



H.S. Grace & Company, Inc.

The Evolving Role of the Nominating & Corporate Governance Committee

With changes in SEC regulations and NYSE rules in the last 10 years, the role of the Nominating & Corporate Governance Committee is becoming increasingly important in providing effective corporate governance to corporate entities. NYSE rules, for example, currently require that listed companies must have a nominating/corporate governance committee composed entirely of independent directors (NYSE Rule 303A.04). Rule 303A.04 also requires that the Nominating & Corporate Governance Committee must have a written charter that addresses the following:

(1) the committee's purpose and responsibilities, which must be, at a minimum, to: identify persons qualified to become board members, in accordance with criteria approved by the board, and to either choose or recommend to the board director candidates for the annual shareholder meeting; to develop and recommend to the board corporate governance guidelines, and to oversee management and board evaluation; and

(2) the committee's annual performance evaluation.

The Nominating & Corporate Governance Committee may allocate the above described responsibilities to other committees if such committees are made up entirely of independent directors. (*See Commentary to Rule 303A.04*). While SEC regulations do not require that a corporation have a Nominating and Governance Committee, the regulations do mandate public disclosure of the reasons the board believes such a committee is not necessary.

Corporations have elected to address these requirements in different ways, depending on corporate culture, board synergies and other criteria. Development of board composition strategy and identification of director nominees are the two functions most commonly identified with the Nominating & Corporate Governance Committee, along with the initial framing and updating of the company's corporate governance principles. Recent changes in SEC regulations require proxy disclosure of policies and procedures for considering director nominees and disclosure of the experience, skills, and qualifications of board members. Other functions frequently identified with the Nominating & Corporate Governance Committee include CEO succession planning, the board self-assessment and evaluation process, director education, and director compensation. Nominating & Corporate Governance Committees also may be involved in recommending to the board changes in board organization, including committee structure and qualifications.

There is, however, no one size fits all for what the Nominating & Corporate Governance Committee must do as long as SEC regulations, NYSE rules and other laws and

regulations are complied with. For example, some corporations have allocated the specific responsibility of evaluating management and CEO succession planning to the Compensation Committee under the oversight of the Nominating & Corporate Governance Committee. Similarly, compliance responsibilities are frequently shared by the Audit Committee, the newly evolving Risk Committees, and the board as a whole, although the Nominating & Corporate Governance Committee in its role in overseeing corporate governance may have responsibility for specific areas such as assessing conflicts and related party transactions.

H.S. Grace & Company, Inc. is a team of senior executives who diagnose and resolve critical corporate problems in business governance, operations, finance and control. With more than 1,000 years of experience, our goal is to help companies enhance shareholder value, protect reputation and their long-term ability to succeed, avoid and manage litigation, and navigate major changes such as mergers and acquisitions or bankruptcies. We often serve as consulting and testifying experts, identifying and analyzing critical business issues.

Representative Issues Examined

- Lender Liability
- D&O
- Corporate Split-off
- Family Trust
- Health Care
- Professional Services
- Intellectual Property
- International Structured Finance Transaction
- Fraud
- Pension Fund Investments
- SEC White Collar Defense
- Stock Option Backdating
- Oil & Gas
- Real Estate
- Fiduciary Issues
- Contract Dispute
- Fund Management
- Market Timing Allegations
- Financial Derivatives
- Portfolio Management
- Special Purpose Corporation

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