Lead Director Network ViewPoints

Issue 4 July 24, 2009

The board's role in risk management

Introduction

The fourth meeting of the Lead Director Network (LDN)[1] was held in New York City on July 8, 2009. Members discussed company risk management practices and board risk oversight duties, including the role of the lead director.

The lead directors who participated in the meeting included:

- Frank Blount, Presiding Director at Caterpillar and Lead Director at KBR
- Peter Browning, Lead Director at Nucor and The Phoenix Companies
- Ray Gilmartin, Lead Director at Microsoft and Presiding Director at General Mills
- Dick Goldstein, Presiding Director at Interpublic Group
- Bonnie Hill, Lead Director at The Home Depot
- Karen Horn, Presiding Director at Eli Lilly
- Phil Humann, Presiding Director at Coca-Cola Enterprises
- Linda Fayne Levinson, Presiding Director at Jacobs Engineering Group and Lead Director at NCR
- Jack O'Brien, Lead Director at TJX Companies and Non-Executive Chairman at Cabot
- Stephanie Shern, Presiding Director at GameStop
- Mike Sullivan, Lead Director at Constellation Energy Group

King & Spalding partners participating in the meeting were:

- J. Kelley, Partner, Corporate Practice Group
- Chris Wray, Partner, Chair Special Matters and Government Investigations Group

ViewPoints reflects the network's use of a modified version of the Chatham House Rule, whereby names of members and their company affiliations are a matter of public record, but comments made before, during, and after meetings are not attributed to individuals or their companies. Members' comments at the meeting are shown in italics.

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[1] The LDN brings together a select group of lead directors, presiding directors, and non-executive chairs from Fortune 500 companies for private, candid discussions about ways to improve board governance. For the purposes of this network, the term *lead director* is used to refer to all three titles – lead director, presiding director, and non-executive chairman – except where otherwise stated.

Executive summary

Taking measured and informed risks is an element of any company's strategy. Indeed, as one member said in a previous meeting, "The lead director's role is being sure that in the strategic discussions, risk is an important part of the discussion."[2] At the same time, the financial and economic crisis has led institutional investors, regulators, and the public to scrutinize boards' risk oversight more closely. In this context, LDN members continue to seek the best approaches to risk management and oversight.

- **Company approaches to risk management** *(Page 3)*

  LDN members generally see room for improvement in the way companies approach risk management. They are increasingly focused on identifying and mitigating strategic risks, including unexpected "black-swan" risks that can threaten the company's survival.[3] Members said that most companies' enterprise risk management (ERM) systems, while perhaps excessive in their detail, add some value through their analytical rigor. However, members said the risks that can threaten the existence of their companies are often broader than those identified by their ERM processes. Also, members desire better and greater codification of strategic thinking about risk than is currently taking place, especially as the Securities and Exchange Commission (SEC) is likely to require additional disclosure relating to a company's overall compensation policies and their impact on risk taking, as well as the board's role in the risk management process.

- **Board approaches to risk management** *(Page 5)*

  The Sarbanes-Oxley Act compelled boards to focus on compliance, and now the financial crisis is pushing them to a greater focus on strategic risks. Members believe that the vast scope and strategic nature of risk requires the full board's active oversight. They said boards can add value by establishing and nurturing a culture of risk management, by challenging management to look more deeply into specific issues, by asking probing questions, and by keeping risk "top of mind" at the board level. Board committees can play key roles by taking targeted "deep dives" into specific risk issues. Members are also forming special subcommittees to drill down further into more specific or unique risks, including technology and litigation risks.

- **The lead director's role in risk management** *(Page 8)*

  Members said that the lead director can play an important role in focusing the board on critical risk matters. Lead directors can prod management to provide more detail on specific issues, probe specific transaction decisions, and provide leadership on issues when there is dissension within the board. Lead directors can also have important inputs into their companies' approaches to risk by focusing on board composition and guiding leadership succession.

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[2] Lead Director Network, "The board's role in corporate strategy," *ViewPoints*, November 24, 2008, 8. Available at http://www.tapestrynetworks.com/documents/Tapestry_KS_LDN_Nov08_View2.pdf.

[3] "Black-swan" risks are high-impact, hard-to-predict and seemingly rare events. The term was coined by Nassim Nicholas Taleb, a hedge fund manager, in his 2007 book *The Black Swan* (New York: Random House, 2007).

