KEY AGREED PRINCIPLES

to Strengthen Corporate Governance
For U.S. Publicly Traded Companies

NACD™
NATIONAL ASSOCIATION OF CORPORATE DIRECTORS

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Key Agreed Principles to Strengthen Corporate
Governance for U.S. Publicly Traded Companies

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OVER THE PAST DECADE, a host of detailed corporate governance best practice recommendations have arisen from a variety of organizations representing the views of shareholders, management, and directors. These best practice recommendations agree on many key points (at least at the theoretical level); however, some important differences in viewpoints remain. Overall, the development of varying best practice recommendations has been positive: it has added richness to the discussion of corporate governance practices and has underscored the room for variation in practices at the highest levels of excellence. legitimate concerns arise, however, about the overly prescriptive use of best practice recommendations by some proponents, without recognition that different practices may make sense for different boards and at different times given the circumstances and culture of a board and the needs of the company.

In an effort to recognize significant areas of common agreement and interest and to move beyond highly prescriptive and rigid recommendations of best practice for publicly traded companies, National Association of Corporate Directors (NACD) puts forth the following key principles to strengthen corporate governance—key principles that we believe most companies, boards, shareholders and shareholder groups will also support.

These Key Agreed Principles reflect the distillation and articulation of fundamental principles-based aspects of governance on which there appears to be broad consensus. they are intended to describe the current baseline consensus and thereby to help improve the quality of discussion and debate about governance issues that have not yet gained consensus. We would like to acknowledge the extraordinary and pro bono efforts of Ira Millstein, Holly Gregory, and their colleagues at Weil, Gotshal & Manges LLP—Kasara Davidson, Ofer Eldar, Christopher Evans, and Lyn Fay—for their analysis of corporate governance best practices and identification of the commonalities that were the basis for the principles.

The Principles can be given effect in a variety of ways. Boards are encouraged to use them in thinking through and tailoring their own governance structures and practices to meet the needs of their respective companies. shareholders are encouraged to consider these principles in assessing the governance of companies.

It has often been said that "one size does not fit all" when it comes to corporate governance. The Principles are intended to assist boards and shareholders to avoid rote "box ticking" in favor of a more thoughtful and studied approach. It is expected that NACD, Business roundtable (BRT), and other thoughtful proponents of effective governance practices (like those referenced in Appendix A) will continue to advocate their own views about the details of corporate governance best practice. Boards and shareholders should consider these more detailed viewpoints which, while similar in many respects, reflect and will likely continue to reflect some important differences.

2011 Update from NACD: We wish to extend our deepest gratitude to The Business Roundtable and the Council of Institutional Investors, who were essential in developing the NACD Key Agreed Principles, published in 2008. In recent years, the NACD initiated a challenge asking America's directors to adopt the Principles, assess their governance practices, make changes where needed, and commit to continuing education and transparency. To learn more, please visit the NACD Challenge website at nacdonline.org.

Key Agreed Principles

I. Board Responsibility for Governance
Governance structures and practices should be designed by the board to position the board to fulfill its duties effectively and efficiently.

II. Corporate Governance Transparency
Governance structures and practices should be transparent— and transparency is more important than strictly following any particular set of best practice recommendations.

III. Director Competency & Commitment:
Governance structures and practices should be designed to ensure the competency and commitment of directors.

IV. Board Accountability & Objectivity
Governance structures and practices should be designed to ensure the accountability of the board to shareholders and the objectivity of board decisions.

V. Independent Board Leadership
Governance structures and practices should be designed to provide some form of leadership for the board distinct from management.

VI. Integrity, Ethics & Responsibility
Governance structures and practices should be designed to promote an appropriate corporate culture of integrity, ethics, and corporate social responsibility.

VII. Attention to Information, Agenda & Strategy
Governance structures and practices should be designed to support the board in determining its own priorities, resultant agenda, and information needs and to assist the board in focusing on strategy (and associated risks).

VIII. Protection Against Board Entrenchment
Governance structures and practices should encourage the board to refresh itself.

