



LEGAL ALERT

February 20, 2014

NOTE TO CLIENTS ON PREPARATION, REVIEW AND ADOPTION OF PROXY MATERIALS

With annual meeting season upon us, we would like to take this opportunity to remind our clients and friends about the importance of establishing and following a process concerning the preparation, review and adoption of proxy materials for annual meetings of shareholders.

Proxy Preparation

Preparation of proxy materials requires the involvement and coordination of executive management, board committees and the entire board of directors. It also may involve coordination with outside professionals, including auditors, legal counsel and compensation professionals. Therefore, proxy materials inevitably will go through numerous revisions as information is compiled and updated from various sources. In some cases, the proxy materials will contain recommendations from board committees that have to be approved by the full board of directors, such as those clients subject to the SEC rules on Compensation Discussion and Analysis.

Benefits of Establishing and Following a Proxy Preparation, Review and Approval Process

By establishing and following a proxy preparation, review and approval process, the company lays the foundation for available legal defenses to any subsequent claim that might be made against the company with respect to the proxy materials.

Usually, these claims relate either to (1) breach of fiduciary duty or negligence in connection with the preparation, adoption and dissemination of the proxy materials or (2) the proxy materials containing a material misstatement or omission of material fact.

Under the Pennsylvania Business Corporation Law, a director stands in a fiduciary relationship to the company and must perform his duties in good faith and in a manner he reasonably believes to be in the best interests of the company and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. By establishing and following a process for the preparation, review and approval of proxy materials, directors will be able to demonstrate that they have satisfied their responsibilities to the company with the required inquiry, skill and diligence. This generally is referred to as a "due diligence" defense.

A claim for securities fraud in connection with the dissemination of proxy materials may arise under SEC Rule 10b-5 for non-SEC reporting companies and under SEC Rule 14a-9 for a SEC reporting company. In either case, the claim will be that the proxy materials contained a material misstatement or an omission of material fact. In this regard, it is important that whatever statements the company

Bybel Rutledge LLP
1017 Mumma Road, Lemoyne, PA 17043
Phone: 717-731-1700
Fax: 717-731-8205
Website: www.bybelrutledge.com

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship.

makes in its proxy materials concerning the preparation, review and adoption of the proxy materials is accurate in all material respects. By establishing and following a proxy preparation, review and approval process, the company can minimize the possibility that its statements in the proxy materials do not correlate with the actual process which it followed.

Have You Changed Auditors this Year?

If you are a SEC reporting company and you have changed your PCAOB-registered accounting firm this year, you will have filed Form 8-K with the SEC.

However, in addition to filing Form 8-K, ***SEC rules also require you to include similar disclosure in the proxy materials that will be filed with the SEC and disseminated to shareholders.***

Time and Responsibility Chart

In light of the foregoing, the following is an abbreviated time and responsibilities chart for review, adoption and dissemination of proxy materials for annual meetings of shareholders. A more detailed timeline, which previously was provided, is available for review by management.

<u>Task</u>	<u>Responsibility</u>
Drafting proxy statement and coordinating with outside professionals	CEO/CFO and delegates
Review and comment on Draft Proxy preliminary to full Board review	CEO, CFO and COO Board Committee Chairs
Final Draft to be reviewed by Entire Board with board resolution to approve distribution of proxy materials to shareholders with such non-material changes as may be made by executive management, counsel and auditors.	Board of Directors

Need More Information?

If you would like additional information concerning the proxy preparation, review, adoption and solicitation process, including rules applicable to SEC reporting companies, or a draft time and responsibilities chart, please contact any of the following members of Bybel Rutledge LLP at (717) 731-1700 or at their respective email address:

Nicholas Bybel, Jr., Esq. (bybel@bybelrutledge.com)
Erik Gerhard, Esq. (gerhard@bybelrutledge.com)
L. Renee Lieux, Esq. (lieux@bybelrutledge.com)
Nicole Stezar Kaylor, Esq. (kaylor@bybelrutledge.com)
G. Philip Rutledge, Esq. (rutledge@bybelrutledge.com)



Trusted Advisors to Companies...Every Step of the Way.SM