

Good Governance Practices

Presented by
Todd Taylor

2008 National Biodiesel Conference &
Expo

Overview

- Governance is organization, process, education, execution and evaluation
- Governance is not management, hind-sighted, self-dealing and careless
- Directors are agents for the shareholders
- Directors act independently
- Directors proactively and vigorously oversee the company and its affairs

Governance is...

- Organization: Ensuring the board, management and company are set up to excel
- Process: Following proper and legal procedures
- Education: Giving everyone the right tools
- Execution: Getting the job done on time, on budget and correctly
- Evaluation: Reviewing the previous four steps to determine where there is room to improve

Governance is not...

- Management: Management runs the operations of a company
- Hind-sighted: Directors focus on “where do we go now,” not “what did we do back then”
- Self-dealing: Directors do not enrich themselves at the expense of the company
- Careless: Directors must thoroughly examine the issues facing the company before making a decision

Agents for Shareholders

- Directors are “fiduciaries” of a company
- Think “Trustee,” only for the money of people to whom you may not be related
- Each Director represent the company and all of its Shareholders, even those that didn’t vote for them
- Directors take direction, not orders, from Shareholders

Agents for Shareholders

- Directors owe two major duties:
 - Duty of Loyalty
 - Must act in the best interests of the company
 - Must avoid conflicts of interests
 - Must act in Good Faith
 - Duty of Care
 - Must know about the company and its affairs
 - Must carefully analyze and consider important issues
 - Must use sound business judgment

Independence

- Directors must limit transactions with the company to avoid even the appearance of a conflict of interest
- Directors must make decisions based on their own review and judgment
- Directors must avoid outside influences, including from management, shareholder groups and special interests

Oversight

- Directors have ultimate authority for direction, integrity, ethics and business
- Directors then also bear final responsibility for failures
- Directors must ask questions of management
- Directors must require compliance programs

Oversight

- Directors cannot blindly rely on management
- Directors must assess organization, business, financial, legal and personnel risks
- Directors must investigate if there is a problem
- Directors must take action to fix problems

Confidentiality

- Directors have a duty to keep company information confidential
- Even from shareholders if not told to everyone
- Important information such as revenues, merger or sale discussions are not acceptable coffee talk
- Insider trading laws might apply

Boards and Shareholders

- Board oversees the company
- Shareholders usually have no role in operations
- Directors are the representatives of the shareholders
- Directors must use their own judgment
- Directors should not take directions from groups of shareholders
- Shareholders vote for Directors

The Three Hats

- Shareholders
 - Owners of the company
 - Elects Directors
 - Vote on major company issues such as mergers
- Directors
 - Elected by Shareholders
 - Representatives of Shareholders
 - Responsible for overseeing company
- Officers
 - Appointed by the Board
 - Representatives of the Board
 - Responsible for the operations of the Company

Questions?



Todd Taylor, Attorney at
Law

ttaylor@fredlaw.com

612-492-7355