

NACD Listing of "Best Practices"

Procedural Considerations

On December 7, 2005, a blue ribbon commission of the National Association of Corporate Directors (NACD) issued a report recommending best practices for directors to safeguard against personal liability. The commission's report, echoing themes sounded in the Disney decision, underscores that boards should take appropriate steps to strengthen their decision making process. The NACD recommendations to corporate directors are listed below for further discussion with outside counsel:

- Obtain a broad understanding of the company's business, including management's strategy, the assumptions and risks associated with management's strategy, the company's system of controls and the compliance culture promoted by senior management.
- Pay special attention to the board agenda and the flow of information to the board, including whether the board receives sufficient information, both positive and negative, to make informed decisions.
- Attend meetings with an attitude of healthy skepticism and review minutes carefully and promptly to see that they accurately reflect the matters considered. Insist that management periodically circle back to issues that previously have been decided or discussed, for updates and progress reports.
- Hold regular executive sessions without management to discuss the quality of management.
- Understand matters put before the board for approval. Take special care in reviewing SEC filings, including registration statements, prospectuses and the periodic reports that they incorporate. Discuss within the board - and with management, outside auditors and counsel -- whether there are any additional steps that the directors should take to assure themselves of the accuracy of documents filed with the SEC and whether aspects of a particular disclosure are unusual or problematic.
- Rely in good faith on well-chosen experts, but consider expert advice carefully based on a director's own knowledge and information.
- Strictly observe procedures for addressing unavoidable conflicts of interest and avoid self-dealing. Take special care as to any issue or transaction that involves a potential conflict for a member of management, a director or a controlling stockholder.

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InSights

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This article is provided for informational purposes only and is not intended to provide legal advice. The issues and suggestions presented in this article should be reviewed with outside counsel. Any change in board processes or practices should be discussed with outside counsel before implementation.