

**PRESENTATION TO  
MSBA Health Law Section  
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I. INTEGRITY, OR LACK THEREOF, IS AT THE HEART OF TODAY'S GOVERNANCE FAILURES – WHETHER THESE FAILURES RELATE TO THE GOVERNANCE OF BUSINESS OR NONPROFIT ORGANIZATIONS. WE'VE HAD A NUMBER OF THESE FAILURES IN PUBLIC COMPANIES, PRIVATE COMPANIES AND IN THE NONPROFIT SECTOR, INCLUDING HEALTHCARE.

- The responsibility for these situations is ultimately on the governing bodies of these organizations (*e.g.*, Boards of Directors, Trustees, etc.)
- What stakeholders need most from their governing Board is assurance of the organization's integrity.

Specifically:

- That the organization has a clear direction, plan or mission, and that the resources and activities of the organization are devoted to its execution.
- That the organization's financial statements have integrity – in other words that they can be clearly understood and relied on by those responsible for assessing the value and quality of the organization – and that the value and quality of the organization can be relied on by its owners, financiers, regulators, donors, employees, suppliers and customers. It's hard to square a Board's duties of financial oversight with many of the off-balance-sheet financing techniques that have been utilized, revenue and earnings overstatements and revised financial results which have been in the news for many months.
- That the public disclosures and comments of senior management and the Board have integrity and are reflective of the true state of the organization's affairs.
- That executive management, selected and regularly evaluated and compensated by the Board, would above all responsibilities see that the organization's affairs are conducted in a manner which would serve rather than detract from its integrity.
- That accounting, legal and consulting firms engaged by the organization will conduct their activities in a manner that will serve rather than detract from the organization's integrity.

- That, in the case of public companies, the sale of the company's securities by its Board members and management would not be permitted if it reflected poorly on the company's integrity or could give rise to a belief that the sellers had used their positions as governors of the company unfairly.
  - ❖ Sales by Enron insiders reflected terribly on the Board's and management's credibility as stewards for Enron's shareholders (including the company's employee retirement plans, which were heavily invested in Enron shares – stock that Enron's employees could not sell during one period of particularly heavy insider selling).
  - ❖ After having taken reportedly in excess of \$700 million in stock sales Gary Winnick's recent \$25 million offered contribution to assist Global Crossing employees who suffered losses in their retirement plans seems extraordinarily callous to the chaos he oversaw.
  - ❖ The recent report on executive compensation from the Conference Board Commission now recommends pre-disclosure of stock sales by insiders – a recommendation which I heartily support. Let directors and senior managers of publicly-held corporations disclose their intention to sell, and the amount they are selling, 15 days in advance of their proposed sales and take whatever adjustment the market wants to give the company's stock on becoming aware of the sellers' intentions.
- That the compensation and perks awarded to Board members and senior management, which directors alone approve, will not in actuality or perception co-opt their judgment, compromise their independence or detract from the organization's integrity.
  - ❖ This was an issue for Attorney General Mike Hatch in his investigations of Allina and HealthPartners.
  - ❖ This was an issue in the United Way situation several years ago.
  - ❖ The National Association of Corporate Directors' *Report on Director Professionalism* recommends the elimination of "perks" and "benefits" from director compensation.
  - ❖ Executive compensation has been a troublesome issue for a number of organizations and is very much the focus of regulators, shareholders and the media. There is continuing pressure on Boards to obtain objective support for compensation determinations, and the IRS requires objective support for the compensation of executives of nonprofit organizations. Executive compensation was an issue cited in Attorney General Hatch's HealthPartners Report, and, interestingly, he referenced the subject of private inurement in this regard.

