

# FOREWORD

The legal description of director duties has not changed significantly for many years: Directors must act in good faith; in a manner reasonably believed to be in the best interests of the corporation (duty of loyalty); and with such care, including reasonable inquiry, skill, and diligence, as a person of ordinary prudence would use under similar circumstances (duty of care). However, for much of the past two decades, boards of directors of public, private, and nonprofit corporations organized in the United States have been subject to increasing scrutiny and expectations regarding how they govern and whether they do so effectively. Boards govern in a challenging environment of rapid technological and geopolitical change, business disruption, and economic and political uncertainty. The increased regulation of public companies in the aftermath of corporate scandals and the global financial crisis, the birth of the influential and concentrated proxy advisory industry, the growing influence of shareholders, and the enhanced power of shareholder activists adds to the complexity that boards face in their task of governing. Much has been written about the structures and practices that boards and their committees should consider to support effective governance, with a focus on issues such as board composition, leadership structure, committee structure, board and committee processes for agenda-setting and information flow, management relations, and board culture. Far less has been written about how individual directors can enhance their contributions to board effectiveness.

Yet, any serious effort to improve board effectiveness must focus not only on the board but also on the contributions and behaviors of individual directors. While the authority to govern lies with the board as a collective, it is through the application of informed judgment by individual board members that the board forms consensus and takes action. This is underscored by the fact that fiduciary obligations of care and loyalty are owed to the corporation by each individual director, and the related legal reality that liability for breach of fiduciary obligations is personal to the director.

Fundamentally, board effectiveness begins with informed judgment by individual directors, which requires that directors assess the quality and relevance of the information they

receive, ask probing questions on the range of matters that come before the board, and seek from management and experts additional information when needed. And the range of matters that directors must attend to is broad: Directors must be prepared to come to informed judgments in a range of contexts on a wide range of topics, including corporate strategy and finance; management performance; risk management; cybersecurity; management development and compensation; financial reporting and related controls; legal and regulatory compliance; corporate ethics and related controls; corporate social responsibility and sustainability; relations with investors, including shareholder activists and institutional investors and other key stakeholders; CEO succession; and on and on.

This Director's Handbook has been written for the individual director who seeks to improve his or her own effectiveness with respect to an expansive set of 101 specific topics that boards most often face. The intent is to provide practical guidance for directors in preparing for meetings and participating in board decision making. Each of the concise 101 chapters provides a high-level overview of a topic and includes a set of suggested questions directors can ask of themselves and management to provide a useful starting point for discussion. Website links to relevant resources are also provided at the end of each chapter.

The Handbook is the brainchild of Frank M. Placenti, who came up with the overall concept and outline of topics and proposed that it become a project of the ABA Business Law Section's Corporate Governance Committee. In addition to its novel scope and approach, the Handbook is notable for the innovative "crowdsourcing" method by which it was created. Members of the Corporate Governance Committee were invited to draft one or more chapters and to invite colleagues from their firms to contribute. Members of the American College of Governance Counsel were also invited to participate. Among his many roles in shepherding his idea to fruition, Frank was our Tom Sawyer—convincing us how much fun it would be to help "paint the fence." He also nagged us, gathered and reviewed author contributions, and served as editor. My sincere thanks to Frank for his wonderful idea and masterful job in implementing it in record time. And special thanks to all the authors who contributed.

To say that boards and directors operate in a challenging environment understates the complexity and pressures of board service—and it is a service in the nature of public service, due to its importance to our economy, the commitment required, and the risks of liability that arguably outpace the rewards. As directors continue to grapple with ever-expanding agendas and complex issues in the boardroom, this Director's Handbook provides a valuable practical resource.

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