IX. Shareholder Input in Director Selection
Governance structures and practices should be designed to encourage meaningful shareholder involvement in the selection of directors.

X. Shareholder Communications
Governance structures and practices should be designed to encourage communication with shareholders.

The National Association of Corporate Directors (NACD) puts forth these Key Agreed Principles, grounded in the common interest of shareholders, boards and corporate management teams, to provide a blueprint to corporate boards and thereby to help improve the quality of discussion and debate about governance issues moving forward.

To learn more, visit NACDonline.org/keyprinciples.

THIS DOCUMENT ASSUMES that companies comply with applicable governance-related provisions required by the Dodd-Frank Act of 2010, the Sarbanes-Oxley Act of 2002, rules of the Securities & Exchange Commission ("SEC"), stock listing standards, and all other applicable laws and regulations, as well as company articles and bylaws. For example, it is assumed that most publicly traded U.S. corporations now have a majority of independent directors; that independent directors hold periodic executive sessions without members of management present; that such sessions are convened and presided over by an independent director chosen by the independent directors; and that audit, compensation, and nominating/governance functions are undertaken by independent directors usually organized in committees.

The Key Agreed Principles that follow are grounded in the common interest of shareholders, boards, and management teams in the corporate objective of long-term value creation (through ethical and legal means), the accountability of management to the board, and ultimately the accountability of the board to shareholders for such long-term value creation. The Principles provide a framework for board leadership and oversight in the especially critical areas of strategic planning, risk oversight, executive compensation, and transparency. Principle I emphasizes the responsibility of every board to design its own governance structure and practices, and that boards should take into account in designing and explaining structures and practices. Principle II emphasizes the importance of the board explaining how it has tailored governance structures and practices to meet its own needs. Principles III through X describe the key fundamentals.

I. Board Responsibility for Governance

Governance structures and practices should be designed by the board to position the board to fulfill its duties effectively and efficiently.

The board of directors, as the central mechanism for oversight and accountability in our corporate governance system, is charged with the direction of the corporation, including responsibility for deciding how the board itself should be organized, how it should function, and how it should order its priorities. The board's fiduciary objective is long-term value creation for the corporation; governance form and process should follow.

"The board's fiduciary objective is long-term value creation for the corporation; governance form and process should follow."

Shareholders and management have important viewpoints about governance structures and processes, and shareholders elect directors and have authority for certain critical decisions. However, it is the board that is charged with selecting and evaluating senior executives; planning for succession; monitoring performance; overseeing strategy and risk; compensating executives; approving corporate policies and plans; approving material capital expenditures and transactions not in the ordinary course of business; ensuring the transparency and integrity of financial disclosures and controls; providing oversight of compliance with applicable laws and regulations; and setting the "tone at the top." Ultimately, therefore, the board must decide how best to position itself to fulfill its fiduciary obligations.

The corporation today faces pressures and scrutiny from a variety of stakeholders (for example, employees, customers, suppliers, special interest groups, communities, politicians, and regulators) having diverse interests in its operation and success. Moreover, shareholders are increasingly diverse and the capital markets and the business and social environment are increasingly complex and challenging. In addition to individuals who hold shares directly, investors now include a growing variety of entities that invest monies on behalf of their beneficiaries and have diverse time horizons, strategies, and interests in the corporation. These include hedge funds, private equity and venture capital funds, public and private pension funds, mutual funds, sovereign wealth funds, insurance companies, banks and other types of lenders, and derivative product holders. In responding to the pressures facing the corporation, the board must understand the diverse interests of stakeholders and investors, and consider competing demands and pressures as necessary and appropriate while ensuring that the corporation is positioned to create the long-term value that all shareholders have an interest in as a unified body.

This is the context in which the board must order its governance structures and processes, providing both oversight and guidance to management regarding strategic planning, risk assessment and management, and corporate performance. Serving as a director is demanding and—in addition to significant substantive knowledge and experience relevant to the business and governance needs of the company—requires integrity, objectivity, judgment, diplomacy, and courage.

