

BOARD OF DIRECTORS ANNUAL SELF-EVALUATION FORM

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These materials are updated periodically—this version is dated 10.30.14

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I. INTRODUCTION

This paper discusses the annual board of director's self-evaluation, and includes a form. Please also pass this paper to other people who may find it beneficial, and also refer to the separate Audit Committee Annual Self-Evaluation Form.

Although many board functions, responsibilities and tasks are specified by statute, regulation, rule or pronouncement, a director's standard of care remains significantly dependent on due diligence and prudent judgment.

Limitations and Disclaimer. These materials do not provide legal, accounting or other professional advice or services, are not a solicitation for work, and do not apply to any particular person, entity, event, board, director, transaction or situation. These materials are only a summary. If you have questions or issues about a particular specific situation, you need to seek your own legal, accounting or other professional assistance, and you absolutely should not rely on the summary materials in this paper. The materials in this paper are updated periodically, and cannot be relied on for that additional reason.

II. THE BOARD OF DIRECTOR'S ANNUAL SELF-EVALUATION

Boards of various entities are required by law, regulation or rule to conduct an annual board self-evaluation; however, it is worthwhile for boards of all public and private companies, nonprofits and governmental entities to conduct an annual or more often self-evaluation. A board's job is challenging, ongoing, and technical in nature, and requires the directors to significantly interact

with many people in different capacities within and outside of the entity. It only makes sense that the board should at least once each year take time to step back and review, evaluate and make improvements to its manner of operation, and also consider helpful actions that can be taken by people with whom the board interacts. The annual self-evaluation will be worthwhile even if it results in improving only one area of operation.

Board oversight, diligence and prudence responsibilities originate from different sources at least including (1) the business judgment rule; (2) specific laws, regulations and rules that are applicable to the entity's board and directors; (3) the wording of the board's charter, if there is a charter; (4) shareholder and stakeholder expectations; and (5) activities that the board voluntarily undertakes.

Prudent board processes and diligence are also important to reduce director and entity liability and reputation risk. An increasing number of cases hold that directors can be liable for failure to exercise sufficient oversight diligence, failure to spot and respond to red flags, and failure to take action. Active board and corporate diligence tend to demonstrate prudent business judgment and negate allegations of recklessness, improper intent, intentional wrongdoing, or "scienter" such as in the context of securities litigation, thus reducing the risk of securities liability and damages.

Although not required, there can be advantages to having a facilitator conduct an interactive interview approach to the self-evaluation process, but without performance grading or rating: it can be difficult to construct a questionnaire with standardized questions that would be similarly understood by each of the participants in the self-evaluation process; different people use different rating scales; different people express responses in different manners; and certain important issues will change from year to year. A facilitated approach may encourage better discussion and comment, compilation, continuity, explanation, and follow-up, can be structured to your organization and board, and need not be expensive including by fixed fee.

Issues and topic areas to consider during the self-evaluation process will naturally vary from entity to entity, and from board to board. Thus, to stimulate discussion, at Part III of this paper I have provided a list of potential broad issues or topic areas to consider for discussion and evaluation, including both successes and possible improvements; and at Part IV I have outlined a process with a form to assist your board of directors self-evaluation process.

III. SAMPLE LIST OF ISSUES OR TOPIC AREAS TO CONSIDER

The following is a list of issues and topic areas to consider for discussion and evaluation. The list is intended to help trigger thought processes, but, of course, is not exhaustive as areas of discussion and evaluation will vary from entity to entity, and from board to board. Broadly speaking a director's responsibility is to act as a member of the board which is responsible for oversight of the organization's actions and activities. The following list is not intended to and does not suggest that each or any of the below issues and topics must be considered or covered and is not a checklist – instead, if your board is required to conduct a specific evaluation process

or to cover certain specific issues and topics, you will need to separately consider the specific requirements, if any, for your board and its evaluation process pursuant to law, regulation or rule. Please see also the Limitations and Disclaimer at page one of this paper

-Board meeting agenda preparation and dissemination process.

-Director independence, potential conflicts of interest, insider trading issues or processes, use of entity assets, financial literacy, and other experience and expertise as required or desired.

-Strategy – short, mid- and long-term including entity sustainability and growth; products; development; market and industry share, placement and changes; R&D; financial strength, viability and needs; M&A and sales; strategic alliances; investor and stakeholder relations and communications; and other issues in this category.

-Director access to information and/or education pertinent to the functions and responsibilities of the board. Are the needs of the directors being met, so that they are knowledgeable and educated about the company or nonprofit, its products, services and mission, and its industry; relevant practice and technical areas; and relevant new developments.

-Board and director interactions, including interaction between directors, and between the board/directors and the CEO, the CFO, the outside auditor, the internal auditor, legal counsel, compliance and ethics, HR, consultants, and other people.

-The board's processes for identifying and spotting issues, evaluation and decision making.

-The contents of the board charter, and a mutual understanding of the board's responsibilities and tasks. The charter is a requirement for public companies, and is a good idea for many private companies and nonprofit entities. The charter is a prudent document to identify and clarify the board and the director's responsibilities. In addition to the board and the directors, it is important for the executive officers, shareholders and stakeholders to have a correct understanding about the board's responsibilities and limitations.

