JUNE 8, 2017
CHICAGO CHAPTER SPECIAL EVENT WITH DUFF & PHELPS SUMMARY

Corporate Governance for the Next Generation

Program jointly sponsored by NACD Chicago and Duff & Phelps

Moderator: Chris Abbinante – Co-Leader, Private Equity, Sidley Austin, LLP

Panelists: Dennis Chookaszian – Director, CME Group, Prism Technologies, MacDonald Dettwiler

Doug Grissom – Managing Director, Business & Government Services Team, Madison Dearborn Partners

Jai Shekhawat – Founder, Fieldglass; Director 1871, Signal, Semantify

The panel offered corporate governance advice to current and prospective directors serving on both public and private boards. The panelists spoke from multiple perspectives, including as board members, CEOs and board-level advisors.

Abbinante began the program with a series of questions for his panelists, starting with the differences between serving on public and private boards. Grissom maintained that 80% to 90% of the efforts were the same, particularly as they relate to strategy and management. All of the panelists agreed that the primary difference related to *who* the board is working for – public companies' shareholders are typically varied with a wide range of time frames while it's usually fairly easy to determine who you represent as the director of a private company, and goals, particularly over the long term, are clearer. The panelists also pointed out that public company boards have significantly more regulations to consider and observe. Regardless of public or private, however, all participants stressed the importance of acting as independent directors. An audience member questioned the panelists on how board members can enhance "professionalism" on private company boards if the company has no intent to go public. Grissom replied that directors should identify at least three to four areas in which their help could make a difference to the company's strategy or operations, and then focus on which directors could provide the best assistance in each area. Shekhawat added that managements need to spend some time considering how to get the most out of their boards, creating an environment in which directors are inspired to participate at the highest possible level.

Taking a broader perspective, Chookaszian noted that the role of a board depends on the needs of the organization. He described five types of boards, ranging from passive (typically appointed by the CEO), to certifying (focused on compliance), to engaged (acting as partners with the CEO), to intervening, to operating. Chookaszian favors the third level, which he termed "noses in, fingers out." In terms of bringing overly complacent or overly involved boards to a middle ground, Shekhawat noted that younger company boards tend to begin in an overly engaged position to compensate for management inexperience and an often still-formulating market. This type of board position is particularly appealing to directors with entrepreneurial experience. Abbinante commented on the opposite situation in which a founding CEO has a hard time ceding control of strategic direction of his or her company. An audience member's question led to a discussion of recent events at Ford where a board member was named to replace a departing CEO.

Abbinante asked his panelists to give advice to new board members, focusing on how first-time directors can add value. Grissom suggested new directors find an area of expertise or function that they know well, and then lead that part of the discussion. Shekhawat added that new outside directors should form partnerships with management. Chookaszian cautioned new directors to "watch their word count," admonishing them against monopolizing board discussions by remembering that "everything's been said, but not everyone has said it."

Abbinante asked his panelists to offer suggestions on how to elicit feedback from shareholders, looking for ways to find out what is important to investors without becoming overly reliant on management for information. Grissom stated that it is difficult for public company directors to have direct dealings with shareholders as input usually flows from investors to senior management before it reaches the board. Noting that some public companies do allow board members to communicate directly with shareholders, Chookaszian recommended that directors all agree to follow the same course. Offering a venture capital perspective, Shekhawat commented that most private company investors already have some representation on the board, but shareholder groups may still have different agendas and perspectives. On these private boards, directors may actually have more experience than the operating management, requiring much work to be done through one-on-one calls and meetings outside the boardroom.

On the issue of risk management and cyber security, all three panelists stressed the need for vigilance; cyber security, for example, should be discussed in at least one board meeting each year, and directors must be certain they are satisfied with programs and procedures. Grissom identified outside risks, inside risks and competitive risks, citing the latter as the most concerning with the phase "keep your cannibals in your family." Chookaszian recommended that boards use the risk management process to drive strategy, recognizing that risks must be identified and dealt with in order to plan a company's direction. The panelists also discussed the issue of director liability, noting that the vast majority of shareholder suits result in insurance settlements. Directors are rarely at any individual financial risk, unless there is significant evidence of bad behavior such as self-dealing or legal violations. In a similar vein, panelists discussed corporate whistle blower programs. Companies must have clear policies and procedures and carefully avoid retaliation.

The panel ended the afternoon session by discussing the board's role in extraordinary transactions such as the sale of a company or an IPO, with a particular focus on how to handle potential management conflicts. Grissom noted that private company boards are always focused on the eventual exit, and Shekhawat discussed the aspects of his business – including uneven short-term results – that caused him to avoid any plans to take his company public.