

_____ **ONLINE SUPPLEMENT TO**
Walter A. Effross,
Corporate Governance: Principles,
Practices & Provisions (3d ed. 2022)



Like the provisions that appear inside “boxes” in the book, the following items (other than the appendices) are patterned on those of major companies, but are not presented as model or ideal versions of such documents.

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COMMITTEE CHARTERS

Below, accompanied by references to the corresponding sections of the book, are sample charters for several key committees of the board.

Many of the provisions identified by a “#,” such as the “Composition” section, are common, in presence and (often) in substance, to most, if not all, of these committee charters; for instance, all committee charters discuss, in some fashion, the number of directors who may serve and the method by which those directors will be selected.

By contrast, those provisions identified by an “@,” such as the “Purpose” section, are found in virtually all charters but may diverge greatly in their content.

Finally, provisions identified by an “!” are usually unique, in presence and/or in substance, to the charter of the committee under consideration.

Audit Committee Charter (Section 3.08(A)(3))

Charter of the Audit Committee of the Board of Directors

@Purpose

The Audit Committee (the “Committee”) shall aid the Board in overseeing the systems, practices, compliance, quality, and integrity of the Company’s accounting, financial reporting, and disclosure, especially with regard to the selection of an appropriate and independent auditor. A report by the Committee will be included in the Company’s annual proxy statement.

Structure and Operations

#Composition

The Committee shall be composed of no fewer than three directors as determined annually by the Board on the recommendation of the Nominating and Governance Committee.

@Qualifications of Members

!Each of the members of the Committee shall meet the independence and expertise requirements of the New York Stock Exchange and of any other exchange on which the Company’s securities are traded; Section 10A(m)(3) of the Securities Exchange Act of 1934; the rules and regulations of the Securities Exchange Commission; the Sarbanes-Oxley Act of 2002; and any other applicable laws and regulations. No member of the Committee shall also serve concurrently on the audit committee of more than two other public companies unless the Board concludes that such concurrent service would not impair that director’s ability to serve effectively on the Committee, and such determination is disclosed in the Company’s proxy statement.

!All members of the Committee shall, in the judgment of the Board, be financially literate, which at a minimum means possessing a working familiarity with basic finance and accounting practices. At least one member of the Committee shall, in the judgment of the Board, have accounting or related financial management expertise. The Committee shall also disclose, in accordance with applicable regulatory requirements, whether any member of the Committee is a “financial expert,” as defined by the Securities and Exchange Commission.

#Removal; Resignation; Replacement

Committee members may be replaced by the Board at any time, with or without cause, by a majority vote of the Board. Any member of the Committee may resign at any time by giving written notice to the Chairman of the Board or the

Secretary of the Corporation. Such resignation shall be effective immediately, unless it specifies a later time for its becoming effective.

#Quorum; Presence and Voting Requirements for Action

A quorum shall be a majority of the members of the Committee. The Committee shall take action through a majority of the votes of the members present at any meeting at which there is a quorum, or, in the absence of a meeting, by unanimous written consent of the members.

#Selection and Role of the Chair; Acting Chair

The Board shall designate the Chair of the Committee and shall rotate the position annually among members of the Committee. The Chair shall direct all regular sessions of the Committee and set the agenda for Committee meetings.

In the absence of the Chair, the other members of the Committee participating in a meeting of the Committee shall designate one of their number as the acting chair for that meeting.

!Committee Function Limited to Oversight

Notwithstanding the financial expertise of its members, the Committee members are not full-time employees of the Company and do not provide any expert approval or certification of the Company management's preparation of the Company's financial statements or of the independent auditor's auditing of those statements. It is not the duty or responsibility of the Committee or its members to conduct "field work" or other types of auditing or accounting reviews or procedures or to set auditor independence standards.

#Delegation to Subcommittees

In fulfilling its responsibilities, the Committee shall be entitled to delegate any or all of its responsibilities to a subcommittee of the Committee and—to the extent not expressly reserved to the Committee by the Board or by applicable law, rule, or regulation—to any other committee of directors of the Company appointed by it, which may or may not be composed of members of the Committee.

Meetings

#Frequency

The Committee shall meet, as scheduled by the Chair, at least four times annually, or more frequently as circumstances dictate. The Committee shall meet periodically (at least once quarterly) in separate sessions with each of management, the director of the Company's internal auditing department, and the independent

auditor to discuss any matters that the Committee or those individuals believe appropriate.

#Initiation

Any member of the Committee may call meetings of the Committee.

#Attendance by Right and by Invitation; Executive Session

Any director of the Company who is not a member of the Committee may attend meetings of the Committee; provided, however, that any director who is not a member of the Committee may not vote on any matter coming before the Committee for a vote. The Committee also may request the attendance at a Committee meeting of any member of management of the Company and such other persons as it deems appropriate in order to carry out its responsibilities; it may also request any such person to meet with members of, or consultants to, the Committee.

The Committee shall meet in executive session (*i.e.*, in the absence of officers and staff of the Company) as the Committee deems necessary or appropriate.

#Preparation

The Chair or acting chair may direct appropriate members of management and staff to prepare draft agendas and related background information for each meeting of the Committee. The draft agenda shall be reviewed and approved by the Chair or acting chair before it is distributed to other members of the Committee. Any background materials, together with the agenda, should be distributed to the members in advance of the meeting.

#Recording and Reporting

All meetings of the Committee shall be held pursuant to the bylaws of the Company with regard to notice and waiver; and written minutes of each meeting, in the form approved by the Committee, shall be prepared by the Committee and duly filed in the records of the Company. Reports of meetings of the Committee, accompanied by recommendations of the Committee, shall be made to the Board at the next regularly scheduled meeting following the Committee meeting.

#Resources and Their Retention

The Committee has the sole authority to retain (and to terminate) the services of, at Company expense but without the prior approval of the Board, independent legal, accounting, and other advisors to assist it in its duties and responsibilities. The Committee shall have the sole authority to approve the advisors' fees and other terms of their retention.

The Company shall also pay for all administrative expenses incurred by the members of the Committee in the course of the Committee's work.

#Access

The Committee will have full access to the Company's books, records, and facilities.

@Responsibilities and Duties

Among the primary functions of the Committee, subject to changing business, legal or other conditions and to the additional requests, resolutions, and directives of the Board, are:

To review and discuss, with management and the independent auditor, the accuracy, integrity, completeness, and compliance with legal requirements of: (1) the annual and quarterly financial statements prior to their filing, including the Company's disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations"; and (2) the Company's approach to formulating earnings press releases and financial information and earnings guidance provided to analysts and rating agencies.

To review and discuss with management, the independent auditor, and the company's internal auditor the adequacy, effectiveness, and compliance of, and significant deficiencies or weaknesses in and changes to: (1) the Company's internal controls over financial reporting; (2) the Company's disclosure controls and procedures; and (3) the Company's risk assessment and risk management policies.

To review and discuss with the independent auditor (1) the matters required to be communicated by applicable Statements of Auditing Standards; (2) all critical accounting policies and practices to be used; (3) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management, ramifications of the use of such alternative principles and treatments, and the treatment preferred by the independent auditor; and (4) other material written communications between the independent auditor and management, such as any management letter or schedule of unadjusted differences.

To have sole authority and responsibility to select, set the compensation of, review the performance and independence of, and if necessary, terminate and replace, the independent auditor, and to resolve disagreements between management and the independent auditor concerning financial reporting. This includes reviewing, at least annually, the independent auditor's report describing its internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding 5 years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and all relationships between the independent auditor and the Company. In accordance with applicable statutes and regulations, the Committee should also establish policies restricting the Company's employment of employees or former employees of the independent auditor; and should confirm

that among the independent auditor's staff, the lead audit partner, the concurring review partner, the client service partner and other partners directly involved in the performance of the audit, of the independent auditor are rotated at least every 5 years.

To assess, in conjunction with the Company's general counsel, the possible effects of pending legal or regulatory developments on the Company's financial statements.