- **Open session on corporate governance legislation and SEC proposals** *(Page 9)*

  During an open session, members discussed recent legislative and SEC proposals that may have an impact on their companies and boards. Some members fear that perhaps *"the biggest systemic risk is now Congress."* Specifically, members worried that shareholder proxy access and proxy disclosure mandates will significantly disrupt the way companies do business by distracting boards from their most important duties *"in what feels like a rush to re-regulate."*

Company approaches to risk management

Members, who tend to sit on multiple boards and have many years of board experience as both directors and executives, said that the financial crisis and other events have pushed companies to think about risk in broader terms, to elevate risk management in their corporate cultures, and, in some cases, to make changes to their risk management approaches. Members believe that typical ERM processes alone are insufficient to fully identify and mitigate risk. Ideally, companies should combine increased analytical rigor, greater strategic insight and intuition, and a board culture of challenging management to determine the right risk-reward balance.

Defining risk

LDN members point out that the board's role in risk management is determined primarily by how the individual company approaches risk. These approaches vary widely by industry sector, company size and complexity, the nature of the company's product and service risk exposure, macro-environmental conditions, and other factors. In its broadest definition, risk encompasses the degree of uncertainty between expected and actual outcomes.[4] For working purposes, risk was defined in the meeting as the potential for failure, significant loss, or reduced opportunity for gain.

Expanding risk management considerations

Members expressed concern about companies concentrating too heavily on financial and accounting risks without adequately taking into account the wide range of other risks that can impact them. In the meeting, members said companies were now considering a wider variety of risks. One member described the diversity of risks now under consideration as follows: *"Financial and accounting risk, capital deployment risk, operational risk, compensation risk, liquidity risk, market risk, litigation risk, regulatory risk, reputation risk, transaction risk, natural-disaster risk, customer risk, and technology risk."*

One member said the financial crisis has encouraged companies to return to the basics of risk management: *"Prior to the financial crisis, no one could get their heads around this, a 50% drop [in the stock market]. The financial crisis [has] really caused companies to spend more time on fundamentals. Now, risk discussions are much more thoughtful, and we have started to go back to principles, like liquidity and working capital risk, and basic business model risk."* Another member agreed, stressing that companies are now balancing complex analytical models with reviews of higher-level strategic risk: *"We have always had a fairly robust enterprise risk management process, but we now look at risks in other, less analytical ways."*

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[4] Millstein Center for Corporate Governance and Performance, "Pay, Risk, and Stewardship: Private Sector Architecture for Future Capital Markets," policy briefing no. 5, June 2009, 6. Available at http://millstein.som.yale.edu/Policy%20Briefing%20No%205.pdf.

One member, however, was skeptical about the new focus on risk management, pointing out that risk is always taken into consideration as a part of decision making and that to be effective, risk management must be considered in the context of overall decision making: *"I think there is a danger of over-thinking risk, or considering it in isolation. Risk has become the new buzzword. All the issues brought to the board on a regular basis have risk involved."*

Risk management processes

Members are seeking ways to organize their risk management processes. In light of SEC proposals to increase the level of disclosure about risk,[5] one member asked, *"How do we codify what we are doing so it is explainable?"*

Members noted that some companies have implemented new risk management processes and procedures. One member pointed to a company that is completely overhauling its risk management procedures. *"We have a full-scale project under way. We hired an outside consultant to come in and help with the process. They have gone through the motions of identifying all the key risks and then doing internal surveys to help get a broad view of the risk profile and where the gaps might be."* Another company is taking a similar approach: *"Companies that have been exposed to 'black-swan' risks are taking a much more formal approach. We brought in a corporate risk manager who identified about 300 risks initially and then got it down to about 40 or so and developed mitigation strategies for all of them."*

However, one member warned that believing that you are equipped to handle most risks can give you *"a false sense of security … You might get 299 [risks], but it's that [other] one that will take down the company."*

Indeed, despite improvements to risk management procedures, members said that managing risk is by nature an inexact science. One member noted, *"I don't think anyone could have predicted that the financial crisis could have happened [to the degree that it occurred]. What caused it was something everyone knew was risky. It didn't take any comprehensive process to see that securitization of subprime lending wouldn't work. What we didn't realize [was] the magnitude of the failure."* Another member agreed: *"The attitude for us was that it would impact some of our business, but not the whole. The interconnectivity was not seen."*

