# THE HONORABLE BARBARA HACKMAN FRANKLIN

## THE CONNECTICUT CHAPTER OF THE NATIONAL ASSOCIATION OF CORPORATE DIRECTORS
## "LEADING THE WAY: DIRECTORS STRENGTHENING CORPORATE GOVERNANCE"
## HARTFORD, CT MARCH 1, 2010

***REMARKS AS DELIVERED***

It is such a pleasure to be with you this evening and to acknowledge the fine work of NACD's Connecticut Chapter so ably led by Suzanne (Hopgood) and Michael (Wilder). Thanks very much Mark (Bertolini) for such a gracious introduction. Thanks, too, to Aetna for hosting this gathering and to the Barnes Group for being a sponsor.

I have been a director since December 1979 when I joined the Aetna board the first time. Since then I have served on 14 public company boards, with time off to be Secretary of Commerce. In all of this time, I have never seen such volatility in the business environment – both economic and political. And public trust in American business is at the lowest ebb in my memory. In the most recent annual Gallup Honesty and Ethics poll, business people are far down the list but above Congress, advertising practitioners, insurance salespeople, stockbrokers, HMO managers and car salespeople. As a believer in the American system of entrepreneurial capitalism which has produced the world's largest and most dynamic economy, I believe we cannot allow this lack of trust to persist. If we do, over time there will be irreparable damage to our great economy.

In the early part of this decade it was the scandals at Enron, WorldCom and others that caused an erosion of public trust in American business. These scandals were rooted in fraudulent and illegal activity; the Sarbanes-Oxley act was the response of the U.S. government. It aimed to correct the abuses. That law and the regulations that came with it gave more power and responsibility to us – to boards of directors.

Now, public trust has been damaged again, this time by the financial meltdown and global recession. Boards of directors were certainly not the cause of this downturn but we are getting our share of the blame, nonetheless, along with CEO's and the way corporations are governed – or not.

As we well know, the U.S. government has stepped in to rescue our financial system, shore up our economy and create jobs. Along with this wave of government involvement has come a push for more shareholder power in the boardroom – a push to hold directors more accountable.

We are probably all familiar with the various items included in the "Shareholder Bill of Rights" which are embodied in various pieces of legislation introduced on Capitol Hill. But let's focus just on proxy access, majority voting and say-on-pay.

- **Proxy access.** A rule was proposed by the SEC last summer. A large number of comments were submitted. The agency re-opened the comment period briefly, then closed it, and they are again reviewing the comments. It is unclear what the agency will do and when, but we anticipate the promulgation of a rule. If enacted, this would allow shareholders owning a certain percent of a company's stock for a specific time period, to place director nominees directly onto the company's ballot for vote at the annual meeting, thus eliminating the need for expensive proxy fights.

- **Majority voting**. Already, about two-thirds of S&P 500 companies have a majority voting standard, which means that a director must receive a majority, not a plurality, of votes cast to be elected.

These two powers – if enacted and used together – could make it easier for some shareholders to elect directors of their choosing, thereby giving more boardroom clout to those shareholders. And this could change the power alignment among directors, the CEO and shareholders. This is precisely what many shareholder activists are striving for.

- **Another thing probably coming is "Say-on-pay."** This would give shareholders an advisory vote on a company's pay plans. The firms receiving government bailout funds already have this, and the expectation is that the Congress will pass a bill making it apply to all public companies. As we all know, there is enormous anger at the grassroots level about excessive CEO compensation and that is why it has become a political issue. As long as this anger remains, it should be a concern to us.

**What should boards do?**

This brings me to the crucial question – what should boards of directors do now?

In my experience, directors are working valiantly to do a good job, and boards are performing better than they ever have before. As directors we are more engaged on strategy, "tone at the top", CEO succession, executive compensation and the oversight of risk. I'm proud to be a director. I think this is important and worthwhile work, and I'm sure you feel that way too or you wouldn't be here today.

But, still, it is time for another step up in vigilance and performance. These are tough times and probably will be for the foreseeable future. We as directors have a responsibility to be part of the solution – to do our part to help restore trust in corporate governance and in American business, help to build long term value for shareholders and do our best for the company as a whole. This is a call to action and it is urgent.

Here is what I believe we, as directors, must do. I am talking to myself as well as to you. Three things:

**First**, rededicate ourselves to understanding fully the companies we serve. How does the company make money? What is the strategy? What are the drivers of success? What are the risks? How strong is the "tone at the top"? Does the company make money by also doing good – by providing products and/or services which are needed and useful? If we as directors are not really knowledgeable and current, we cannot do an adequate job of overseeing performance and engaging in these important decisions regarding strategy, risk and succession.

