ICD Fellowship Inauguration

Edmonton, AB

May 30, 2012

Bob Bertram acceptance speech

I would like to share my thoughts on three issues that influence shareholder trust in public boards today: agency issues, how they might be offset by director independence and how communication improves trust between owners and boards.

I have mostly served on private company boards where governance is simpler. Owners control the board table, the corporate agenda and speak directly to one another. Agency issues that plague public companies are simply not tolerated.

Teachers' purchase of Cadillac Fairview in 2000 is an example of finding a middle ground between the best of both public and private models. Teachers established a Board that was independent of OTPP including an independent chair but boundaries were established. The CF board was mandated to act as if it were a public company. It had the freedom and responsibility to set management compensation.

That independent board placed CF decisions closer to customers and markets, and operated more efficiently than Teachers might have directly. Two Teachers' members provided sufficient discipline to avoid most agency issues.

An investment in a public company puts equity dollars at risk but involves owners only indirectly. Owners cede day to day control and strategic direction to management. Good governance is the only protection from agency issues that often give rise to unacceptable compensation or poor corporate performance.

Governance enthusiasts continue to push for director independence because independent directors provide a greater voice for owners. It is not a cure all. Directors still need to be knowledgeable and have an independent frame of mind.

Independence is also a two edged sword. It applies equally to owners as to management. Independent boards succeed when they have shareholders with longer horizons and they build better ways to communicate with them to retain their trust.

The current hot button for shareholders is the issue of aligning compensation with performance. Compensation issues are the bullseye in the middle of the agency target. While concerned with the quantum of pay the real dissatisfaction is with the lack of correlation between high levels of pay and positive corporate performance.

Just as there is no correlation between good governance and good performance there has too often been little or no correlation between executive pay and corporate performance.

The Economist magazine in the issue of May 19th stated that the total remuneration of FTSE 100 corporate chief executives rose by an annual average of 10% from 1999 to 2010 whereas the returns to owners of the FTSE 100 companies rose only by an annual 1.9%. Such findings are causing shareholders and even governments to act.

Neither shareholders nor governments should be making decisions about individual manager compensation. Each company's issues are unique. Compensation should be left to Boards. It is equally true that public shareholders cannot be expected to tolerate compensation negatively correlated to corporate performance. They will move their investment to more friendly organization structures.

Directors who are independent of both management and shareholders are always in a better position to make decisions on what compensation is necessary to compete in the market place.

One fruitful avenue to help move this issue forward is to improve communications between long-erm shareholders and directors. In my mind Nexen is a good example of evolving shareholder communications.

I feel fortunate to have been invited to serve on the Board of Nexen in 2009 and am honored that many of my fellow directors have joined me here tonight. Nexen has had a corporate objective to make good governance practices a competitive advantage. The Chair and almost the entire board, with the exception of the CEO, are considered independent. Moreover, having observed and participated, I am struck by the Nexen Boards' ability to listen to all shareholders but still act in the long term interests of the corporation.

To further sustainability the Nexen Board almost always starts every meeting with the committee dedicated to employee safety and above ground environmental practices. The Nexen Board has reflected best practice in pursuing improved pay for performance and Nexen has also been a pioneer in scheduling regular "governance" meetings between board members and significant shareholders without management present. These actions by themselves will not guarantee success but they will build shareholder trust and help the company survive through periods of difficulty.

In closing let me remind you how quickly the world is changing around you. Public companies are facing more stresses than ever.

But for 150 years Public corporations have proven to be the most innovative and successful form of capitalist enterprise. If they continue to evolve by embracing the benefits that arise from strong governance models, use independent directors to further reduce agency issues and improve the trust between shareholders and directors they will continue to dominate commerce for another 150.