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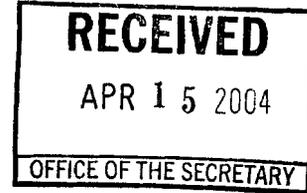
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BY EMAIL

April 1, 2004



The Honorable William H. Donaldson
Chairman
U. S. Securities & Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Henry A. McKinnell, Jr.
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Chairman

Franklin D. Rainey
Laurie Mac
Co-Chairman

Edward D. Ross, Jr.
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Co-Chairman

John J. Castellani
President

Patricia Hanahan Engman
Executive Director

Jonathan I. Schneider
Executive Director
Special Relations

Dear Chairman Donaldson:

Thank you for meeting with me, Steve Odland, Hank McKinnell and Peggy Foran yesterday. We appreciated the opportunity to discuss the Commission's director nomination proposal.

The Business Roundtable has long been a strong supporter of good corporate governance. We have issued numerous statements addressing corporate governance, including *Principles of Corporate Governance* (May 2002) and *Executive Compensation: Principles and Commentary* (November 2003). I am attaching our most recent statement, *The Nominating Process and Corporate Governance Committees: Principles and Commentary*, which was released today.

The Business Roundtable remains committed to promoting best practices with respect to the director nomination process and corporate governance generally.

Please do not hesitate to contact me if I can be of assistance to you.

Sincerely,

John J. Castellani

Attachment



Business Roundtable

**The Nominating Process and
Corporate Governance Committees:
Principles and Commentary**

April 2004

BUSINESS ROUNDTABLE

AN ASSOCIATION OF CHIEF EXECUTIVE OFFICERS COMMITTED TO IMPROVING PUBLIC POLICY

PRINCIPLES FOR THE NOMINATING PROCESS AND CORPORATE GOVERNANCE COMMITTEES

1. The corporate governance committee, which should be composed entirely of independent directors, should play a leadership role in shaping a company's corporate governance and overseeing the composition, structure, operation and evaluation of the board and its committees.
2. The corporate governance committee should take responsibility for assuring that a substantial majority of the board meets appropriate standards of independence developed by the committee and approved by the board.
3. The corporate governance committee should develop and recommend to the board a set of corporate governance principles, which the corporation should make publicly available.
4. Director candidates should be identified, evaluated and recommended to the board by the corporate governance committee. The corporate governance committee should consider director candidates recommended by stockholders, as well as suggestions from directors, management and other sources.
5. The corporate governance committee should have an established process for evaluating the independence, contributions and effectiveness of incumbent directors when deciding whether to recommend those directors for re-nomination.
6. The corporate governance committee should be responsible for establishing and overseeing procedures for stockholder communications with directors if the full board or another committee does not do so.
7. The corporate governance committee should assist the board in planning for CEO and senior management development and succession if another committee of independent directors does not do so.

**THE NOMINATING PROCESS AND
CORPORATE GOVERNANCE COMMITTEES:
COMMENTARY**

FOREWORD AND INTRODUCTION

The Business Roundtable is recognized as an authoritative voice on matters affecting American business corporations and, as such, has a keen interest in improving corporate governance practices. The Roundtable is an association of chief executive officers of leading corporations with a combined workforce of more than 10 million employees in the United States and \$3.7 trillion in annual revenues. The chief executives are committed to advocating public policies that foster vigorous economic growth, a dynamic global economy, and a well-trained and productive U.S. workforce essential for future competitiveness.

The Roundtable believes that every publicly owned corporation should have an independent board committee that addresses director nominations and corporate governance issues. An effective corporate governance committee (often combined with, or referred to as, a nominating committee) is central to the functioning of the board. Traditionally, the corporate governance committee's role was to recommend director candidates to the board and the corporation's stockholders. Over the past decade, however, the committee's role has expanded so that today, at many corporations, it plays a leadership role in shaping corporate governance and overseeing the composition, structure, operation, compensation and evaluation of the board and its committees.

