

## 2-PAGE BOARD & DIRECTOR OVERSIGHT GUIDELINES

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This paper is applicable for all entities – public companies, private companies and organizations, nonprofits and governmental entities – although depending on the entity type or situation, sometimes the terminology or context might be different. These guidelines will help the prudent director accomplish his or her responsibilities. This paper is comprised of two primary sections: Overall Guidelines and Oversight Areas. Some of these guidelines are simply prudent business judgment, which might also be a legal defense to allegations of director wrongdoing. Some of the guidelines are required by law. This paper does not provide legal or other professional advice – you should consult with a professional about your specific situation. Updated October 30, 2014.

The following 10 board and director Overall Guidelines are grouped into two areas: general and specific. I have intentionally avoided a checklist approach. The 10 Overall Guidelines are primarily based on the business judgment rule and related statutes, regulations and rules. See also the Oversight Areas topic that follows.

### OVERALL GUIDELINES

There are 4 general guidelines, not in any particular order:

1. Act with integrity, honesty and professionalism, and without self-dealing, self-interest or conflict of interest, and require that of others.
2. Act in the manner that you believe is best for the organization, and require that of others, even if at times it isn't comfortable for you to do so.
3. Be heard and actively involved, speak up, and be counted, with the appropriate "working together" demeanor.
4. Be a leader, by example.

The remaining guidelines, numbers 5 through 10 are more specific. Again not in any particular order:

5. Know your responsibilities, and make sure the other people are in agreement about your responsibilities. Some people might refer to this as having a charter, but I believe this guideline requires more detail and understanding than a typical charter. You should also be analyzing and revising or updating your board and committee charters and responsibilities. Right now, for example, especially for activities having to do with risk management, and cybersecurity.
6. Acquire the information that you need so that you can accomplish your responsibilities, by exercising active, timely and inquiring diligence and follow-up, talking with people and acquiring information.
7. Timely possess and acquire the knowledge and education that you need so that you know your responsibilities and are prepared to perform your responsibilities, address the issues, and act with prudence.
8. Rely on other people including information provided by other people only if (1) you believe those people are reliable and competent in the areas that they are addressing, (2) your reliance is in good faith, after reasonable inquiry as warranted by the circumstances, and (3) you do not have knowledge that would cause reliance to be unwarranted.

And as a sub-set of number 8, ask the people who you are relying on for information the following question, “What else do you know that I should also know?”

9. Make diligent informed decisions in keeping with these guidelines, including the difficult decisions.

10. And for number 10 I have included a suggestion. Take time to reflect on the organization, the board and the board committees, important issues and topics, and how things are going, what needs to happen, and things about which you have questions. Then, communicate the issues, topics and actions that you believe need to be addressed, in keeping with the organization’s mission and your responsibilities.

Number 10 also relates to board and committee agenda setting. To whom do you communicate proposed agenda issues and topics? Are your issues and topics given due consideration?

Of course, accomplishing director responsibilities is also a function of the board’s overall governance, operations, expertise, functioning and atmosphere of professionalism. And remember the annual or more often evaluation of the board and its committees.

### OVERSIGHT AREAS

Broadly speaking a director’s responsibility is to act as a member of the board which is responsible for oversight (not day-to-day operation) of the organization’s significant activities, processes and actions in the following areas, not in any particular order:

- Strategy – short, mid- and long-term (mission, product/service, operational, R&D, innovation, development, technology, branding, reputation, value creation, profitability and sustainability);
- Governance and tone-at-the-top, including management and the board and its committees;
  - Risk and uncertainty management, including risk response;
  - Compliance with laws, regulations, rules and other requirements;
    - Accounting and financial reporting;
    - CEO and other executive/senior talent and succession;
    - Executive compensation;
- M&A including sales, and significant/strategic collaborations, affiliations and relationships;
  - Investigations as appropriate and if needed;
  - Investor and stakeholder relations;
- Executive officer, director and insider conflicts of interest and use of organization assets;
  - Board composition and nominations; and
- Aspects of information/data security and privacy, HR, and personal safety and catastrophic events.

Of course as you drill down each organization will have specific board oversight sub-areas or topics that are industry or entity specific. The specific sub-areas could be extensive. Again, for the purpose of this discussion I have intentionally avoided a checklist approach.

Oversight responsibilities also change over time. Obviously new and specific issues do become relevant as facts, circumstances and current events occur or change.

And for many areas – for example audit committees, executive compensation, investigations, and risk or uncertainty management – there will be additional specific responsibility requirements.

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