To develop and implement procedures for the confidential and anonymous submission of complaints and concerns regarding the Company's accounting, internal accounting controls, or auditing or related matters; and for the receipt, retention, and evaluation of these messages.

To evaluate the function, structure, performance, and compensation of the Company's internal auditor.

To develop for the Company's senior financial personnel a code of ethics that conforms to applicable laws, rules, and regulations.

To prepare and publish an annual report of the Committee to be included in the Company's Proxy Statement.

#Annual Performance Evaluation

The Committee shall perform a review and evaluation, at least annually, of the Performance of the Committee and its members, including a review of adherence of the Committee to this Charter. In addition, the Committee shall review and re-assess, at least annually, the adequacy of this Charter and recommend to the Nominating and Governance Committee any improvements to the Charter that the Committee considers necessary or appropriate. The Committee shall conduct such evaluation and reviews in such manner as it deems appropriate.

Executive Committee Charter (Section 3.08(B))

Charter of the Executive Committee of the Board of Directors

@!Purpose

The primary purpose of the Executive Committee (the "Committee") is to exercise the powers and authority of the Board when the Board is not in session, and to take such other actions as may be directed from time to time by the Board.

1. Although the purpose provision is found in every committee charter, the allocation to the Executive Committee of the broad powers of the Board is exceptional.

Structure and Operations

@Composition

The Committee shall consist of three regular members of the Board, including the Chair of the Board and two others who shall be appointed by the Board from among its members. [Note: Charters for some Executive Committees include as members the Chairs of identified other committees, such as the Audit, Nominating, and Compensation Committees.]

#Removal; Resignation; Replacement

Committee members may be replaced by the Board at any time, with or without cause, by a majority vote of the Board. Any member of the Committee may resign at any time by giving written notice to the Chairman of the Board or the Secretary of the Corporation. Such resignation shall be effective immediately, unless it specifies a later time for its becoming effective.

#Quorum; Presence and Voting Requirements for Action

Two members of the Committee shall constitute a quorum. The Committee shall take action through a majority of the votes of the members present at any meeting at which there is a quorum, or, in the absence of a meeting, by unanimous written consent of the members.

#Selection and Role of the Chair; Acting Chair

The Chair of the Board shall serve as the Chair of the Committee. The Chair shall direct all regular sessions of the Committee and set the agenda for Committee meetings.

In the absence of the Chair, the other members of the Committee participating in a meeting of the Committee shall designate one of their number as the acting chair for that meeting.

#Delegation to Subcommittees

In fulfilling its responsibilities, the Committee shall be entitled to delegate any or all of its responsibilities to a subcommittee of the Committee and, to the extent not expressly reserved to the Committee by the Board or by applicable law, rule, or regulation, to any other committee of directors of the Company appointed by it, which may or may not be composed of members of the Committee.

Meetings

@Frequency

The Committee shall meet as necessary.

#Initiation

Any member of the Committee may call meetings of the Committee.

#Recording and Reporting

All meetings of the Committee shall be held pursuant to the bylaws of the Company with regard to notice and waiver; and written minutes of each meeting, in the form approved by the Committee, shall be prepared by the Committee and duly filed in the records of the Company. Reports of meetings of the Committee, accompanied by recommendations of the Committee, shall be made to the Board at the next regularly scheduled meeting following the Committee meeting.

#Resources and Their Retention

The Committee has the sole authority to retain (and to terminate) the services of, at Company expense but without the prior approval of the Board, independent legal, accounting, and other advisors to assist it in its duties and responsibilities. The Committee shall have the sole authority to approve the advisors' fees and other terms of their retention.

The Company shall also pay for all administrative expenses incurred by the members of the Committee in the course of the Committee's work.

Nominating Committee Charter (Section 5.03(A))

@Purpose

The Nominating Committee (the "Committee") shall aid the Board in identifying individuals qualified to become members of the Board, and shall recommend to the Board nominees for election of directors at the annual meeting of shareholders or, should a Board vacancy occur between such annual meetings, for election by the Board.

Structure and Operations

#Composition

The Committee shall be composed of no fewer than three directors as determined annually by the Board.

@Qualifications of members

Each member of the Committee shall meet the independence and expertise requirements of the New York Stock Exchange, any other exchange on which the Company's securities are traded, Section 10A(m) (3) of the Securities and Exchange

Act of 1934, the rules and regulations of the Securities Exchange Commission, the Sarbanes-Oxley Act of 2002, and any other applicable laws and regulations.

#Removal; Resignation; Replacement

Committee members may be replaced by the Board at any time, with or without cause, by a majority vote of the Board. Any member of the Committee may resign at any time by giving written notice to the Chairman of the Board or the Secretary of the Corporation: such resignation shall be effective immediately, unless it specifies a later time for its becoming effective.

#Quorum; Presence and Voting Requirements for Action

A quorum shall be a majority of the members of the Committee. The Committee shall take action through a majority of the votes of the members present at any meeting at which there is a quorum, or, in the absence of a meeting, by unanimous written consent of the members.

#Selection and Role of the Chair; Acting Chair

The Board shall designate the Chair of the Committee, [and shall rotate the position annually among members of the Committee?] The Chair shall direct all regular sessions of the Committee and set the agenda for Committee meetings.

In the absence of the Chair, the other members of the Committee participating in a meeting of the Committee shall designate one of their number as the acting chair for that meeting.

#Delegation to Sub-committees

In fulfilling its responsibilities, the Committee shall be entitled to delegate any or all of its responsibilities to a sub-committee of the Committee and, to the extent not expressly reserved to the Committee by the Board or by applicable law, rule, or regulation, to any other committee of directors of the Company appointed by it, which may or may not be composed of members of the Sub-committee.

Meetings

#Frequency

The Committee shall meet, as scheduled by the Chair, at least four times annually, or more frequently as circumstances dictate.

#Initiation

Any member of the Committee may call meetings of the Committee.

#Attendance by Right and by Invitation; Executive Session

Any director of the Company who is not a member of the Committee may attend meetings of the Committee; provided, however, that any director who is not a member of the Committee may not vote on any matter coming before the Committee for a vote. The Committee also may request the attendance at a Committee meeting of any member of management of the Company and such other persons as it deems appropriate in order to carry out its responsibilities; it may also request any such person to meet with members of, or consultants to, the Committee.

The Committee shall meet in executive session (*i.e.*, in the absence of officers and staff of the Company) as the Committee deems necessary or appropriate.

#Preparation

The Chair or acting chair may direct appropriate members of management and staff to prepare draft agendas and related background information for each meeting of the Committee. The draft agenda shall be reviewed and approved by the Chair or acting chair before it is distributed to other members of the Committee. Any background materials, together with the agenda, should be distributed to the members in advance of the meeting.

#Recording and Reporting

All meetings of the Committee shall be held pursuant to the bylaws of the Company with regard to notice and waiver, and written minutes of each meeting, in the form approved by the Committee, shall be prepared by the Committee and duly filed in the records of the Company. Reports of meetings of the Committee, accompanied by recommendations of the Committee, shall be made to the Board at the next regularly scheduled meeting following the Committee meeting.

#Resources and Their Retention

The Committee has the sole authority to retain (and to terminate) the services of, at Company expense but without the prior approval of the Board, independent legal, recruiting, investigative, and other advisors to assist it in its duties and responsibilities. The Committee shall have the sole authority to approve the advisors' fees and other terms of their retention.

The Company shall also pay for all administrative expenses incurred by the members of the Committee in the course of the Committee's work.

#Access

The Committee will have full access to the Company's books, records, and facilities.

