.; Howard Engle, partner at Deloitte Tax LLP; James T. Glerum, Jr., Managing Director at UBS Securities LLC; Randall Hogan, Chairman and CEO of Pentair, Inc.; and Glen E. Tellock, President and CEO of The Manitowoc Company, Inc. The speakers and attendees discussed pitfalls and best practices for CEOs to consider and adopt when approaching four primary topics: interacting with the Board of Directors; succession planning for CEOs and management; management of financial crises; and interacting with "difficult" shareholders.

INTERACTING WITH THE BOARD OF DIRECTORS

A CEO's relationship with his or her Board of Directors can take many forms, often reflecting the relative maturity of the company and the experience of the CEO and the Board. All participants agreed that the Board should not merely serve as a "rubber stamp" for the CEO's decisions, and no CEO or director felt their Board was so limited. Instead, all participants agreed that a true value-added Board should serve as a source of guidance, wisdom and perspective to the CEO and his or her management team. Regardless of the CEO's experience and length in office, the Board should serve as a sounding board for the CEO's major decisions. Although the relationship between the Board and the CEO will vary from company to company, a Board can provide particularly valuable advice to the CEO in addressing such issues as strategic planning, succession planning, crisis management, growth opportunities/acquisitions, personnel issues, financing, and executive compensation. The Board's diverse perspectives and experiences should be brought to bear to allow the CEO to consider a wide spectrum of viewpoints to enhance his or her decision making process. Of course, this interaction should be mutual, and the CEO is expected to actively provide information to the Board to assist it in carrying out its fiduciary duties and providing value-added advice.

To serve as an effective resource, the Board should be properly informed both in between and before meetings. This means that monthly business development and financial updates from the CEO, as well as copies of all research analyst reports, press accounts and SEC filings, should be provided to the Board so that its advice can be well-informed. Similarly, detailed informational packages should be sent to directors at least a week in advance of all scheduled Board and committee meetings.

The participants agreed that the Board's composition has much influence on its effectiveness in providing value-added advice and guidance to the CEO. A company's size, maturity level and industry should each be considered when determining the appropriate composition of a Board that can provide the most diverse and value-added perspectives. A Board with directors who possess different backgrounds, experiences and expertise generally can best help to ensure fully vetted decisions. The Board should have both a near-term and a long-term succession plan that recognizes upcoming mandatory retirement ages (or term limits), as well as the discretionary timetables of individual directors. The core competencies needed to support the company's ongoing changing needs as it grows and matures should also be considered. Board members and the CEO/Chairman should also be opportunistic and continually leverage outside partnerships and resources to identify competencies and perspectives lacking in the current Board and to bring on new directors as needed. To facilitate this process, the Board should engage in annual Board, committee and individual director peer-reviews to identify areas of needed additional expertise, as well as individual directors who may not be value-added.

The participants noted that most Boards continue to be led by a combined Chairman/CEO. However, several participants strongly recommended severing the Chairman function from the CEO function to ensure greater diversity of thought in Board meetings. Others noted that a combined Chairman/CEO can be extraordinarily effective, especially in dynamic industries and private companies. The participants recommended that an independent "Lead Director" be utilized if a company chooses to have a combined Chairman/CEO. As a best practice, the participants recommended that the Lead Director should be the head of the governance committee (or an analogous committee). The participants believed that the Lead Director's main role is to facilitate communications between the CEO and the Board, to assist in Board meeting agenda setting and to chair the executive sessions of the Board.

Although the CEO's primary interaction with the Board will be during formal meetings, the participants believed that the CEO should communicate frequently with Board members outside of Board meetings as well, both to seek advice and to inform Board members of new or unusual developments and opportunities. These in-between-meeting communications should be aimed at the mutual sharing of information and give-and-take advice that respects the different roles of the CEO (day-to-day management) and the Board (oversight).