II. Corporate Governance Transparency

Governance structures and practices should be transparent— and transparency is more important than strictly following any particular set of best practice recommendations.

A variety of structures and practices may support and further effective governance. Boards should tailor governance structures and practices to the needs of the company in a pragmatic search for what is most effective and efficient. Governance best practices should be adopted thoughtfully, and not by rote reliance on the recommendations posited by any entity or group. However, every board should strive to understand generally the parameters of and variations in standards of best practice recommended by NACD, BRT, and other thoughtful proponents of effective governance practices (like those referenced in Appendix A).

" Boards should explain to shareholders why the governance structures and practices it has developed are best suited to the company."

Every board should explain, in proxy materials and other communications with shareholders, why the governance structures and practices it has developed are best suited to the company. Some boards may choose to disclose their own practices in relation to a set of recognized best practice recommendations, identifying those areas where their practices differ and explaining the board's rationale for such differences. Whether or not a board discloses its practices against a defined set of recommendations, it is the disclosure of governance structures and practices generally and the rationale for divergences from widely accepted best practices that is important. Disclosure of the practices adopted and adapted by the board, along with the rationale for unusual aspects, is far preferable to the adoption of any prescribed set of best practices. Valuing disclosure over rigid adoption of any set of recommended best practices encourages boards to experiment and develop approaches that address their own particular needs, and avoids rigidity. Boards that explain their practices should be rewarded and not penalized for decisions to adapt best practice to their own needs.

III. Director Competency & Commitment:

Governance structures and practices should be designed to ensure the competency and commitment of directors.

A board's effectiveness depends on the competency and commitment of its individual members, their understanding of the role of a fiduciary and their ability to work together as a group. Obviously, the foundation is an understanding of the fiduciary role and the basic principles that position directors to fulfill their responsibilities of care, loyalty, and good faith.

However, an effective board is far more than the sum of its parts: it should bring together a variety of skill sets, experiences, and viewpoints in an environment conducive to reaching consensus decisions after a full and vigorous discussion from diverse perspectives. While the board should reflect a mix of diverse experiences and skill sets relevant to the business and governance of the company, each board must determine for itself, and review periodically, what those experiences and skill sets are and what the appropriate mix should be as the company faces different challenges over time.

"Director qualifications and criteria should be designed to position the board to provide oversight of the business."

Typically, a board will want some persons with specialized knowledge of relevant businesses and industries and the business environment in which the company functions who can provide insight regarding strategy and risk. Director qualifications and criteria should be designed to position the board to provide oversight of the business.

Directors need to exhibit a commitment of both time and active attention to fulfill their fiduciary obligations. Generally, that means that directors should ensure that they have the time to attend board and committee meetings and the annual meeting of shareholders, prepare for meetings, stay informed about issues that are relevant to the company, consult with management as needed, and address crises should crises arise.

The board may wish to articulate guidelines that encourage directors to limit their other commitments. Such guidelines assist in communicating expectations about the commitment that is expected. Given the considerable variation in individual capacity, boards should apply their judgment and assess directors' commitment through their actions, rather than rely on rigid standards.

IV. Board Accountability & Objectivity

Governance structures and practices should be designed to ensure the accountability of the board to shareholders and the objectivity of board decisions.

Boards are accountable to shareholders for the governance and performance of the corporation, and must provide active oversight of the management of the corporation. Accountability in the oversight of the corporation is premised on the ability of the board to be objective and distinct from management. While actual board objectivity is key, reassuring shareholders that the board is structured to lessen the likelihood of undue management influence is also important.

"Disclosure serves as a significant disciplining force for board independence."

Listing standards require that a majority of directors qualify as "independent," and reserve key functions relating to audit, compensation, and nominating/governance matters to independent directors. (Heightened standards of independence apply to audit committee members.) Listing standards also define certain relationships that are inconsistent with a finding of director independence while otherwise leaving to board discretion the determination whether a director has family, business, consulting, charitable, or other relationships with the company and its management that might undermine objectivity.