@Responsibilities and Duties

Among the primary functions of the Committee, subject to changing business, legal or other conditions and to the additional requests, resolutions, and directives of the Board, are

- to identify, develop, and periodically review the qualifications, including any requisite elements of independence and financial literacy, for Board membership and for membership on committees of the Board, including the chairs of committees;
- to investigate and monitor individual directors' compliance with such qualifications, including whether other employment or board opportunities offered to members of the Board might compromise their independence, and, in situations of non-compliance, to recommend whether the director should be removed from the Committee and/or the Board;
- to develop and recommend to the board limitations on the tenure of directors, such as term limits (for consecutive and/or non-consecutive terms) and age-linked retirement policies;
- to develop and recommend to the Board policies and procedures for the periodic rotation of the office of chair of different committees of the Board;
- to assess the performance of current directors and submit recommendations to the Board on their nomination to serve an additional term of Board and/or committee service;
- to evaluate and submit recommendations to the Board on the proposed nomination of other individuals for election to the Board;
- to develop and implement procedures for evaluating nominees for the Board proposed by members of the Board, officers, and shareholders;
- to identify, and assist the Board in recruiting, prospective members of the Board;
- to analyze and make recommendations to the Board concerning the appropriate size and composition of the Board and of its committees;
- to assess and make recommendations to the Board concerning the need for additional committees or the termination of existing committees; and
- to evaluate and make recommendations to the Board concerning the acceptance or rejection of resignations tendered by directors (including directors who have failed to obtain the requisite number of shareholder votes in favor of their re-election; and those non-employee, or outside, directors who have retired or changed their employers and/or positions).

#Annual Performance Evaluation

The Committee shall perform a review and evaluation, at least annually, of the Performance of the Committee and its members, including a review of adherence of the Committee to this Charter. In addition, the Committee shall review and re-assess, at least annually, the adequacy of this Charter and recommend any improvements to the Charter that the Committee considers necessary or appropriate. The Committee shall conduct such evaluation and reviews in such manner as it deems appropriate.

Compensation Committee Charter (Section 6.01(C))

@Purpose

The Compensation Committee (the “Committee”) shall: (1) assess compensation plans for executive officers and recommend to the Board compensation policies for directors; and (2) review the disclosures in, and prepare a committee report for inclusion in, the Compensation Disclosure and Analysis (“CD&A”) section of the Company’s annual proxy statement.

Structure and Operations

#Composition

The Committee shall be composed of no fewer than three directors as determined annually by the Board.

@Qualifications of members

!Each member of the Committee shall meet the independence and expertise requirements of the New York Stock Exchange [and/or Nasdaq], any other exchange on which the Company’s securities are traded, Section 10A(m)(3) of the Securities and Exchange Act of 1934, the rules and regulations of the Securities Exchange Commission, the Sarbanes-Oxley Act of 2002, and any other applicable laws and regulations.

Each member shall qualify as a “non-employee director” under SEC Rule 16b-3 and an “outside director” under Section 162(m) of the Internal Revenue Service Code of 1986 (as amended), and shall not be part of a compensation committee interlock within the meaning of SEC Regulation S-K §407(e)(4)(iii).

#Removal; Resignation; Replacement

Committee members may be replaced by the Board at any time, with or without cause, by a majority vote of the Board. Any member of the Committee may resign at any time by giving written notice to the Chairman of the Board or the Secretary of the Corporation: such resignation shall be effective immediately, unless it specifies a later time for its becoming effective.

#Quorum; Presence and Voting Requirements for Action

A quorum shall be a majority of the members of the Committee. The Committee shall take action through a majority of the votes of the members present at any meeting at which there is a quorum, or, in the absence of a meeting, by unanimous written consent of the members.

#Selection and Role of the Chair; Acting Chair

The Board shall designate the Chair of the Committee, [and shall rotate the position annually among members of the Committee?]. The Chair shall direct all regular sessions of the Committee and set the agenda for Committee meetings.

In the absence of the Chair, the other members of the Committee participating in a meeting of the Committee shall designate one of their number as the acting chair for that meeting.

#Delegation to Subcommittees

In fulfilling its responsibilities, the Committee shall be entitled to delegate any or all of its responsibilities to a sub-committee of the Committee and, to the extent not expressly reserved to the Committee by the Board or by applicable law, rule, or regulation, to any other committee of directors of the Company appointed by it, which may or may not be composed of members of the Sub-committee (but all of whose members shall satisfy the “Qualifications of Members” identified above).

Meetings

#Frequency

The Committee shall meet, as scheduled by the Chair, at least four times annually, or more frequently as circumstances dictate.

#Initiation

Any member of the Committee may call meetings of the Committee.

#Attendance by Right and by Invitation; Executive Session

Any director of the Company who is not a member of the Committee may attend meetings of the Committee; provided, however, that any director who is not a member of the Committee may not vote on any matter coming before the Committee for a vote. The Committee also may request the attendance at a Committee meeting of any member of management of the Company and such other persons as it deems appropriate in order to carry out its responsibilities; it may also request any such person to meet with members of, or consultants to, the Committee.

!At the invitation of the Committee, the CEO may attend, but not vote at, a Committee meeting regarding the compensation of any officer other than herself.

The Committee shall meet in executive session (*i.e.*, in the absence of officers and staff of the Company) as the Committee deems necessary or appropriate.

#Preparation

The Chair or acting chair may direct appropriate members of management and staff to prepare draft agendas and related background information for each meeting of the Committee. The draft agenda shall be reviewed and approved by the Chair or acting chair before it is distributed to other members of the Committee. Any background materials, together with the agenda, should be distributed to the members in advance of the meeting.

#Recording and Reporting

All meetings of the Committee shall be held pursuant to the bylaws of the Company with regard to notice and waiver, and written minutes of each meeting, in the form approved by the Committee, shall be prepared by the Committee and duly filed in the records of the Company. Reports of meetings of the Committee, accompanied by recommendations of the Committee, shall be made to the Board at the next regularly scheduled meeting following the Committee meeting.

#Resources and Their Retention

The Committee has the sole authority to retain (and to terminate) the services of, at Company expense but without the prior approval of the Board, compensation, legal, accounting, auditing, and other [director, board, and/or officer evaluation] consultants to assist it in its duties and responsibilities. The Committee shall have the sole authority to approve the advisors' fees and other terms of their retention.

The Company shall also pay for all administrative expenses incurred by the members of the Committee in the course of the Committee's work.

#Access

The Committee will have full access to the Company's books, records, and facilities.

@Responsibilities and Duties

Among the primary functions of the Committee, subject to changing business, legal or other conditions and to the additional requests, resolutions, and directives of the Board, are

- to annually establish and apply annual and long-term goals, metrics, and benchmarks in connection with assessing the performance of the Company's senior executive officers;
- to set, adjust, and oversee the administration of the compensation philosophy and programs for these officers accordingly, so as to align the interests of management and shareholders while encouraging management to remain with and perform optimally for the company;

- to determine the appropriate amounts or proportions of the following compensation elements for these officers: base salary, annual bonuses, stock options, long-term incentive payments (cash based, equity based, and mixed), and retention payments, benefits, perquisites, severance compensation, and change in control payments. In determining the base salary and short-term incentive compensation of the CEO, the Committee shall consider competitive compensation practices of comparable companies and the CEO's performance in achieving the goals set by the Committee. In determining the long-term incentive component of the compensation of any officer, the Committee shall consider factors including the Company's recent and long-term performance and relative shareholder return, the value of similar awards granted to counterpart officers at comparable companies, and the awards granted by the Company to the officer in recent years, and such other factors as the Committee deems relevant;
- to make and annually review decisions relating to the entering into or amendment or extension of any employment contract or similar arrangement with the CEO or other officers;
- to annually examine the goals, performance, and general compensation arrangements for directors who are not otherwise employed by the Company ("outside directors"), and special compensation adjustments for committee chairs and members of certain committees; and to recommend to the board any adjustment in such arrangements;
- to review all compensation actions taken with regard to other officers of the Company;
- to review and discuss with management the disclosures made in the CD&A report and related compensation disclosures to be included in the Company's annual proxy statement or annual report on Form 10-K and to conclude whether to recommend to the board that the CD&A be included in those filings; and to make recommendations to the board about any adjustments to the content of that report before those filings are made;
- to produce an annual report of the Committee to be included in the Company's annual proxy statement;
- to ensure the compliance of the Company's compensation arrangements with the Sarbanes-Oxley Act of 2002, Section 16 of the Exchange Act, the New York Stock Exchange and/or Nasdaq listing requirements, Section 162(m) of the Internal Revenue Code, the Employee Retirement Income Security Act of 1974 (ERISA), and other applicable statutes and regulations;
- to review and discuss with management, and make recommendations concerning, the total amount to be distributed annually for salaries and bonuses, and the specific distributions made to individuals, prior to the annual determination of individual cash and stock incentive awards;
- to establish guidelines for the required ownership of Company stock by the Company's senior executive officers;
- to approve all perquisites, including expense reimbursements [in excess of \$ _____ annually per individual], to the Company's executive officers;
- to appoint, monitor the performance of, and remove administrators for the retirement and ERISA-related employee benefit plans established by the

