Getting on Board: The Role of Directors in Managing Risk

John Pietila

Dentons Davis Brown PC

Grow | Protect | Operate | Finance

1

John Pietila

- Mergers & Acquisitions
- Corporate Law
- Telecommunications
- Agribusiness
- Dentons Davis Brown Board of Directors President, 2019 to present

John.Pietila@dentons.com
515-288-2500
www.dentons.com/Iowa

2

Welcome

This presentation discusses

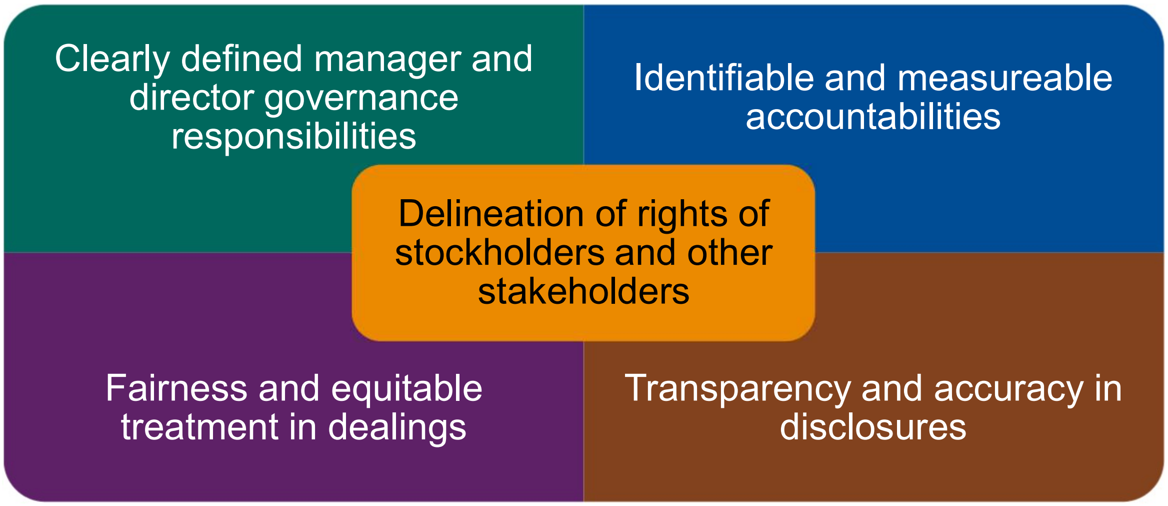
- The overall role of the Board of Directors in corporate governance
- Evolving/expanding strategic and risk considerations in our industry
- The specific role of the Board in oversight of strategy and risk

Checking In

Directors play a critical role in corporate governance

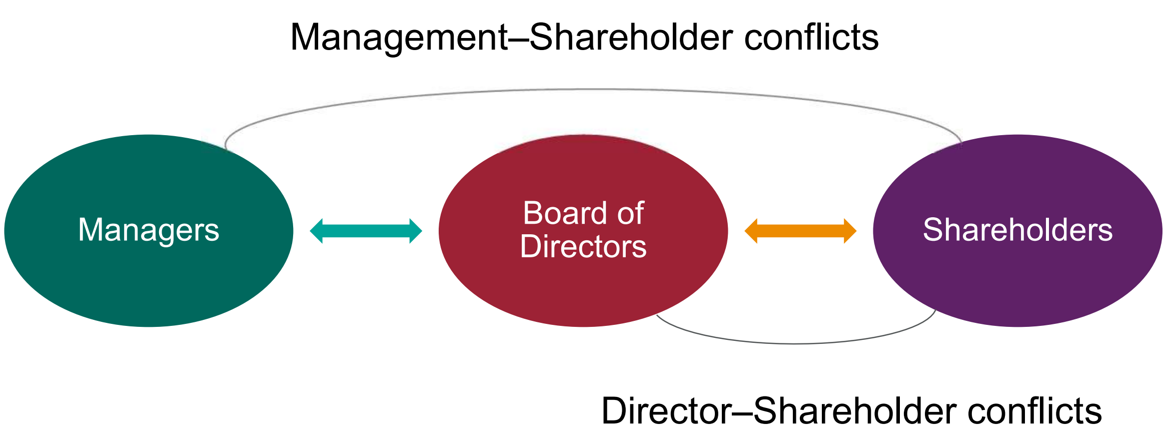
- The board of directors has ultimate legal authority and responsibility to direct the business and affairs of the corporation
- Directors owe fiduciary duties to the corporation, including the **duty of loyalty** and **duty of care**
- Failure of directors to discharge their duties may result in personal civil or criminal liability
- In most circumstances, directors who do their job are legally protected by the **business judgment rule**

