

Conversation with Bob Lamm on Governance Today

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To get a perspective on corporate governance challenges at public companies, we turn to a true expert, Bob Lamm. Until March 2013, Bob was Assistant General Counsel and Assistant Secretary at Pfizer Inc., where he was responsible for a broad range of securities and corporate governance matters. He joined Pfizer in 2008 after holding senior legal and governance positions with a number of major corporations, including W. R. Grace & Co., CA, Inc. and FGIC Corporation. Bob is currently Chair of the Society's Securities Law Committee at the Society of Corporate Secretaries and Governance Professionals.

Davis Polk: In your many years as an in-house governance lawyer, what are some of the biggest changes you've seen over time?

Bob: There have been many changes, but I'll start with the dramatic change in the investor community. When I first started working in-house, the so-called "Wall Street Walk" was the norm – if your investors didn't like what the company was doing, they were free to sell the stock. Obviously, that's no longer the case, and I can't imagine that too many in-house lawyers would like to tell their CEOs or their boards "I just told a major investor to take a hike." These days, nearly every investor – and I don't mean just institutional investors – is an activist of one sort or another and is unafraid to make demands upon the company. There are also third parties, including the SEC, self-regulatory organizations and, yes, proxy advisory firms, who listen to investors and repeat their demands. Many companies have met this challenge by robust shareholder engagement. I'm all for that, and have advocated it since the late 1980s, when I first started meeting with investors who submitted environmental and social proposals. It was and continues to be a most rewarding aspect of in-house practice.

The second major change is the exponential increase in disclosure, for the most part triggered by a massive increase in regulatory requirements. Of course, that increase has been fueled to some degree by demands of investors who want more and better disclosure. 10-Ks were once perhaps 30 pages and proxy statements rarely went over 20 – and the font was bigger, too! Nowadays, many companies' proxy statements are approaching 100 pages, and 10-Ks are routinely 200 or more. The bad news is that some of this disclosure has resulted from legislative efforts to engage in social or political engineering through disclosure, which means our reports are increasingly cluttered with information that is not material to the average investor.

Davis Polk: How do you think the role of the general counsel, corporate secretaries and others who support the board has changed in the last three to five years, and has that been affected by the continuing uncertain economy?

Bob: Lawyers who support the board have become far more proactive. I'm not fond of the word, but I don't have a better one. We have to think more defensively, and we have to think more about the long-term impact of our advice. Sometimes, particularly in the world of corporate governance, if you fight too hard to win individual battles you may lose the war. This is an area where outside counsel has "matured" in recent years; in the old days, you'd get advice from transactional lawyers and possibly litigators, both of whom are oriented towards closing the deal or winning the lawsuit and moving on. Nowadays, they "get" the importance of assisting the company to develop positive relationships with investors and to maintain their clients' credibility for the long term.

Davis Polk: Focusing on the present, what do you find to be the biggest governance concerns at public companies today? What advice would you give as to the essential elements to successful corporate governance practices?

Bob: One big concern is the pressure to adopt a one-size-fits-all approach to governance. My favorite (or, actually, least favorite) example of this is the push to separate the positions of chair and CEO, coupled with pressure to have an independent chair. I've seen separation work, and I've seen it not work, so to insist upon it irrespective of facts and personalities bothers me greatly. I've done quite a bit of reading on this, and there's no data proving that separation and an independent chair work better; the most you can say is that the data are inconclusive. Despite that, you hear the separation mantra all the time. And some of that pressure is due to the fact that separation is common in the U.K. and elsewhere. However, that doesn't mean that it should be imported.

I also keep hearing directors complain about the amount of time they spend on routine matters that would be better spent on important ones such as strategy and management succession. Counsel needs to do what it can to prevent good corporate governance from becoming compliance and to develop more efficient ways of having boards deal with all they have to do. As far as advice is concerned, one thing that's often forgotten in the pressure to adopt one-size-fits-all "fixes" is the need to do what's right for the company. A responsible board shouldn't do something just because ISS says so. If something doesn't work for your company, don't do it. Of course, you need to be prepared to defend your decision, but make it on the merits.

Davis Polk: Among all your other activities, you are also an active Chair of the Society's Securities Law Committee. What is the current objective of the Committee and its main projects?

Bob: The Committee's recent and current projects include commenting on the SEC's pay ratio disclosure rule and on the PCAOB's proposal to expand auditor reports. We will almost surely comment on rule proposals under the remaining governance provisions of Dodd-Frank, including pay-for-performance, clawbacks and hedging disclosure. We're also committed to making progress on a number of matters that were put on hold when Dodd-Frank and the JOBS Act were enacted, such as proxy plumbing and all that entails, and we continue to suggest areas for improvement, such as changes in shareholder proposal resubmission thresholds and disclosure reform generally.

The Committee isn't likely to run out of things to do for a long, long time – if ever – so even when I step down as Chair, it will still be going strong, and I hope to be as active as I was before I became Chair.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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