



207 - Corporate Secretary Basics

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Faculty Biographies

Harold G. Barksdale

Harold G. Barksdale is chief corporate counsel and corporate secretary of Tyco Electronics in Princeton, New Jersey. Tyco Electronics is one of the world's largest providers of engineered electronic components, network solutions, and wireless systems with 2006 revenue of US\$12.8 billion and has nearly one hundred thousand employees in more than 45 countries. He manages a group of attorneys responsible for the company's compliance under the Securities Act of 1933 and the Securities Exchange of 1934, as well as the company's corporate finance transactions. His duties also include managing all matters related to the Board of Directors and the company's corporate governance programs.

Prior to joining Tyco Electronics, he was corporate securities counsel for Tyco International. Previously, Mr. Barksdale has held corporate and securities law positions with three other Fortune 500 companies as well as serving as an attorney in the division of corporation finance for the United States Securities and Exchange Commission.

Douglas Chia

Douglas K. Chia is senior counsel and assistant corporate secretary at Johnson & Johnson, the world's most broadly based health care company, headquartered in New Brunswick, New Jersey. His responsibilities include providing legal counsel to the corporation on matters of corporate governance, securities regulation, public company disclosure, and Sarbanes-Oxley Act compliance.

Prior to joining Johnson & Johnson, Mr. Chia was assistant general counsel, corporate at Tyco International. In private practice, Mr. Chia was an associate at the law firms of Simpson Thacher & Bartlett and Clifford Chance, practicing in the New York and Hong Kong offices of each firm. While in private practice, Mr. Chia provided legal counsel to issuers and underwriters on securities offerings and cross-border transactions.

Mr. Chia is a member of the ACC's Corporate and Securities Law Committee, ACC's New Jersey Chapter, and the board of directors of the Society of Corporate Secretaries & Governance Professionals.

Mr. Chia received his A.B. from Dartmouth College and his J.D. from the Georgetown University Law Center.

Andrew Fleming

Andrew Fleming is a member of the business law group of Ogilvy Renault LLP in Toronto, Ontario. He has extensive experience in business law, including company, securities and banking law, and regulatory requirements relating to corporate transactions, financings, and mergers and acquisitions. He is involved in all aspects of company law, including advising on general corporate governance and structure matters, corporate reorganizations, organizing and conducting shareholder and bondholder meetings, and corporate disclosure. Familiar with company law of other jurisdictions, including the USA and Europe, he has acted on project financings, and has assisted corporations in structuring their regular borrowing activities. He has also acted as arbitrator in international business matters.

He is a past member of the continuous disclosure advisory committee of the Ontario Securities Commission and of the Committee on Corporate Disclosure of the TSX. He is listed as one of Canada's leading capital markets lawyers in The Legal Media Group Guide to the World's Leading Capital Markets Lawyers.

John Henry

John E. Henry is special counsel to State Street Corporation in Boston, and is primarily responsible for assisting the general counsel with transition issues related to State Street's acquisition of Investors Financial Services Corp.

Mr. Henry was senior vice president, general counsel and secretary of Investors Financial Services Corp. and its primary operating subsidiary, Investors Bank & Trust Company. Mr. Henry was responsible for all legal, regulatory and compliance matters at Investors and was a member of the company's executive and management committees. Prior to joining Investors Financial, he was an associate at the Boston law firm of Testa, Hurwitz & Thibault, LLP. During his tenure at Testa, Hurwitz, Mr. Henry represented underwriters, venture capital funds, and growth-oriented technology and financial services companies in corporate, securities and intellectual property matters. Before attending law school, Mr. Henry was a software systems analyst at GTE and acted as assistant general manager of the South Shore Music Circus and the Cape Cod Melody Tent. Mr. Henry performed as a free-lance classical and jazz musician, coached instrumental groups at Boston College and taught private lessons.

Mr. Henry holds B.A. from the Hartt School of Music and a J.D. from Boston College.

The Annual Meeting

- Preparation
 - Proxy Statement
 - Transfer Agent
 - Solicitor
 - ISS & Other Advisors
 - Shareholder Proposals
 - Script and Other Documents

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The Annual Meeting

- At the Meeting
 - Attendees
 - Verification of Eligibility
 - Business Presentation
 - Discussion and Questions
 - Removal of Shareholder
 - Voting Process

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The Annual Meeting Preparation

- Proxy Statement: communicate facts about the annual meeting to shareholders including:
 - Where & When – Will there be a live broadcast?
 - Proposals To Be Voted
 - Who Will Be Present: Are Directors Required? (a majority of companies now require directors to attend)
 - Admission Procedures
 - Behavioral Expectations
 - What Will Be Provided: samples, brunch, an opportunity to ask questions.....

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The Annual Meeting Preparation

- Timeline
 - 1 year prior – anticipate next meeting date
 - 8 months – begin preparing documents for printing and distribution
 - 4 to 5 months – notify exchanges, solicitors, transfer agent, printing & mailing services of key dates
 - 3 months – file 10-K
 - 3 – 2 – 1 – 0 – work even longer hours!