Embedding risk management in the corporate culture

One study on creating a risk management culture suggested that operational risk "can only be fully addressed if it is communicated throughout the organisation, with each employee understanding their impact on risk taking, their responsibility for acting within acceptable limits, and their ultimate accountability. Conversely, it will not work if left exclusively to the treasurer or risk manager, for example."[6] Indeed, a recent Ernst & Young survey on risk management found that "60% of corporate executives indicated that they believe an integrated approach remains a key factor for successful risk

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[5] Securities and Exchange Commission, "SEC Proposes Measures to Improve Corporate Governance and Enhance Investor Confidence," press release, July 1, 2009. Available at http://www.sec.gov/news/press/2009/2009-147.htm.

[6] Claire Spencer, "Creating a Successful Risk Management Culture," *Financier Worldwide,* March 2009. Available at http://www.financierworldwide.com/article.php?search&id=3464.

management. Even with the additional risk management investments most companies have made in recent years, 42% of the companies that responded believe they have risks that are not being formally managed."[7]

One member stressed the influence that corporate culture has on risk management: *"The crisis wasn't a failure of process, but it was cultural. No one wanted to get off the gravy train."* Members suggested that the board could help elevate risk management in the company by making it a fixture in the boardroom. *"If you've got the right people on the board, who have good intuition about risk, you can help build a company-wide risk management process that you can be comfortable with."*

Board approaches to risk management

The board's responsibility for overseeing risk management is derived primarily from three sources – state courts' considerations of directors' fiduciary duties, stock exchange listing requirements, and the Sarbanes-Oxley Act. The Delaware courts (through a series of decisions relating to fiduciary duties of directors) have outlined a framework in which a board's oversight of a company's risk management practices will be reviewed by the courts.[8] Participants in the meeting stressed that boards should establish risk management processes well above the minimum standards required by the courts, not only to avoid the reputation risk and opportunity costs that may arise in a shareholder lawsuit, but because good risk management is essential to long-term value creation. However, King & Spalding partners present at the meeting also warned about the litigation risk of formally setting a higher-than-necessary bar and then failing to meet it.

In addition to the standards established by the courts, the New York Stock Exchange's (NYSE) listing requirements adopted in 2002 also address risk: the audit committees of listed companies must assume specific responsibility for oversight of their companies' risk management practices.[9] This development encouraged boards to take a more active role in risk oversight from a compliance perspective. More recently, however, the financial crisis has made it apparent that boards must be more committed to ensuring that their companies' risk management processes are aligned with their approved strategies and that management has in place the procedures needed to manage those risks. In addition, the Sarbanes-Oxley Act of 2002 imposes several requirements on companies and boards – such as the maintenance of financial and disclosure controls and the certification of quarterly and annual financial statements – that, although not expressed in terms of a board's risk oversight duties, involve issues associated with risk management.[10]

Members confronted the dual reality of risk management: on the one hand, the board has always provided oversight of company risk; this is a fundamental and enduring responsibility of the board. On the other, the expectations of the public and of shareholders now seem to demand more comprehensive oversight. One member observed, *"What changed the dialogue about risk was the NYSE listing requirements that*

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[7] Ernst & Young, The Future of Risk Management and Internal Control (Ernst & Young, 2008), 1. Available at http://www.ey.com/Publication/vwLUAssets/Assurance_The_future_of_risk_management_and_internal_control/$FILE/FutureRiskMgmntInternalControl.pdf.

[8] For more information, see Court of Chancery of Delaware, "In re Caremark International Inc. Derivative Litigation," September 25, 1996. Available at http://corporatecompliance.org/Content/NavigationMenu/Resources/ComplianceBasics/caremarkDecision.pdf.

[9] The audit committee's responsibility for risk is outlined in New York Stock Exchange, *Final NYSE Corporate Governance Rules* (New York: NYSE Euronext, 2009), 303A.07(c)(iii)(D). Available at http://www.nyse.com/pdfs/finalcorpgovrules.pdf.

[10] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 15 U.S.C.).

forced every board to say, 'What does that mean?' Now, we almost lose the banking system, and everyone is talking about risk in a different way – what does all this mean?"