The Roundtable has developed seven principles to serve as best practices for the nominating process and corporate governance committees. These principles are discussed in more detail in the commentary that follows. While the commentary illustrates ways to implement the principles, other approaches may be appropriate given the circumstances of an individual corporation.

It is critical to have independent director oversight of board nominations and operations. However, references in the principles and commentary to the corporate governance committee are not intended to preclude corporations from allocating responsibility for particular matters to a different committee, to the independent directors as a group or to the full board. (For example, although the principles suggest that the corporate governance committee should assist the board in planning for CEO and senior management succession, at some corporations the compensation committee is charged with this responsibility.) What is important is that key corporate governance issues are addressed effectively by the independent members of the board.

COMMENTARY ON PRINCIPLES

1. *The corporate governance committee, which should be composed entirely of independent directors, should play a leadership role in shaping a company's corporate governance and overseeing the composition, structure, operation and evaluation of the board and its committees.*

- Members of the corporate governance committee should be independent in both fact and appearance, as determined by the board. They should have the ability to exercise independent judgment free from any relationship or influence that could compromise their ability to approach nominating and governance issues decisively and independently.
- The responsibilities of the corporate governance committee should be set out in a written committee charter that is made publicly available to stockholders and other interested parties.
- The committee's responsibilities should include identifying, evaluating and recommending director candidates to the board; establishing criteria for board and board committee membership; overseeing the evaluation of the board; developing and recommending to the board for public release a set of corporate governance principles; providing direction and oversight for director orientation and continuing education programs; overseeing procedures for stockholder communications with

the board; and assisting the board in planning for CEO and senior management development and succession (or seeing that another committee or the full board addresses these issues).

- The corporate governance committee should review the board's committee structure and recommend candidates for membership on the board's committees. As the corporation's circumstances change, it may be appropriate for the committee to recommend that the board add or dissolve board committees (other than those required by law, regulation or listing standards).
 - ◆ In recommending committee membership, the corporate governance committee should focus on the strengths that different directors bring to the committees and the needs of the committees.
 - ◆ It is the corporate governance committee's responsibility to see that key board committees, including the audit, compensation and nominating/corporate governance committees, are composed of directors who meet applicable independence and qualification standards.
 - ◆ When evaluating potential committee chairs, the corporate governance committee should consider each candidate's leadership abilities, as well as his or her expertise and availability.
 - ◆ The corporate governance committee, along with the full board, should consider whether

periodic rotation of committee membership and chairs would provide fresh perspectives and enhance directors' familiarity with different aspects of the corporation's business.

- The corporate governance committee is responsible for overseeing the effective functioning of the board. The committee should review the board's policies relating to meeting schedules, meeting agendas and the participation of management at board and committee meetings.
 - ◆ The committee should evaluate the quality and timeliness of information received by the board, and the manner in which it is provided. The board should receive from management in a timely manner appropriately detailed information, and directors should request additional information as necessary.
 - ◆ The board also should be provided with information from sources outside the corporation, including analyst and press reports (both positive and negative), relating to the corporation, management, the industry, and corporate governance issues.
 - ◆ The board should have an opportunity to meet with members of management on a regular basis, in order to assess their capabilities and to stay apprised of issues facing the company and its industry.

- The corporate governance committee should oversee evaluation of board and board committee performance and individual director contributions.
 - ◆ The performance of the full board should be evaluated at least annually. Companies conduct board evaluations in a variety of ways, including through discussions led by the board chair or the chair of the corporate governance committee, annual board self-evaluation questionnaires, and the use of third parties.
 - ◆ The committee and the board should assess how directors work as a group, and whether changes in the composition of the board or key committees would better serve the corporation's interests.
 - ◆ Evaluation of the board involves a candid assessment of the board's strengths and weaknesses. The committee should report to the board on any weaknesses identified through the evaluation process and, together with the board, should develop and implement plans to address those weaknesses.
 - ◆ The corporate governance committee should conduct its own committee self-evaluation and should assist other board committees with their self-evaluations.