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The Annual Meeting Preparation

- Transfer Agent
 - Solicitation of electronic delivery consents
 - Certify list of record date shareholders
 - Identify potential meeting attendees
 - Tabulation of paper, phone & internet proxies
- Proxy Solicitor
 - Communicate frequently
 - Work with brokers and institutional investors
 - Follow-up on returns
 - Ensure a quorum
 - Anticipate shareholder issues

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The Annual Meeting Preparation

- ISS & Other Advisors
 - Review analysis and correct misinformation early
 - Prepare for clients following ISS' advice
 - Script responses to anticipated comments
 - Prepare directors and executives to respond if necessary

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The Annual Meeting Preparation

- Shareholder Proposals
 - Build time into the proxy preparation process to respond and attempt resolution
 - Fully inform the board of issues
 - Recognize which issues may have broader support

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The Annual Meeting Preparation

- The Annual Meeting Script
 - Review agenda and script with meeting moderator and officers, other speakers, and seconders
 - Include:
 - Welcome & Introductions
 - Review of the meeting content
 - Inspector of Elections' report
 - Formal convention and adjournment announcements
 - Opening and closing of polls
 - All agenda items

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The Annual Meeting Preparation

- Other Documents
 - Provide key directors with summary notes of the past year's events and data on committee issues
 - Provide key directors with scripted responses to Potentially Asked Questions

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The Annual Meeting

- Attendees & Verification of Eligibility
 - Ticket Required?
 - 23% of companies required admission tickets in 2006 & 2007 (*SCSGP 2007 Annual Meeting Survey*)
 - Will tickets be provided with proxy materials or must shareholders request tickets? (providing an estimate of attendance)
 - Members of the Press?
 - Consider: Reserved Seating for Directors, Executives, Inspectors, Legal, Audit & other service representatives?

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The Annual Meeting

- Business Presentation
 - Financial results
 - Business segment accomplishments
 - Economic variables
 - Long term goals
 - Introduction of members of management

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The Annual Meeting

- Discussion and Questions
 - Almost all companies provide time for Q&A or comments
 - Will shareholders be required or requested to submit questions in writing prior to the meeting? Will their identities be verified?
 - Will there be a limit on the time allowed per shareholder/question/comment?
 - Who will provide answers?

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The Annual Meeting

- Removal of Shareholder
 - Plan provided in writing to key individuals
 - Distribution of contact information for local authorities and company security managers
 - Meeting between company security managers and others who will attend
 - Discussions with local authorities

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The Annual Meeting

- Voting Process
 - Brief attendee shareholders
 - In writing in the meeting program
 - Verbally before the vote
 - Plan for unusual situations

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The Corporate Secretary - Duties and Responsibilities

(Publication of The Society of Corporate Secretaries & Governance Professionals)

What Does a Corporate Secretary Do?

So just what does a Corporate Secretary* do, anyway? A good question, but difficult to answer! While the basic duties of the Corporate Secretary can be outlined easily, their overall responsibilities, and the fit of the role within senior management, are more difficult to explain.

By reviewing state statutes and corporate by-laws, from which the powers and duties of the Corporate Secretary and other corporate officers are derived, one could conclude that the Corporate Secretary is expected to be a sort of combination of scrivener and custodian, but happily, this is not the case in practice. The Corporate Secretary in today's world is a senior corporate officer with wide-ranging responsibilities, who serves as a focal point for communication with the board of directors, senior management and the company's shareholders, and who occupies a key role in the administration of critical corporate matters. The Corporate Secretary is often confidant and counselor to the Chief Executive Officer and other members of senior management, especially on corporate governance affairs.

Providing advice on corporate governance issues is an increasingly important role for corporate secretaries. Many shareholders, particularly institutional investors, view sound corporate governance as essential to board and company performance. They are quite vocal in encouraging boards to perform frequent corporate governance reviews and to issue written statements of corporate governance principles. The Corporate Secretary is usually the executive to assist directors in these efforts, providing information on the practices of other companies, and helping the board to tailor corporate governance principles and practices to fit the board's needs and expectations of investors. In some companies, the role of the Secretary as corporate governance adviser has been formalized, with a title such as Chief Governance Officer added to their existing title.

Several years ago, the leadership of the Society came up with a list of personal and professional attributes of a successful Corporate Secretary. Among these "core competencies" are: understanding the company's business thoroughly; having a basic knowledge of corporate and securities law; demonstrating a "presence" and being able to back it up with solid communication skills; being sensitive and intuitive to what the CEO and directors are thinking and feeling; being able to read signals on the horizon and provide early warning to management; being able to mediate and achieve consensus; knowing how to overcome bureaucratic thinking in the company; being detail-oriented; being flexible and creative; and, finally, maintaining a sense of humor and balance no matter how pressured a situation.

* Corporate Secretary is used here to refer to the Corporate Secretary function. In large corporations, certain administrative corporate secretarial duties are allocated to assistant secretaries, paralegals, or others within the office of the corporate secretary.

For most corporate secretaries, these skills are evidenced in the following areas:

- Board and Committee Meetings
- Annual Meeting of Shareholders
- Corporate Records
- Stock Transfer
- Securities Markets
- Director, Officer, and Shareholder Concerns
- Compliance

Board and Committee Meetings

Being responsible for the smooth operation of corporate meetings requires planning and attention to detail, ranging from assuring that agendas are logically ordered and not overcrowded for the time available, to knowing how to find directors and committee members on short notice when special meetings are needed. To do it well, the Corporate Secretary needs a good working knowledge of the corporate, legal and regulatory matters which may come up at a meeting, and of the business of the corporation and its operations.

In many companies, the Corporate Secretary plays a significant role in determining the agenda of meetings, especially in alerting the Chief Executive Officer, or board and committee chairmen, to topics which should be brought to the attention of the board or committee. And the Corporate Secretary's knowledge of corporate, legal and regulatory matters is frequently called upon during board or committee deliberations.

The Corporate Secretary also drafts and distributes minutes of board and committee meetings. Minute taking and drafting is an art, requiring excellent writing skills, an understanding of what is important to record, and a sensitivity to issues that require special attention and particularly careful treatment.