-Overview of the board's committees. Appointment or designation of board committees, such as for the annual audit, executive compensation, and risk management, does not relieve the board of its responsibility for overall oversight of those committees. Of course, if board committees aren't required or appointed the board itself remains directly responsible for the activities that such committee or committees would have performed. For example, if an audit committee is not appointed or designed, then the board remains directly responsible for the activities that an audit committee would have performed. In that regard, you can refer to my separate Audit Committee Annual Self-Evaluation Form.

-Review of requirements and recent developments relating to board and director standard of care and oversight responsibilities, and acceptable reliance on other people.

- Review of risk and uncertainty assessment and management and related processes including risk, uncertainty and liability relating to the entity; individuals; products; strategy; transactions; sustainability; laws, regulations, and rules; reputation; crisis response; and other areas that are within the scope of the board's functions and responsibilities.
- Review of compliance and risk or uncertainty assessment and management processes relating to laws, regulations, rules and otherwise that are within the scope of the board's functions and responsibilities.
- Documenting and reporting the board's activities and minutes.
- The board's use of attorneys and consultants.
- The entity's investor, shareholder, stakeholder and public communication processes.
- CEO and executive talent and succession.
- Executive compensation.
- Board composition, expertise and knowledge.
- Whistleblower, ethics, HR and complaint handling oversight and processes including issues relating to the Foreign Corrupt Practices Act; and corporate investigations.
- Document retention policies.
- Review of the compliance and ethics function and processes that are within the scope of the board's functions and responsibilities.
- Governance, including tone at the top for management and the board and its committees, leadership, transparency and appearance.
- Review of employer, employee, HR and workplace processes that are within the scope of the board's function and responsibilities.
- Review of information and data security and privacy processes that are within the scope of the board's functions and responsibilities.
- Review of entity activity, product, workplace and facility safety and safety processes that are within the scope of the board's functions and responsibilities.
- D&O/board insurance.
- Review of pension and health plan related issues that are within the scope of the board's function and responsibilities.

-Review of processes for receipt of funds or revenues from governmental sources, and compliance with applicable laws, regulations, rules and other requirements; and oversight of expenses and payments relating to these areas.

-Review of tax compliance and related issues that are within the scope of the board's functions and responsibilities.

-Particularly for nonprofit boards, review of the acceptance, receipt, allocation, expenditure or distribution, and accounting for all charitable and donor funds, grants, contributions, pledges and other resources, including compliance with all requirements, restrictions and special uses.

-Particularly for nonprofit boards, review of collaboration and joint venture arrangements, including the allocation of receipts/income and distributions/expenses between the entities.

-Particularly for nonprofit boards, review of investments; and tax exempt status including fund raising, dues, solicitation, and political, campaign and lobby activities.

-Additional significant topics or issues that should be discussed relating to the entity and its industry, and the board.

10 OVERALL BOARD & DIRECTOR GUIDELINES

The following 10 overall board and director guidelines are grouped into two areas: general and specific. Again, I have intentionally avoided a checklist. Although these guidelines do not necessarily cover specific issues or topics to consider during the self-evaluation, I have included them anyway with the thought that some readers would find them worthwhile as a reminder.

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 would say that this guideline requires more detail and understanding than a typical charter.
6. Acquire the information that you need so that you can accomplish your responsibilities. This requires that you exercise 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 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, consider asking 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.

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, also 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 board member responsibilities is also a function of the board’s overall governance and atmosphere of professionalism.

IV. THE SELF-EVALUATION PROCESS AND FORM

The following eight primary steps outline a proposed board self-evaluation process that is workable for boards of public companies, private companies and nonprofit entities, whether using or not using an outside facilitator.

Step 1. Determine the people who will be participating in the evaluation process, including the board members, and other people, if any, to interview for comment.

Insert below the names of the people who will participate in the evaluation process:

Step 2. Determine how the participant interviews will be conducted, individually or in a group, in person or by telephone.

Insert below comments or information about how the interviews will be handled with the various different people who will participate in the evaluation:

Step 3. Arrange participant individual or group interview dates and times.

Insert below participant individual or group interview date and time information:

Step 4. Provide the participants with pre-interview materials and a list of possible issue or topic areas (broad and specific) for consideration and discussion. Of course, the participants can add additional issues or topics. You may wish to use this paper and form for that purpose.

Insert below information regarding the status of providing the pre-interview materials:

Step 5. Have each participant provide a list of one to five, or more, issues or topic areas that the participant would specifically like to discuss during the evaluation process.

Insert below comments and information regarding receipt of issues or topic areas from the self-evaluation process participants, and the respective issues or topic areas listed:

Step 6. Conduct information intake or interviews with participants individually or as a group.

Insert below comments and information from the participants or the status of such – the input can be made by the participants themselves or by a facilitator during self-evaluation interviews:

Step 7. Summarize in a report format the issues and topic areas, information received, and suggestions made during the self-evaluation process.

Insert summary below in a report format:

Step 8. Provide a report back to the board, and possibly conduct a committee group review of the self-evaluation process, information obtained, and suggestions made, and possible future actions or follow-up.

Insert below additional comments and information about the self-evaluation process or results:

Concluding comments. I hope that you found this paper helpful and at least a good starting point for your board of director's self-evaluation. Feel free to contact me if you are interested in discussing the board self-evaluation process, or if you would like help with facilitation. This paper is updated from time to time. Please also be mindful of the Limitations and Disclaimer at page one of this paper.

Regards,
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