

Counseling Audit Committees and Independent Directors

Recent Developments

Reacting to the many recent accounting and other financial scandals that have roiled the markets, the U.S. Congress enacted the Sarbanes-Oxley Act of 2002. The sweeping terms of the Act, and their interplay with related rules issued by the SEC and the national securities exchanges, impose important new duties and disclosures on public companies, their management and, perhaps most significantly, their audit committee members and other independent directors. Corporate directors have already, in recent years, been asked to wade through blue ribbon committee reports, SEC staff accounting bulletins, compliance checklists and committee charters in the wake of SEC and stock exchange rules and pronouncements on financial reporting and corporate governance reform issues. The overlay of the new Act's provisions and the current business climate, however, have made it more difficult than ever for corporate directors, and audit committee members in particular, to discharge their duties in an effective and satisfactory manner. Indeed, at no other time in our nation's history have financial reporting and corporate governance matters been more publicized or related securities enforcement inquiries been of greater potential consequence to those involved.

Among its provisions, the Sarbanes-Oxley Act cites the authority of public company audit committees to engage advisers and requires issuers to provide appropriate funding for that purpose, recognizing that many committees have engaged accounting and legal advisers on financial reporting and governance matters for some time as a matter of best practice. Given the cumulative nature of these rules and broad array of duties and responsibilities they impose on audit and other committee members, their need for ongoing guidance from seasoned counselors has never been so great.

Turning to Ropes & Gray

For more than a century, Ropes & Gray has advised audit committee members and other independent directors and individual fiduciaries on sensitive governance issues. We also regularly advise such clients in connection with the discharge of their periodic responsibilities, such as their oversight of financial reporting matters, and their situational duties, including addressing potential changes of control as well as conducting special reviews and investigations.

The depth and range of our audit committee advisory practice is a product of our service as general or special counsel to scores of public companies and boards, and our representation of more mutual funds and fund directors and trustees than any other law firm in the nation. In counseling the directors and audit committee members of many of the leading and largest mutual funds in the country, we bring to bear the insights, experiences and judgment borne of decades spent advising on board matters, routine and otherwise. In doing so, we have also developed insights on the many particular concerns unique to the management of audit committee affairs in a very highly-regulated environment – one like that now imposed on all corporate audit committees by the Sarbanes-Oxley Act and related SEC and exchange rules.

To these audit committee and independent director engagements, we bring not only the full benefit of our securities expertise and preeminence in investment management and governance matters, but also our

expertise in allied fields such as taxation and litigation, general corporate advice appropriate to the directors of public companies, as well as advice concerning changes of control and other structural changes, merger and acquisition activity, financings, public offerings, insurance and indemnity arrangements, compensation matters and specialized governance issues.

We and our clients also benefit from our relationships with major accounting, financial consulting and advisory firms. We can bring to bear their expertise, if necessary, in a confidential and protected manner, to assist audit committees, independent directors and full boards in carrying out their oversight and periodic responsibilities as well as any situational duties that may arise.

Our success in advising audit committee members and other independent directors on sensitive financial reporting and corporate governance matters as well as in addressing corporate crises of all forms stems from our broad approach and firm-wide sense of teamwork in advising our clients. Ropes & Gray litigators, for example, are found alongside their corporate colleagues in the boardroom, in drafting sessions, in the negotiation of major transactions, in the review of key corporate filings and releases, and in a broad range of corporate governance matters. Many of the firm's lawyers are former federal prosecutors. Others have served with the SEC, including its Divisions of Corporation Finance and Enforcement. By integrating their views with those of our many corporate partners in governance counseling and transactional engagements, among others, our clients not only further their business interests but also frequently avoid undue regulatory scrutiny, litigation and other disputes – or have the most protective record available to them should problems arise later on.

Our Clients

In addition to corporate audit committees, we represent clients in virtually every sector of the economy, both domestic and international. They include Fortune 100 companies; technology companies; large financial service complexes; individual investment advisers; brokerage firms; mutual funds; public companies large and small; multi-billion dollar manufacturing companies as well as emerging-growth companies; retailers; financial institutions; conglomerates; and high-technology, pharmaceutical and biotechnology businesses. We also regularly advise independent directors, corporate officers and other individuals in securities matters as well as a host of other engagements. For more than a century, Ropes & Gray has resolved high-profile and remarkably sensitive matters in a broad range of venues to the great satisfaction of our clients, and we continue to do so.