- Company for its employees, and to review the terms of those plans as well as of incentive compensation plans, equity-based plans, deferred compensation plans, profit-sharing plans, and welfare benefit plans, and group insurance plans;
- to monitor the funded status and investment performance of the employee benefit plans;
 - to periodically advise the Board concerning whether and how the Company's compensation programs should be amended to remain competitive as well as cost-effective in light of regional and industry-wide developments and trends in executive compensation identified by the Committee;
 - to develop criteria for evaluating its own performance, and to prepare an annual report assessing its own performance for inclusion in the Company's annual proxy statement;
 - to develop and implement a procedure for identifying and preparing candidates to succeed the Chair of the Board and the CEO, as well as such other senior executives as the Board shall determine; and
 - to review this charter regularly and recommend changes.

#Annual Performance Evaluation

The Committee shall perform a review and evaluation, at least annually, of the Performance of the Committee and its members, including a review of adherence of the Committee to this Charter. In addition, the Committee shall review and reassess, at least annually, the adequacy of this Charter and recommend any improvements to the Charter that the Committee considers necessary or appropriate. The Committee shall conduct such evaluation and reviews in such manner as it deems appropriate.

Public Responsibility Committee Charter (Section 7.03(B))

@Purpose

The Public Responsibility Committee (the "Committee") shall aid the Board in overseeing the Company's positions and initiatives on matters of corporate social responsibility and on public issues relevant to the Company's investors and other stakeholders.

Structure and Operations

#Composition

The Committee shall be composed of no fewer than three directors as determined annually by the Board on the recommendation of the Nominating and Governance Committee.

@Qualifications of Members

All of the members of the Committee shall be independent directors.

#Removal

Committee members may be replaced by the Board at any time, with or without cause, by a majority vote of the Board.

#Quorum; Presence and Voting Requirements for Action

A quorum shall be a majority of the members of the Committee. The Committee shall take action through a majority of the votes of the members present at any meeting at which there is a quorum, or, in the absence of a meeting, by unanimous written consent of the members.

#Selection and Role of the Chair; Acting Chair

The Board shall designate the Chair of the Committee, and shall rotate the position annually among members of the Committee. The Chair shall direct all regular sessions of the Committee and set the agenda for Committee meetings.

In the absence of the Chair, the other members of the Committee participating in a meeting of the Committee shall designate one of their number as the acting chair for that meeting.

#Delegation to Subcommittees

In fulfilling its responsibilities, the Committee shall be entitled to delegate any or all of its responsibilities to a sub-committee of the Committee and, to the extent not expressly reserved to the Committee by the Board or by applicable law, rule, or regulation, to any other committee of directors of the Company appointed by it, which may or may not be composed of members of the Committee.

Meetings

#Frequency

The Committee shall meet, as scheduled by the Chair, at least four times annually, or more frequently as circumstances dictate.

#Initiation

Any member of the Committee may call meetings of the Committee.

#Attendance by Right and by Invitation; Executive Session

Any director of the Company who is not a member of the Committee may attend meetings of the Committee; provided, however, that any director who is not a member of the Committee may not vote on any matter coming before the Committee for a vote. The Committee also may request the attendance at a Committee meeting of any member of management of the Company and such other persons as it deems appropriate in order to carry out its responsibilities; it may also request any such person to meet with members of, or consultants to, the Committee.

The Committee shall meet in executive session (*i.e.*, in the absence of officers and staff of the Company) as the Committee deems necessary or appropriate.

#Preparation

The Chair or acting chair may direct appropriate members of management and staff to prepare draft agendas and related background information for each meeting of the Committee. The draft agenda shall be reviewed and approved by the Chair or acting chair before it is distributed to other members of the Committee. Any background materials, together with the agenda, should be distributed to the members in advance of the meeting.

#Recording and Reporting

All meetings of the Committee shall be held pursuant to the bylaws of the Company with regard to notice and waiver; and written minutes of each meeting, in the form approved by the Committee, shall be prepared by the Committee and duly filed in the records of the Company. Reports of meetings of the Committee, accompanied by recommendations of the Committee, shall be made to the Board at the next regularly scheduled meeting following the Committee meeting.

#Resources and Their Retention

The Committee has the sole authority to retain (and to terminate) the services of, at Company expense but without the prior approval of the Board, independent legal, accounting, and other advisors to assist it in its duties and responsibilities. The Committee shall have the sole authority to approve the advisors' fees and other terms of their retention.

The Company shall also pay for all administrative expenses incurred by the members of the Committee in the course of the Committee's work.

#Access

The Committee will have full access to the Company's books, records, and facilities.

@Responsibilities and Duties

Among the primary functions of the Committee, subject to changing business, legal or other conditions and to the additional requests, resolutions, and directives of the Board, are

- to identify and monitor social, political, and scientific issues that might be addressed by initiatives that are or might be taken by the Company, and to make recommendations to the board concerning them;
- to review, evaluate, and make recommendations to the board concerning the positions taken by the Company on matters of public policy, not only in Company documents and statements but also before courts, legislatures, and regulatory bodies;
- to examine the effect of the Company's operations and practices on the safety, health, and environment of the Company's employees, trading partners, customers, local communities, and larger communities, and to make recommendations to the board concerning the same, especially with regard to the possibility of the Company's amending its Code of Ethics and Employee Conduct manual;
- to review the nature and value of the financial and other support provided by the Company to charitable, philanthropic, educational, and political organizations and initiatives (including to political action committees), and to make recommendations to the board concerning the Company's policies with regard to, and budgeting for the aggregate value of, such contributions;
- to review, and to make recommendations to the board concerning its response to, shareholder proposals that involve issues of the Company's engagement in matters of public policy;
- to oversee the Company's preparation of its annual Corporate Social Responsibility Report for distribution to shareholders;
- to prepare and publish an annual report of the Committee to be included in the Company's Proxy Statement.

#Annual Performance Evaluation

The Committee shall perform a review and evaluation, at least annually, of the Performance of the Committee and its members, including a review of adherence of the Committee to this Charter. In addition, the Committee shall review and re-assess, at least annually, the adequacy of this Charter and recommend to the Nominating and Governance Committee any improvements to the Charter that the Committee considers necessary or appropriate. The Committee shall conduct such evaluation and reviews in such manner as it deems appropriate.

***NOMINATION FORM FOR BOARD CANDIDATES
(SECTION 5.03(A))***

Below is a sample of the disclosure that a corporation might furnish to shareholders interested in proposing individuals for nomination to the board:

Nomination of Directors

The Nominating Committee of [X] Corporation invites directors, officers, search firms that it retains, and shareholders to propose candidates for nomination to the board.

A stockholder or group of stockholders making such a proposal must submit it in writing by no later than [month/date] of the preceding year. The proposal must contain the following information:

- the shareholder's name, postal address, e-mail address, telephone number, and fax number;
- the candidate's name, postal address, e-mail address, telephone number, and fax number;
- identification of the number and class of shares held by the shareholder;
- a description of any agreements among the shareholder and the candidate and any other person(s) (and the names of any such person(s)) under which the shareholder proposed the candidate;
- a description of all prior and current relationships between the shareholder and the candidate, whether personal, familial, professional, financial, or charitable.
- an indication of whether or not the candidate has agreed to the proposal of his/her name;
- if so, whether the candidate has:
 - read and agreed to the Committee's policy statement(s);
 - read and agreed to the corporation's ethics code and governance principles; and
 - agreed to provide the Committee with relevant information that it may request;
- a current résumé and biography of the candidate; and
- the shareholder's statement of why he or she believes that the candidate would be a good addition to the board.

