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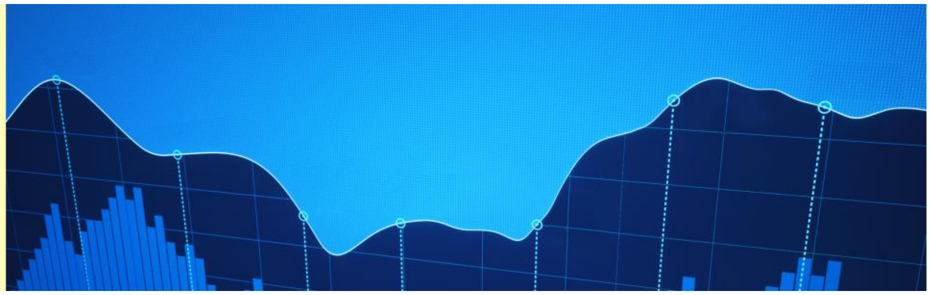

Securities Quarterly Update

May 2024 | Spring Edition

Welcome to the spring edition of Securities Quarterly Update*, a publication that provides updates and guidance on securities regulatory and compliance issues. In this edition, we look at some corporate governance, executive compensation and SEC best practices.*

Ten SEC and Corporate Governance Considerations for Summer

With the proxy statement and earnings behind for many, summer may be a good time to bolster corporate governance, executive compensation and SEC practices in preparation for busier times. Some potential considerations follow.

1. ***Capital raising preparedness***. With changes in market conditions, is the company ready to quickly raise capital as needed? When does the next universal shelf expire, and does it need a refresh? Would the company be ready for a reverse stock split and a related shareholder meeting if necessary given stock prices and stock exchange requirements?

2. ***Shareholder activism protections***. Do the bylaws reflect state law, universal proxy and developing corporate governance changes? Does the company need to bolster its takeover and shareholder activism protections given stock price fluctuations and changes in shareholder base? Is the current state of incorporation still the right one? Does the company have a year-round cadence for shareholder engagement, and is it responsive in its public disclosures?

3. ***Board reporting***. Does the board receive sufficient information on cyber, artificial intelligence (AI), sustainability, regulatory and other emerging areas? Is it time to revisit reporting cadences and dashboards? Do the directors receive too much information, and do board meetings leave enough time for discussion? Has the format of the board minutes been considered in light of guidance from Delaware? Can any required corporate governance practices be more user-friendly, such as revisited board decks or electronic D&O questionnaires?

4. ***ESG***. As to the ESG/sustainability data, has an inventory of applicable regulations and stakeholder expectations been completed, and how is the company preparing to address them? Are controls for ESG data adequate? Is the company receiving "credit" through public disclosures for its efforts while mitigating greenwashing (and AI-washing) liability? As ESG is playing an increasingly greater role in M&A due diligence, are the deal teams ready?

5. ***Corporate governance policies***. Do the company's board committee charters and corporate governance policies address developing areas? When was the last the self-assessment of the board and committees? Do proxy disclosures need enhancements in this area?

6. ***Noncompetition agreements***. Does the company have an inventory of its noncompetition provisions, whether in employment agreements, separation agreements, confidentiality agreements (NDAs), employee handbooks, other corporate governance policies, plans or otherwise, given bans and restrictions being placed by the FTC, Department of Labor and various states?

7. ***Executive compensation***. Do the executive compensation and non-employee director programs remain aligned with the company's strategy and reflect its trajectory and expectations of its current and expected shareholder base? Have there been

significant changes to the structure of these programs? Does CD&A need to be revamped to reflect the evolution of the program?

8. ***SEC focus areas***. With the SEC's focus on executive compensation perks, non-GAAP financial measures, key performance indicators, Rule 10b5-1 stock trading plans and stock options, do related policies and procedures need to be revisited? Do employees know what they are? Is additional training necessary? Does the company have an equity grant policy? Is the company prepared to act quickly in an event of a required compensation clawback?

9. ***Onboarding and training***. Are new team members onboarded as to Form 8-K current event reporting and Rule 144 and Section 16 (securities transactions) SEC requirements? Given the SEC's sweeps in Section 16 and Schedule 13D/G areas and shorter reporting deadlines for Schedules 13D/G, is a refresher needed?

10. ***Corporate hygiene***. From the corporate hygiene perspective, should any old registration statements be deregistered? Do any outstanding SEC confidential treatment orders need to be renewed or converted? Are the transfer agent's and stock plan administration procedures to the company's satisfaction? Has the Corporate Transparency Act (CTA) applicability assessment been completed? Note that some joint ventures, investment entities and other non-controlled entities of SEC reporting companies could fall within the CTA reach. Some corporate hygiene upfront can save time and due diligence costs.

FOR MORE INFORMATION

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