THE HONORABLE BARBARA HACKMAN FRANKLIN
DIRECTORS AND NACD HAVE COME OF AGE
NATIONAL ASSOCIATION OF CORPORATE DIRECTORS 2010 CORPORATE GOVERNANCE CONFERENCE
WASHINGTON, DC   OCTOBER 17, 2010
REMARKS AS DELIVERED

Welcome

Good afternoon and welcome to the **23rd NACD annual Governance conference**. We are thrilled that so many of you are here – 751 individuals. You represent 42 states and more than 1400 corporate boards. You represent all 22 NACD chapters. And a special welcome to our global colleagues, those of you who have traveled from Brazil, Canada, Colombia, Dubai, Germany, Hong Kong, Korea, Kuwait, Malaysia, and several South American countries. We are so pleased you are here. Governance is indeed global.

History of Governance and NACD

First, a bit of history. NACD was started by John Nash in 1977. The mission was to help directors be more effective. We know that the first annual conference was held on a boat, the Queen Mary in Long Beach, CA, in 1987. I remember it well. I was there. In fact, I moderated a panel but cannot recall what the subject was. What I do remember is that the audience seemed more interested in going to Disneyland than in coming to our sessions.

All of us – directors and NACD -- have come a long way since then.

We all know that the US corporate governance framework is a system of checks and balances. Once in a while, it's useful to refresh our collective memories. The board of directors – that's us – hires and fires the CEO, sets executive compensation, makes policy, oversees company performance, and approves major capital expenditures. The CEO manages the company for the benefit of the owners and other stakeholders. And the owners of the company – the shareholders, shareowners – elect the board of directors. It's a tripartite system of checks and balances.

An early defining work about governance was the book, *The Modern Corporation and Private Ownership* by Berle and Means, published in 1932. The authors described -- with concern – that as corporations grew larger and had thousands of shareholders, there was a separation of ownership and control. That was because professional managers, rather than owners, were controlling the destiny of the company.

The observation was correct. In the decades that followed, CEO's dominated. They populated their boards with friends, and boards were mostly passive. By the 1970's – just when NACD came into being – the idea of "independent directors", as a check on management, began to be discussed. In the 1980's shareowners – began to awaken. Large institutional shareholders – pension funds and mutual funds – owning many shares began to recognize their latent powers. ISS was formed. So was the Council of Institutional Investors. And the so-called "raiders", who engaged in hostile takeovers, forced boards to make faster decisions under pressure. The most highly publicized episode was memorialized in the book, *Barbarians at the Gate.*

In the 1990's boards became more assertive as more CEO's of large companies were ousted. Activists pushed for management ownership of stock in their companies in order to align their interest with that of the owners. Stock options were favored as a reward for performance, and boards awarded tons of them. We thought they were free. Then stock markets boomed, options were exercised, and payouts seemed huge. This is where the pay gap between the CEO and lower level employees began to widen, triggering the public concern about excessive CEO compensation that is with us today. This era saw the zenith of the "rock star" CEO.

Things changed during this past decade. The Enron and other scandals resulted in the passage of the Sarbanes-Oxley law. That caused directors to take another step up in responsibility and power. And today boards now engage more actively with CEO's on corporate strategy, succession planning, the management of risk, the company's tone at the top.

We directors have been maturing in our understanding and ways of doing our jobs.

NACD has been maturing, too.

During these decades NACD matured along this same trajectory – offering more and better education opportunities, information, and thought leadership to help directors be more effective.

And now we are on the cusp of more change, this time greater empowerment for shareowners. The Berle and Means treatise of many decades ago has come full circle as we have before us the implementation of the many provisions of the Dodd-Frank bill and the new regulations to be forthcoming from the Securities and Exchange Commission (SEC). The proxy access rule has already been finalized and issued by the SEC. Because of a lawsuit opposing the rule, the Commission has stayed it until the DC Circuit of Appeals renders an opinion by summer of next year. So the rule will not be in effect for the 2011 proxy season. Dodd-Frank made say-on-pay mandatory; it will be in effect for this upcoming season.

The changing environment – what does it mean for directors?

So what does this changed environment mean for us, for directors? In the words of my favorite philosopher Yogi Berra, “When you come to a fork in the road, take it.”

That fork means to me that we directors must recognize that our role is more important, more relevant, more challenging, and has greater impact than ever before. And because of the maturing process we have been through during the past decades, we are well equipped to take this new environment in stride. We are positioned to do our jobs even better with greater seriousness of purpose and deeper comprehension of who we are and why what we do is essential. We contribute through the boards on which we serve to the very foundation of our great economy. We can take pride in playing this vital role. We can be proud to be directors.

And surely we have a much bigger job today.