Recommendations from LDN members

Members suggest several ways for boards to improve risk management in their companies:

- **Asking the right questions.** In a previous LDN meeting, members said fearlessness in the face of management is one of the most important attributes of a successful lead director.[11] This trait is especially important for a lead director's oversight of risk management. One member pointed out that *"as a director, you have to have the intestinal fortitude to challenge management. Think of what would have been said about you if you were a dissenter during the tech boom … [And] if you were on a bank board in the last few years and were telling them to be conservative, you would have been laughed at."*
- **Selectively engaging outside experts.** There will be situations in which specialists can help address important risks. *"We challenged management about the impact of technology on the business. [The] management team took on this challenge, and for the next nine months, spent considerable time with our business partners to find out where the technology was going."*
- **Confronting the possibility of black-swan events.** Generally, members said the financial crisis has driven home the danger of black-swan risks, prompting boards to challenge management in this space. *"At a strategic retreat recently, we asked management to bear down on a potential black-swan event. On one particular risk, we wanted to know, 'What are six to eight options if this comes to fruition?'"*
- **Ensuring the right board composition.** Members stressed that effective boards require engaged directors with the confidence to challenge management, but the wisdom to trust when management is right. This is especially pertinent to the board's risk management function. One member said, *"A couple of years ago, a banker on our board told management that the financial markets were going to melt down. Even though [demand was high for one of our products], we stopped development, and six months later, that demand just dropped off."* Another added, *"One of the greatest risks is not having the right directors. When you have someone on the board without a clue, you are in trouble."*
- **Elevating risk oversight in the boardroom.** One member cited an instance in which risk, while considered by board committees, was not being thoroughly addressed by the full board: *"If you asked directors to describe their roles, I guarantee none of them would mention risk. We have a real challenge to do better."*

Risk oversight allocation

A 2008 National Association of Corporate Directors survey found that "67 percent of companies assign the majority of risk-related tasks to the audit committee."[12] In pre-meeting conversations, however, members said the audit and risk committees take responsibility for overseeing financial risks, but the full board is

[11] Lead Director Network, "The role and value of the lead director," *ViewPoints*, July 30, 2008, 8. Available at http://www.kslaw.com/library/pdf/LDN_ViewPoints_1.pdf.

[12] National Association of Corporate Directors, *Restoring Confidence in Corporate Governance: Directors Leading Change* (Washington, DC: National Association of Corporate Directors), 3.

more equipped to oversee the company's entire risk portfolio. One member said before the meeting, "The audit committee looks at financial variety risk, but the real risks are the ones that come out of left field … I strongly believe that risk is a full-board responsibility, and not a committee responsibility." Another said the audit committee is "a backward-looking institution," and risk oversight demands creative, forward-looking thought processes.

At the meeting, members insisted that full boards should take responsibility for risk oversight, as audit and risk committees are often already overburdened with financial risks. *"Boards have to consider such a wide variety of risks, and sometimes risk is just too narrowly defined by the audit committee. The whole board needs involvement."* Nevertheless, members add that audit, risk, and governance committees add value by initiating targeted, detailed analysis of specific issues. At one company, management seemed to be ignoring a particular strategic risk, but *"the governance committee… forced them to do a deep dive,"* preventing an investment that would have had significant adverse effects on the company's balance sheet.

Some companies have established special committees that are unique to their companies' risk profiles. Examples of such committees in companies on whose boards LDN members sit include a Public Policy and Compliance Committee, a Science and Technology Committee, a Health, Safety and Environment Committee, and a Public Responsibility Committee. In addition, some members' companies have established subcommittees that devote, in one committee's case, *"all of their time"* to very specific risks that can disrupt or destroy the franchise. Though not labeled as "risk management" committees, each of these committees focuses on specific types of risks facing the company. However, while many companies have succeeded in assigning risk oversight responsibilities to committees, allocation remains a fluid process: *"At my company, we are constantly talking about who is responsible for what risk."*

Emerging boardroom best practices in risk oversight

- Use the risk factors in the 10-K: *"We started using the 10-K to say, 'To what extent have we discussed these risks? Is there anything we left out?' You try to figure out everything that could go wrong with a company, and you use the 10-K as a template for discussion."*
- Conduct individual, iterative conversations: *"I have found that connecting with directors offline has been helpful, because a lot of times people are afraid to bring something up in the boardroom."*
- Think about risk heat maps differently:[13] *"If you go into these heat map discussions, everyone wants to talk about the yellows or the reds, but no one wants to talk about the greens. We should ask, 'Why is this green?' Because green can turn to red real quick."*
- Listen to analysts: *"Sitting in on earnings calls is very helpful. You need to know how your company is perceived by Wall Street. What do analysts think about the company risks?"*

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[13] Heat maps are graphs that map the probability of risks and their potential impact, using colors (often red, yellow, and green) to distinguish between the severity of the risks.