Annual Meeting of Shareholders

The Corporate Secretary plays a major role in the annual meeting of shareholders - a very significant event for most large public corporations.

Preparation and distribution of the proxy statement and notice of meeting (as well as preparation of the directors' and officers' questionnaires needed to prepare the proxy statement) usually are some of the major functions. The Secretary may also be involved in preparing and distributing the Annual Report. Production of these documents requires a knowledge of federal and state law, and of the rules of the stock exchange(s) on which the company's stock is listed. It also requires a high level of skill in coordinating input from lawyers, personnel and finance groups, as well as directors and senior officers; the knack of dealing with transfer agents, printers, and mailing houses; and the ability to

remain calm despite inevitable last-minute changes that threaten to ruin "do-or-die" production schedules, not to mention budgets.

Negotiations with shareholders regarding shareholder proposals are also frequently the responsibility of the Corporate Secretary. These negotiations involve meetings with proponents, discussions with management and the board, and working with the Securities and Exchange Commission through the "no-action" process.

The Corporate Secretary works closely with the Chairman and senior management, as well as with the Chairman's speech writer, in preparing the script and agenda for the annual meeting. Another essential function for the Corporate Secretary is to help directors and management prepare to respond to shareholder questions at the meeting by creating briefing materials and alerting directors and management to "hot-button" issues. The Secretary is also generally responsible for coordinating security arrangements, thinking through and briefing the Chairman on how to handle disruptive or emergency situations at the meeting.

The Corporate Secretary is usually involved in soliciting proxies, either directly or by working closely with the corporation's proxy solicitors, to help achieve a quorum and deliver the vote. And the Corporate Secretary is also responsible for assuring that the vote is properly and impartially tabulated, and that results are duly reported in the minutes of the meeting.

Corporate Records

When working with corporate records, the Corporate Secretary must know what documents and records need to be created and what matters they should, or should not, contain. It is the Corporate Secretary who needs to consider "Are the proper delegations of authority in place?" "How should this be recorded in the minutes (or should it)?" "Does this action conflict with or supersede a prior action or policy?", etc.

With respect to record maintenance, the Corporate Secretary must assure not only that records are filed and protected and, where applicable, indexed and kept up-to-date, but also that they are accessible. A considerable amount of a Corporate Secretary's time is spent organizing, retrieving, explaining and certifying corporate documents. In addition, the Corporate Secretary is often required to certify officer signatures, affix the corporate seal to various corporate documents, and attest to their legitimacy. The Corporate Secretary must also assure that important corporate records are retained in accordance with applicable law and sound business practice.

As a senior corporate officer, the Corporate Secretary must execute a significant number of documents on behalf of the corporation, and may have liability for the matters contained therein. The Secretary must therefore understand the significance and substance of a wide variety of matters, and may need to develop procedures to assure the accuracy of many different types of documents.

The Corporate Secretary may also be Secretary to the corporation's subsidiaries, and be responsible for their corporate records. In corporations with a large number of subsidiaries, managing these records adds a great deal of complexity to the job.

Stock Transfer

Maintaining shareholder records, and providing for the transfer or replacement of stock certificates, is ultimately the responsibility of the Corporate Secretary. In most major corporations, however, this function is handled by a separate unit or by an outside transfer agent, with the Corporate Secretary acting as the corporate liaison.

Securities Markets

The Corporate Secretary normally serves as the corporate liaison with the various securities markets on which the company's shares are listed, and he or she may be responsible for assuring corporate compliance with stock market requirements. The Corporate Secretary may also be heavily involved in preparing listing or other market agreements, notices, and other documents and reports which the corporation must send to various securities exchanges or markets.

Director, Officer, and Shareholder Concerns

With their prominent role in so many corporate matters, the Corporate Secretary is a central person to whom directors, officers and shareholders turn for practical assistance as well as guidance. Much of a Corporate Secretary's time is spent working with directors, officers and shareholders on a wide variety of matters, and these constituencies expect a great deal of attention from the Corporate Secretary's office.

Directors

The Corporate Secretary is the primary liaison between the corporation's directors and management. As such, a Corporate Secretary may need to:

- help orient new directors to the corporation and the board;
- advise and keep directors informed of corporate and legal responsibilities;
- assist with compliance issues;
- coordinate and organize the flow of information to directors;
- obtain from directors information needed for legal and regulatory compliance;
- assist directors with travel arrangements to and from meetings;
- advise management on director compensation;
- advise the Chairman of the Board on committee assignments for directors;

- keep management informed of director views and preferences;
- provide resources for and coordinate board evaluations;
- assist the Chairman on the selection of new directors;
- advise management and directors on potential director interlock issues.

Officers

The Corporate Secretary provides services to senior officers similar to those provided to directors: advising and keeping senior officers informed of corporate legal responsibilities; assisting with compliance issues; obtaining information needed for legal and regulatory compliance; assisting with travel arrangements to and from corporate meetings; advising the Chairman or Chief Executive Officer on management committee assignments for officers; keeping the Chairman or Chief Executive Officer informed of senior officer views and preferences; alerting senior officers to matters which should be brought to the attention of other officers or the board or board committees; and providing advice and counsel to officers preparing presentations and memoranda to be presented to the board or committees. In addition, in many corporations, the Corporate Secretary administers the corporation's stock option and other compensation programs for executives.

Shareholders

The Corporate Secretary is often responsible for shareholder relations. The shareholder relations function usually involves responding to shareholder inquiries; directing or assisting in preparing and distributing reports and other materials and shareholder communications; maintaining statistical information on the shareholder base; developing programs for large individual or institutional shareholders; and alerting the board and senior management to shareholder concerns. The Corporate Secretary is the principal corporate contact for most shareholders, and may be able to influence how shareholders view management's responsiveness.

