Preface and Acknowledgements

“Corporate governance” emerged as a practice area at the unforeseen intersection of state corporate law, federal securities law, and Delaware tort law, as lawyers and their clients realized no single body of law covered the complex and inter-connected issues that modern publicly traded companies face.

This book is intended to provide directors—and attorneys advising directors—with information on the policies and underlying issues that shape director fiduciary duties and the other corporate governance requirements. It describes the legal and economic context in which these governance requirements arise, and it also describes the implementation details that can affect specific governance related decisions.

This book also provides sample summary materials in the form of Power Point presentations that attorneys can use as starting points to prepare training or explanatory sessions before a board or management. While none of the material in this book constitutes legal advice respecting any specific factual situation, the presentation templates are intended to help attorneys organize and prepare materials for their clients on governance issues. The presentations also provide practitioners with a summary overview and refresher on the governance topics covered in the book.

This book grew out of my experience as general counsel to a public company in the mid-1990s. While I was armed with a small library of
treatises and handbooks, I found that no matter how well a writer summarized a legal matter, the specific facts of any question forced me to seek out the text of underlying cases, statutes and regulations. However, in those pre-Google, dial-up modem days, legal material was not as available or as readily searchable online as it is today.

Prior iterations of this book contained digital copies of source material. This book omits source material, but includes citations so readers can locate it online. The book’s citations are made in the summary form that securities and corporate law practitioners use in speaking among themselves, rather than formal Blue Book style. For example, Section 16 of the Securities Exchange Act of 1934, as amended, is not cited as “15 U.S. Code § 78p.” It is simply cited in the book as “Section 16.” I selected this format as a way to make references more easily recognizable to practitioners. While that choice does stick any litigators or academics using this book with a bit of extra work to find the formal citation, the Internet has made that legal research simpler than in the past.

I also recommend another book published by the ABA, “The Corporate Directors Guidebook,” prepared by the Corporate Laws Committee of the Business Law Section of the American Bar Association. It provides broad general advice to boards and individual directors—and to their advisors—on what directors of public companies must do in order to meet their obligations.

For practitioners who want to maintain or expand their expertise in corporate governance, I recommend joining the American Bar Association Business Law Section’s Corporate Governance Committee (“CGC”). The CGC programs and materials are excellent. If you attend the meetings, you will be inspired and energized by the talent, experience and wisdom possessed by lawyers who are members of the CGC.

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