The lead director's role in risk management

Members said the lead director was just *"one equal around the table."* Nonetheless, members said the lead director has a valuable role to play in risk management. The lead director facilitates open communication among directors, ensuring that all voices are heard, and encourages debate. The lead director acts as a conduit, transmitting the directors' views to the CEO and management. The lead director also plays a role in leadership development and succession planning.

Facilitating open communication and encouraging dissent

One member said, *"The lead director is a facilitator. The lead director tries to make people with good ideas functional."* This includes directors with opinions that differ from the prevailing view in the boardroom: *"The lead director makes sure that directors with divergent views get heard, and that all ideas are being considered."* One member stressed the importance of drawing out divergent views: *"During big acquisitions, do we ask whether it makes sense at the start of the negotiations? Otherwise, you'll be sitting in the room with the lawyers and investment bankers for hours, and a bad deal will be done before you can raise a question."*

One member noted after the meeting that the lead director can challenge each board committee to dig deeper into the specific risk issues that the committee covers. This not only helps the board better identify, assess, and manage risk, but also improves board-wide collaboration: "I am in all of the committee meetings, and I work closely with the chairs on issues in the [committee] charters that they are dealing with on a regular basis. I can inject issues into the committee agendas."

Members said lead directors utilize several forums to make sure all views have a platform. Some prefer to talk to individual directors offline, while others prefer the executive session: *"The executive session provides the best opportunity to bring out a view that is at variance with the rest of the group."* One member added, however, that if a director with an agenda of questionable value is constantly demanding attention, it is the lead director's responsibility to make sure that person stops wasting the board's time.

Acting as a conduit between the board and management

The lead director can also act as a conduit between the board and management. One member commented, *"In my experience, the lead director can be most helpful in prodding management through a discussion with the CEO to take a deeper dive on a specific issue."* Whatever the venue or method, members said the key outcome of the lead director's involvement was gaining management's attention. One member said, for instance, that, management should not seek to "defeat" or outwit a question raised by a board member. Rather, management should seek to understand *"what they can get from the question … management can defeat directors every time, but the key is to understand what [it is] that the director is really worried about."*

Guiding leadership development and succession planning

Members noted that succession planning is a critical board duty and an important aspect of risk management: *"The most important thing is, do you have the right person in the corner office?"* Another member said, *"Any of us is only as good as the CEO."* A third added, *"You need a long-term successor. Without the right CEO, the board is at a huge disadvantage. Succession planning just isn't emphasized*

enough." Members noted that there is an opportunity for the lead director to play an important role in succession planning: *"The lead director adds the most value … in picking the right CEO."* The stakes are high. As one member commented, *"If you choose the wrong manager, that's where the possibility of enhanced risk comes in."*

Open session on corporate governance legislation and SEC proposals

In light of the depth of the financial and economic crisis, there has been a groundswell of opinion in political and activist investor circles that major changes in corporate governance should be implemented. The International Corporate Governance Network, a group of institutional investors with $9.5 trillion in assets under management, stated, "It is now widely agreed that corporate governance failings were not the only cause of the crisis but they were highly significant, above all because boards failed to understand and manage risk and tolerated perverse incentives."[14]

Members discussed the broader corporate governance changes that will impact boards in the near future. They expressed deep concern about the breadth of the proposed regulatory changes, and the challenges they may pose to the broader economy. Specifically, they focused on recent SEC rule proposals and other legislative initiatives. The latter includes the Shareholder Bill of Rights Act of 2009,[15] sponsored by Senators Charles Schumer (D-NY) and Maria Cantwell (D-WA), and the Shareholder Empowerment Act of 2009, introduced in the House by Congressman Gary Peters (D-MI).[16] The discussion focused on the SEC's proposals, as they are more likely to be acted upon before the end of the year.

