

Presenting a live 90-minute webinar with interactive Q&A

Corporate Board Meeting Minutes, Agendas, and Other Written Records: Governance Best Practices

Safeguarding Directors Against Breach of Fiduciary Duty Claims With Effective Document Preparation and Retention Practices

THURSDAY, MAY 13, 2021

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Paul Marcela, President & Managing Director, **Governance Partners Group**, Alpharetta, GA

Mark J. Mihanovic, Partner, **McDermott Will & Emery**, Menlo Park, CA

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1.**

Tips for Optimal Quality

FOR LIVE EVENT ONLY

Sound Quality

If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, you may listen via the phone: dial **1-877-447-0294** and enter your **Conference ID and PIN** when prompted. Otherwise, please **send us a chat** or e-mail sound@straffordpub.com immediately so we can address the problem.

If you dialed in and have any difficulties during the call, press *0 for assistance.

Viewing Quality

To maximize your screen, press the 'Full Screen' symbol located on the bottom right of the slides. To exit full screen, press the Esc button.

Continuing Education Credits

FOR LIVE EVENT ONLY

In order for us to process your continuing education credit, you must confirm your participation in this webinar by completing and submitting the Attendance Affirmation/Evaluation after the webinar.

A link to the Attendance Affirmation/Evaluation will be in the thank you email that you will receive immediately following the program.

For additional information about continuing education, call us at 1-800-926-7926 ext. 2.

If you have not printed the conference materials for this program, please complete the following steps:

- Click on the link to the PDF of the slides for today's program, which is located to the right of the slides, just above the Q&A box.
- The PDF will open a separate tab/window. Print the slides by clicking on the printer icon.

McDermott
Will & Emery

Corporate Board Meeting Minutes, Agendas and other Written Records: Governance Best Practices

Director Fiduciary Duties and Board Minutes; Document Retention

May 13, 2021

Mark Mihanovic
mmihanovic@mwe.com

www.mwe.com

Boston Brussels Chicago Dallas Düsseldorf Frankfurt Houston London Los Angeles Miami Milan Munich New York Orange County Paris Rome Seoul Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

© 2017 McDermott Will & Emery. The following legal entities are collectively referred to as "McDermott Will & Emery," "McDermott" or "the Firm": McDermott Will & Emery LLP, McDermott Will & Emery AARPI, McDermott Will & Emery Belgium LLP, McDermott Will & Emery Rechtsanwälte Steuerberater LLP, McDermott Will & Emery Studio Legale Associato and McDermott Will & Emery UK LLP. These entities coordinate their activities through service agreements. This communication may be considered attorney advertising. Previous results are not a guarantee of future outcome.

- Role of Board of Directors
 - Manage business and affairs of corporation
 - Oversight of management and risk and compliance
 - Crisis management
 - COVID-19 pandemic
 - Strategic opportunities
- Basic fiduciary duties to corporation and its stockholders
 - Duty of loyalty
 - Duty to act solely for the benefit of the corporation and its stockholders when voting on a transaction or other business matter
 - Duty to act without self-interest (not expecting to derive personal benefit from transaction)

- Basic fiduciary duties to corporation and its stockholders (cont.)
 - Duty of loyalty (cont.)
 - Issue arises in context of (a) transaction proposed between (i) corporation and (ii) director or entity in which director has ownership interest, (b) prospect of employment with other party or (c) corporate opportunity

- Basic fiduciary duties to corporation and its stockholders (cont.)
 - Duty of care
 - Duty to act in informed and considered manner
 - Review of reasonably available material information
 - Amount of care which an ordinarily prudent person would use in similar circumstances
 - Reasonable reliance on reports and opinions of experts (including financial and legal advisors)

- Business judgment rule provides basic standard of review for duty of care
 - Presumption that directors are acting in good faith and that Board action taken is in the best interests of the corporation and its stockholders
 - Court will not substitute its own business judgement for that of Board of Directors if there is rational business purpose
 - Courts typically focus on process used in decision-making rather than substance of decision

- Business judgment rule provides basic standard of review for duty of care (cont.)
 - Applied to protect directors from liability for mistakes in judgement regarding action taken in good faith and with appropriate care
 - Applied to prevent stoppage of transactions due to questions of judgement
 - Presumption is rebuttable if third party can establish that the Board did not act in informed, careful manner (or breached duty of loyalty)