CEO AND MANAGEMENT SUCCESSION PLANNING

CEO and management succession planning was widely viewed as one of the Board's most important oversight functions. The participants agreed that succession planning should be a priority item addressed in the early stages of company formation, even if the initial plan is merely limited to emergency scenarios. Thereafter, a formal plan of CEO succession should be developed by the CEO and reviewed by the Board or a designated committee at least annually and revised as needed to reflect the company's growth and development and the CEO's current and expected future circumstances.

In preparing a succession plan, the participants believed that the CEO and Board should address the following issues:

- How far down should a succession plan extend? The participants agreed that, ideally, succession planning should address each position throughout the entire corporate structure, though the Board and CEO should directly address succession planning only at the executive officer level (direct reports to the CEO). It was recommended that virtually every position in the company have an identified succession plan.
- Who should review and update the plan? An annual high-level review should be addressed in depth by the Board's compensation or nominating/governance committee, and then on an oversight review basis by the Board as a whole. However, the participants agreed that effective CEO and senior level executive succession planning should not just be limited to an annual event. CEO and senior level succession planning should be a discussion topic on almost every Board meeting agenda, since this is one of the Board's most important functions.
- Is talent being identified and developed, both internally and externally? To facilitate succession planning and develop senior management talent, the participants believed that a company's senior and mid-level management team should be continually exposed to the Board and vice versa. The participants recommended that senior and mid-level management members be invited to present periodic reports to the Board, attend Board meetings and be invited to participate in informal Board functions and social activities. Also, if a human resources executive has been tasked with focusing on succession planning issues, that executive should work hand-in-hand with the CEO to train and retain mid-level candidates and nurture a culture of talent development within the organization.
- As a CEO vacancy approaches, what is the appropriate timing for choosing a successor? This issue was the source of a spirited debate. Some participants believed that if the Board announces an expected upcoming CEO vacancy too early, it risks creating a public horse race for the position. This can cause divisive factions to develop within the company and the loss of key management talent once a winner is selected. Other participants cautioned that if the expected vacancy is announced too late, then the successor may not yet be fully ready to assume the CEO position.

Ultimately, the participants believed that succession planning is closely aligned with the company's business continuity and disaster recovery planning, and accordingly, it should dovetail with the company's overall strategic planning.

MANAGEMENT OF FINANCIAL CRISES

In approaching financial crises, as with all other organizational challenges, the participants agreed that "proper advance planning prevents surprises." The participants believed that most financial crises are visible internally long before they occur and can be addressed with adequate preparation and preventative safeguards or preemptive actions. The participants discussed four specific financial-type crisis situations and some ideas on how best to engage in preventative planning to avoid, or minimize, a "surprise:"

- Restatement/accounting issues: The participants believed that the Audit Committee should meet regularly with the company's external and internal auditors and the finance team so that the Committee is well-versed in advance of any potential changes in accounting standards or their application which could result in a restatement. Key judgmental reserves and assumptions, as well as off-balance sheet risks, should be constantly reviewed, as should the main areas of the company's financial and operational risk. Comparisons of the company's treatment of such judgmental reserves, assumptions and financial and operational risk areas should be made to the company's peer group companies. Significant time should be spent by the Audit Committee chair and/or the Audit Committee in executive sessions with both external and internal auditors to review the key judgments, assumptions and risk mitigation strategies being made by the senior finance staff.
- Market risks: The Board and Audit Committee should be intimately aware of their company's market and financial risks perceived by the company's rating agencies, research analysts, investment bankers, commercial bankers, debt holders and institutional shareholders. Attention should be devoted at every meeting to these key risk areas and the Board and Audit Committee should understand all of the key leading positive and negative indicators which could lead to a change in these risk areas.
- Negative financial results: A company's finance, accounting and risk management executives should be able to predict the financial impact of negative business trends early through their internal review/budget update processes, and should update the Audit Committee accordingly. Again, the key macro and micro leading indicators should be closely monitored by the Audit Committee. The company's future expected financial results should be stress tested against various potential future macro and micro economic developments, with the consequences well understood and responsive action plans developed in advance to deal with the potential occurrence of each such potential adverse circumstance.
- Hostile raid: A genuine surprise hostile takeover raid is unusual, because some level of contact with the CEO or Board members typically occurs beforehand. Most well-prepared Boards and management teams have planned in advance for such a potential hostile raid and have in place and on standby their immediate response team of attorneys, investment bankers, IR/PR specialists and proxy solicitors and a pre-prescribed immediate response action plan. Potential white knights and alternative transactions should be considered and

evaluated well in advance so that a Friday midnight raid can be addressed quickly and effectively based on a pre-thought-out action plan.