SEC proposals

Since May, the SEC has proposed:

- **Proxy access:** Similar to the proxy access proposal in the Shareholder Bill of Rights Act, the SEC's proposal would grant shareholders access to a company's proxy, to nominate for election up to 25% of a company's directors, if they hold 1% of its shares for large accelerated filers, 3% for accelerated filers, and 5% for non-accelerated filers.[17]
- **Disclosure:** The SEC has proposed rules that would require companies to disclose more information on board leadership structure (including whether the company has a lead director and if so, what role the lead director plays in guiding the company), the qualifications of directors, potential conflicts of interest that could affect compensation consultants, and how compensation policies are aligned with risk taking.[18]

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[14] International Corporate Governance Network, *Second Statement on the Global Financial Crisis* (London: International Corporate Governance Network, 2009), 1. Available at http://www.icgn.org/files/icgn_main/pdfs/news/icgn_statement_on_the_financial_crisis_23_march_09.pdf.

[15] Senator Charles E. Schumer, "Schumer, Cantwell Announce 'Shareholder Rights Bill' to Impose Greater Accountability on Corporate America," press release, May 19, 2009 Available at http://schumer.senate.gov/new_website/record.cfm?id=313468.

[16] Gary Peters, "Congressman Peters Introduces Bill to Empower Shareholders," press release, June 12, 2009. Available at http://peters.house.gov/?sectionid=22§iontree=21,22&itemid=148.

[17] Securities and Exchange Commission, "SEC Votes to Propose Rules Amendments to Facilitate Rights of Shareholders to Nominate Directors," press release, May 20, 2009. Available at http://www.sec.gov/news/press/2009/2009-116.htm.

[18] Securities and Exchange Commission, "SEC Proposes Measures to Improve Corporate Governance and Enhance Investor Confidence," press release, July 1, 2009. Available at http://www.sec.gov/news/press/2009/2009-147.htm.

In addition, pursuant to a recent SEC rule change, effective on or after January 1, 2010, brokers would no longer have the ability to vote their clients' shares in an uncontested election of directors, if the client failed to provide voting instructions.[19] This rule change could have an important impact on boards, as brokers in some cases comprise 20% of shareholder votes,[20] and historically, most brokers have voted with management. In other words, management's historical 20% advantage would be removed next January. Taken together with the prospect of annual elections and the requirement for a majority vote, the elimination of broker discretionary voting is a concern for members.

Proxy access: a closer look

While members are concerned by all of this impending regulation, they believe that much of it will not pass in its current form. For example, members agreed that the proposal for mandating the separation of the role of chairman and CEO, which is in the Schumer and Peters bills, probably will not pass. Members also predicted that say on pay, which appears in both bills and is already part of the administration's Troubled Asset Relief Program, will be extended to all public companies, but they do not expect it have a substantial impact. Members do believe, however, that the SEC's proxy access rules will be enacted and will have a substantial impact on their boards. They observed that proxy access, like the removal of broker discretionary voting and implementation of annual elections, directly affects the appointments of directors to the board, and they worry that combined, these measures will fundamentally change the process by which directors are elected, and create boards that are less effective.

Members also pointed out that because proxy access would eliminate the costs of challenging incumbent directors and allow challengers to aggregate shares, it could increase trivial challenges to the board and the costs of the proxy process, which is ultimately borne by all shareholders. Members said that, *"The impact on medium-sized companies, when you have aggregation, will be enormous."* Members are also concerned that proxy access would grant more power to large, short-term shareholders, such as hedge funds. One member said, *"I thought I represented long-term shareholders."*

Conclusion

Directors are continuously seeking to improve their companies' approach to risk management. At the company level, directors are urging management to think beyond financial and analytic models, to use a broader perspective in thinking, and to contemplate black-swan risks (however unlikely they may seem). The boards on which they sit have seen their priorities shift in recent years from the relatively narrow oversight of compliance to an open-ended oversight of strategic risk. As lead directors, LDN members believe that they improve the oversight of risk management by facilitating open discussion and encouraging dissent. Looking forward, however, LDN members are fearful that impending regulation may weaken their boards just when strong boards are needed most.

The Lead Director Network ("LDN") is sponsored by King & Spalding and convened by Tapestry Networks. The LDN is a group of lead independent directors, presiding directors, and non-executive chairmen drawn from America's leading corporations who are committed to improving the performance of their companies and to earning the trust of their shareholders through more effective board leadership. The views expressed in this document do not constitute the advice of network members, their companies, King & Spalding, or Tapestry Networks.

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[19] Ibid.

[20] Council for Institutional Investors, "Broker Voting," Available at http://www.cii.org/resourcesKeyGovernanceIssuesBrokerVoting.