Also, we should rededicate ourselves to the qualities of character all of us, as directors, must have – integrity, good judgment, a commitment to excellence, a strong work ethic, independence and courage. And each of us should know what we bring to the board table through expertise and experience, so that we can use that expertise and experience to help the company.

**Second**, reevaluate how board members work together. A board, as we all know, is a group usually of 6–12 people. So it must do its work as a group, by consensus. A key dimension of board effectiveness – often overlooked, I believe – is the group dynamic at work around the board table and also, importantly, how the group interacts with the CEO. There are a variety of cases where person for person, the directors sitting around the board table are excellent people. Yet somehow the group process didn't work well enough or quickly enough when action was needed. We board members should look at ourselves and be honest about how things are working.

Some questions to ask: Do board members respect each other? Do they trust each other? Are they willing to challenge the CEO in a constructive way? How do they deal with, for example, an overpowering CEO? Is leadership of the board – lead director or independent chairman – working well? Is the lead director trying to act like the CEO? These and other questions should be asked and answered. Where different behavior is called for, the board should make that happen. That can be somewhat delicate but necessary.

**Third**, participate in NACD's initiative – "Leading the Way: Directors Strengthening Corporate Governance." The hope is that every board in the country will assess its own governance practices using the Key Agreed Principles as a framework. That should stimulate a robust discussion about governance practices, what works and what doesn't. Then, make it an annual part of the self-assessment that each public company must do according to listing standards. We hope this will be an ongoing process, not a one off. (There is a special website to help.)

*The Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies* are contained in a unique document. It was a year and a half in preparation and represents the distillation of a variety of governance principles on which we believe there is agreement from management, directors and shareholders. There are 10 principles, quite logical, really. Such things as(1) board responsibility for

governance (2) corporate governance transparency (3) director competency and commitment (4) board accountability and objectivity (5) independent board leadership (6) integrity, ethics and responsibility (7) attention to information, agenda and strategy (8) protection against board entrenchment (9) shareholder input in director selection and (10) shareholder communications.

I want to emphasize that these principles are not prescriptive. They are not a "cookie cutter" one-size-fits all list of do's and don'ts. This is not a compliance exercise. No additional liability accrues because your board participates in this self-assessment. We hope each board will evaluate its practices and then strengthen its performance in whatever way it sees fit.

Then tell the NACD national office that your board is participating. Some of those so far are: Aetna, Dow Chemical, Home Depot, United Health, Becton Dickinson and Whirlpool. And when we have a good number of boards participating – large cap, medium and small cap, we can communicate this fact to public policy makers, shareholder groups and the media. The purpose is to let them know that directors really are stepping up and making a difference. One difficulty now is that many stakeholders – many in the public policy arena – just lump boards together with CEO's.

One obvious question: will such a voluntary effort on the part of boards make a difference? Can this help to prevent another economic crisis? Will it stop future fraudulent activity?

Of course, there can be no guarantees. But I truly believe that more effective corporate governance and more vigilance on the part of each and every one of us can contribute significantly to a company's better financial and ethical performance.

**An important question: What does your board get out of this effort?** First, it is a good way to focus on and discuss your own governance practices and, hopefully, strengthen them. Second, you can be part of a larger effort to show that directors are taking initiative and actively working to do their jobs better. That, in turn, as it is recognized, can help to restore public trust in American business and work to change some of the negative thinking.

For our part, at NACD, as the only membership organization of directors, we are aiming to be the **"voice of the director".** This is an addition to our original mission which is to help directors to do their jobs better by offering educational activities, informational resources and opportunities for peer to peer director contact. "Voice of the director" means, for example, commenting on various regulatory proposals which impact boards. NACD has commented on the SEC's proxy access proposal and the agency's proposal for additional disclosure about director qualifications. It also means reaching out to Capitol Hill staffers and other stakeholders to educate them about the role of the board of directors. In other words, NACD is starting to play an advocacy role on behalf of directors. A vacuum exists now. We believe that articulating the interest of directors to

public policy makers and other stakeholders is a real need. It is a need that we believe NACD is well equipped to fill and we think we should do so.

**Conclusion**

As we said, these are challenging times for directors. But the flip side of challenge is opportunity. Before us now, as never before, is the opportunity and the need to demonstrate that boards can perform even better and can help to restore public and investor trust. It is in the interest of everyone – shareholders, managements, boards, employees, the public, and yes, our government – that we directors succeed in proving that corporate governance really works for the good of the company and that our American system of capitalism really is the best.

Thank you.

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