I hereby certify that, to the best of my knowledge and belief, all information contained in this form and the accompanying supporting documentation is accurate and complete.

[Shareholder to sign here]

Please submit this document and the relevant attachments to [corporation's postal address] or [corporation's e-mail address].

Clawback (Recoupment of Unearned Compensation) Policy (Section 6.02(B)(3))

If the Board learns of any misconduct by an executive officer that contributed to the Company's having to restate all or a portion of its financial statements, it shall take such action as it deems necessary to remedy the misconduct, prevent

its recurrence and, if appropriate based on all relevant facts and circumstances, punish the executive officer in a manner it deems appropriate. In determining what remedies to pursue, the Board shall take into account all relevant factors, including whether the restatement was the result of negligence or intentional or gross misconduct. The Board will, to the fullest extent permitted by governing law, in all appropriate cases, require reimbursement of any bonus or other cash incentive compensation awarded to an executive officer or effect the cancellation of unvested restricted, deferred stock awards previously granted to the executive officer if: (1) the amount of the bonus, incentive compensation or stock award was calculated based upon the achievement of certain financial results that were subsequently the subject of a restatement, (2) the executive engaged in intentional misconduct that caused or partially caused the need for the restatement, and (3) the amount of the bonus, incentive compensation or stock award that would have been awarded to the officer had the financial results been properly reported would have been lower than the amount actually awarded. In addition, the Board, in its full and complete discretion, may dismiss the executive officer, authorize legal action for breach of fiduciary duty or take such other action to enforce the officer's obligations to the Company as the Board determines fit the facts surrounding the particular case. The Board may, in determining the appropriate punishment, take into account penalties or punishments imposed by third parties, such as law enforcement agencies, regulators or other authorities. The Board's power to determine the appropriate punishment for the executive officer is in addition to, and not in replacement of, remedies imposed by such entities.

(SIMPLIFIED) COMPENSATION DISCLOSURE AND ANALYSIS (SECTION 6.03(E))

Philosophy of Executive Compensation

In determining the appropriate forms and formulas of compensation for our named executive officers (NEOs), the Compensation Committee (the Committee) attempts to

1. align the financial interests of executives with those of shareholders by providing “pay for performance” — that is, by placing a significant amount of the compensation “at risk” and dependent on the individual executive’s meeting quantifiable benchmarks, both with regard to the company’s own performance and with regard to the company’s performance as compared to other firms;
2. design compensation packages that, while competitive in the marketplace to enable the Company to attract and retain optimally talented executives, also create internal pay equity — that is, a properly proportional increase of potential compensation concomitant with increased responsibilities in the Company;
3. by including not only cash but stock components, motivate executives to pursue not only short-term but long-term gains for the Company;
4. encourage and recognize executives’ achievements in such non-quantifiable areas as executing long-term strategic plans, maintaining and improving

- executive and employee morale, contributing to the communities served by the Company, and demonstrating the values of the Company as expressed in the Company Code of Ethics and Responsibility; and
5. afford the Company flexibility in designing compensation packages for executives operating in a complex and challenging environment.

The Compensation Committee

The Committee is composed of four independent (*i.e.*, non-executive) directors, who are charged with developing and recommending to the board general policies for compensating NEOs as well as specific implementations of those policies for each of the NEOs.

Tally Sheets; Non-formulaic

The Committee makes use of summary remuneration tables, or “tally sheets,” to review all elements (including salary, annual and long-term bonuses, equity, long-term incentive compensation, stock options, restricted stock, retirement benefits, severance payments (under a variety of termination situations), and perquisites) of the current year’s and next year’s proposed compensation for each of the NEOs.

However, rather than adhering to one or more quantitative formulas for executive compensation, the Committee considers the elements of each NEO’s compensation and performance history individually and also comparatively with those of other NEOs.

Retention and Independence of Compensation Consultants and Legal Advisors

The Committee is authorized by the Board to, at its sole discretion, select, retain, define the scope of the engagement of, determine the compensation of, and terminate the services of consultants.

The Committee has retained the services of [compensation consulting firm] and [law firm] (collectively, the Consultants) as independent consultants to prepare the “tally sheets” discussed above and to advise it on the design and amounts of compensation packages for the NEOs and on emerging trends in compensation practices for executives in firms comparable to and competitive with the Company.

At least one representative of each of the Consultants attends in person every meeting of the Committee. The Consultants communicate directly with the chair of the Committee, and with the Committee in executive session (*i.e.*, outside the presence of any of the NEOs).

The Consultants also provide oral and written advice to the Committee between Committee meetings, and may, at the Committee’s direction, meet with management (with or without the presence of one or more members of the Committee) to obtain information.

Pursuant to the Company’s compensation policy, to preserve the Consultants’ independence while the Consultants advise the Committee, they will not concurrently advise the Board, any other Board Committee, or any Company director(s) or officer(s) personally, concerning any matter. Nor will any affiliate of the Consultants receive payment from the Committee or the Company generally that would

have a value greater than 2% of the Consultants' gross revenues for that calendar year. The Committee requires the Consultants to provide written certification that they meet these standards of independence.

Comparator Companies and Benchmarking

[The compensation consulting firm] has, in its yearly review, identified the following comparator companies, both within and outside the Company's industry, whose size and operation are similar to the Company's, for purposes of comparison and benchmarking of NEO performance.

[list of companies within the Company's industry]

[list of companies outside the Company's industry]

Among the financial results chosen for benchmarking purposes are earnings, net income after cost of capital, earnings per share growth, revenue growth, and return on equity.

Management Recommendations

The Compensation Committee also reviews, but is not bound by, the recommendations on the compensation of NEOs (other than the CEO) made by the Company's Chief Executive Officer and the Company's Human Resources Department.

Components of Compensation Packages

Base Salary

Each of the NEOs receives a base salary, adjusted annually by the Compensation Committee, that reflects the executive's responsibilities, experience, and performance. The Committee also takes into account when adjusting the base salary the salaries of the executive's counterparts at competitor companies and within the Company.

The Committee's policy is to target base salary for NEOs at or near the 50th percentile of base salary for their counterparts at comparator firms in the Company's industry. The Company's policy is that base salary should be a relatively small proportion of the total value of an executive's total compensation.

Annual Cash Incentive Bonuses

In [year], the Company awarded to each NEO a bonus based on the following elements: total Company pre-tax profits; and for each NEO other than the CEO and CFO, pre-tax profits attributable to that executive's business unit and the market share of that business unit.

If the Committee linked a performance target to the payment of an incentive bonus for an NEO, that executive will receive the proportion of that bonus corresponding to the proportion of the target performance attained. This bonus may include additional amounts, in proportion to the degree that the target was

exceeded, unless a maximum bonus has been specified; or, if the executive did not achieve a minimum level of performance specified, no bonus will be paid.

The Company does not generally disclose its performance targets, which could signal to competitors the Company's short-term and long-term goals and strategies, and aid competitors' attempts to recruit executives from the Company.

Equity-Based Incentives

The Company offers two programs that further align the interests of NEOs with those of shareholders.

Stock Options

Under the Company's Stock Option Program, the Committee determines at its first meeting in the calendar year (usually the second Monday of January) annual grants of Company stock options to qualifying NEOs based on their salary and performance over the preceding year. The options vest in equal portions of 25% in each of the 4 years from the date of the grant.

The exercise price of such stock options is the closing price of Company stock on the day of that meeting (or, if the markets are closed on that day, the closing price on the day of the most recent day on which the markets were open). The Company's practice is to schedule such meetings at least 1 year in advance, and to award stock options without regard to the timing of the release of the Company's annual financial results or of any other material non-public information.

The Company does not re-price stock options except in rare situations; in the event that it chose to, it would require prior shareholder approval.