In each of these situations, the participants said that advance planning is critical. The participants believed that it is prudent to hire an experienced law firm, investment bank, investor/public relations specialist, and to meet with ratings agencies, research analysts and major shareholders during good times, well in advance of any financial crisis. This will ensure that open and direct lines of communication with key constituencies have been established and that contingency plans have been vetted, or at least discussed, during a period of calm reflection. The Board need not create these contingency plans directly; an ad hoc committee, a lead Board member, or at a minimum, an executive close to the CEO can serve as the initial crisis point-person who can be ready to act quickly in a crisis. In dealing with a crisis, however, there is no substitute for experience.

If a financial crisis strikes, the participants said that planning should give way to immediate triage and communication. Triage, in this situation, is the quick fact-gathering and analysis necessary to ascertain the truth of the matter. Investors typically have seen countless financial crises, so they are usually not shocked by crisis specifics. Nonetheless, they increasingly appear to focus on the speed and manner in which the executives and the Board manage the crisis. Thus, fast, open and brutally honest communication is often as critical as advance planning to the successful navigation of a crisis. With regard to outside advisors, lawyers and bankers can usually craft a position more efficiently and effectively than PR firms, but PR firms can more effectively disseminate the message to the public and key constituencies for optimal impact.

INTERACTIONS WITH "DIFFICULT" SHAREHOLDERS

Participants stated that, as a concept, the "problem shareholder" is really a straw man. As a matter of corporate policy and process, interacting with the "problem shareholder" is really no different than interacting with any other shareholder. Nonetheless, some shareholders have more clout merely by the fact of their more significant holdings. Moreover, even shareholders with small holdings may raise issues or take actions that are disruptive to the current strategic plan of the Board and CEO. For example, shareholders may:

- Seek a disproportionate voice in company management (e.g., a small shareholder or group of shareholders demanding a large dividend or seeking to advance a pet social issue);
- Violate confidentiality or non-disclosure requests regarding information received as a shareholder;
- Seek unreasonable access to company records or related financial information; or
- Seek to (a) contract with the company in a non-arm's-length manner; (b) contact or direct employees at their own initiative, (c) recommend vendors, advisors, consultants and other

providers to the company; or (d) unreasonably block acquisition and disposition transactions.

In dealing with "difficult" shareholders, public companies (which must abide by Regulation FD) have much less freedom than private companies. Paradoxically, sometimes these restrictions actually make it easier for public companies to deal with "difficult" shareholders, since the regulations limit the actions a public company can take in response to shareholder demands. In either case, however, the Board and CEO should create a "culture of transparency" regarding decision-making, and communications to shareholders must be presented in a central and unified manner. Though it is sometimes unavoidable, individual Board members should be discouraged from talking with bankers, analysts and shareholders. The CEO should be the company's primary liaison with shareholders, supplemented by an effective Investor Relations department (in larger organizations).

If an individual shareholder seeks an audience to discuss a particular issue, the appropriate spokesperson (but not the Board) should usually take the meeting, listen to the shareholder's concerns, and discuss only those company strategies that have been publicly disclosed. Generally, trying to avoid such a meeting is a mistake. The spokesperson, particularly if he or she is the CEO, should show patience in dealing with difficult shareholders, recognizing that a fiduciary duty is owed to all shareholders as a group, but that the group is made up of individuals with sometimes wide-ranging agendas. In addition, it is important that the communications between the company and the shareholder be consistent, and that everyone speaking on behalf of the company speaks with one voice.