- Enhanced scrutiny standard of review
 - Certain situations in which business judgement rule will not apply and courts will take closer look at Board's actions for reasonableness
 - Employment of defensive techniques to block take-over proposal by outside party
 - Change-in-control transactions trigger Revlon duties

- Entire fairness standard of review, if business judgment rule presumption is rebutted
 - Burden of proof on Board to show transaction is entirely fair to corporation
 - Entire fairness encompasses procedural fairness/“fair dealing” (as well as substantive fairness/“fair price”)
 - Strictest standard of review of Board actions, granting no deference to Board’s judgement

- Interested party transactions
 - Business judgment rule does not apply where the transaction in question involves the self-interest of individual directors
 - Delaware law provides that contracts between the corporation and an interested director shall not be void or voidable, provided:
 - All material facts are known to the entire Board and the transaction is approved by a majority of the disinterested directors or
 - The transaction is fair to the corporation at the time it is approved by the directors

- Other considerations
 - State Corporate Law
 - Delaware General Corporation Law (Section 142)
 - California Corporations Code (Section 1500)
 - Corporate formalities/piercing of corporate veil
 - Subsidiary Board minutes
 - Bylaws, Board Committee Charters and Corporate Governance Guidelines
 - Sarbanes-Oxley
 - Emphasis on greater accountability and disclosure

- Other considerations (cont.)
 - Culture, circumstances and resources of company
 - Conflicts of interest
 - Discussions under attorney-client privilege
 - Executive sessions
 - Recording practices vary
 - Record of discussion of significant items
 - Utilization of Board Written Consents
 - Auditor review

- Other considerations (cont.)
 - Board minutes vs. drafts or notes
 - Board approval of draft minutes
 - Key Board Committees

- Implications for directors and their advisers
 - Directors should be informed and well-advised
 - Staying well-informed of developments in crises and rapidly changing situations (such as COVID-19 pandemic and geopolitical or other macro events impacting Company)
 - Regular attendance at Board meetings
 - Directors should be deliberative and ask questions
 - Courts look for objective evidence that directors made careful and educated decisions
 - Exercise reasonable diligence in gathering and considering all material information
 - Explore, understand and weigh alternative courses of conduct that may be available

- Implications for directors and their advisers (cont.)
 - Courts look for objective evidence that directors made careful and educated decisions (cont.)
 - Weigh benefits versus harm to corporation and its stockholders when considering specific courses of action
 - Obtain independent expert advice and understand experts' findings and bases therefor
 - Have reasonable basis for believing that information provided to Board is reliable
 - Review of relevant documentation (or adequate and accurate summaries thereof)
 - Take time to make informed decisions

- Implications for directors and their advisers (cont.)
 - Courts look for objective evidence that directors made careful and educated decisions (cont.)
 - Consistent recollection of deliberations and decisions by Board members and advisers
 - Importance of disclosure to Board regarding director's self-interest in transaction
 - Be aware that communications among directors are not privileged and are subject to discovery in litigation

- Purposes of Board minutes and how minutes can help
 - A primary purpose of corporate minutes is to preserve an accurate and official record of the proceedings of a Board or Board Committee meeting
 - Establish internal approvals and delegations of authority in Resolutions
 - Presentation of draft minutes for Board to approve
 - Importance of minutes for key Committees such as Audit, Compensation and Corporate Governance Committees
 - Compliance function
 - State Corporation law requirements
 - Securities Exchange Act of 1934, Sarbanes-Oxley, Stock Exchange requirements

- Purposes of Board minutes and how minutes can help (cont.)
 - Evidence of corporate action and compliance for third parties
 - Discoverable
 - Subject to third-party audit
 - Subject to stockholder demand to inspect books and records
 - Liability risk mitigation by reflecting satisfaction of business judgement rule elements
 - Reduced risks of stockholder lawsuits
 - Assume minutes will be obtained by Plaintiffs seeking to use minutes against corporation in litigation

- Purposes of Board minutes and how minutes can help (cont.)
 - Preservation of corporate veil by maintenance of Subsidiary minute books
 - Short-form vs. long-form
 - Length related to importance of Meeting Agenda
 - Not a transcript