NEOs, like all employees of the Company, are prohibited by Company policy from engaging in derivative transactions in Company stock, including transactions involving pledging, collars, short sales, and hedging.

Performance Share Unit Grants (Restricted Stock)

The Restricted Stock Award Program provides annual grants of Company stock to qualifying NEOs based on their salary and performance over the preceding 3 years, as measured against benchmarks set prior to that 3-year period. The restricted stock may not be sold or otherwise transferred until the executive leaves the employ of the Company.

Stock Ownership Policy

The Company's Stock Ownership Policy provides that, within 4 years from the date of appointment, the CEO should own and maintain Company stock of a total value at least equal to five times her base salary; and that any other NEO should, within 4 years from the date of his appointment, own and maintain Company stock of a total value at least equal to three times his base salary. All NEOs currently comply with these requirements.

Pension Plan

The Company provides retirement benefits to the NEOs through a pension plan, under which the retirement eligibility for employees begins at age 65. A supplementary pension plan is also available as an unfunded, unsecured obligation of the Company.

Clawbacks

If the Company determines that an executive's intentional misconduct resulted or substantially resulted in the necessity for the Company to restate its financial results, and if that executive would have received lower amounts of cash, stock, or stock options under the restated results, the Company will seek reimbursement of the excess compensation awarded to that executive.

In such situations the Company may also terminate the executive's employment, take legal action against the executive for breaching his fiduciary duty, and/or cooperate with the efforts of law enforcement, regulatory, or other authorities.

Severance Benefits

The NEOs are at-will employees whose employment may at any time be terminated by the Board. The Company does not pay severance to executives terminated for cause.

For executives terminated without cause, the Committee and the Board will seek shareholder approval of any severance benefits proposed to be paid to an NEO if the value of those benefits (excluding the value of deferred compensation, retirement, or savings plans) exceeds 2.99 times the executive's most recent base salary and most recent bonus.

Change-in-Control Benefits

The Company will provide the NEOs and several other senior executives with change-in-control benefits in the amount of 2.99 times their most recent annual salary and most recent bonus that will be paid if a change in the ownership of the Company or of a substantial portion of its assets, or of a change in effective control of the Company, results in the termination of the affected executive either:

- without cause (for example, for fraud, negligence, non-performance, or other breach of the executive's employment agreement); or
- for sufficient change-in-control reason (diminution of the executive's office, duties, responsibilities, level of officer to whom the executive reports, or salary).

The Company will also pay to the affected executives any taxes that they would be required to pay on this personal income.

Perquisites and Other Benefits

The Company's NEOs (and in appropriate circumstances, a limited number of their guests) are permitted to use any of the Company's corporate aircraft,

subject to availability, when the NEO is traveling on trips of over 500 miles for Company business. For security reasons, the CEO is required to use Company aircraft for all air travel, whether business or personal.

As do a number of our peer companies in its industry, the Company maintains the security and privacy of its CEO by providing her with 24-hour personal protection services, including a company-leased car and driver, as well as protection for her personal residence. Other NEOs are provided with personal protection when deemed necessary by the Company's Security Department and are provided a home security evaluation and security system.

The Company reimburses each of the NEOs for membership dues in relevant professional associations, social clubs, and recreational organizations.

The Company provides the NEOs with financial planning services as well as with the opportunity to obtain supplemental life insurance coverage.

The Company provides the NEOs with, and pays all premiums for, life insurance with a value equal to twice their annual salary.

The Company offers to match, up to a total amount of \$20,000 per executive per calendar year, any donation(s) made by an NEO to charitable, educational, or philanthropic organizations.

The Company provides NEOs, as it does its other employees, with medical and dental benefits and insurance and a 401(k) plan.

Compensation Committee Report

The Compensation Committee has reviewed and discussed with the Company's Board of Directors and the NEOs the above Compensation Discussion and Analysis report for fiscal year [year]. As a result of this review and discussion, the Committee recommended to the Board that this report be included in the Company's Annual Report on Form 10-K for [year] and the Company's [year] Proxy Statement.

[Names of chair and other members of the Committee]

RECOMMENDED READING (AND REVIEWING) FOR NEW AND CURRENT DIRECTORS

The corporate governance principles/guidelines of many companies refer to internal “on-boarding” programs designed to familiarize new directors not only with the company’s operations but also with their boardroom responsibilities.

Some companies also encourage or require all directors, during the course of their tenure, to attend presentations, whether in-house or external, on developments in corporate governance.

The first category of information (often featuring presentations by officers, and possibly visits to company facilities) is probably largely unnecessary for “inside directors” who are also serving the company as officers (for example, as CEO).

The second category might be redundant for many directors who have board experience at other companies.

And all directors, and potential directors, should read not only the company’s proxy statement but its securities filings, such as Form 10-K, 10-Q, and 8-K.

However, directors might consider adding to their summer (and subsequent) reading lists the corporate documents—and (mostly) non-law books—identified below.

First, every director could benefit from regularly reviewing the core corporate documents (probably) publicly provided on the company’s website: the articles/certificate of incorporation, bylaws, committee charters, and conduct/ethics code, as well as any separate specialized policies concerning such issues as the company’s political or other contributions, the “clawback” of excessive compensation, and supplier compliance.

Second, directors might examine, perhaps with the guidance of the company’s counsel, the company’s risk management plan; its compliance policies; its major contracts with outside law and accounting firms; and its insurance, indemnification, and exculpation arrangements (including exceptions to each, and areas of potential overlap) for directors.

Third, new directors could read, from the past three years or so, minutes of board meetings and committee meetings; board resolutions; and documents relating to litigation brought by or against the company.

Fourth, the board should review and (if necessary) update, at least annually, plans for the succession of senior executives.

Fifth, whether or not a formal policy requires directors to submit their resignations if they might have, even in their “off-hours” and law-abiding activities, embarrassed the company, counsel might regularly provide to all directors a summary of situations in which executives of other companies have attracted unfavorable attention.

Sixth, directors might also wish to examine, or be briefed (possibly by board’s Nomination and Governance Committee) on, or at least on changes to, the annual summaries prepared by (and available for downloading, on the websites of) proxy advisors such as Glass Lewis and ISS; asset management firms like BlackRock, State Street, and Vanguard; major institutional investors such as CalPERS, CalSTRS, and TIAA; and the Council of Institutional Investors.

Seventh, below are a few (idiosyncratic) reading suggestions, almost all of which are available in inexpensive paperback editions, for directors’ (and their counsel’s) consideration:

Daniel Kahneman, *Thinking, Fast and Slow* (2011). A sobering, and humbling, survey of cognitive traps by a Nobel Prize-winning economist who has spent decades studying how individuals and groups can optimize their decision-making.

Sharon Bertsch McGrayne, *The Theory That Would Not Die* (2011). Discusses in much more detail than Kahneman does the role and applications of Bayes’ Theorem in effectively incorporating new information into decision-making processes.

Philip Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil* (2007). By a psychologist involved — two years after he pioneered tests of the “broken window theory” — in the (in)famous “Stanford Prison Experiment” of 1971. Disturbing and detailed discussions of that experiment and of its relationship to subsequent activities at the Abu Ghraib prison in Iraq. Directors might focus on Zimbardo’s “Ten-Step Program to Resist Unwanted Influences” (pages 451-456), offered as a “starter kit toward building individual resistance and communal resilience against undesirable influences and illegitimate attempts at persuasion.”

Andrew Grove, *Only the Paranoid Survive* (1996). The former chairman and CEO of Intel discusses how to recognize and react to “strategic inflection points” that affect one’s industry, one’s company, and (in the last chapter, easily by itself worth the price of the book) one’s career.

Useful (though now dated), and possibly inspirational, examples of attempts to identify trends, if not inflection points, include: Mark Penn’s *Microtrends* (2007) and *Microtrends Squared* (2018); various “Non Obvious” books by Rohit Bhargava; and Mauro F. Guillen’s *2030* (2020).

Also of interest:

Robin McGrath’s *Seeing Around Corners: How to Spot Inflection Points in Business Before They Happen* (2019).

