What is the Role of a Board of Directors?

Aeschylus was the first of the three ancient Greek tragedians whose plays can still be read or performed; the others are Sophocles and Euripides. He is often described as the father of tragedy. In his life he fought for the Athenian democracy, most notably at the Battle of Marathon. When asked if he wanted to be remembered for his plays or his service to his country, he responded by having the following epithet inscribed on his burial site: "Beneath this stone lies Aeschylus, son of Euphorion, the Athenian, who perished in the wheat-bearing land of Gela; of his noble prowess the grove of Marathon can speak, and the long-haired Persian knows it well." Sometimes it is the simple rather than the complex that we should focus on and for my money, the epithet of Aeschylus is one of the classic examples.

One of the ongoing topics for various Foreign Corrupt Practices Act (FCPA); UK Bribery Act or other anti-corruption and anti-bribery compliance conferences is what information does a Board of Directors want or need for oversight of a compliance program? However today I would like to step back and focus on the initial question of "What is the role of a Board of Directors?" In a recent preliminary draft of a White Paper entitled "*Corporate Governance of Social Enterprises*" (herein "the White Paper") a group of European authors, Ann-Kristin Achleitner, Judith Mayer, Andreas Heinecke, Mirjam Schöing and Abigale Noble (collectively "the authors"), explored this most basic question and others including such topics as Board of Directors make-up and selection; Board of Directors meetings and management of the Board and its relationship with a company's management.

A Board of Directors will probably have an Audit Committee or Compliance Committee. I would like to focus on the role of the entire Board of Directors, rather than a specialized subcommittee. By reviewing the role of a Board of Directors within an organization, this should shed light on the types of information that a compliance officer should be prepared to present to the. Starting with the proposition that a "well run Board can lift a significant burden off of the management team in the short-term and ensure the long-term success" of an organization, the authors posit three general areas. They are (1) Support; (2) Supervision; and (3) Approval of Management Decisions.

Support

In the area of support a Board of Directors should provide strategic guidance but should not simply take what management may tell it or even feed to it. A Board member must be ready to challenge management, particularly the Chief Executive Officer (CEO). A Board must hold the CEO accountable for running the company's business but should not go so far as to become bogged down in the day-to-day details of running the company.

Supervision

Here a Board of Directors should monitor the performance of management against prescribed benchmarks. The financial bottom line is obviously a key performance indicator. However, there are other areas which the Board will need to monitor. Clearly the compliance arena is now one which a Board must become familiar with and have visibility into but there may well be a variety of other legal issues, such as regulatory or even intellectual property protection in a situation where a company's main, if not only asset is some type of intellectual property. This should be broad enough to ensure that management complies with its own governing documents. The authors note that ideally Boards should "have a list of the compliance requirements and periodically check if they are being met."

Approval of Management Decisions

The authors believe that betwixt and between the concepts of Support and Supervision lays the area where a Board must approve certain management decisions. Board approval of these decisions should "serve to guarantee conformance with the overall mission" of the organization. While each organization could certainly have a greater number of these areas, the authors believe there are basic areas that, at a minimum, should require Board approval. These areas are:

1. The organization's annual budget;
2. Decisions on significant financing and significant changes in the ownership structure;
3. Succession planning for the CEO and remuneration as well as key members of the company's management team; and
4. Decisions about overall company strategy.

The authors provide a summary of some of a Board's "Do's and Don't's" which I have put into the following box:

DO's	**DON'T's**
Define Success with the Board	Spend time on the trivial
Let Board's create their own agenda	Short term and reactive bias
Direct questions to specific members	Overly involve the Board
Focus on shaping the future of the organization	Just review the past
Invite external experts	Let company executives control the Board

The authors end their White Paper with a very useful Appendix of country-by-country listing of corporate governance guidelines and codes of best practices for Boards of Directors.

While the White Paper has a focus on social enterprises, the concepts that it puts forward can inform the types of information that as a compliance officer, you can suggest to your organization's Board of Directors that they begin to review. In the US and UK, many Boards will have an Audit or Compliance Committee, which will desire more detailed information. A report, annual or other, to a full Board of Directors is an important component of a minimum *best practices* compliance program. The compliance function should be prepared to lead your company's Board through this journey.