

## Task Force On Corporate Governance

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- *Independent*
- *Objective*
- *Conflict-Free*

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## *Executive Summary*

The law relating to corporate governance of publicly traded companies is evolving rapidly, raising the standards for Board of Directors oversight and management responsibility. The context for governance issues is also having a ripple effect for numerous private companies -burdening those preparing to go public or to be acquired by a public company, or inhibiting venture capital investment. In response to these changes, Anderson Kill & Olick, P.C. ("AKO"), a nationally-known firm headquartered in New York, offers seasoned attorneys to provide precise, concrete, cost-effective assistance to companies and their in-house and outside counsel seeking to meet the challenges of the Sarbanes-Oxley Act ("SOX")—the AKO SOX Task Force.

The AKO SOX Task Force offers:

- **Governance Compliance Services**, including legal audits, objective advice to independent directors on their role and responsibilities, and advice to Board Committees, as to compliance procedures and policies, ethics and conflicts issues, performance standards and disclosure obligations.
- **Audit Committee Services**, including evaluation of member qualifications and those of the "financial expert," procedures for selection and oversight of auditors, relationship to auditors, management and the Board, and policies for internal controls and disclosure controls.
- **Independent Litigation Services**, including advice on, and performance of, independent investigations, advice concerning criminal investigations, guidance concerning allegations from "whistleblowers", and advice regarding derivative actions.
- **Insurance Protection Services**, including evaluation of existing coverage and interplay of D&O and corporate policies, availability of expanded coverage, anticipation of insurer audits.
- **Recommendation and guidance of Ancillary Professional Services**, including accountants, forensic accountants, executive recruiters, insurance coverage analysts, investigators and financial public relations firms, to provide a full package of integrated SOX services, reduce learning time and contain costs.

### *Governance Compliance Services*

SOX and its implementing regulations, and their counterpart regulations of the national stock exchanges and the NASD, are the principal reaction to now widely perceived deficiencies in United States corporate governance. Specifically targeted are the historically self-policing systems dealing with public company financial disclosure and management accountability. While only egregious corporate scandals have captured the daily headlines, every public company must now address many “hot button” issues, such as increasing independent board oversight, responding to conflicts of interest and lapses in corporate ethics, and rationalizing performance-based executive incentives. All of this means that current corporate practices must be scrutinized closely.

The AKO Task Force will perform the following services for an initial governance legal audit and follow-up annual audits:

- Review and evaluate corporate documents pertaining to Board and Committee procedures, guidelines for director oversight activity, access to counsel, consultants and other resources, and reporting of issues to the Board.
- Evaluate existing Board composition and review directors for independence, conflicts, interlocks and relevant business and professional background.
- Evaluate procedures for selection, evaluation and investigation of prospective directors and their orientation and training.
- Identify issues affecting D&O insurance coverage.
- Review policies and procedures of each of the following:
  - Audit Committee, including qualifications, auditor hiring and supervision, and interface with Board and management.
  - Compensation Committee, including executive compensation policies, qualified and incentive stock option plans, severance packages, and performance criteria, particularly with a view to comparable companies in the relevant industry.
  - Governance Committee, including procedures for monitoring governance issues, codes of ethics, identifying conflicts of interest, evaluating use of tax havens and other off-shore entities, compliance with

Foreign Corrupt Practices Act, and dealing with “whistleblowers.”

In addition, the AKO Task Force will provide the following ongoing counsel:

- Evaluate role of in-house counsel relationship to senior management, participation of counsel in review of business initiatives, reporting, record retention and responses to failure of management to respond to violations.
- Recommend new mechanisms to ensure timely and appropriate disclosure and appropriate interface with the Audit Committee.
- Monitor and advise on new proposals regarding disclosure required by the SEC and the various stock exchanges and the NASD.
- Evaluate public disclosure made by other companies, to determine trends and standards for complying with applicable disclosure rules.

### *Audit Committee Services*

In the world of governance of public companies, much of the focus is on the Audit Committee of the Board, the linchpin between management of a company and its auditors. Audit Committees must become pro-active, to ensure the quality and integrity of a company’s financial statements and reports. Audit Committees must understand the critical accounting policies of a company, the reasons they were chosen and how they are applied, and ultimately must have a rational basis for believing that a company’s actual financial condition is being fairly presented.

The AKO Task Force will:

- Assess the qualifications of Audit Committee members, including independence, financial literacy and whether a member is eligible to become the “financial expert” of the Audit Committee.
- Analyze procedures for appointment, compensation and oversight of auditors.
- Amend the Audit Committee charter to reflect its expanded responsibilities.
- Recommend strategies for evaluation and for resolution of disagreements

between management and the auditors.