In some organizations, the Corporate Secretary is primarily responsible for individual or small institutional shareholders, and large institutional investors are handled by an investor relations group reporting to Finance, Corporate Communications or some other department. The Corporate Secretary may be responsible for the company's stock watch programs, alerting management to unusual trading in the company's securities.

Compliance

Depending on the corporation and the background of the Corporate Secretary, he or she may be responsible for or play a major role in preparing and filing registration statements and reports to the Securities and Exchange Commission, insider trading reports, filings and amendments of state corporate documents, documents related to qualifications to do business, and other regulatory or legal filings. The Corporate Secretary is often the person responsible for pre-clearing purchases and sales of the corporation's securities by

directors and officers. The Corporate Secretary may also play a role in preparing corporate communications on matters of significance to the corporation, including essential disclosures.

In some corporations, the Corporate Secretary is also responsible for compliance with state escheat laws and, occasionally, for general legal compliance for the company as a whole. Some Corporate Secretaries are involved in administering their corporation's code of corporate conduct and developing and administering other corporate-wide policies and policy manuals.

Does the Corporate Secretary Have to Be a Lawyer?

Many corporate secretaries are lawyers and some serve as their corporation's General Counsel. But while a legal background is quite helpful in performing the role of Corporate Secretary, it is not essential. In fact, at times, having a Corporate Secretary who also provides legal advice creates interesting questions as to whether particular communications made to management are legal advice - which may be subject to the attorney-client privilege - or general corporate/business advice, which is not. Thus, the "dual hat" Corporate Secretary/lawyer must always be careful to distinguish (and, as Corporate Secretary, record) which "hat" is being worn, and whether it is legal or managerial advice that is being given to directors and management.

Need Further Information?

This brief monograph outlines the general parameters of the role of the Corporate Secretary. Volumes have been written on the individual aspects of the job, and more detailed accounts of the overall role are also available. The Society of Corporate Secretaries and Governance Professionals, a professional association composed principally of corporate secretaries, assistant secretaries and business executives involved in the duties associated with the corporate secretarial function, maintains and publishes information to assist Corporate Secretaries in carrying out their duties. The Society promotes the voluntary exchange of information through member committees, local chapters, publications and research, as well as through seminars and conferences. For further information on Society programs, publications and reference materials, visit <http://www.governanceprofessionals.org>, or contact:

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COMMUNICATIONS AND DISCLOSURE

ACC 2007 Meeting

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Types of Shareholder Activists

- Identifying and recognizing shareholders and their motivation
 - Activist Hedge Funds
 - Institutional Investors
 - Social Responsibility Activists

Types of Shareholder Activists

- Hedge Funds
 - concern with short term increase in value and often sale of corporation
 - looking for an exit strategy
 - interests may not be aligned with other shareholders
 - increased activity where corporation in play or undervalued

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Types of Shareholder Activists

- Institutional Investors
 - longer term concerns than hedge funds
 - interests more likely to be aligned with other shareholders
- Social Responsibility Activists
 - motivation to bring about social change
 - may or may not be aligned with increasing shareholder value and with interests of other shareholders

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Dealing with Shareholder Activists

- Understand your corporation
 - access the risk of activism based on industry sector
 - identify and keep current with activists issues in comparable corporations
- Understand and monitor changes in your shareholdings
 - identify potential activists
 - ensure management aware of activists concerns
 - manage relationships with key shareholders
 - seek shareholder advice on plans to the extent allowable

5

Dealing with Shareholder Activists

- Procedures and Education
 - develop policies and protocols to deal with shareholder activists
 - educate management and directors in delivering consistent communications
 - deliver a clear and concise corporate message
- Communicate with Activists
 - communicate pre-emptively to avoid media campaigns
 - avoid hostile interaction

6

Dealing with Shareholder Activists

- Shareholder Proposals
 - review proposals and concerns
 - assess all shareholder base support for proposal
 - consider methods to encourage withdrawal of proposal (i.e. consultation, independent review)
 - rely on expert advice regarding outcomes of potential proxy fights
 - consider the interests of all shareholders

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Dealing with Shareholder Activists

- Transfer Agent
 - ensure transfer agent briefed on corporate message
 - implement procedures to avoid transfer agent leading communications with shareholders

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Governance Rating Agencies

- Major governance rating bodies
 - ISS
 - GovernanceMetrics International
 - Moody's
 - Corporate Library
- Concerns regarding governance metrics
 - are they an effective assessment tool for investors?
 - is transparent disclosure a more effective governance tool?

Hot Button Issues

- CALPERS, ISS
 - executive compensation (eg. excessive severance pay, pay for performance)
 - elimination of super majority voting requirements
 - proxy access for director nominees
 - repeal of classified boards

Hot Button Issues

- Social Activists
 - environmental issues (eg. reduction of greenhouse gas, climate change, product safety)
 - political contribution disclosure
 - ethical pricing
 - equal employment opportunities

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SEC Proposals

- Shareholder Nomination of Directors: Proposal 1
 - must include proposals to amend by-laws to allow shareholder nomination
 - 5% shareholder threshold
 - must be made by institutional/passive investor

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SEC Proposals

- Shareholder Nomination of Directors: Proposal 2
 - may exclude any proposal:
 - resulting in immediate election contest
 - establishing process for future election contest

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Governance Fundamentals

Everyone these days is focused on corporate governance as if it were a new concept. In fact, the obligations of directors and the practices and processes around Boards and management have been around for years, and stem primarily from state corporation code requirements. The primary goal of a sound corporate governance program is to help directors meet their fiduciary responsibilities. In doing so, directors are more likely to obtain the protection of the business judgment rule for their actions. Below are a series of questions designed to raise awareness of some of the fundamental corporate governance practices and processes that are used to help make Boards more effective and efficient. Following the questions are brief descriptions of just some of those practices in use by Corporate Secretaries of many well-run public companies.

