FLORIDA DIRECTORS' INSTITUTE
A forum for business leaders

Suggested Best Practices for Directors

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Before accepting a Board position, **consider** the financial position of the company and the integrity of its board and management. Is the board comfortable, active and diligent in providing oversight of management, or does it defer to the CEO? Speak with key officers and other directors.

Understand the company's business, strategy, competitive environment, significant risks, financial controls and compliance systems. Make a point of meeting management throughout the company, not just the most senior officers, and do regular site visits to see the company's operations. If possible, speak with key customers and vendors to learn more about their perspective on the company. Use time between meetings to learn more. Your ability to add value is directly correlates with your knowledge of its people and business.

Aspire to those **best practices** that in your considered business judgment can be adapted to the company's circumstances and meaningfully enhance the board's and the company's performance.

Begin good corporate governance practices by checking the right boxes for compliance purposes, but do more than that.

Remember that **director independence** requires more than just satisfying the enumerated criteria under NASDAQ or NYSE rules – it also requires an affirmative determination by the board on the basis of all relevant facts and circumstances. A board should have either a separate, independent chair or a lead independent director. Directors who are hand-picked or perceived to be hand-picked by the CEO might not be truly independent.

Hold regular executive sessions among independent directors.

Develop a **constructive, collegial, but independent, relationship** with the CEO and other key officers.

Rely in good faith on **carefully chosen experts**, but do not always feel obliged to do what they advise.

Ask whether the board **focuses on the right issues using the right priorities**, and whether it has access to the information it needs?

Actively engage in board deliberations with healthy and constructive skepticism, after having reviewed all board and committee materials circulated in advance of the meeting. Freely ask for added information or input from experts such as counsel and investment bankers advising the company. Insist that you be fully informed in advance of actions on key matters such as acquisitions and other major transactions and the hiring of senior officers.

Have plans to deal with crises and contingencies such as a major public relations issue, the loss of a key officer, a material fraud, and significant damage to a major facility. Have plans to handle and consider acquisition proposals.

Regularly meet with the company's compliance officers for briefings on compliance systems.

Understand the company's compensation arrangements and confirm incentives align with the company and its shareholders' interests. Regularly evaluate the larger picture – do the company's compensation arrangements serve its strategic plans and goals?

Understand the company's succession plans for its CEO and other key officers. Understand the company's efforts to develop talent throughout its organization.

Review board and committee minutes carefully. Minutes should accurately reflect the matters considered, capture the general extent and nature of the board's questions, discussions, and decisions, and document start and end times and the times when persons entered and left the meeting – particularly when potential conflicts are involved. If information was provided to the board before the meeting or discussions among directors occurred before the meeting, reflect those facts in the minutes.

Insist that management **keep track of and report progress** on items that came before the board that resulted in board decisions or directions.

Ensure that public filings are clear and that you understand them. Ask for assurances with respect to the process used to ensure that public filings are accurate. Insist on receiving drafts of public filings you will be asked to sign in a timely fashion.

Ask both management and independent auditors for specific assurances on the integrity of the company's reporting, their respective due diligence, and their respective confidence in what they are reporting. Ask auditors what they would do differently than management and whether in their view the company has the right personnel for its financial reporting and controls.

Beware of issues or transactions involving compensation or a potential conflict for a member of management, a director or a controlling shareholder.

Periodically review risks inherent in the company's business and the oversight of those risks.

Periodically review corporate policies such as the company's code of ethics, confidentiality policies, insider trading policies, and training policies.

Ensure that the company's charter includes a provision prohibiting recovery of money damages from directors for duty of care claims similar to the provisions that the court in Disney noted the "vast majority of Delaware corporations" have adopted.