- That directors and management will avoid actual or perceived conflicts of interest which would detract from the integrity of the organization and its governance.
- That management has in place compliance systems and procedures that will give it early warnings of activities that would threaten the integrity of the organization – and when the warning comes that the Board will investigate the issue independently and without restrictions that might compromise the investigation.
- ❖ I have read Sherron Watkins’ letter to Ken Lay at Enron. I have also read the nine-page rather dismissive letter written by Vinson & Elkins in response to a request that it investigate Ms. Watkins’ allegations. That response stands in sharp contrast to the 200+ page report of the Special Investigative Committee of Enron’s Board of Directors issued with the assistance of independent counsel. The Powers Report was extremely critical of the Board, certain members of senior management, Vinson & Elkins and Arthur Andersen.
- ❖ I spoke at a national convention of charities regulators in September, 2002. Here is a list of ways charities attract Civil Investigative Demands from regulators:
  - Use donated funds for purposes other than specified by the donors or requested by the charity.
  - Use government funds for unauthorized purposes.
  - Pay outrageous salaries to officers/directors/employees or outside professionals.
  - Hoard money; *i.e.*, make low payouts relative to donations.
  - Spend money on expensive non-essentials, *e.g.*, gifts, trips, conferences, etc.
  - Solicit funds through telemarketers or fundraisers who keep most of the money.
  - Don’t adopt or follow policies or procedures intended to assure ethical conduct, legal compliance or proper activities.
  - Let your executive director control everything.
  - Convert from a nonprofit charity to a for-profit enterprise or merge with a for-profit enterprise.
  - Complicate your organizational or business structure.
- ❖ The recent publication “Corporate Responsibility and Corporate Compliance: A Resource for Healthcare Boards of Directors,” a collaboration between the

Office of Inspector General of the U.S. Department of Health and Human Services and the American Health Lawyers Association, focuses primarily on Board responsibilities for an organization's compliance oversight. The paper notes that under the *Caremark* case "A director has a duty to attempt in good faith to assure that (1) a corporate information and reporting system exists, and (2) this reporting system is adequate to assure the Board that appropriate information as to compliance with applicable laws will come to its attention in a timely manner as a matter of ordinary operations."

The paper suggests questions which a Board may want to consider including:

- Structure of the compliance program.
  - Key employees responsible for implementation and monitoring.
  - Board committee or members responsible for oversight.
  - Functioning of the organization's compliance system, and frequency of reports to the Board about compliance issues.
  - Goals of the compliance program, and inherent limitations of the program.
  - Key risks of the organization's business, and contemplation of those risks by compliance program.
  - Resources necessary to effectively implement the compliance program.
  - Organizational code of conduct, and incorporation of the principles of the code of conduct into various corporate policies.
  - Assignment of compliance-related responsibilities within various levels of the organization, and designation of management person responsible for implementation, monitoring and investigations respecting compliance program.
  - Compliance program-related education and training.
  - Process for responding to suspected or actual compliance violations.
  - Appropriate protection for "whistle-blowers."
  - Guidelines respecting reporting compliance violations to the Board.
  - Policies governing reporting of violations of law to government authorities.
- The bottom line of governance is that the ultimate authority for the governed entity is responsible for the entity's integrity. In many of the current scandals the Board failed

because it did not take responsibility for the organization's integrity. The directors did not see the organization's integrity as an extension of their own integrity – and I think ultimately that is the critical point.

II. THERE HAVE BEEN MANY REACTIONS TO THE CORPORATE SECTOR PROBLEMS IN THE NEWS. I WANT TO DISCUSS TWO OF THEM WHICH I BELIEVE ARE APPLICABLE TO PUBLIC, PRIVATE AND NONPROFIT ORGANIZATIONS:

1. The emergence of recognized corporate governance best practices, and
  2. The evolution of the proactive Board.
- First, the emergence of recognized best governance practices.
    - For several years there has been emerging a body of “best practices” in corporate governance. The sources are many:
      - ❖ Corporate governance practices articulated by Boards of Directors (this got a huge public push from General Motors several years ago).
      - ❖ Corporate governance practices articulated by institutional investors such as TIAA CREF and CALPERS, and proxy advisors such as Institutional Investors.
      - ❖ State and federal legislatures. State corporate laws for the most part do not distinguish between public and private corporations with respect to governance and the duties of directors. In many states much of the language of the nonprofit statutes is drawn from the business corporation laws, particularly as to conflicts of interest, director duties and indemnification of directors, officers, employees and agents, etc.
      - ❖ Various regulatory agencies, *e.g.*, the Internal Revenue Service, the SEC, and the Comptroller of Currency. The Internal Revenue Service has adopted regulations pertaining to executive compensation, and, with respect to nonprofits, is looking at expanded disclosures of certain information on Form 990.
      - ❖ Various self-regulatory organizations such as the New York Stock Exchange and NASDAQ.
      - ❖ State and federal offices charged with enforcement. The New York Attorney General has introduced legislation which would add to New York's nonprofit organizations laws a number of the Sarbanes-Oxley concepts (see Attachment 1). Attorney General Mike Hatch has been increasingly aggressive in the oversight/investigation of nonprofits (Allina and HealthPartners to date).
      - ❖ State and federal court decisions.