- Is your Board satisfied with the support it receives from the company?
- Are you meeting the SEC and stock exchange requirements for effective corporate governance?
- Are your Board and Committees properly staffed and getting what they need to satisfy their fiduciary obligations and to function properly?
- Are meetings well planned, well attended and properly documented?
- Do you have an effective Board orientation and education effort?
- Are the right resources in place to interact with your Board and implement your governance practices?
- Are you confident that you have adequate equity grant practices and governance?
- Are your investors satisfied with your governance practices?

How do you respond to these questions? Today's regulatory environment makes having a sound governance program a corporate imperative. There is data to suggest that companies with sound governance programs perform better. Sarbanes Oxley, the SEC and the stock exchanges have each imposed governance requirements on public companies, not to mention the expectations of investors, director and officer liability insurers, and proxy advisory services. State corporation law also sets forth certain legal requirements for Boards for both private and public corporations that are part of a company's governance. Recent court decisions, such as the Disney case,¹ make clear that certain governance standards should be met in the process. Companies, both public and private, and their Boards need to ensure that their corporate governance practices and processes are in order.

Most corporate governance failures can be traced to ineffective service provided by Board advisors and inadequate controls on governance processes. This is true for large and small corporations alike. In a climate of increased focus on corporate governance, Boards themselves need to ensure that fundamental governance practices and processes are in place at their companies.

The role of Corporate Secretary is an increasingly important and visible one as the person in that role is generally responsible for the company's corporate governance. The lawyers and professionals comprising the Corporate Secretary function effectively combine practical knowledge of the detailed requirements with sound practices and processes to ensure a high standard of governance. The Corporate Secretary is responsible for appropriate recordkeeping of Board and committee materials, developing agendas that capture required Board action, drafting materials and resolutions for Board consideration and drafting artful minutes that demonstrate the Board's diligence in exercising its responsibilities. Without these fundamental practices in place, the Board may have to resort to unanimous written consents because regular meeting agendas have not captured required actions. Meeting minutes may be poorly drafted. In such situations, the Board faces exposure in the event of legal or regulatory proceedings, or audits where Board meeting minutes and Board records will come under very close scrutiny. In the commentary that has followed the Disney decision, it has been noted that the governance processes in place when that case first arose in the mid-1990s would not be tolerated today by the courts in the post-Sarbanes Oxley environment.

The Corporate Secretaries at well-run public companies keep their Boards organized and operating efficiently using a standard set of procedures and practices such as those briefly described in the next sections. These procedures and practices provide a framework for the Board to meet various legal and regulatory requirements. Ultimately the goal is to provide a comfort level for the Board that it is getting what it needs, that appropriate records are being kept, procedures are followed and policies are in place.

1. Develop Annual Agendas. The organization of the Board and its processes are critical to the smooth functioning of the Board. Before the beginning of each year, the Corporate Secretary should develop draft agendas for each of the Board and committee meetings. Those draft agendas should reflect historical agenda items, as appropriate, committee charter requirements, other required matters (*e.g.* officer elections, director nominations, Section 16 designations, approval of the 10-K), benefit plan matters, regular financial reports, regular reports of the general counsel, corporate strategy presentations, as well as any corporate governance or other matters set forth in the corporate governance guidelines. Refer to the company's corporate approvals process for additional matters requiring Board or committee approval. The draft agendas should be reviewed with senior management, including the general counsel, and as appropriate, by the Chairman of the Board and Presiding or Lead Director, if any, and Committee Chairs. Once through that process, the annual agendas can be submitted to the Board and committees for their approvals. Prior to each meeting the agendas are again reviewed by senior management, modified or supplemented as necessary, and once again shared with the Chairman, Lead or Presiding Director and Committee Chairs.

These agendas may be also used as part of the Board/Committee evaluation process as an objective measure of the Board's performance. If at the end of the year the Board attended to

those matters identified at the beginning of the year, it can be said to have substantially met those particular objectives.

2. Develop a Two-Year Meeting Schedule. The Corporate Secretary should, on an ongoing basis, have a schedule of meetings for the Board and each of its committees that goes out at least two years. When deciding on that schedule, consideration is given to the company's particular cycles, earnings release and quarterly and annual SEC filings schedules, the timing of the annual budget review and other recurring matters requiring Board or committee approval. Stagger committee meetings so that directors on more than one committee are able to attend all meetings. Other considerations are the schedules of the directors and their other obligations. When polling directors as to their availability, reaching quorum at each meeting is essential. The Corporate Secretary should develop a proposed schedule and then work with the directors and their support before bringing the schedule to the full Board for approval.

Adequate time should be allocated to the meeting schedules for the Board and Committees to perform their obligations. Regular meetings can last 3-5 hours or more. Audit Committee meetings tend to require more time than some other committee meetings, but some attention should be given to the matters being presented and the appropriate amount of time to allocate to each. Compensation Committees have been called the "new Audit Committees" because of the SEC's new executive compensation disclosure requirements which may require more meeting time than in the past (which also translates into the need for carefully crafted minutes and meeting materials that will serve as support for such disclosure.) At least once each year, the Board should meet for an annual strategy session to be able to fully delve into the company's financials, its short and long-term strategic plans and director education, among other things. This session is often held offsite, and can last for 2 or more days.