- Identify issues affecting members' D&O insurance coverage.
- Determine non-auditing services that the auditors can lawfully perform.
- Advise on appropriate policies with respect to internal controls and procedures and disclosure controls and procedures, and off balance sheet and off-shore transactions.
- Establish procedures for dealing with complaints regarding accounting, internal accounting controls and similar matters, as well as "whistle-blower" submissions by employees concerning accounting and auditing matters.
- Establish policies for engaging independent counsel and other advisors to the Audit Committee at company expense.

### *Independent Litigation Services*

The era of corporate reform has consequences not only in the boardroom but in the courtroom as well. Each and every corporate debacle over the last several years has resulted in extensive litigation, often both civil and criminal. AKO's SOX Task Force provides advice and guidance for responding to triggers for action in a manner which fulfills legal duties and protects corporate interests.

The AKO SOX Task Force can provide the following litigation services:

- Advise the Board or its Committees concerning the need for and performance of independent investigations of alleged corporate misconduct, including coordination with other professional advisors and experts such as forensic accountants, crisis managers and private investigators.
- Advise the Board or its Committees regarding issues involving investigations by government agencies or regulators.
- Advise the Board or its Committees relating to allegations made by "whistleblowers", including investigations of any such claims and avoidance of retaliation.

- Advise the Board or its Committees in circumstances where there has been a demand threatening commencement of a derivative action, including review and analysis of proposed claims, establishment of proper procedures for investigation of claims, and consideration of whether a company should bring or seek a dismissal of such claims.

### *Insurance Protection Services*

Director and Officer insurance as well as other coverage (e.g., professional liability) for executives has gained increasing importance in light of the increased exposure of directors and officers under the strictures of SOX. The new pro-active roles projected by SOX for independent directors, audit and other Committee members, and senior management requires close and serious attention to existing and prospective policies.

AKO and its affiliate, Anderson Kill Insurance Services (“AKIS”), can provide a full range of services:

- Analysis and reporting to executives regarding the scope and limits of existing coverage.
- Recommend modification of existing insurance programs to provide, for example:
  - Separate coverage for each Board Committee (e.g., audit, governance and compensation committees).
  - Separate coverage for independent directors.
  - Separate coverage for each individual director.
- Assist in the insurance underwriting process to provide, for example:
  - Assistance in complying with insurance company governance requirements imposed as a condition to issuance of insurance.
  - Advice regarding company and director representations and warranties mandated by the insurance companies.
  - Strategies to enable a company to lower its insurance premiums.
- Post-Claim Monitoring Assistance, including:
  - Tracking claims handling by the carrier for the purpose of protecting the insurance available for all affected directors.
  - Guiding directors individually (or through their own representative)

to participate in presentation of all facts leading to coverage decisions that affect their own D&O insurance.

- Prosecute litigation against recalcitrant insurance companies.

### *Ancillary Professional Services*

AKO's Task Force performs legal analysis and recognizes that, for both completion of its evaluations and design of recommended proposals, the assistance of other professionals will sometimes be required. Accordingly, AKO has access to a number of highly-qualified professional advisors, whose supplemental services could be engaged by the client and coordinated with those of AKO, or utilized independently on a spot basis.

These advisors include the following:

- Accountants, to provide independent advice to the Audit Committee or Board of Directors as to questioned practices or disagreements with a company's auditors.
- Forensic accountants, to investigate suspected wrongdoing.
- Insurance analysts, to review issues of adequacy of D&O coverage, negotiate with carriers, evaluate claims response.
- Private investigators, for background checks of existing and proposed directors.
- Executive search firms, to aid in selection and recruitment of independent professional directors and senior executives.
- Financial/investor public relations experts, to guide the client through disclosure of non-compliance, crisis management, and corporate image design and market positioning, vis-à-vis different investor constituencies. ■

## About AKO

Founded in 1969, AKO, at approximately 120 lawyers, has built a formidable national reputation for quality lawyering. AKO is a full service firm representing corporations and financial institutions from start-ups through Fortune 500 multinationals. Our Business Law practice is especially geared to providing responsive, cost effective service to privately-owned and publicly-traded businesses, both domestic and foreign.

In addition to its main office in New York, it has offices in Chicago, Newark, Philadelphia, Greenwich and the District of Columbia. The AKO Task Force is drawn mainly from our Business Law Department. It includes members of our Insurance Coverage and Litigation Departments for D&O matters, counsel responsibility issues, and litigation and pre-litigation counseling.

The members of the task force include:



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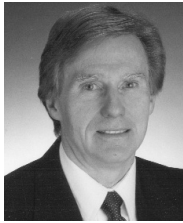
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