- ❖ Various business organizations such as the Conference Board and the Business Roundtable. On February 6, 2003 the Better Business Bureau released an exposure draft of “Standards for Charitable Accountability” (see Attachment 2).
  - ❖ The National Association of Corporate Directors. NACD has issued a number of Blue Ribbon Commission reports on matters like director professionalism, executive compensation, director and executive evaluation, detection of fraud, etc.
  - ❖ The American Law Institute’s principles of corporate governance.
  - ❖ The American Bar Association Task Force on Corporate Responsibility.
  - ❖ The American Bar Association Task Force on Nonprofit Corporate Governance.
- Best governance practices generally speak to the following subjects:
- ❖ **Board size.**
  - ❖ **Board composition.**
  - ❖ **Director selection process.**
    - Is this a management dominated process? Or is it controlled by the Board of Directors, and in particular by independent directors in an effort to bring more independence and objectivity to the nomination/selection process?
    - Current best practice is an independent governance/nominating committee.
  - ❖ **Board organization and leadership.**
    - A Board should have a written charter.
    - Should the Board have a separate chair or other non-management leadership? In contrast to business organizations this is more often the case with nonprofit organizations.
    - What committees should the Board have? Audit? Governance (nominations)? Compensation?
  - ❖ **Board processes.**
    - How many meetings per year?
    - Who sets the Board meeting agenda? How is director input obtained?

- Regular executive sessions?
- What materials are expected and how far in advance?
- Who is invited to attend Board meetings?
- Board access to senior officers and advisors.
- Board meeting minutes.

❖ **Board service conditions .**

- What should be the length of a term of service (*e.g.*, one, two or three years)?
- Should terms be staggered?
- Should there be term limits (*e.g.*, number of consecutive terms which a director may serve)?
- Should there be a retirement age (*e.g.*, once a director reaches a certain age is he or she no longer eligible for service)?
- Should directors submit their resignation on a change of job or other events?

❖ **Board duties. Are these in writing?**

- Assuring the integrity of the organization. Vigorous oversight.
- Elect corporate officers.
- Annual CEO evaluation and compensation.
- CEO/management succession planning.
- Review/approve strategy.
- Review/approve annual budget.
- Review/approve extraordinary expenditures (or extraordinary expenditures above certain dollar amount).
- Review/approve transactions not in ordinary course of business.
- Review quarterly operating results against plan/budget.
- Elect and compensate (?) directors.

- Authorize committees and committee membership.
  - Approve committee charters and compensation (?).
  - Review/approve Board meeting minutes.
  - Approve governance principles, codes of conduct and compliance policies.
  - Director orientation and education (activity segment, organization, governance).
  - Review conflicts of interest involving senior executives and directors, including current and proposed other directorships held by officers and directors.
  - Agree on other organization actions with respect to which Board wants approval or consultation.
  - Board and director evaluation.
- ❖ **Board compensation.**
- ❖ **Evaluation of Board and Committee performance.**
- Criteria for performance.
  - How frequent?
  - Process.
- ❖ **Evaluation of director performance.**
- Criteria for performance.
  - How frequent?
  - Process.
- ❖ **Committee organization; compensation.**
- Member composition.
  - Member selection process.
  - Committee duties (charter).
  - Committee compensation.
- ❖ **Stakeholder interaction/communications.**

