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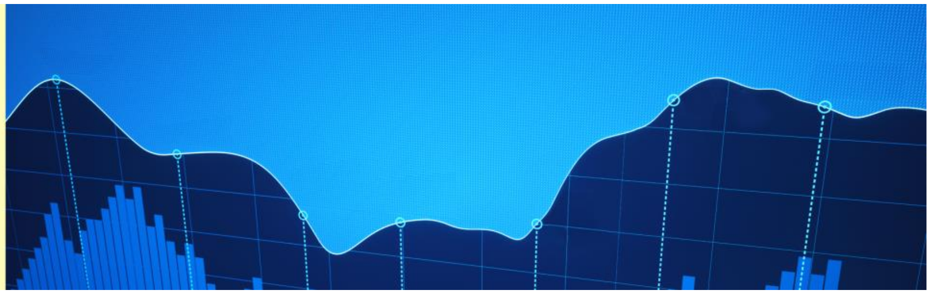

Securities Law Update

December 2024

Updates to 2025 Director and Officer Questionnaires

The regulatory environment has been relatively quiet as to developments that would directly impact director and officer (D&O) questionnaires. However, in light of new Securities and Exchange Commission (SEC) requirements, institutional investor interests, SEC enforcement actions, and other general trends, companies should consider updating their 2025 D&O questionnaires to address certain issues, as outlined below.

Artificial Intelligence (AI) Expertise, Cybersecurity and Other Director Expertise

As companies increasingly include AI-related disclosures in their SEC filings, they should consider adding questions to their D&O questionnaires to collect information relating to their board's AI expertise, including any relevant experience, skills, education, certifications, or other knowledge, background, or qualifications. If similar questions about cybersecurity expertise are not incorporated into questionnaires yet, companies should consider adding them as well.

In light of the increasing focus on individual directors' qualifications, increasing shareholder activism and use of universal proxy cards, companies should consider if any additional questions would be helpful to demonstrate the alignment between the board's expertise and the company's strategic plan and the directors' skills matrix, particularly if any changes have recently been made to those documents in light of the economic environment, industry conditions, or company circumstances (e.g., sustainability).

Director Time Commitments

Institutional investors and shareholder advocates are increasingly focused on director time commitments. Companies should consider adding a question to collect information about how much time directors spend on professional activities outside of the time commitments required as a member of the company's board or committees.

SEC Enforcement Actions

Director Independence

In September 2024, the SEC announced settled charges against a company's former CEO, chairman, and, subsequently, an independent board member for violating proxy disclosure rules by failing to disclose a personal relationship with a high-ranking company executive, allegedly leading to materially misleading statements about his independence in the company's proxy statements. Companies should review their D&O questionnaires to confirm if such relationships would be covered and consider adding a question that addresses close personal relationships between directors and executive officers.

Companies should also consider if additional information is needed to address independence concerns of ISS, Glass Lewis, and various institutional investors.

Related Person Transactions

In March 2024, the SEC announced settled charges against a company for, among other things, failing to disclose that two of its executives owed more than $120,000 to the company for personal expenses that had been paid by the company but not yet reimbursed by the executives. Companies should review their D&O questionnaires to confirm if such transactions would be captured and consider adding a question that addresses personal expenses paid by the company but not yet reimbursed by a director or officer.

Perquisites

As the SEC continues to heavily scrutinize perquisites, companies should consider expanding the definition of perquisites included in their D&O questionnaires. They may want to include the following as examples of perquisites: security provided at a personal residence or during personal travel, commuting expenses, and contributions to charitable organizations. Companies should also consider clarifying the definition of personal travel to include costs related to flights, vehicle rentals, other forms of transportation, hotels and other lodging, and meals.

EDGAR Next

The SEC recently adopted amendments (collectively referred to as "EDGAR Next") intended to enhance EDGAR's security. Among other new requirements, applicants for EDGAR access will be required to disclose if the applicant, the account administrator(s), or the individual signing the Form ID has been convicted of or civilly or administratively enjoined, barred, suspended, or banned as a result of a federal or state securities violation. Companies may want to consider adding a question to their D&O questionnaires to address this new EDGAR Next requirement. Additionally, as the EDGAR Next question is not limited to the past 10 years, companies should carefully consider where to place the question in their D&O questionnaires.

Beneficial Ownership

If not added last year, companies should consider adding questions to confirm existence, modification, and terminations of Rule 10b5-1 stock trading plans, timely filing of Section 16 beneficial ownership reports, and compliance with the company's insider trading and other policies. Based on the SEC's recent enforcement activity, additional questions might also be helpful as to margin loans and other forms of pledging.

Director Consents and Certifications

If not included yet, companies should obtain directors' consent to disclose any diversity-related information, consent to be named in the company's proxy statement and card as well as the activist's proxy materials should that become necessary given universal proxy card rules, certifications as to accuracy of information provided in the questionnaire, and acknowledgement of the requirement to update questionnaire responses for any changes.

FOR MORE INFORMATION

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