Boards are encouraged by listing standards to disclose the standards they apply in determining director independence and must disclose, by category or type, the relationships that they consider in their assessment. Disclosure serves as a significant disciplining force for board independence decisions. Given to the impossibility of defining all the relationships with a company that may arise for directors and director candidates, and the likelihood that many relationships outside the per se prohibited relationships provided by listing rules and SEC regulations will be significantly attenuated, it is advisable that boards retain discretion to decide independence on a case by case basis. Application of board judgment to the independence determination (within the framework provided by listing standard and applicable SEC regulations) is preferable to application of the more rigid standards prescribed in some best practice recommendations.

Executive sessions—usually including both independent directors and those outside directors who do not qualify as independent— without members of management present should be held regularly; more often than once or twice a year. Such sessions provide the opportunity for open discussion of management's performance and management proposals regarding strategies and actions. Executive sessions are critical in establishing an appropriate environment of objectivity and candor. Most boards also spend time in the board meeting alone with the CEO to provide the CEO with the opportunity for candid exchange outside the presence of executives and staff. In addition, the independent and other outside directors should have the opportunity, from time to time, to meet alone with the chief financial officer, general counsel, and/or other key senior officers outside the presence of the CEO.

Careful respect should be given to maintaining the distinction between the role of the board and the role of management. Undue board involvement in matters of management may interfere with the board's ability to provide objective oversight of management performance.

V. Independent Board Leadership

Governance structures and practices should be designed to provide some form of leadership for the board distinct from management.

The board provides oversight of management and holds it accountable for performance. This requires that the board function as a body distinct from management, capable of objective judgment regarding management's performance. Therefore, some form of independent leadership is required, either in the form of an independent chairman or a designated lead or presiding director. (Rotation of the leadership position among directors or committee chairs on a per-meeting or quarterly basis is not favored because it does not promote accountability for the independent leadership role.) Boards should evaluate the independent leadership of the board annually.

"Accountability in the oversight of the corporation is premised on the ability of the board to be objective and distinct from management."

The decision as to the form of independent leadership should be made by the independent directors. If the independent directors determine that it is in the best interests of the company to have independent board leadership in the form of an independent lead director, with the CEO or other non-independent director serving as the board chair, the independent directors should explain why that form of leadership is preferable and also provide the independent lead director with authority for setting the board agenda, determining the board's information needs, and convening and leading regular executive sessions without the CEO or other members of management present.

VI. Integrity, Ethics & Responsibility

Governance structures and practices should be designed to promote an appropriate corporate culture of integrity, ethics, and corporate social responsibility.

The tone of the corporate culture is a key determinant of corporate success. Integrity, ethics, and a sense of the corporation's role and responsibility in society are foundations upon which long-term relationships are built with customers, suppliers, employees, regulators, and investors. The board plays a key role in assuring that an appropriate corporate culture is developed, by communicating to senior management the seriousness with which the board views the matter, defining the parameters of the desired culture, reviewing efforts of management to inculcate the agreed culture (including but not limited to review of compliance and ethics programs) and continually assessing the integrity and ethics of senior management.

"The tone of the corporate culture is a key determinant of corporate success."

Assessment of management performance and integrity are at the heart of effective governance, and should factor into all board decisions – not only in hiring and compensation matters. In particular, boards should assess management integrity and ethics when considering management proposals; assessing internal controls and procedures; reviewing financial reporting and accounting decisions; and more generally, when discussing management development and succession planning. The board should pay special attention to how members of senior management approach their own conflicts of interest, for example, in addition to any proposed related-person transactions involving management, the conflicts inherent in compensation decisions and the use of corporate assets in the form of perquisites.

VII. Attention to Information, Agenda & Strategy

Governance structures and practices should be designed to support the board in determining its own priorities, resultant agenda, and information needs and to assist the board in focusing on strategy (and associated risks).