- Purposes of Board minutes and how minutes can help (cont.)
 - Well-kept Board minutes
 - Serve as tangible record of Board meeting
 - Memorialize decisions of the Board
 - Indicate presence of Board members and quorum for actions
 - Indicate Board attention and deliberation regarding matters at level commensurate with importance of such matters
 - Document Board's consideration of crisis management steps, strategic opportunities
 - Indicate sufficient due diligence

- Purposes of Board minutes and how minutes can help (cont.)
 - Well-kept Board minutes (cont.)
 - Provide record of agreements and other documentation and information provided to Board (including in advance of Meeting) and considered by Board
 - Reflect appropriate reliance on outside counsel and other experts (identified by name)
 - Reflect disclosure of director interest in transaction
 - Address Business Judgement Rule considerations
 - Reflect director dissents and abstentions where appropriate
 - Offer guidance for future Board action and for next steps by management

- Purposes of Board minutes and how minutes can help (cont.)
 - Well-kept Board minutes (cont.)
 - Reduce misunderstandings as to intent of Board
 - Serve as source of contemporaneous evidence in regulatory or judicial proceedings
 - Protect attorney-client privilege
 - Can assist in supporting indemnification rights of directors
 - Enhanced credibility and streamlined third-party due diligence process in context of financing or partnership or M&A transaction
 - Can also be a factor in director recruitment and retention efforts

- Purposes of Board minutes and how minutes can help (cont.)
 - Heightened importance for change-in-control transactions
 - Inclusion of financial adviser's business and financial advice regarding selling strategies, price, viability of corporation's projections and prospects
 - Accurate and complete minutes allow Board to assess actions and possible errors (including in relation to inclusion or exclusion of bidders and evolution of financial assumptions used by management and financial adviser)
 - Identification of key factors (including advisers' input) considered by Board in decision-making

- Purposes of Board minutes and how minutes can help (cont.)
 - In Re Family Dollar Stores stockholder litigation
 - Board's decision not to negotiate with a topping bidder found reasonable by Delaware Chancery Court based partly on documentation of Board's process and documentation regarding advice received by Board from financial and legal advisers

- How inadequate Board minutes can hurt
 - Deny directors a potentially dispositive resource from which to defend conduct or explain full nature of Board decision
 - Plaintiffs and regulators will use sloppy or deficient Board minutes as evidence to bolster their arguments against corporation in stockholder or other litigation or regulatory proceedings
 - Courts give credence to contents of minutes
 - Cause confusion as to intent of Board or provide roadmap for plaintiffs or regulators by including confusing detail
 - Overly detailed minutes or identification of Board members taking specific positions or making specific comments potentially chill future provocative comments or difficult questions from Board members

- How inadequate Board minutes can hurt (cont.)
 - Levels of discussion detail disproportionate to importance of topics can be problematic
 - Cause issues or delays with corporation's auditors
 - Create concern or uncertainty in due diligence process with business or financial partners
 - Disney stockholder derivative litigation
 - Brevity of Compensation Committee minutes and inconsistency of minutes with subsequent recollection of participants played major role in Plaintiffs withstanding Motion to Dismiss and proceeding to long drawn-out litigation

- How inadequate Board minutes can hurt (cont.)
 - Netsmart Technologies case
 - Court critical of Defendant’s “tardy omnibus consideration of meeting minutes”
 - NYSE CEO compensation
 - New York AG fiduciary duty breach allegations largely based on close review of Board and Compensation Committee minutes
 - WorldCom bankruptcy
 - Bankruptcy Examiner criticism of Board and its inattentiveness concerning corporate affairs was based partly on review of corporate minutes and similar records

- How inadequate Board minutes can hurt (cont.)
 - Del Monte Foods case
 - Stockholders won injunction postponing sale of company due in large part to lack of any Board minutes detailing meaningful consideration of another high bidder
 - e-Smart Technologies case
 - Unsigned and non-current Board minutes used as evidence to show that company lacked internal controls and, thus, a grant of summary judgment for the SEC was warranted

■ Consent Agendas

- Consent Agendas bundle items not requiring or meriting independent discussion into one agenda item
 - Any and all documents comprising the Consent Agenda (such as routine reports and Board and Committee meeting minutes) are circulated to directors for review prior to Board meeting
 - The Consent Agenda item is voted on at Board meeting without discussion or debate
- Items on the Consent Agenda may be removed and placed back on the regular agenda for discussion during Board meeting

- Consent Agendas (cont.)

