



What's Next?

A Path Forward in Uncertain Times



Top Considerations for Public Company Boards

In these uncertain times for companies across industries, a cross-discipline team of lawyers provides relevant considerations for public company Boards of Directors.

Disclosures and Fiduciary Duties

- Identify categories of risks that are “mission critical” to the company and update the Board of Directors or key committees regarding the status of any identified priority risk mitigation at least annually
- Evaluate protocols and procedures to ensure information flow to directors about mission-critical risks
- Encourage director engagement through questions or discussions to meet oversight duty concerning public disclosures of mission-critical risks
- Assess documentation of Board of Director discussions, including director engagement, informal discussions between meetings noted in next meeting minutes, and consider level of detail of discussion topics
- Review Board of Director materials with legal counsel in real time



GOODWIN

Executive Compensation

Top considerations for executive compensation and retention risk for top performers

- Rethink your compensation program in light of changed circumstances
- Reconsider performance metrics for cash bonus plan and performance-based equity
- Don't forget about succession planning
- Be mindful of executive retention
- Understand disclosure implications of compensation decisions
- Review compensation planning for potential M+A

Activism

- Shareholder Activism and Hostile M+A are likely to be extremely active starting in the fall of 2020 — be sure Management and Boards of Directors know the dos and don'ts for these situations and are aligned on their different roles in an activist scenario
- In select industries affected by the pandemic, Shareholder Rights Plans have been adopted at a rate not seen since the Great Recession
- Be thinking about the gender diversity and composition of your Board of Directors

Public M+A

- Deal volume was down in first half of 2020, as bargains did not materialize and capital markets remained available
- Potential market and price stabilization will drive Q4 2020 and Q1 2021 deal volume
- Material adverse change clauses and other deal terms are more important in the wake of sweeping pandemic changes
- Evaluate what terms are necessary for deal certainty given ongoing risks

Public Company Fundraising Transactions to Consider

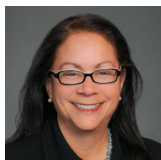
Given the current market volatility, many companies are turning to alternative financing techniques as a means of accessing the public markets

- Direct listings
- At-the-Market ("ATM") offerings
- Bought deals and block trades
- Private Investment in Public Equity ("PIPE") transactions
- Convertible note offerings
- Special Purpose Acquisition Companies ("SPACs") and reverse mergers

Contact Us



Rick Kline
Partner, Silicon Valley
+1 650 752 3139
rkline@goodwinlaw.com



Deborah Birnbach
Partner, Boston
+1 617 570 1339
dbirnbach@goodwinlaw.com



Lynda Galligan
Partner, Silicon Valley
+1 650 752 3167
lgalligan@goodwinlaw.com



Joseph Johnson, III
Partner, Boston
+1 617 570 1633
jjohnson@goodwinlaw.com



Danielle Lauzon
Partner, Boston
+1 617 570 1955
dlauzon@goodwinlaw.com



Maggie Wong
Partner, San Francisco
+1 415 733 6071
mwong@goodwinlaw.com

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