Corporate Governance



5

Governance is About Conflicts



6

6

3 Key Roles of the Board

- **Decision Making**: The Board is responsible for making certain decisions, including how much authority to delegate to management, board committees, and others
- **Oversight**: The Board is responsible for overseeing the authority it has delegated
- **Sounding Board**: The Board supports management as a sounding board when management seeks guidance or input on matters within management's delegated authority

Understanding these 3 distinct roles can help support an appropriate relationship of respect and trust among directors and between the board and management

7 DENTONS

7

Risk Management

Risk from a governance perspective

Accounting risk	The risk that a corporation's financial statement recognition and related disclosures are incomplete, misleading, or materially misstated
Asset risk	The risk that the corporation's assets may be misappropriated by managers or directors
Liability risk	The risk that management will enter into excessive obligations that destroy the value of shareholders' equity
Strategic risk	The risk that managers may enter into transactions or incur other business risks that are self-serving and may not be in the best long-term interest of shareholders

8 DENTONS

8

Decision Making

- Generally, the following decisions are reserved to the Board
  - Amending the articles of incorporation or bylaws
  - Issuing stock and granting equity
  - Filling vacancies on the board
  - Approving mergers or other material transactions, including engaging in a sale or distribution of all or substantially all of the company's assets
  - Borrowing or lending material amounts of money
  - Establishing board committees and delegating authority to management, board committees, and others
  - Approving the company's strategic direction and annual budget
  - Declaring a dividend
  - Appointing or terminating the CEO
  - Adopting employee benefit plans
  - Adopting significant corporate policies
  - Retaining and overseeing the independent auditor

Oversight

- The Board must provide oversight of matters it delegates to management and others. Typical areas of oversight include
  - Strategic initiatives
  - Operational and financial performance, including the integrity of financial accounting and reporting processes
  - Risk management
  - Compliance

- Oversight is a continual inquiry by directors into whether the Board's delegation of authority to management is reasonable, and whether the information that management provides to the Board may be relied upon.

Sounding Board

- It is management's prerogative whether to seek the Board's active input on matters within management's delegated authority
- For management to fully use the Board as a forum for testing ideas and seeking guidance, managers must have confidence that the Board or individual directors will not use the opportunity to overstep or micro-manage by giving direction on matters that are for management to decide
- When management consults with the Board, the Board benefits from the enhanced transparency into management's decision-making processes and earlier involvement in matters that may ultimately require board oversight or even board decision-making

Oversight/Sounding Board

- The sounding board role is intertwined with the oversight role, because exposure to how management is thinking about and approaching an issue provides a basis for the Board's judgments about management's performance and capabilities

- Board activity is often context dependent, and increased levels of Board involvement in decisions and oversight may be appropriate in certain contexts
  - A crisis arises
  - The business needs to pivot in a new strategic direction
  - There has been a period of unresolved underperformance
  - Confidence in the CEO has deteriorated
  - There are other material unresolved issues affecting the company that call for a higher level of Board attention

What is happening?

Are we OK?

Market disruption and business model change

The impact of innovation and commoditization

The need for differentiation in the face of continuous change and killer competition

The need for greater scale or scope or new services to stay competitive

Growing emphasis on responsibility and accountability to **stakeholders**, not just shareholders

Regulatory (or Legal?) sea change

Governance Priorities

Strategic and risk management

Focus on long-term strategy for return on owner investment, including appropriate corporate investment and prudent corporate risk taking

Active approval of strategic and operating plans and related budgets

Monitoring corporate performance, including through use of preset benchmarks (if helpful) to determine progress in relation to approved plans and budgets

Strategic Planning

Governance Priorities

Strategic and risk management

- Identify and understand sources of disruption and change that are most likely to impact the company's business in significant ways
- Understand industry context as it relates to overall corporate strategy, especially long-term trends and any risks related to inaction in an industry that is rapidly changing
- Understand risks of acquisitions and monitor those risks before, during, and after the acquisition.

Strategic Planning

15 DENTONS

15

DENTONS

Thank You!

John Pietila
John.Pietila@dentons.com
515-288-2500
www.dentons.com/Iowa

Grow | Protect | Operate | Finance

16