John Carreyrou, *Bad Blood: Secrets and Lies in a Silicon Valley Startup* (2018). An extraordinary profile of dysfunctional governance at a company that promised accurate and efficient analyses of medical patients’ blood samples.

Mitchell Waldrop, *Complexity: The Emerging Science at the Edge of Order and Chaos* (1992). Explores, using very little mathematics, the study of the marketplace, the human brain, evolution, and other “complex, self-organizing, adaptive systems [that] have somehow acquired the ability to bring order and chaos into a special kind of balance. . . . The edge of chaos is the constantly shifting battle zone between stagnation and anarchy, the one place where a complex system can be spontaneous, adaptive, and alive.” Poetic and scientific at the same time.

For another early mass-market treatment of similar systemic concerns, see Kevin Kelly (the founding executive editor of *Wired* magazine), *Out of Control: The New Biology of Machines, Social Systems, and the Economic World* (1992).

David Priess, *The President’s Book of Secrets: The Untold Story of Intelligence Briefings to America’s Presidents* (2016). A fascinating discussion of the evolution of the substance, style, and methods of presentation of the President’s Daily Brief (PDB), beginning in the Kennedy administration. It contains many lessons for executives, their counsel, and others who advise decision-makers.

Michael Lewis, *Flash Boys: A Wall Street Revolt* (2014). An extended illustration, in the context of high-frequency trading (HFT), of many people’s lack of understanding of the technical foundation/chassis/plumbing/architecture of their profession’s (or investment managers’) systems, and of the continuing tensions among technologists, regulators, and businesspeople.

The American Law Institute’s two-volume *Restatement of the Law Third, Agency* (abbreviated versions of which are also available), although not a statute, is an influential codification of the fiduciary duties of agents (including officers, and, though they are not technically agents of the corporation, directors); the duties owed to them by their principals (the corporation); and the ways in which they can commit (even an unknowing or unwilling) principal to contractual and tort liability.

In a more specialized context, because lawyers are agents of their clients (and, simultaneously, are “officers of the court”), directors might derive from the plain-English, annotated *Model Rules of Professional Conduct* a better sense of the responsibilities of and restrictions on their in-house and outside counsel.

A third perspective on agent-principal relationships is the memoir of a prominent Hollywood agent who received more than \$130 million in severance compensation after serving for about fourteen months (October 1995–January 1997) as the president of the Walt Disney Company: *Who Is Michael Ovitz?* (2018). (A sample: “Sometimes, representing a client’s best interests means not getting him what he thinks he wants. The judgment part of the job requires knowing when to redirect a client’s desires.”)

Of the court opinions generated to resolve shareholder-initiated litigation against the Disney board for initially offering Ovitz that compensation arrangement, and for then declining to terminate him for cause (which would have deprived him of the severance payment), a most illuminating and instructive review of directors’ fiduciary duties was issued by Delaware’s Chancery Court in 2005 (Google “907 A.2d 693”).

Near the beginning of what amounts to a factual and legal primer, Chancellor William B. Chandler III observed that “I have tried to outline carefully the relevant facts and law, in a detailed manner and with abundant citations to the voluminous record. I do this, in part, because of the possibility that the Opinion may serve as

guidance for future officers and directors—not only of The Walt Disney Company, but of other Delaware corporations.”

David Kaiser, *How the Hippies Saved Physics* (2011). An exploration of how, beginning in the pre-Internet era of the 1970s, a group of “fringe” physicists who focused on the mind-expanding implications of quantum mechanics formed, maintained, and expanded their professional and philosophical network. The group included, at various points, prominent mainstream physicists; members of the intelligence and defense communities; New Age figures like Werner Erhard of est and the leaders and habitues of the Esalen Institute; and best-selling authors like Fritjof Capra and Gary Zukav. Among the book’s themes are the relationships of theoretical to practical research and the sponsorship/patronage of each; the popularization, and cultural relevance, of scientific concepts; and the harmonization of science with (particularly Eastern) philosophy (to a much greater technical degree than in Robert Pirsig’s *Zen and the Art of Motorcycle Maintenance* (1975)).

As the Grateful Dead famously sang in “Scarlet Begonias” (1974; lyrics by Robert Hunter), “Once in a while, you get shown the light/ In the strangest of places, if you look at it right.”

PREPARING PROFESSIONAL PROGRAMS

PROJECTS, PROTOTYPES, PORTFOLIOS, AND PRIORITIES

*FROM CORPORATE GOVERNANCE, PRINCIPLES, PRACTICES,
AND PROVISIONS (3RD ED. 2022)*

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American University Washington College of Law

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The following are suggested topics for practice-oriented corporate governance training programs for directors, officers, and their counsel (including law firms' seminars or skills training sessions for associates, current clients, and/or potential clients). (They could also serve as the topics of papers on corporate governance, or for presentations by student groups at law schools or business schools.)

Approaches to Drafting

1. Collect (from, for instance, the websites of large corporations) many examples of the same type of corporate document (such as bylaws, compensation committee charters, or sections of SEC filings).

Then examine the ways in which their provisions resemble and are different from each other.

Create a template for or prototype of such a document, and annotate it with alternative provisions or phrasings, and discussions of the circumstances in which those alternatives would better suit a client's needs.

2. Create checklists of issues that may/should be addressed by a particular corporate document (such as board resolutions authorizing officers to engage in a particular transaction; an audit committee charter), set of documents (board resolutions on related issues; charters for different types of committees), or (as "corporate boilerplate") by corporate documents in general.

(Sample elements: (a) which individuals or groups can amend this document, and by what process?; and (b) which terms are defined for purposes of this agreement?)

3. Consider the default arrangements supplied by corporate statutes, regulations, listing standards, and caselaw if the corporate documents do not specifically provide otherwise; and the degree to which the statutes, regulations, listing standards, and caselaw allow the documents to diverge from these defaults.
4. Prepare, for a given client or for a hypothetical “typical client,” a map or diagram of the types of provisions in different corporate documents (such as articles of incorporation; bylaws; committee charters; board resolutions; governance principles; shareholder agreements, and employee conduct codes) interrelate, and which ones take precedence over others. (This project may also identify issues that are not sufficiently addressed by the documents as a group.)
5. Construct a list of “red flag” issues and/or provisions whose presence (or absence) in a corporate document should alert clients and counsel to examine the proposed relationship or transaction more closely.
6. Review and repair a document drafted particularly inartfully (perhaps one created specifically for this purpose, from a well-written document that is deliberately “seeded” with inappropriate additions and deletions).
7. Examine the different types of drafting required for, and the types of liability that can arise from errors in or the absence of, such communications as: public disclosures (such as SEC filings); internal disclosures (as when a director notifies the other board members of her possible conflict of interest with respect to a proposed or completed transaction); notifications (for instance, to shareholders, or to a contracting party); and documentation (for example, in corporate minutes, or expert and legal reports).
8. Evaluate the disclosures, within a specific industry or profession or across industries and professions, that boards have made in compliance with recent SEC requirements (for instance, concerning executive compensation, or the diversity of directors) in terms of (a) the operative language of the rules; (b) the SEC’s statements accompanying proposed and final rules; (c) the specificity of responses made by corporations and (d) the particular words used by corporations in their responses.

Are any trends and patterns emerging? If so, what level of specificity do they suggest would be tolerated by the SEC in new and/or proposed rules?

Has the SEC required more specificity in such areas, either by contacting individual companies or by clarifying or amending the requirements of its rules?

What are the (voluntarily-adopted) “best practices” for satisfying the disclosure requirements?

9. Consider the circumstances under which clients and/or counsel should *not* reduce their impressions, reasoning, suggestions, recommendations, and/or policies to writing.

