Corporate Governance at RIM:

The Mirage of "Good Governance"

FEBRUARY 3RD 2012

Yvan Allaire, Ph.D. (MIT), FRSC

Emeritus Professor of Strategy,
UQAM

Executive Chairman,
Institute for governance of private and public organizations (IGOPP)

The on-going discussion about RIM's governance misses the point. Whether the jobs of chair and CEO are divided or not, whether "executive sessions" of the board are held regularly, and so on are all side issues.

Let's be clear, and it is for anyone who has actually sat on boards of directors: in the widely-held, publicly traded corporation, governance is largely a *mirage*. For those looking from afar, the board of directors looks like a decision making and controlling body, the ultimate authority over the company and its management. From up close, the mirage dissipates into a stark reality where impeccably independent directors, no matter how impressive their biographies, are the vassals of management, of management's insuperable advantage in information, in time invested, and in specific expertise.

Boards of directors play many fiduciary roles: they review and approve everything, from strategic plans and budgets to acquisitions, risk policies and organization structures. But all these "decisions" are based on information presented and defended by management. Directors may dig into their past experience to ask a few relevant questions, make a few suggestions. Management has spent hundreds, even thousands, of hours on these issues and in preparing these documents; board members may have spent a few hours before coming to the meeting.

Corporate governance begets this paradox: where management is able (or glib), the board of directors rarely finds faults and flaws in what management is proposing. When the board regularly finds problems with management's proposals, it should change management. In other words, with a savvy management in place, governance soon becomes a fiduciary routine, until a crisis flares up.

The governance orthodoxy that became dominant since Sarbanes-Oxley has only reinforced this character of governance: *a fiduciary façade for shareholders, a simulacrum of decision-making authority over management*.

We have referred to this form of governance, prevalent in widely-held listed companies, as "fiduciary governance", which we contrast with "value-creating governance".

© 2012 Yvan Allaire

HOW AND WHEN IS GOVERNANCE VALUE-CREATING?

Having a *legitimate and credible* board is the first and essential condition for value-creating governance.

A board acquires legitimacy through the process of election/nomination of board members. Several measures have been proposed to enhance corporate democracy, such as cumulative voting, nomination of candidates for board seat by large shareholders, individual and majority voting for candidates to the board, etc. All measures aimed at strengthening the legitimacy of boards deserve a vigorous support from those committed to improving the quality of governance in our private and public organizations.

Undoubtedly a majority of board members should be independent of management and of significant shareholders. However, when significant shareholders are actively engaged in the governance and management of the company, *they are also bearers of great legitimacy*. The co-founders of RIM with 12% of the shares are indeed legitimate members of the board!

Credibility is the joint product of competence, integrity, and trustworthiness of board members. Credibility is in the eyes of the beholder, in this case of senior management.

Do members of the management team believe that discussions with the board are fruitful, bring new perspectives and viewpoints, add value to the decision process? Does management believe the board members will spot the real issues, ask the tough questions, are prepared to be (politely) confrontational?

A director's credibility results from his/her expertise and relevant experience as well as from the trust he/she inspires. Credibility cannot be measured. *It is virtually impossible for an outside observer to assess a board member's credibility, yet this quality is glaringly obvious to anyone sitting on a board.*

While it is legitimacy that gives a board the right and authority to impose its will on management, it is by its credibility that a board becomes truly effective and adds value to the company.

Given board members with the requisite intellectual wherewithal, enhancing their credibility in these instances would require a large investment of time in mastering the details of the company's strategic drivers, its competitive challenges, in maintaining the currency of that knowledge; it calls for raising the competency of the board in sync with the rising complexity of the company's operations.

Boards should abide by some simple guidelines, such as the following:

- **"No company should become more complex than what its board can govern effectively".**

"Governors" of widely held corporations should keep that in mind. The ability of boards to govern, even the best ones, is generally rather limited; thus, they should keep the company simple. That is the lesson of the recent failures of American and European banking institutions. Their complexity had become such that it overwhelmed their governance (and too often, their senior management).

- **"No board is more competent than the median expertise and experience of its members".**

Boards should beware of the illusion of competency because one or two members are particularly knowledgeable about the industry. Eventually, confronted with divergent positions of management and these "knowledgeable" board members, the less knowledgeable members will tend naturally to side with management. These members will not admit to their inability to understand the crux of the arguments presented on both sides of a delicate issue.

- **"All boards should assess soberly and frankly the qualifications of their members to deal with increased complexity".**

Board evaluation, if it is to mean anything, should face up squarely to the inadequacy of the board as major moves suddenly increase the complexity of the company. Board members should be replaced to cope with the changed circumstances, *never an easy process in practice*.

- **"All boards should beware of creeping, insidious, undetected rise in complexity".**

© 2012 Yvan Allaire

Often, the level of complexity of a company increases as a result of several, quick-paced, incremental strategic moves. That phenomenon may gradually create a competency void on the board that may well go undetected until some crisis makes it glaringly obvious.

What RIM must aim for is a board of directors that is legitimate and credible,… and is perceived as such. That is the real challenge of corporate governance.

Institute for governance
of private and public organizations

1000 De la Gauchetière St. West, Suite 640, Montréal (Québec) H3B 4W5

Telephone 514.439.9301 **Fax** 514.439.9305 **info@igopp.org** **www.igopp.org**

This article is available online in PDF format at www.igopp.org

© 2012, IGOPP. All Right Reserved.

Design: KarineBellerive.com