In today's dynamic and volatile business and financial environment, a key challenge for boards comprised primarily of outside and independent directors is to develop their own sense of corporate priorities and their own view of the matters that are most important to the success of the company. Boards must develop their own viewpoints to provide management with meaningful strategic guidance and support and to focus their own attention appropriately. Therefore, the board must be actively engaged in determining its own priorities, agenda and information needs.

" Boards must develop their own viewpoints to provide management with meaningful strategic guidance and support."

Directors need significant information about the company's business and its prospects based on an understanding of opportunities, capabilities, strategies, and risks in the competitive environment. While directors must—and should—rely on management for information about the company, they need to recognize that their ability to serve as fiduciaries depends on the degree to which they can bring objective judgment to bear. Therefore, directors cannot be unduly reliant on management for determining the board's priorities and related agenda, and information needs.

For most companies, the priority focus of board attention and time will be understanding and providing guidance on strategy and associated risk–based on the underlying understanding of the company's strengths and weaknesses, and the opportunities and threats posed by the competitive environment—and monitoring senior management's performance in both carrying out the strategy and managing risk. Management performance, corporate strategy, and risk management are the prime underpinnings of the corporation's ability to create long-term value. Directors should strive for a constructive tension in discussions with management about strategy, performance, and the underlying assumptions upon which management proposals are based. Directors should actively participate in defining the benchmarks by which to assess success, and then monitor performance against those benchmarks. They should also establish (and disclose to the extent practical in light of competitive realities) a very real and apparent link between the strategy, benchmarks for success, and compensation.

As emphasized by the Sarbanes-Oxley Act and related SEC regulations and listing standards, the board plays a critical role in oversight of compliance, financial reporting, and internal controls, as well as in organizing the board's own processes. However, these functions should follow naturally from an understanding of the importance of the board's objective judgment in its role as a fiduciary and a primary focus on corporate strategy and performance (within an appropriate framework of integrity and ethics as discussed above). In normal circumstances, compliance, oversight of financial reporting and controls, and governance issues should not demand the majority of board time and therefore should not overwhelm the board's agenda.

Information flow to the board should be sufficient to support understanding of the company's business and the critical issues the company faces, and enable participation in active, informed discussions at board meetings. It should not be so voluminous as to overwhelm. While the board must have access to any information that it wants, generally the board should assert discipline and not overwhelm management with requests for information outside the scope of what management uses to manage. The board and management should work together to define the type and quantity of information that is of most use, and to identify the timeframe in which information should be provided. (It is in the area of agenda and information flow that independent board leadership is particularly necessary.) Crisp reports distributed in advance of meetings should obviate the need for lengthy management presentations in most board and committee meetings, so that maximum time is preserved for discussion.

As expressed in more detail below, the board should also strive to communicate with shareholders about corporate priorities.

VIII. Protection Against Board Entrenchment

Governance structures and practices should encourage the board to refresh itself.

The board needs to ensure that it is positioned to change and evolve with the needs of the company. This requires that directorship never be viewed as a sinecure. Some boards rely on age limits and/or term limits to assist in moving directors off the board. Some boards also require directors to offer their resignation upon a significant change in job responsibility. These mechanisms do not substitute for evaluating the contributions of individual directors in the context of re-nomination determinations and, in appropriate circumstances, determining not to re-nominate based on the evolving needs of the company or underperformance by the director.

" Boards should consider the contributions of individual directors as well as the evolving needs of the company in determining board composition."

In addition, the board and its committees should conduct self-evaluations periodically in the interest of continual self-improvement. Such self-evaluations do not need to be unduly complicated, but should provide an opportunity for the board and its committees to reflect and should culminate in a significant discussion about areas for further effort and improvement. Board policies regarding the conduct of evaluations should be disclosed.