- Benefits of Consent Agenda

- Reduces time spent at Board meetings on redundant or routine agenda items
- Allows more time during Board meeting to be allotted to more controversial or significant agenda items

■ Consent Agendas (cont.)

– Dangers of Consent Agenda

- Potentially suppresses beneficial discussion of items within the Consent Agenda
- Documents circulated beforehand may not be thoroughly reviewed
- Requires that all directors fully understand the proper use of Consent Agendas
- Improper use of the Consent Agenda may result in an important action taken without the Board's informed consent

- Document Retention Policies
 - Creation and retention of Board meeting minutes subsequent to meetings
 - Should be clear and adhered to consistently
 - Typically includes Schedule charting how long different categories of documents must be kept
 - Corporate and administrative documents
 - Accounting and financial documents
 - Contracts
 - Litigation

- Document Retention Policies (cont.)
 - Typically includes Schedule charting how long different categories of documents must be kept (cont.)
 - Tax
 - Employment/Human Resources
 - Public relations
 - Applicable federal regulations and (varying) State and local laws can dictate retention time periods

- Document Retention Policies (cont.)
 - Regulatory landscape applicable to entity
 - Publicly-traded companies
 - Industry
 - Cost of storage

■ E-Mail Retention Policies

- Either included in general Document Retention Policy or separate policy dove-tailing off general Document Retention Policy
- Retention of an e-mail should generally align with retention of documents covering same substance as the e-mail
 - Volume and nature of e-mails sometimes make them difficult to categorize to match general Document Retention Policy
 - Training of employees to move e-mails into proper folders for appropriate categorization or functional software programs should be implemented
 - Technology alternatives
 - Systematic e-mails deletion program

- E-Mail Retention Policies (cont.)
 - Same legal and regulatory requirements as applicable to documents generally
 - In litigation context, resources spent in (and costs of) producing e-mails for Discovery will be impacted by the volume and organization of retained e-mails
 - Data storage costs

■ Best practices

- Certain records should be kept indefinitely
 - Organizational documents (such as Charter and Bylaws) with Amendments
 - Copyright, Trademark and Patent registrations
 - Financial statements
 - Certain State and local filings
 - Insurance policies (Auto, General Liability and Umbrella Policies)
- Records with limited value should be kept for lesser (consistently applied) periods of time (subject to legal retention requirements)
- Records with little or no long-term value should be kept until no longer needed for reference

- Best practices (cont.)
 - HIPAA compliance
 - Corporate Minute Books
 - Bylaws provisions
 - Should be covered by Document Retention Policy
 - Directors should be informed (and periodically reminded) of Document Retention Policy
 - Notes of directors and other attendees and drafts of Board minutes
 - Retained permanently

GOVERNANCE PARTNERS GROUP, LLC

Corporate Board Meeting Minutes

Best Practices for Board of Directors Meetings

CORPORATE GOVERNANCE ENERGIZED!

www.governancepg.com

GOVERNANCE PARTNERS GROUP

TOPICS COVERED

- PURPOSES
- REQUIRED ELEMENTS
- FORM/STYLE
- PROTECTING ATTORNEY-CLIENT PRIVILEGE
- EXECUTIVE SESSIONS
- DRAFT AND REVIEW PROCESS
- REVIEW BY AUDITORS AND REGULATORS
- DESTRUCTION OF DRAFT MINUTES AND DIRECTORS' NOTES AND COPIES
- LIMITING OR ALLOWING ACCESS/COPIES
- METHODS TO STORE AND PRESERVE MINUTES

GOVERNANCE PARTNERS GROUP

PURPOSES

CORPORATE RECORD FUNCTION

- Official historical record of Board discussions and actions
- Presumption that content is accurate
- Establish internal approvals and delegations of authority

DOCUMENTATION OF CORPORATE ACTION FOR THIRD PARTIES

- Discoverable – subject to shareholder demand to inspect books and records
- Subject to review by external auditors and other third parties