Approaches to Accelerated/Crisis Counseling and Decision Making

1. Prepare a series of “pocket memos”¹ that briefly summarize, with supporting references, the caselaw, regulations, statutes, industry standards, and/or best practices concerning issues that you consider likely to arise in court or in transactional situations. (A variant of this project: create, for counsel’s use and/or for distribution to clients, lists of “frequently asked questions” and their answers with regard to specific issues or types of transactions.)
2. Review the documents that executives and/or their counsel should have immediately at hand (or on their computers or networks) in case of a governance emergency; and consider the creation of special decision-making procedures for situations where sufficient time and/or information is not available yet initial decisions must be made quickly.
3. Discuss the types of information that counsel should elicit from a client or potential client in situations of corporate crisis, and the responses that counsel should (and should not) offer to the responding individuals.² Also consider, in this context, the procedures and priorities by which inside and outside counsel should alert others within and outside their organizations of an emerging situation.
4. Review the “rules of engagement” of an individual or firm engaged by the corporation to conduct an internal investigation (for instance, in the context of a shareholder’s derivative lawsuit or demand for the board to bring suit, or in a response to a whistleblower’s allegations of improprieties). What power do such investigators have over individuals and records of the firm?
5. What written policies or guidelines should govern directors’ and officers’ generation, retention, copying, and destruction of information in the course of their duties, and how do these relate to the rules and

1. In the context of litigation,

A pocket memo is a very brief memorandum of points and authorities on one topic that is prepared and left in a discreet file somewhere in the defense files for that right moment in trial. It is designed to provide legal support on some issue counsel may, at some point, wish to raise—an objection, a request to voir dire a witness, a motion to strike, etc. Its purpose is to allow its author maximum strategic flexibility. If the reason to use it never arises, it never sees the light of day. If it does arise, it may still remain buried, unless the oral presentation calls for written backup.

In addition to providing flexibility, the pocket brief is a great strategic tool. Judges like to keep things moving. If you can pounce on an issue (perhaps complicated) and then give the judge the controlling case in support of the proposition, the judge may provide instantaneous relief. The pocket memo is not designed to play games with an opponent. Each side needs to anticipate issues at trial and come prepared to raise them.

Courtney J. Linn & Mark Beck, *The Strategic and Tactical Uses of Motions In Limine in Federal Criminal Trials*, 46 *Crim. L. Bulletin*, no.2, art.3 (Spring 2010).

2. Cf. *Dispatcher Training Manual: Call Taking*, 911dispatch.com/training/train_call.html (providing specific instructions for emergency service dispatchers).

- presumptions of evidence law? To what degree should elements of such policies appear in other corporate documents (for example, the bylaws)?
6. The ABC television series, *MacGyver* (1985-1992) featured the title character's resourceful methods of escaping dangerous situations, often with the aid of such common items as a Swiss Army knife or chewing gum.³ What principles or policies of creative and improvisational problem-solving, and what tools, should corporate counsel employ to meet unexpected crises?
 7. For purposes of corporate decision-making, how can corporate counsel, directors, and officers adopt, or adapt, strategies and techniques of solving mathematical⁴ or chess⁵ problems?
 8. Discuss how to create—or actually construct, and perhaps conduct—scenarios and simulations that test the decision-making processes of executives and counsel.

Approaches to Professional Responsibility

1. What is the role of corporate counsel in fostering, as opposed to opposing, agreement among the firm's executives? When should counsel be acting as a “devil's advocate,” as opposed to a facilitator of brainstorming sessions or an architect of consensus?
2. Discuss the extent of counsel's responsibility—and ability—to educate themselves and their clients in the recently-popular(ized) literature of behavioral economics (such as Daniel Kahneman's *Thinking, Fast and Slow* (2011)), and to take measures to resist the “cognitive biases” and fallibilities identified by these works. (Much of this information can be presented without significant mathematical discussion, but the useful topic of Bayesian analysis, which concerns adjusting the estimated validity of a hypothesis in light of newly-received information or results, is somewhat more demanding.)

Is it ethical for counsel to apply these lessons “in the best interests of the client” (as counsel perceives them) to influence clients' decisions—for instance, by presenting an option that counsel favors as having “an estimated 75% chance of success” as opposed to “an estimated 25% chance of failure”?

Is it ethical for counsel to (and/or to advise their clients how to) apply these lessons aggressively, to attempt to exploit the inherent vulnerabilities of commercial adversaries (and, possibly, judges) in negotiations and litigation?

3. Cf. Gary Marcus, Kluge: *The Haphazard Evolution of the Human Mind 2* (2008) (defining a “kluge” as “a clumsy or inelegant—yet surprisingly effective—solution to a problem.”).

4. See, e.g., George Polya, *How to Solve It: A New Aspect of Mathematical Method* (1945); Paul Zeitz, *The Art and Craft of Problem Solving* (1999); Wayne A. Wickelgren, *How to Solve Mathematical Problems* (1995).

5. See, e.g., Per Ostman, *Your Best Move: A Structured Approach to Move Selection in Chess* (2011); Adriaan D. De Groot, *Thought and Choice in Chess* (2008); Andrew Soltis, *How to Choose a Chess Move* (2005); Amatzia Avni, *The Grandmaster's Mind* (2005).

3. How should in-house, and outside, counsel conduct themselves in order to preserve their “independence” with regard to their corporate and/or executive clients? Under what circumstances, if any, should counsel consider compromising such independence?
4. How does the rise of online communication and digital storage of information change the risks and responsibilities of corporate and/or individual executive clients? How do these developments change the risks and responsibilities, and ethical duties, of counsel?

Approaches to Identifying and Managing Corporate and Personal Risks

1. Identify the categories of internal and external risks (including liability for noncompliance with relevant statutes and regulations) that directors should identify and monitor. Discuss how inside and outside counsel can assist in these efforts.
2. Identify the categories of information that directors and officers should supply to the corporation on an ongoing basis (such as: their personal contact information; the change of an outside director’s primary source of employment; and perhaps certain notifications to directors and officers that they are under investigation for, or that their testimony is requested in connection with, civil or criminal charges). Which corporate documents require executives to supply which type of information?
3. Conversely, consider under what circumstances information can legitimately be withheld (a) by a director or officer, from the board, board committees, senior officers, and/or in-house or outside counsel; (b) by the board, board committees, and/or in-house or outside counsel, from one or more of the directors or officers; (c) by in-house or outside counsel, from the board, board committees, and/or one or more of the directors and officers; (d) by in-house counsel, from outside counsel; (e) by outside counsel, from in-house counsel; and/or (f) by the board, from shareholders.

What parts of which corporate documents, if any, should permit or authorize such opacity?

4. Identify the situations in which directors and officers should obtain the board’s or shareholders’ permission/authorization before taking certain actions (such as appropriating what might be seen as a corporate opportunity, or engaging in (or causing the company to engage in) what might be seen as a self-dealing situation). What types of information (just “all material information”?) should an executive furnish to the group whose permission she is requesting (just “all material information”? “all material information, including but not limited to . . .”?) Does the same standard apply for the corporation’s ratification of such actions? Should the corporate documents specify that some actions will not be authorized and/or ratified?
5. Examine the overlaps of, and gaps between, the liability protection provided to directors and/or officers by: (a) directors’ and officers’ insurance; (b) any indemnification provisions adopted by the corporation (or provided by statute); (c) any indemnification provisions adopted by the corporation; and (d) the executives’ employment contracts.

6. Roger von Oech's *Creative Whack Pack* (1992) is a collection of 64 cards bearing creativity-enhancing suggestions (such as "Find a Pattern" and "Ask, 'What If?'") "to jolt you out of habitual thought patterns that prevent you from looking at things in a fresh way."

What principles, advice, or instructions would the corporate (or corporate counsel) equivalents of these principles be, in a deck of cards devoted to executives' (a) minimizing corporate liability, (b) minimizing their own personal liability, (c) optimizing their own decision-making processes, or (d) adopting "aspirational" governance practices?

Other Applications

Discuss how the above topics might be analyzed differently in the context of:

- (a) nonprofit entities;
- (b) corporations engaged in corporate social responsibility (CSR) initiatives;
- (c) corporations in jurisdictions with "other constituency" statutes;
- (d) "social enterprises" like benefit corporations, flexible purpose corporations, and B Corporations; and
- (e) law firms operating as corporations (or as professional service corporations).