- ◆ Individual directors' contributions should be evaluated in connection with the re-nomination process, as discussed below.
- The corporate governance committee should establish procedures for the retirement or replacement of board members. Such procedures may include a mandatory retirement age or term limits. In addition, directors who change primary employment should notify the chair of the corporate governance committee, so that the committee may determine whether the director's continued service on the board is appropriate.
- The corporate governance committee should ask directors and the most senior executive officers to notify the corporate governance committee chair before accepting a position on another for-profit company's board.
- The corporate governance committee, if the compensation committee does not do so, should review and recommend changes to the corporation's director compensation policies.
 - ◆ A meaningful portion of a director's compensation should be in the form of long-term equity.
 - ◆ The committee should consider establishing a requirement that, for as long as directors remain on the board, they hold a meaningful amount of company stock.

- ◆ The committee should review the compensation provided to the lead or presiding director (if one has been designated) and key committee chairs to determine whether supplemental compensation, reflecting their additional responsibilities and time commitment, would be appropriate.

2. *The corporate governance committee should take responsibility for assuring that a substantial majority of the board meets appropriate standards of independence developed by the committee and approved by the board.*

- The corporate governance committee should monitor and safeguard the independence of the board and should see that a substantial majority of directors are independent in both fact and appearance, as determined by the board.
- The committee should develop and recommend to the board standards for determining directors' independence, taking into account the requirements of the federal securities laws and applicable securities markets and the views of institutional investors and other relevant groups.
- An independent director should not have relationships with the corporation or its management – whether business, employment, charitable or personal – that could impair his or her ability to exercise independent judgment.

- The committee should have a rigorous screening process to uncover any conflicts of interest or other relationships impacting independence. Director questionnaires are a useful part of this process. The committee also should review information from other sources as necessary.

3. *The corporate governance committee should develop and recommend to the board a set of corporate governance principles, which the corporation should make publicly available.*

- The corporate governance committee should develop, recommend to the board and update as necessary a set of corporate governance principles.
- The corporate governance principles of a public corporation should address, at a minimum, board leadership, qualifications for directors (including independence standards), director responsibilities, the structure and functioning of board committees, the board's access to management and independent advisors, director compensation, director orientation and continuing education, board evaluations and management succession.
- The corporate governance principles should be made publicly available to the corporation's stockholders and other interested parties.
- The corporate governance committee should conduct regular reviews of corporate governance trends and best practices and should recommend

changes to the principles and board practices as appropriate.

4. *Director candidates should be identified, evaluated and recommended to the board by the corporate governance committee. The corporate governance committee should consider director candidates recommended by stockholders, as well as suggestions from directors, management and other sources.*

- A core function of the corporate governance committee is selecting and recommending to the board qualified director candidates for election by the corporation's stockholders. To properly perform this responsibility, the committee should prepare and recommend to the board written criteria for director candidates. Over time, the committee should evaluate whether changes to the board's criteria are appropriate.
- ◆ In developing criteria and evaluating individual candidates for nomination, the corporate governance committee should consider the background and expertise of existing board members and the specific needs of the board.
- ◆ The composition of the board should reflect a mix of talents, experience, expertise and perspectives appropriate to the corporation's circumstances and strategic challenges, and the corporate governance committee should plan ahead for changes in board composition.