3. Development and Distribution of Board Materials. Essential to the proper functioning of the Board is the quality of materials it receives in advance of meetings, and how long the members have to review the materials. Senior management must be disciplined in its development of materials and ensure that the Board is presented with appropriate background for each matter in which action is required. For significant matters, the underlying documentation should address, among other things, the financial implications, risks and uncertainties, and alternative strategies, along with an executive summary. Draft resolutions should be included in the materials. Agendas should reflect which items are included in the distribution. For "housekeeping" or routine matters, they may be presented as "consent" items so long as sufficient background is provided to the Board in advance.

Secure electronic delivery of Board materials is becoming more popular and is an efficient way to deliver materials, but attention must be given to the individual work styles of each director. Regardless of the delivery method, materials should be sent out no later than one week prior to regularly scheduled meetings. Occasionally, transactions or other matters requiring Board action arise quite suddenly or are so fast moving that directors will often have less than a week with the materials. In such cases, advance communication with the directors to let them know the proposed timing so that they can set aside time on their calendars is essential. In such cases, electronic delivery can speed the process considerably.

Board and committee materials must be properly stored and maintained as part of the record of the meeting. Company practices vary as to how long such records are kept. Forever, is not too long.

3. **Minutes Matter.** Minute taking is no longer considered to be a ministerial function. Skilled professionals should be taking Board and committee minutes, which should be complete and contain sufficient detail. Minutes need to be drafted with consideration for the elements of the business judgment rule: that the directors acted on an informed basis, in good faith and not in their personal self interest. The level of detail on a particular topic in the minutes will depend on the nature of that topic. Minutes should reflect who was present at the meeting, and make clear reference to materials provided to the directors both in advance of and during the meeting. They should note if the topic was discussed and, if required, include any resolutions adopted. Minutes should not reflect what each director said, but rather note more generally that questions were raised on particular topics, and that discussions occurred. In the *Disney* case, the minutes were incomplete and inconsistent, and it was suggested that the drafter did not understand their purpose – and may not have been at the meetings. (While this practice is not uncommon, it is not acceptable.) In that case, had the minutes been adequately drafted, the case might have been dismissed in 2003.

Once drafted and reviewed internally, minutes should promptly be distributed to the directors for their review before memories fade. In some cases, subject matter experts such as tax or benefits lawyers should be part of the review process. Directors can formally approve minutes at the next scheduled meeting. Following the Board's approval of minutes, any notes or drafts should be destroyed.

4. **Director Education.** To keep the Board abreast of current trends in the business, important legal developments, and as a refresher as to their ongoing obligations, time should be set aside on meeting schedules for some director education. Additionally, external educational opportunities should be made available to the directors at the company's expense.

5. **Director Orientation.** As they join the Board, new directors should be educated about the company through presentations by senior management regarding the business of the company, the financials, current strategic efforts, risk management, human resources and executive compensation. Additionally, new directors should learn of the company's corporate governance practices and initiatives.

6. **Board Evaluations.** The Board and its committees should regularly evaluate their own performance. Both objective and subjective criteria may be used. Attending to the agenda items established at the beginning of the year may be used as part the evaluation. The Corporate Secretary can facilitate the evaluation process, which may be oral rather than written, and then summarized for the Board. Sample evaluations² abound, but should be tailored to the particular company and its Board. Occasionally outside consultants may be brought in by the Board to conduct the evaluation and report back the results. In some companies individual director evaluations are being conducted, again often through oral interviews. The nature of the evaluations can vary from company to company, but in all cases should be handled with discretion.

Conclusion

Having a sound corporate governance program in place is a corporate imperative in today's regulatory climate, both from an internal as well as external perspective. The practices above are just some of the fundamental processes that directors should expect from their companies and are in use by Corporate Secretaries at many companies. Directors need to know that they are getting what they need to make their decisions, that minutes are being drafted to reflect their deliberations, and that appropriate records of those meetings are being kept. Externally, regulators expect their requirements to be met. Finally, with a strong governance program in place the company's reputation with investors, credit rating agencies, D&O insurers and proxy advisory services will be enhanced. Companies with sound governance programs may perform better. It stands to reason.

¹ *In re Disney Co. Derivative Litigation No 411, 2005 (June 8, 2006)*

² The Society of Corporate Secretaries and Governance Professionals is an excellent corporate governance resource and has copies of evaluations used by its members. www.governanceprofessionals.org.

Veaco Group provides practical corporate governance services, including the corporate secretary function, to resource-constrained companies of all sizes and stages of development. Visit our website at www.veacogroup.com or contact Kristina Veaco at kveaco@veacogroup.com; tel. 415-731-3111; fax 415-731-1101 for more information.



What We Will Cover

- Process and Communication to the Board
- Board Training
- Board Evaluations
- Annual Meeting of Shareholders
- Communications and Disclosure
- Managing Subsidiary Corporate Records
- Potential Conflicts: Who Is Your Client?

