

# Governance Board Responsibilities & Internal Audit

Alan R. Crain

Chairman, Governance & Nominating Committee

National Association of Corporate Directors (NACD) Texas TriCities Chapter

FIRMA – Risk Management Conference

New Orleans, LA – May 24, 2016

# **FIDUCIARY DUTIES OF THE BOARD**

- **DUTY OF CARE**
  - **Must Act With Due Care and in Good Faith**
  - **(Business Judgment Rule)**
- **DUTY OF LOYALTY**
  - **Act in Good Faith to Advance the Best Interests of the Company**
  - **Ensure Proper Policies & Compliance With Them**

# BUSINESS JUDGEMENT RULE

- The Results Of The Board's Decisions Do Not Have To Be Optimal IF the Board
  - Made A Reasonably INFORMED, Good Faith, Rational, Decision
  - **WITHOUT PERSONAL CONFLICTS OF INTEREST**
- Entire Fairness: Both a fair process to reach the decision & it produced a substantially fair outcome for all shareholders

# **TWO ROLES OF THE BOARD**

## **OVERSIGHT**

### **REGULATORY COMPLIANCE**

**SECURITIES & EXCHANGE ACT OF 1934**

**SARBANES-OXLEY ACT OF 2002 (“SOX”)**

**DODD-FRANK WALL STREET REFORM AND CONSUMER  
PROTECTION ACT (“DODD FRANK”)**

**OTHER APPLICABLE LAWS & REGULATIONS**

**RISK**

**CULTURE**

# TWO ROLES OF THE BOARD

## ADVISORY

**IDENTIFY and FOCUS ON WHAT IS IMPORTANT TO:**

**BUILD SHAREHOLDER VALUE**

**ENSURE THE COMPANY'S SUSTAINABILITY**

**THRIVE IN THE FUTURE**

**ENHANCE THE CULTURE**

# The WHAT

- **WHAT** is the VISION, MISSION, PURPOSE?
- **WHAT** are the KEY ELEMENTS to reaching it?
  - CORE VALUES – I T S L P L
  - DEFINE THE CULTURE
  - STRATEGIC PLAN
    - Short term and Long Term goals (KPIs)
    - Building sustainable long-term value

# The WHO

- **WHO** ARE THE **PEOPLE** TO
- EFFECTIVELY & EFFICIENTLY DELIVER THE VISION?
  - **SUCCESSION PLANNING**
  - **OPTIMAL CULTURE** – defining it & nurturing it
  - Avoiding
    - “Board Capture”
    - “Asymmetric Information Risk”

# INTERNAL AUDIT CAN PREVENT THE IMPACTS OF COMPLIANCE FAILURES

- **PROSECUTION** of the company, individual officers, directors & employees (DOJ “*Yates*” Memo)
- **FINES, PENALTIES & EVEN GREATER COSTS** (resulting from the “*Investigative Freeze*”)
- **BRAND / REPUTATION DESTRUCTION** = loss of trust & damage to business
  - Customers, shareholders and employees
  - Other regulators both domestic and foreign
  - Joint venture partners & suppliers
  - “Wall Street” including rating agencies



# MACRO ISSUES OF CONCERN TO BOARDS

- **POLICIES of the New Administration**
  - Trade, Labor, Environmental, **TAXES**
- **“ISMs”** - Populism, Anti-Globalism, Nativism, Global Terrorism
- **BREXIT** and its progeny
- **US involvement in FIVE ONGOING WARS**
- **THE VELOCITY OF CHANGE**
- **CYBER SECURITY**
- **CLIMATE CHANGE**
  - Weather, Resources, Markets, Supply Chain

# 2017 GOVERNANCE ISSUES

- **Shareholder Engagement**
  - Meetings with Board members
  - Proxy Access
- **Shareholder Activism**
  - Share Buybacks
  - Asset Spin-offs
- **Other “ESG” Proposals:** e.g. Climate Change, Board Diversity
- **Executive Compensation:** Say-on-Pay

# BOARD MEMBER QUALITIES

- **EXPERIENCED**
- **HIGHLY INFORMED**
- **DILIGENT & ENGAGED**
- **CURIOUS**
- **CREATIVE**
- **FLEXIBLE**
- **INDEPENDENT THINKER**
- **COURAGEOUS**