- Now to a few comments on the Sarbanes-Oxley Act, the New York Stock Exchange corporate governance proposals, the ABA Corporate Responsibility Task Force corporate governance recommendations and the ABA Task Force on Nonprofit Corporate Governance best practices guidelines.. Again, we are looking at these because they were written to address corporate governance issues and are evidence of articulated best practices.
- Sarbanes-Oxley.
- ❖ Prohibits eight types of consulting services by public company auditors.
  - ❖ Requires rotation of audit partners after five years, and a study of the rotation of audit firms.
  - ❖ Requires retention of audit records for five years.
  - ❖ Makes Board audit committees responsible for hiring and overseeing auditors.
  - ❖ Provides strict independence standards for Board audit committee members.
  - ❖ Requires audit committees to have one member who is a “financial expert” and to disclose that person’s name.
  - ❖ Provides that each member of the audit committee must be independent, and defines independence stringently.
  - ❖ Prohibits efforts to fraudulently influence, coerce, manipulate or mislead auditors for the purpose of making financial statements misleading.
- We are well aware of the pressure put on auditors by CEOs and CFOs to make accounting judgments favorable to a company’s financial statements.
- ❖ Makes it unlawful for a registered public accounting firm to perform audit services for a company if a key officer of the company was employed by the accounting firm and participated in an audit of that company during the one-year period preceding the date of initiation of an audit.
  - ❖ Requires that management acknowledge responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and annually assess the effectiveness of the internal control structure.
  - ❖ Prohibits most loans to directors and executive officers.
  - ❖ Requires the SEC to issue rules requiring disclosure of whether a company has a code of ethics for “senior financial officers.”

- ❖ Requires real time disclosure of material changes in the business or financial condition of companies.
- ❖ Requires certifications by the CEO and CFO that:
  - A filed report fully complies with the applicable reporting requirements.
  - The information in the filed report fairly presents, in all material respects, the financial condition and results of operations of the company.
  - The officers have reviewed the report.
  - The report does not contain a material misstatement or omission.
  - The officers are responsible for establishing the organization's internal controls, have evaluated the effectiveness of the controls recently and have reported their conclusions about the effectiveness of those controls.
  - The officers have disclosed to the organization's auditors and the audit committee any deficiencies in the controls and any fraud on the part of employees who have a significant role in maintaining those controls, and have stated in their report whether there were changes in the controls, including any corrective actions taken with respect to the controls.
- ❖ Enhances criminal penalties for destruction, alteration or falsification of documents (applies to private corporations and nonprofits).
- ❖ Enhances criminal penalties for retaliation against informants (applies to private corporations and nonprofits).
- The New York Stock Exchange corporate governance proposals.
  - ❖ Requires that each listed company must have a majority of independent directors on its Board, and goes on to provide a stringent definition of independence.
  - ❖ Requires that there be regularly scheduled executive sessions of the Board.
  - ❖ Requires that the nominating/governance committee be comprised entirely of independent directors, and certain documentation of the nominating committee's responsibilities.
  - ❖ Requires companies to have a compensation committee comprised entirely of independent directors, and again sets out requirements for the committee's functions.
  - ❖ With respect to audit committees, which are already required to be independent, the proposed standards add a requirement that directors' fees are

- the only compensation audit committee members can receive from the company.
- ❖ Increases the authority and responsibility of the audit committee including granting it the sole authority to hire and fire auditors and approve any non-audit services. Again, the Exchange requires that audit committee perform a specified number of duties.
  - ❖ Requires shareholder approval of most equity compensation plans.
  - ❖ Requires that companies adopt and disclose corporate governance guidelines and details seven subjects that the guidelines should address, including director orientation and continuing education.
  - ❖ Requires that companies adopt and disclose a code of business conduct and ethics for directors, officers and employees and disclose any waivers of the code. The Exchange further requires that the code address certain specified subjects of concern.
  - ❖ Requires that a CEO certify to the Exchange each year that he or she is unaware of any violation by the company of the Exchange's listing standards.
- The ABA Corporate Responsibility Task Force.
- ❖ Task Force appointed on March 28, 2002, by the ABA President.
  - ❖ The Final Task Force Report dated March 31, 2003, has been approved by the Task Force for submission to the Board of Governors and ABA House of Delegates. The Task Force was charged with looking at corporate responsibility issues raised by a number of high profile corporate accounting and conduct issues which raised questions about the effectiveness of corporate governance, accounting and disclosure of public companies. The Report makes clear, however, that the issues raised are also applicable to private companies and nonprofit corporations.
  - ❖ The Task Force makes a number of governance recommendations and compares those with recommendations made by the New York Stock Exchange, NASDAQ, the SEC and selected other organizations. The Task Force also makes recommendations regarding the role of counsel to entities.
  - ❖ The Report has not been presented to or approved by the ABA House of Delegates and is not ABA policy. The Report has not been approved for distribution to any non-ABA public audiences.
- The ABA Task Force on Nonprofit Corporate Governance has prepared a draft of best practice guidelines for directors of nonprofit corporations. These guidelines deal with director duties and conduct, Board structure and operations and Board

committees. The guidelines track closely the best practice recommendations emerging for business organizations.