There is much uncertainty around us. The global recovery is underway but the so-called “new normal” has not yet been reached. The US recovery is happening but growth is sluggish; unemployment is higher than we would like; and, looking ahead, we have a federal budget deficit and debt level which are unsustainable. And now this plethora of new regulations – embodied in health reform legislation and Dodd-Frank -- adds to the uncertainty. Uncertainty causes some companies to hoard cash and curtail spending. Smaller businesses still feel a credit crunch. Some financial institutions continue to be under pressure. State and local governments in deficit are cutting services and staff. And we have a national election just weeks away.

Our companies are contending with this difficult time. We directors are called upon to provide wisdom, stability, and strength during a time like this.

Today directors have a bigger job – what should we do?

So exactly what should we do?

Again in the words of my favorite philosopher, Yogi Berra, “If you don’t know where you are going, you might not get there.”

Let me suggest three places where we should be going and actions we should be taking.

First, this is obvious but worth repeating: We must understand the businesses of the company we serve, how the company makes money, the strategy, and how risks are being managed. Be current about the ever changing external environment, economically, politically, and competitively, in the US and around the world. We must protect the “tone at the top”. In times like this where there is uncertainty and stress, personal and organizational, mistakes can happen. So, vigilance is key. My way of expressing this is, “turn up the hearing aid”, even though you don’t have one. Greater vigilance. A nd above all, CEO succession should be on our radar screens almost continuously. We need knowledge about possible successors and assurance that our talent pool is strong.

Second, we must build and maintain a board culture that emphasizes candor and respect, a culture which values constructive working relationships among board members and between the board and the CEO. Board culture is an elusive concept and can be ever changing in subtle ways. So building a good one and then maintaining it is well worth the effort. The annual board evaluation process is one tool which can enable the board to reflect on its culture and improve what needs improvement.

As we know, there are now additional disclosures required about director qualifications and attributes, so it is prudent to refresh our processes for determining board composition, to ensure diversity of thought and alignment with corporate strategy. These disclosures put a greater spotlight on each of us individually.

We can handle that spotlight, but it does not guarantee that the board as a whole will work well. We all know cases where person for person, those sitting around the table were wonderful, accomplished people, but the board didn’t do its job well or act quickly enough in a time of trouble.

Another essential ingredient is the leader of the board. We need leaders who keep the focus on the most important issues, ensure smooth-working processes, and know how to forge consensus. I fervently believe in the value of executive sessions of independent directors and advocate having them at the beginning of the meeting while everyone is fresh, and not at the end, when everyone is heading for the door.

The fundamental point: If our board doesn’t work well together, we cannot act as effectively or swiftly as we would like, especially if there is trouble.

It is worth noting again that this recent whirlwind of legislative and regulatory activity – say-on-pay, proxy access, new disclosures – ushers in an era where expectations for board performance are both more public and more personal. And therefore, we all need a basic understanding of the regulatory ground rules which govern us and a dedication to staying current about what the leading boardroom practices are.

That brings me to the **third** point: consider NACD your partner in helping you be the best you can be in the boardroom.

NACD has matured along with directors. We are the only membership organization of directors – more than 10,000 strong – a nonprofit 501-c-3. Ken Daly is a terrific and energetic president. The staff is a small hardy band here in Washington – they are terrific, too, hardworking and dedicated to serving you. Our chapters are growing and thriving. The NACD board of directors is one of the most active and engaged, especially for a nonprofit, I have ever been privileged to serve on.

What I am saying is that NACD has matured and come of age. We can offer you and your board a great deal more than we ever could before.

- **Information** that is timely and current. I am a fan of the daily email news clips. It's the first thing I read. There is a wealth of other governance information accessible on the great new website. The staff put a lot of work into it and it's quite user friendly.
- **Educational offerings**, courses, webcasts, webinars on a wide variety of key topics.
- **Thought leadership** through our Blue Ribbon Commissions. This year's focuses on performance metrics, an important piece of the compensation puzzle.
- **Peer-to-peer exchanges**, such as this conference and various other venues, including chapter programs.
- **Voice of the director advocacy**. This is a new addition to the NACD mission. We are doing this because there is a need for a "director interest" to be articulated when there are public policy debates about things which impact boards. Too often boards of directors are lumped in with CEO's and there is not enough understanding of the director's different and key role in the governance process. This lack of a director voice in the public policy process has troubled me for years. And I am personally pleased that NACD has begun to fill this void. We have commented on proposals from the SEC and PCAOB, and believe we are being heard. We have been consulted by Congressional committees, and have shared directors' views with shareowner groups, other stakeholders, and the media. As a only membership organization of directors, we are well positioned to do this. And now we need to accelerate our ability to tap into what you, our members, think about various issues so we can articulate them and bring them to the appropriate table. So, please engage with us when we ask for your views.

Conclusion

Let me conclude with another comment from our great philosopher Yogi Berra. He said, “The future ain’t what it used to be.” True enough. So let us advance into that future with confidence and pride in the important work we do as directors. And strive to be the best we can be.

Thank you.

####################