As fiduciaries, boards need the ability to negotiate regarding takeover approaches, and anti-takeover defenses are important in providing negotiating leverage. At the same, time boards should understand that many shareholders view anti-takeover devices as unduly protective of the status quo. Boards should give careful consideration to whether anti-takeover devices are in the best long-term interests of the company. If the board adopts an anti-takeover measure, it should take special care to communicate to shareholders the reasons why, in its considered viewpoint, the measure is in the best interests of the company, and it may wish to consider providing shareholders with the opportunity to ratify within a reasonable time frame.

IX. Shareholder Input in Director Selection

Governance structures and practices should be designed to encourage meaningful shareholder involvement in the selection of directors.

Voting procedures for director elections should be designed to promote accountability to shareholders by providing shareholders a meaningful ability to elect or decline to elect directors in uncontested elections. Companies should adopt majority voting through appropriate provisions in articles of incorporation or bylaws (to the extent consistent with state law). In an uncontested election, a candidate who fails to win a majority of the votes cast should be required to tender his or her resignation, and the nominating/governance committee should recommend to the board whether to accept or reject the resignation, depending on the circumstances. (Any board decision not to accept the resignation of a director who has failed to receive a majority of the votes cast should be carefully thought out, and the explanation for such decision should be fully disclosed to shareholders.) In contested elections, directors should be elected by plurality voting.

> “ *Companies should adopt majority voting through appropriate provisions in articles of incorporation, bylaws or state laws.*” “

Shareholders should have meaningful opportunities to recommend candidates for nomination to the board. The nominating/governance committee should disclose a process for considering shareholders’ recommendations. Particular attention should be paid to a process for obtaining the views of long-term shareholders who hold a significant number of shares.

X. Shareholder Communications

Governance structures and practices should be designed to encourage communication with shareholders.

Shareholders have a legitimate interest in the governance of their companies. The fundamental role of shareholders in corporate governance is to elect directors capable of directing management in the best interests of the company and its shareholders. Receptivity to shareholder communications on topics relevant to board quality and accountability may prove beneficial in helping to improve mutual understanding while avoiding needless confrontation.

The board should carefully consider critical non-binding proxy proposals that attract significant support from shareholders. The board should take special care to ensure that it fully understands the issue and should communicate both with the proponent and the shareholders at large regarding the board's thinking on the matter. Such communication can be had through the proxy statement, annual report, annual meeting, and other meetings and correspondence with the proponent and other shareholders (subject to compliance with Reg FD).

"Boards should consider reaching out and developing stronger relationships with investors through candid and open dialogue."

Boards should also consider reaching out and developing stronger relationships with investors through candid and open dialogue. In particular, boards should consider ways to engage large long-term shareholders in dialogue about corporate governance issues and long-term strategy issues, recognizing that the board's fiduciary duties with respect to these issues mandate that the board exercise its own judgment.

Board communications with shareholders on these issues should involve one or more independent members of the board—usually the board chair, the lead director, or the appropriate committee chairs. In most instances, the CEO or other members of management should also participate. The board should establish processes for communications to ensure that any communications with shareholders are authorized by the board.

Executive compensation is an issue of particular concern for many shareholders. The board and the compensation committee should consider ways for shareholders to communicate their views and concerns regarding executive compensation, and should take these views and concerns into account, again recognizing that ultimately the board as fiduciary must make compensation decisions. Some boards may wish to consider seeking advisory shareholder votes on executive compensation, while some boards may explore other means of obtaining shareholder viewpoints.

The board should also consider ways to enhance the communication opportunity provided by the annual meeting, taking into account shareholders' expense and convenience when selecting the time, location, and mode of meetings (i.e. in-person meetings, meetings via electronic communication, or both). All directors should attend the annual meeting, and shareholders should have the opportunity to ask questions, subject to appropriate procedural rules (for example, those designed to ensure that a variety of shareholders can be heard from in the limited time available).

Get Involved

We encourage you—shareholders, corporate management teams, legislators, directors—anyone with a stake in the outcomes of boardroom excellence—to become familiar with these Principles and continue to participate in the discussion about leading practices in corporate governance.

Visit **NACDonline.org/keyprinciples** for opportunities to help strengthen corporate governance in America.

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