- ◆ The committee should consider candidates from a range of backgrounds. Diversity in gender, age, race and perspective all are appropriate considerations. In recent years, corporations have drawn directors from a variety of sources, including the public sector, educational and charitable institutions and senior management in addition to current and former CEOs.
- ◆ Important criteria for directors include integrity, candor, good judgment, commitment and willingness to consider matters before the board with objectivity and impartiality. In addition, the committee should consider whether candidates have the requisite knowledge, skills and experience to understand the business of the corporation. A candidate's prior success as a manager or director of another corporation or significant enterprise also may be relevant.
- ◆ The board's membership criteria should be disclosed to the corporation's stockholders and included in its corporate governance principles. As the board's needs change, the corporate governance committee should update its criteria for membership.
- Many corporate governance committees use executive search firms to assist them in identifying and recruiting qualified board candidates. Any such outside firm should be retained by, and report directly to, the corporate governance committee.

- The corporate governance committee should encourage stockholder suggestions regarding board composition and should consider director candidates recommended by stockholders.
 - ◆ The corporation should disclose publicly how and when stockholders may recommend director candidates to the corporate governance committee for consideration and should indicate the information that should be provided so that those candidates can be considered by the committee. The corporation should update this information as necessary.
 - ◆ The committee should evaluate stockholder candidates for director using the same criteria it uses to evaluate candidates recommended by other sources.
 - ◆ The committee should consider the candidate's ability to act in the best interests of the corporation and all of its stockholders.
 - ◆ The committee should communicate with any stockholder who recommends a candidate to the committee, informing him or her of the receipt and status of the recommendation and the committee's determination regarding the candidate.
- Although it is appropriate for the CEO to meet with board candidates, final responsibility for selecting

director nominees should rest with the corporate governance committee and the board.

5. *The corporate governance committee should have an established process for evaluating the independence, contributions and effectiveness of incumbent directors when deciding whether to recommend those directors for re-nomination.*

- Board positions should not be regarded as permanent. Directors should serve only so long as they add value to the board and act in the best interests of stockholders. The corporate governance committee should have a rigorous process for evaluating whether incumbent directors continue to have the appropriate skills and experience to contribute to the board.
- ◆ In assessing a director's contributions, considerations should include his or her attendance, preparation and active participation at board and committee meetings. The corporate governance committee also should look to the board's criteria for membership and its current needs for particular background and expertise.
- ◆ The committee should evaluate a director's availability and commitment going forward.
- Corporate governance committees use a variety of means to assess directors' contributions, including discussions led by the board chair or the chair of the

corporate governance committee, confidential self-evaluations or peer evaluations.

6. *The corporate governance committee should be responsible for establishing and overseeing procedures for stockholder communications with directors if the full board or another committee does not do so.*

- Every publicly owned corporation should have effective and meaningful procedures for stockholders to communicate with the board, and for directors to respond to stockholder concerns.
 - ◆ Such procedures may include a mailing address, telephone number or electronic mail address for stockholders to register concerns or questions with the board as a whole, the independent directors or key committee chairs.
 - ◆ The board, the corporate governance committee or members of management should consider meeting with stockholders regarding issues of concern.
 - ◆ The corporate governance committee, another committee or the full board should oversee the corporation's response to proposals submitted by stockholders. It may be appropriate for members of the board to meet with stockholders regarding specific proposals. In addition, the corporation should communicate its response to stockholder proposals that receive a majority vote.

- Directors should attend the corporation's annual meeting of stockholders and have a process for responding to stockholder questions concerning the corporation. At the annual meeting, committee chairs may wish to make presentations on certain issues.

7. *The corporate governance committee should assist the board in planning for CEO and senior management development and succession if another committee of independent directors does not do so.*

- Long-term planning for CEO and senior management development and succession is one of the board's most important functions. The corporate governance committee should assist the board in identifying and regularly updating the qualities necessary for an effective CEO of the corporation.
 - ◆ The board or the committee should monitor the development and progression of potential internal candidates using these standards.
 - ◆ The board or the committee should review with the CEO what is being done to prepare potential candidates for succession.
- Emergency succession planning is equally critical. Working with the CEO, the board should assure that the corporation has a plan to deal with unexpected events, such as the sudden departure, death or disability of the CEO or other senior managers.