GOVERNANCE PARTNERS GROUP

LIABILITY RISK MITIGATION

- Presume that plaintiffs will seek to use minutes in litigation via a shareholders records inspection demand or other discovery request
- Minutes serve as a record that the Board exercised diligence relative to performance of its fiduciary duties and compliance with the business judgment rule
- Minutes demonstrate that the Board properly relied on reports by management and relevant experts
- Minutes document abstentions, dissents and conflicts

GOVERNANCE PARTNERS GROUP

COMPLIANCE FUNCTION

- Minutes are often required by state corporate law
- If a private company goes public, minutes serve to document compliance with public company legal requirements such as:
 - Securities Exchange Act of 1934
 - Sarbanes-Oxley Act
 - Stock Exchange Listing Requirements

GOVERNANCE PARTNERS GROUP

REQUIRED ELEMENTS

- Date, time and location
- Type of meeting
- Attendance
- Procedure for presentations and resolution consideration
- Use of consent agenda
- Documentation of Board discussion and deliberation
- Documentation of Board decisions made and actions taken
- Consideration of follow-up action items
- Documentation of Executive Sessions

GOVERNANCE PARTNERS GROUP

FORM/STYLE: DECIDING ON CONTENT

- The Corporate Secretary has the responsibility for deciding:
 - The aspects of the Board's discussion that should be reflected
 - How the Board's discussions and decisions will be described
 - The appropriate level of detail to be included
- The Chair and other Directors may influence style and content

GOVERNANCE PARTNERS GROUP

CONTROL OF CONTENT

- The Corporate Secretary should keep the level of detail “appropriate” for each particular agenda item
 - Detail should increase with perceived significance or degree of risk
 - Routine items can be recorded with less detail

GOVERNANCE PARTNERS GROUP

CONTROL OF CONTENT

- The Corporate Secretary should use care in referring to and incorporating materials by reference
 - Materials that are “incorporated by reference” in the minutes effectively become part of the minutes
 - Avoid ambiguous phrases such as “approved as requested”

GOVERNANCE PARTNERS GROUP

HANDLING DIRECTOR CONFLICTS OF INTEREST

- When a Director has a conflict of interest on a particular issue under discussion by the Board, the minutes:
 - Do not need to describe the nature of the conflict
 - Should reflect that the director identified that he or she had a potential conflict of interest, abstained from voting on the issue and/or left the meeting while the discussion of the issue took place

GOVERNANCE PARTNERS GROUP

HANDLING DISSENTS

- Dissents are generally rare – most items are approved unanimously
- When there are dissents, the dissenters may insist that the minutes note their names and the fact that they dissented
- The minutes do not need to describe the reasons for the dissent

GOVERNANCE PARTNERS GROUP

FORM OF MINUTES – SHORT FORM

- ADVANTAGES
 - Less risk of misinterpretation in litigation
 - More direct record of actions taken
 - Shorter to draft and read
 - Less revealing to third parties

GOVERNANCE PARTNERS GROUP

FORM OF MINUTES – SHORT FORM

- DISADVANTAGES
 - Does not explain basis for actions taken by the Board
 - Less detailed record of Directors' exercise of diligence related to the performance of their fiduciary duties and compliance with the business judgment rule
 - May not demonstrate that key elements are included

GOVERNANCE PARTNERS GROUP

FORM OF MINUTES – LONG FORM

ADVANTAGES

- More detailed record of Directors' care and diligence
- More detailed description of quality of deliberations and decisions
- More detailed record of management's recommendations and support of Directors' actions
- More detailed historical record for future reference
- Less risk of omitting key points discussed and decisions made

GOVERNANCE PARTNERS GROUP

FORM OF MINUTES – LONG FORM

- DISADVANTAGES
 - Greater opportunity for misinterpretation of unnecessary detailed included
 - Greater risk that extraneous information will be included
 - Less concise

GOVERNANCE PARTNERS GROUP

FORM OF MINUTES - RECOMMENDATION

- ADOPT A HYBRID BETWEEN SHORT FORM AND LONG FORM
 - Use short form for routine matters
 - Use long form for matters that are relatively significant or risky and therefore warrant additional details
- MINUTES SHOULD NEITHER BE A TEMPLATE OR PRO-FORMA DOCUMENT NOR A TRANSCRIPT
 - They should not contain too much detail but not too little detail either
 - Preparing appropriate minutes is a professional art form