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Overview of the Corporate Secretary's Role

- Corporate Governance
 - Board and Board Committee meetings
 - Shareholder meetings
- Compliance/Regulatory Matters
 - Securities regulation/SEC disclosure
 - Insider trading
 - Sarbanes-Oxley Act
- Subsidiary Records Management
- Shareholder Services and Transfer Agent Issues

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Process and Communication to the Board

- Board Calendar
- Meeting Agendas
- Board Materials
- Secure Board Websites
- Meeting Process
- Use of “Consent Agendas”



Board Calendar

- Considerations:
 - Holidays
 - Directors’ other commitments
 - Major corporate events
 - Committee meeting calendars
- ***Practice Tip:*** Use checklists to ensure charter duties and responsibilities are spread out and covered over the course of each year



Meeting Agendas

- Involvement of Chairman, CEO and Lead/Presiding Director
- Committee meeting agendas
 - **Practice Tip:** Schedule “pre-meetings” for management and presenters ahead of Committee meetings

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Board Materials

- Mailings prior to meetings
 - Collecting and reviewing materials from presenters
- Mailings between meetings
 - Press clippings
 - Analyst reports
 - Unanimous written consents
 - Signature pages
- Materials at meetings
 - Security of meeting location
 - Collecting materials after meetings

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Secure Board Websites

- Considerations:
 - Security
 - Elimination of paper mailings
 - Usage
 - Cost
 - Discovery

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Meeting Process

- Scheduling
 - Directors on more than one Committee
 - Corporate Secretary's coverage of Committee meetings
 - **Practice Tip:** Assign specific lawyers to cover particular Committees throughout the year.
 - Board retreats and off-site meetings
- Attendance
 - Disclosure requirements
 - Telephonic participation
 - Unanimous written consents in lieu of meetings

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Meeting Process (cont.)

- Committee reports
- Executive sessions
- Minutes
 - **Practice Tip:** Draft Committee reports and Board and Committee meeting minutes ahead of time. Avoid having to draft minutes from someone else's notes.
 - Executive session and private meeting minutes
- Director notes and other land mines

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Use of “Consent Agendas”

- Many routine items bundled into one and moved and approved in one vote with no discussion.
- Examples:
 - Approval of minutes.
 - Final approval of reports that the Board has been dealing with for some time and all members are familiar with.
 - Routine matters, such as Committee appointments.
 - Staff appointments requiring Board confirmation.
 - Reports provided for information only.
 - Correspondence requiring no action.

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Board Training



Board Training

- Internal v. External Programs
 - Internal
 - Relevant content
 - Board participates as a team
 - Cost effective
 - On-line training options
 - Control the tenor of the message
 - Independence?



Board Training

- Internal v. External Programs
 - External
 - Prestigious programs available
 - Harvard, Stanford, NACD
 - Opportunity for networking
 - Viewed favorably by ISS and other agencies
 - Expense
 - Activist/adversarial factors
 - GC/Secretary should preview or attend

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Board Training

- Hot Topics for Board Training
 - Corporate governance
 - Company and industry specific topics
 - Financial statements
 - Director liability and D&O insurance
 - Crisis management
 - Boardroom confidentiality

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Board Evaluations

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Board Evaluations

- Evaluate the Board and each committee
- Who conducts the assessment
 - Board Committee w/management assistance
 - Third party
- Do you want a Cadillac or a Chevette
- Topics for assessment
 - Governance
 - Information
 - Practice
 - Quality

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Board Evaluations

- Data Collection
 - Written Survey
 - Group Sessions
 - Individual Interviews
 - Board members
 - Management
 - Stakeholders
- Data Aggregation and Analysis
 - Comprehensive data reporting
 - Committee analysis
 - Full board review

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Board Evaluations

- Issues and Potential Traps
 - Beware the record you create – use care in:
 - Constructing surveys and other written materials
 - Applying document retention policies
 - Document response and follow-up
 - Even if the board decides not to act on an identified issue, document that decision and its reasons

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Board Evaluations

- Individual Director Evaluations
 - Depends on the makeup of the Board
 - Approaches
 - Part of Nominating Committee process
 - Engage third party to collect and analyze data
 - Encourages candor and protects confidentiality
 - Delivery of results
 - Comments should be anonymous and delivered individually
 - Nominating Committee or its chair should see results of third party
 - Be prepared to deal with fallout

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The Annual Meeting

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The Annual Meeting

- Preparation
 - Proxy Statement
 - Transfer Agent
 - Solicitor
 - ISS & Other Advisors
 - Shareholder Proposals
 - Script and Other Documents

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The Annual Meeting

- At the Meeting
 - Attendees
 - Verification of Eligibility
 - Business Presentation
 - Discussion and Questions
 - Removal of Shareholder
 - Voting Process

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Annual Meeting Preparation

- Proxy Statement: communicate facts about the annual meeting to shareholders including:
 - Where & When – Will there be a live broadcast?
 - Proposals To Be Voted
 - Who Will Be Present: Are Directors Required? (a majority of companies now require directors to attend)
 - Admission Procedures
 - Behavioral Expectations
 - What Will Be Provided: samples, brunch, an opportunity to ask questions.....

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Annual Meeting Preparation

- Timeline
 - 1 year prior – anticipate next meeting date
 - 8 months – begin preparing documents for printing and distribution
 - 4 to 5 months – notify exchanges, solicitors, transfer agent, printing & mailing services of key dates
 - 3 months – file 10-K
 - 3 – 2 – 1 – 0 – work even longer hours!

