

## Corporate & Securities Bulletin

### CONSIDERATIONS FOR APPOINTING A LEAD DIRECTOR

Over the past five years virtually all large U.S. public companies have appointed an independent director to the role of lead director, presiding director, or non-executive chairman of the board. A majority of these U.S. public companies have opted to retain the role of a combined chief executive officer and chairman, while creating a new independent lead director position. Proponents of separating these roles suggest that it allows the company to maintain effective leadership, while improving the balance of the board by adding a strong independent voice. Proponents of independent chairs, however, counter that a combined chief executive officer and chairman wields too much power and influence. While both perspectives have some merit, the preferred course of action depends entirely on the company's particular facts and circumstances. This article will focus on some of the considerations for appointing an independent lead director.

A lead independent director's role should be tailored to a company's specific needs and focused on shoring up any deficiencies in the effectiveness of the board. Regardless of the specific job description, a lead independent director can add value to a company's performance in at least three critical areas: (1) freeing management to focus on running the company's operations; (2) improving relations and the flow of information between management and the board; and (3) evaluating the performance of the board and assisting with corporate governance objectives.

#### **Freeing Management to Focus on Company Operations**

Appointing a lead director can allow management to focus on the near-term profitability of the company and running the day-to-day operations while the lead director may focus on long-term strategy and shareholder interests. While management should retain primary responsibility for oversight of investor relations, having a lead director serve as the contact person for direct communications with shareholders can be beneficial since independent lead directors are often viewed as a strong advocate for the shareholders.

#### **Improving Relations with Management and the Flow of Information**

A lead director might also take on responsibility for certain administrative tasks. This can include advising on board meeting schedules, presiding at board meetings in the absence of the chairman, and ensuring the timely distribution of board materials. This position can also set the agenda for, and preside over, executive sessions of the board. As a liaison between the board and management, the lead director can improve the flow of communication by working with management to improve the breadth and quality of board materials and can contact management directly with follow-up questions or to gather information in a timely manner. A lead director might handle difficult issues that arise between directors and management, helping to maintain and strengthen relationships between the directors and management.

#### **Evaluating the Performance of the Board and Assisting with Corporate Governance Objectives**

The position can help establish accountability for continuously evaluating and improving the performance of the board and assisting the board in achieving its corporate governance objectives. This can include dealing with underperforming directors or members of management, or helping to facilitate discussions between management and the board to improve overall decision making.

#### **Conclusion**

While no specific set of job duties is appropriate for all companies, a well defined role should be established and then periodically refined to continue to meet the needs of the company and its board. Based on the challenges of this volatile economic climate, the trend of appointing lead directors is likely to continue to be viewed as a strategy to assist U.S. public companies in improving board performance and maintaining the highest standards of corporate governance.

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