GOVERNANCE PARTNERS GROUP

CONSISTENCY

- **FORMAT AND STYLE SHOULD BE THE SAME FOR ALL MEETINGS OF THE BOARD AND ALL COMMITTEES**
 - Avoids having to explain variations of wording, content or level of detail among similar situations
 - Consistent agenda and minute format and style is less confusing to Directors
 - Requires coordination if different individuals act as the Secretary at various meetings

GOVERNANCE PARTNERS GROUP

STYLE SUGGESTIONS

- USE “BUSINESS FRIENDLY” ENGLISH, NOT “LEGALESE”
- CREATE A NEUTRAL RECORD OF BOARD AND COMMITTEE DECISION-MAKING
- BE ACCURATE AND CLEAR
- DEFINE ACRONYMS AND AND USE THEM CONSISTENTLY
- USE THOUGHTFUL, CLEAR AND CONSISTENT WORDING

GOVERNANCE PARTNERS GROUP

STYLE SUGGESTIONS

- DO NOT TRY TO BE ENTERTAINING
- DO NOT USE COMPANY OR INDUSTRY JARGON
- DO NOT USE UNNECESSARY ADJECTIVES OR QUALIFIERS
- DO NOT ADD COMMENTARY OR VALUE JUDGMENTS

GOVERNANCE PARTNERS GROUP

PROTECTING ATTORNEY-CLIENT PRIVILEGE

- Note in the minutes all portions of meetings where attorney-client privileged information is discussed
- Note that those discussions occurred in the presence of legal counsel – identify the attorney by name and which parties they represent
- Do not include a discussion of the substance of legal advice
- Consider whether to separate privileged portion of the minutes in a separate confidential document

GOVERNANCE PARTNERS GROUP

EXECUTIVE SESSIONS

- The minutes should reflect that an executive session was held and who was present
- The substance of the discussion that took place should not be included - care should be taken to ensure that the topics discussed are only described generally if at all
- If directors insist that the minutes record the substance of the discussion, the minutes should be taken by the Lead Director or someone identified to assume that role – the Corporate Secretary should not attend Executive Sessions

GOVERNANCE PARTNERS GROUP

DRAFT AND REVIEW PROCESS – REFLECTING DECISIONS

- It is advisable to note that a decision was reached even if no formal action was approved or a vote was not taken
- It is important to reflect decisions made by the Board and the basis for those decisions
- Informal approvals may be reflected in the minutes by using wording such as:
 - The directors concurred with management's recommendations
 - The directors indicated their support for a proposal

GOVERNANCE PARTNERS GROUP

PROCESS – OUTLINING THE MINUTES

- Standing Agendas
 - Use Charters as a guide for recurring agenda topics
 - Ensure that regulatory items are covered
- Meeting agenda
 - Description
 - Note if approval item
 - Presenter
 - Materials

GOVERNANCE PARTNERS GROUP

RESOLUTIONS

- Resolutions constitute the official approvals of the Board
- Detailed resolutions should be given to Directors in advance of the meeting at which they will be considered
- If permitted by state law and bylaws:
 - Resolutions may be approved using a unanimous written consent in lieu of a meeting
 - Consents may be delivered electronically
- Minutes do not need to reflect the names of Directors making motions and seconds

GOVERNANCE PARTNERS GROUP

CIRCUMSTANCES REQUIRING RESOLUTION

- Not all Board actions require a resolution
- Resolutions are typically used when:
 - They are required by state law or the articles or bylaws
 - The Company needs to furnish evidence of formal corporate action to a third party (e.g. bank or transaction counterparty)
 - The Company needs to demonstrate the formal establishment of authority and delegation of responsibilities

GOVERNANCE PARTNERS GROUP

CIRCUMSTANCES REQUIRING A RESOLUTION

- The Board is going to elect the corporation's officers
- The Board is going to declare a dividend
- The Board is going to authorize a transaction that exceeds management's pre-established authority limits
- The articles of incorporation or the bylaws are going to be amended

GOVERNANCE PARTNERS GROUP

DRAFTING RESOLUTIONS

- Resolutions can be complicated in nature and should be:
 - Carefully drafted in advance by the Corporate Secretary or other corporate governance professionals
 - Reviewed in advance by the Chairperson, CEO, CFO and General Counsel and potentially third parties that may be requiring a particular resolution
 - Drafted in a straight forward manner with the use of “business friendly” language
- Preambles and recitals can help explain the context and basis for resolutions, but they are not necessary