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Annual Meeting Preparation

- Transfer Agent
 - Solicitation of electronic delivery consents
 - Certify list of record date shareholders
 - Identify potential meeting attendees
 - Tabulation of paper, phone & internet proxies
- Proxy Solicitor
 - Communicate frequently
 - Work with brokers and institutional investors
 - Follow-up on returns
 - Ensure a quorum
 - Anticipate shareholder issues

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Annual Meeting Preparation

- ISS & Other Advisors
 - Review analysis and correct misinformation early
 - Prepare for clients following ISS' advice
 - Script responses to anticipated comments
 - Prepare directors and executives to respond if necessary

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Annual Meeting Preparation

- Shareholder Proposals
 - Build time into the proxy preparation process to respond and attempt resolution
 - Fully inform the board of issues
 - Recognize which issues may have broader support

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Annual Meeting Preparation

- The Annual Meeting Script
 - Review agenda and script with meeting moderator and officers, other speakers, and seconders
 - Include:
 - Welcome & Introductions
 - Review of the meeting content
 - Inspector of Elections' report
 - Formal convention and adjournment announcements
 - Opening and closing of polls
 - All agenda items

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Annual Meeting Preparation

- Other Documents
 - Provide key directors with summary notes of the past year's events and data on committee issues
 - Provide key directors with scripted responses to Potentially Asked Questions

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The Annual Meeting

- Attendees & Verification of Eligibility
 - Ticket Required?
 - 23% of companies required admission tickets in 2006 & 2007 (*SCSGP 2007 Annual Meeting Survey*)
 - Will tickets be provided with proxy materials or must shareholders request tickets? (providing an estimate of attendance)
 - Members of the Press?
 - Consider: Reserved Seating for Directors, Executives, Inspectors, Legal, Audit & other service representatives?

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The Annual Meeting

- Business Presentation
 - Financial results
 - Business segment accomplishments
 - Economic variables
 - Long term goals
 - Introduction of members of management

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The Annual Meeting

- Discussion and Questions
 - Almost all companies provide time for Q&A or comments
 - Will shareholders be required or requested to submit questions in writing prior to the meeting? Will their identities be verified?
 - Will there be a limit on the time allowed per shareholder/question/comment?
 - Who will provide answers?

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The Annual Meeting

- Removal of Shareholder
 - Plan provided in writing to key individuals
 - Distribution of contact information for local authorities and company security managers
 - Meeting between company security managers and others who will attend
 - Discussions with local authorities

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The Annual Meeting

- Voting Process
 - Brief attendee shareholders
 - In writing in the meeting program
 - Verbally before the vote
 - Plan for unusual situations

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Communications and Disclosure

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Types of Shareholder Activists

- Identifying and recognizing shareholders and their motivation
 - Activist Hedge Funds
 - Institutional Investors
 - Social Responsibility Activists

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Types of Shareholder Activists

- Hedge Funds
 - concern with short term increase in value and often sale of corporation
 - looking for an exit strategy
 - interests may not be aligned with other shareholders
 - increased activity where corporation in play or undervalued

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Types of Shareholder Activists

- Institutional Investors
 - longer term concerns than hedge funds
 - interests more likely to be aligned with other shareholders
- Social Responsibility Activists
 - motivation to bring about social change
 - may or may not be aligned with increasing shareholder value and with interests of other shareholders

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Dealing with Shareholder Activists

- Understand your corporation
 - access the risk of activism based on industry sector
 - identify and keep current with activists issues in comparable corporations
- Understand and monitor changes in your shareholdings
 - identify potential activists
 - ensure management aware of activists concerns
 - manage relationships with key shareholders
 - seek shareholder advice on plans to the extent allowable

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Dealing with Shareholder Activists

- Procedures and Education
 - develop policies and protocols to deal with shareholder activists
 - educate management and directors in delivering consistent communications
 - deliver a clear and concise corporate message
- Communicate with Activists
 - communicate pre-emptively to avoid media campaigns
 - avoid hostile interaction

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Shareholder Proposals

- Review proposals and concerns
- Assess all shareholder base support for proposal
- Consider methods to encourage withdrawal of proposal (i.e. consultation, independent review)
- Rely on expert advice regarding outcomes of potential proxy fights
- Consider the interests of all shareholders

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Transfer Agent

- Ensure transfer agent briefed on corporate message
- Implement procedures to avoid transfer agent leading communications with shareholders

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Governance Rating Agencies

- Major governance rating bodies
 - ISS
 - GovernanceMetrics International
 - Moody's
 - Corporate Library
- Concerns regarding governance metrics
 - are they an effective assessment tool for investors?
 - is transparent disclosure a more effective governance tool?

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Hot Button Issues

- CALPERS, ISS
 - executive compensation (eg. excessive severance pay, pay for performance)
 - elimination of super majority voting requirements
 - proxy access for director nominees
 - repeal of classified boards

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Hot Button Issues

- Social Activists
 - environmental issues (eg. reduction of greenhouse gases, climate change, product safety)
 - political contribution disclosure
 - ethical pricing
 - equal employment opportunities

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SEC Proposals

- Shareholder Nomination of Directors: Proposal 1
 - must include proposals to amend by-laws to allow shareholder nomination
 - 5% shareholder threshold
 - must be made by institutional/passive investor

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SEC Proposals

- Shareholder Nomination of Directors: Proposal 2
 - may exclude any proposal:
 - resulting in immediate election contest
 - establishing process for future election contest



Managing Corporate and Subsidiary Records

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Managing Corporate and Subsidiary Records

- Centralized v. Distributed Control
- Automate - Automate - Automate
 - Buy or Build – depends on budget/number of entities
 - Commercial apps tend to have more robust features
- Key Components
 - Track constituent documents, Ds & Os, stock ledger
 - Track regulatory filings



Potential Conflicts – Who is your Client?

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Potential Conflicts – Who is Your Client?

- We all know, our client is the Corporation
- Conflicts Arise
 - Clear conflicts – fraud, improper activities
 - Legal duty is clear
 - Subtler conflicts – information flow, compensation
 - Duties are less clear



Potential Conflicts – Who is Your Client?

- Establish a Process that Minimizes Opportunity for Conflict
 - Open communications between Board and management
 - Collaboration between CEO and Independent Chairman/Lead Director on Board agendas and information flow
- If conflicts arise, seek advice - carefully