- Next, the subject of proactive Boards.
  - It used to be the law and the practice that directors were not responsible for discovering problems; they were only responsible for reacting once there had been some kind of a “triggering event” – something that called their attention to a matter which needed to be addressed.
  - That started to change with the development of the Federal Sentencing Guidelines which reduced corporate penalties for infractions where it could be demonstrated that the corporation had taken reasonable steps to avoid the conduct of which the corporation was accused.
  - Board proactivity got a further push from a Delaware court decision in the *Caremark* case where Chancellor Allen articulated the proposition that Boards cannot wait for a triggering event, but must act proactively to assure that management puts systems and processes in place, and engages in active monitoring, in an attempt to avoid illegal conduct, and to pick up warnings of such conduct.
  - And I believe the current business and non-profit sector scandals are underscoring the importance of, and need for, proactivity at the Board level. An emphasis supported by the Sarbanes-Oxley Act with its certification requirements and criminal penalties, and listing standards such as those proposed by the New York Stock Exchange and NASDAQ, the positions taken by institutional investors and business groups, and the ABA Corporate Responsibility Task Force.

### III. HOW WILL SARBANES-OXLEY AND THESE VARIOUS OTHER CORPORATE GOVERNANCE DEVELOPMENTS AFFECT PRIVATE COMPANIES AND NONPROFITS?

- We will continue to see a shift to proactive Boards. Vigorous oversight will become more the norm.
- There will be a greater focus on the Audit Committee, its composition, the definition of its responsibilities, and its performance.
- We may begin to see more extensive certification, particularly on the part of the CEO and CFO. This is one of the proposals of the New York Attorney General. We are currently seeing certifications extending to various responsible persons within organizations.
- State legislatures will consider enacting some or all of the Sarbanes-Oxley Act concepts in business and/or nonprofit corporation statutes; or will prepare their own version of corporate disclosure/conduct requirements.

- California has already done so. Governor Gray Davis signed the California Corporate Disclosure Act at the end of September, 2002. The Act applies to California – incorporated corporations as well as those incorporated elsewhere that are qualified to do business in California.
  - As noted, the New York Attorney General has proposed legislation which would add a number of Sarbanes-Oxley concepts to New York’s nonprofit corporation law.
- Regulators will look at the best practices articulated by other regulatory agencies and self-regulatory organizations and begin to incorporate these into regulations affecting, and settlements with, organizations. Again, reference the New York Attorney General’s proposals.
- Without regard to what the regulators do, Boards of Directors will begin to look at corporate governance best practices and begin to voluntarily bring those practices to the organizations, public or private, for-profit or nonprofit, that they govern.
- Best practice standards adopted by companies will become benchmarks not only for regulators, but for litigants.
- The subject of conflicts of interest, already a focal point for the press, will receive even more scrutiny from Boards, regulators, litigants and perhaps donors and beneficiaries.
- Loans to insiders will draw more attention.
- Non-audit services provided by auditors are being increasingly scrutinized, and this is true of services provided by other consultants as well, to minimize conflicts and insure objectivity.
- The amount and structure of Board and committee compensation will change. While we may continue to see undifferentiated compensation among directors at the Board level, such will not continue to be the case at the committee level, particularly in the case of committees which bear substantially increased responsibilities.
- Codes of ethics and compliance policies will be adopted by more companies, and Boards will more carefully monitor adherence. Given the attention focused on the waiver of certain conflicts of interest by the Enron Board of Directors, Boards will be very cautious about waiving conflicts or suspending ethical conduct policies.
- Document retention policies will be adopted by more companies, and Boards and management will more closely monitor compliance.
  - Document retention policies apply to written and electronically stored data. Email is worthy of special note, and companies should address the companies’

rights to access and view employee email as well as sending, forwarding and saving email messages.