GOVERNANCE PARTNERS GROUP

PROCESS OF PREPARING MINUTES

- Minutes should not be transcripts of the meetings
- Meetings should not be audio or video taped
- Only the Corporate Secretary should be taking the minutes
- The Corporate Secretary should keep separate notes to keep track of post meeting follow-up items
- The Corporate Secretary should be careful to ensure that the finalized minutes constitute the only record of the meetings

GOVERNANCE PARTNERS GROUP

REVIEWING DRAFT MINUTES

- A draft of the minutes should be prepared by the Corporate Secretary immediately after the meeting and it should be clearly marked as “DRAFT”
- The Corporate Secretary should circulate draft minutes for review by:
 - Chair of the Board and relevant Committee Chairs
 - CEO, CFO and General Counsel
 - Presenters and other attendees (but only relevant portions)
 - Relevant internal and external experts who presented at the meeting (but only relevant portions)

GOVERNANCE PARTNERS GROUP

APPROVAL OF MINUTES

- Send to Directors for review
 - It is good practice to circulate committee minutes to all Directors
 - Keep a record of proposed changes and comments
- Approve the minutes at the next regular meeting of the Board
- The Corporate Secretary should sign the final version of the minutes after approval
- Post approval corrections can be made by the Corporate Secretary if minor, technical or ministerial
- Significant changes should be approved by the Board or the relevant Committee

GOVERNANCE PARTNERS GROUP

AUDITOR AND REGULATOR REVIEW OF MINUTES

- Auditors review minutes regularly in connection with financial statement audits and reviews
- Regulators occasionally review minutes as part of audits or investigations
- Auditors and regulators are customarily allowed to review approved minutes but usually not to copy them

GOVERNANCE PARTNERS GROUP

DESTRUCTION OF DRAFT MINUTES

- All notes and drafts (including electronic versions) should be promptly destroyed upon approval and signature of final minutes
- Destruction and retention must be consistent with the company's document retention and destruction policy
- Pending litigation or government investigations may limit ability to destroy notes and drafts
- Follow a consistent procedure and use care to ensure that all electronic copies are deleted and overwritten on hard drives
- Consider use of Board portals

GOVERNANCE PARTNERS GROUP

DIRECTORS' NOTES AND COPIES

- Immediately after a Board meeting, collect all hard copy documents that were distributed to the Directors for the meeting, (including board book contents) and destroy them
- Use of board portals by Directors makes this process very efficient and effective
 - Documents are distributed to Directors via portals
 - Directors review and make notes electronically via the portals
 - Board portal content can be wiped clean within a specified amount of time following a meeting

GOVERNANCE PARTNERS GROUP

LIMITING OR ALLOWING ACCESS TO MINUTES

- Directors can always have access to meeting minutes – they can be archived on a Board portal
- Executive officers can be granted access to meeting minutes by the CEO, CFO or General Counsel
- Legal Department employees can have access to minutes if applicable to specific legal counseling projects
- External Auditors and Internal Audit Department can be allowed to review but not copy minutes

GOVERNANCE PARTNERS GROUP

METHODS TO STORE AND PRESERVE MINUTES

- Once the minutes are signed, the Corporate Secretary should file the final minutes and related materials in the corporate minute book (hard copy and/or electronic)
- Minutes and documents incorporated by reference should be filed in the corporate minute book
- Supporting materials should be filed separately
- Companies are increasingly keeping final documents in electronic form in a secure intranet or extranet site.
- Paper records should be kept in fire-proof and water-proof facilities
- Electronic and paper back-up copies should be kept at a separate site

GOVERNANCE PARTNERS GROUP

KEY POINTERS

- Organize the minutes before the meeting starts
- Anticipate and coordinate meeting procedures
- Control unofficial meeting notes
- Draft and finalize minutes promptly
- Retain final versions of minutes securely
- Comply with the Company's document retention policy

GOVERNANCE PARTNERS GROUP

Paul Marcela
President

770-815-4445

paul.marcela@governancepg.com

www.governancepg.com

Corporate Governance Energized!