

Corporate Governance

Related Practices

Antitrust & Trade Regulation
 Business & Commercial
 Business Services
 Class Action Defense
 Corporate Finance
 Employee Benefits and Executive Compensation
 Environmental
 Government Investigations and Corporate Compliance
 Health Care
 Labor & Employment
 Nonprofits & Tax-Exempt Organizations
 Political Compliance, Elections & Campaign Finance
 Securities

Overview

Heightened public scrutiny and shareholder activism, new disclosure and legal requirements, and increased litigation risk in response to the recent financial market meltdown and the Sarbanes Oxley Act have pushed public companies and even private and nonprofit entities to pay closer attention to the manner in which they govern themselves and to improve the processes by which they make decisions. With our broad base of industry-specific experience in multiple legal disciplines, we are able to assess our clients' issues and needs, and provide solutions to our clients that comply with best practices as well as legal requirements. We have counseled the boards of directors of numerous public and privately held companies as well as nonprofit entities to help them fulfill their fiduciary duties and responsibilities to stakeholders in a wide variety of circumstances, such as:

- Evaluation of management and third-party buy-out proposals
- Succession planning
- Documentation of codes of conduct, governance-related policies and committee charters
- Board self-evaluation processes
- Risk management oversight and corporate compliance oversight
- Responding to an unsolicited offer to acquire the company

Our lawyers also bring an exceptional depth and breadth of experience and resources to bear on the issues that confront board committees, such as audit, compensation and special committees. Our knowledge of state and federal laws, coupled with our experience with corporate governance and compliance challenges across a wide range of industries, helps us to provide valuable guidance to board committee members in a number of critical areas. These may include:

- Reviewing and documentation of executive compensation and termination arrangements
- Evaluation of conflicts of interest and director independence issues
- Conducting internal investigations and internal reviews of alleged wrongdoing
- Structuring a process to ensure fairness of a related party transaction and to minimize associated litigation risk
- Discharging fiduciary duties in the context of a review of strategic alternatives to the company's long term strategic plan
- Discharging fiduciary duties, evaluation and negotiation of the terms of a transaction and interfacing with financial and other committee advisors in the context of a sale of the company
- Evaluating and responding to a shareholder derivative litigation demand

Experience Matters

- Advised the board of a Nasdaq Global Select-traded public company in connection with an auction of the company to strategic bidders for cash. With Dykema's advice regarding the process, the auction generated interest from several bidders, yielded a per share price that exceeded the highest price at which the company's stock had ever traded prior to announcement of the deal and resulted in no shareholder litigation against the board for breach of fiduciary duty.
- Counseled the outside directors of a large public company regarding articles and bylaws changes proposed by a controlling shareholder that would have disproportionately benefitted the controlling shareholder to the detriment of the minority shareholders. Based on Dykema's counsel, the outside directors were able to negotiate a mutually acceptable compromise that preserved many of the minority shareholder protections then in place.
- Counseled the outside directors of a mid-sized public company in connection with an evaluation of the company's strategic alternatives in response to a demand by a significant shareholder and dissident director to sell the company. After an extended evaluation period and discussions with a potential suitor, the board ultimately determined not to sell the company at that time. Shareholders reaped a significant benefit as the company was sold several years later at a much higher price.
- Advised the outside directors of various public companies in response to unsolicited offers to acquire these companies, helping them devise and execute a strategy for responding to the offer in light of each company's circumstances and the posture of the board. In each instance, the outside directors evaluated the offer in light of the company's value if it remained independent and pursued its long term strategic plan and, in some cases, also conducted a more in-depth review of other strategic alternatives available to the company where such information was needed to fully evaluate the offer before responding. When the directors determined to pursue the offer, Dykema's team assisted in negotiating the terms of a transaction document that included protections such as a "go-shop" provision to help meet the directors' fiduciary duties.
- Advised a special committee of the board of a local branch of a national charity and conducted an internal investigation of significant employee misconduct against the charity. As a result of Dykema's efforts, the charity was able to recover a substantial portion of its loss and avoid publicity that would have likely damaged its reputation and shaken donor confidence.
- Advised a large charity seeking to restructure its corporate governance to put safeguards in place similar to those required by the Sarbanes Oxley Act of 2002. Actions such as establishment of an audit committee, selection of an independent auditor through an RFP process, and a process for creation of special board committees to respond to special inquiries helped put the charity's board in position to oversee the charity's operations and finances more effectively.

Speaking Engagements

Crowdfunding and the IPO On-Ramp
June 5, 2012 (Los Angeles-area)

Crowdfunding and the IPO On-Ramp
May 23, 2012 (Detroit) and May 24, 2012 (Chicago)