- Document retention policies need to be very company-specific. They need to start with laws and regulations governing document retention and statutes of limitations respecting various legal actions, and consider industry practice, company needs and the company's capabilities with respect to document management. Document management starts with creation/receipt of documents, continues with retention and concludes with destruction, and policies should address each phase. As to the destruction phase, there needs to be flexibility so that appropriate judgments may be made respecting whether destruction is appropriate given known facts and circumstances.
- The integration of health care entities and the issues that may arise out of dealings between these entities is analogous to what we're seeing in the press as a result of integration of the banking, insurance and securities businesses. The pressure within these integrated financial services enterprises to compromise the standards of a particular business segment in order to maintain a client relationship or obtain new business for another business segment has drawn the attention of regulators, enforcement agencies and plaintiffs' attorneys. As a result the financial services sector is seeing another round of severe, adverse publicity, criminal sanctions and economic losses. The healthcare sector needs to follow these issues closely, and be proactive in eliminating similar conflicts. One need only reference Attorney General Mike Hatch's actions in the Allina-Medica matter as an example.
- Boards and Board committees will more frequently engage independent counsel and other advisors to assist them in the performance of their duties.

#### IV. WHAT CAN WE LEARN FROM WHAT IS TRANSPIRING?

- **Integrity is everything.** It is the root of stakeholder and public confidence in an organization. Organizational integrity starts at the top, i.e., the Board of Directors and senior management.
- **Boards must take more responsibility for compensation, perks and incentives.** Compensation plans for senior executives and other managers must be reviewed to assure improper behavior is not incentivized. Boards must realize that excessive director and executive compensation reflects poorly on their independence, integrity and judgment.
- **Boards must carefully assess actual and perceived conflicts of interest.** Conflicts of interest in general, but particularly involving directors, senior management and key advisors, must be carefully assessed, and independent advice sought where necessary. This was a major problem with several of the Enron special purpose entities. Like the compensation issues, unresolved or poorly resolved conflicts of interest reflect badly on Boards' independence, integrity and judgment.

- **Directors must pay close attention to their core duties: care, loyalty, compliance and oversight.**

- Care in every decision. Be informed. Directors shouldn't approve matters they don't understand. Real or perceived pressures shouldn't overshadow the duty to make an informed judgment.
- Loyalty. The interests of the organization always come first. Directors shouldn't use their position or the confidential information they gain for their or others' benefit. Boards must avoid being compromised by compensation or benefits which could actually, or be perceived in hindsight to, compromise their judgment.
- Compliance. Pay attention to the organization's governing documents, policies and agreements, and the laws and regulations to which the company is subject.

It is difficult to enforce a company's code of conduct and standards of legal compliance if the message of compliance doesn't start with the Board and senior management, both in terms of emphasis and conduct.

- Oversight. A Board's job isn't to manage; it's to vigorously oversee and evaluate management. The CEO reports to the Board, not the other way around. An adversarial relationship with management is counterproductive. Collaboration is essential. But personal relationships and compensation can't be allowed to obscure the need for vigilant oversight.

- **Boards must strive to understand risks, pay attention to warnings and confront problems promptly and forthrightly.** Policies and procedures for assessing and monitoring risks are essential, and directors must assure that they are in place and functioning well. Warnings need to be heeded and promptly investigated. Investigation means a thorough effort to obtain all relevant information, using independent resources where necessary to assure objectivity. History provides ample lessons of the disastrous consequences of cover-ups.

- **Transparency is good; obscuring reality is bad.** Transactions, schemes or practices which make it difficult for those who rely on the organization's financial information to clearly understand that information will be questioned. Boards are increasingly aware that if third parties' decisions are made based on potentially misleading omissions or information litigation and government investigations may ensue.

- **Monitor disclosures.** Boards are also increasingly aware of the organization's responsibility for accurate, complete disclosure to banks, creditors, insurance companies, regulatory authorities, donors and others who rely on or require the organization's business and financial information. Boards must be aware of the many ways in which the organization provides information, *e.g.*, public comments by management, management conduct, media interviews, press releases, websites, broadcast or directed email, regulatory agency filings and a multitude of forms and applications for other third parties.

- **Reputations take years to build; moments to lose.** For most organizations their reputations and goodwill are among their most valuable assets. Boards must be alert to individual and organizational conduct which compromises an organization's reputation for integrity and trustworthiness with its various stakeholders. As we've seen the consequences of a breach of trust can be brutal.
- **Good governance practices.** Good governance in actuality, not just in appearance. The Boards of many companies now in the news are populated with individuals who have excellent credentials. Usually the appropriate Board committees are in place. However, good governance is about organization, process and **EXECUTION**. And finally **EVALUATION** -- evaluation of management, principally the CEO, evaluation of the Board, and evaluation of directors.