MAY/JUNE 2006

ARMSTRONG TEASDALE VOTED ONE OF THE BEST LOCAL CORPORATE LAW FIRMS

Armstrong Teasdale was identified as one of the top corporate law firms in the St. Louis, Missouri area according to the article "America's Best Corporate Lawyers" in the July/August 2006 issue of *Corporate Board Member* magazine. Armstrong Teasdale ranked #2 out of the five firms mentioned from St. Louis. The results of this annual legal survey were generated by asking corporate directors and officers serving on boards of publicly traded companies to identify the most respected local firms across 25 major U.S. markets.

PRACTICE AREA FOCUS: LIFE SCIENCES AND TECHNOLOGY

2005 Year-in-Review. 2005 was a successful year for the Life Sciences and Technology Practice Area with the group continuing to support existing clients and expanding the practice with new clients. Several significant projects were completed in connection with licensing, technology acquisition and private equity financing for start-up and emerging company clients.

Examples of these projects include:

Private Equity Finance - Emerging Companies	Dollars Funded
Kereos, Inc.	$20,000,000
Isto Technologies, Inc.	$10,800,000
Technology Acquisition and Licenses	
Sigma-Aldrich license from and investment in: • Cyntellect • Oxford Biomedica • Benitec • Genospectra	
United Industries: multiple licenses in support of its garden and pet products businesses	
Ipsos Companies: multiple licenses in support of its internal Information Technology requirements	

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Practice Area Overview. The Life Sciences and Technology Practice Area actively represents new and established companies that rely on technology as a core element of their businesses, as well as universities, research institutions and scientists in connection with their technology transfer programs and activities. The practice area covers numerous and diverse legal areas, including venture capital, intellectual property, corporate partnering, university licensing and sponsored research, labor and employment, facilities development and financing, mergers and acquisitions, international and corporate counseling. We are regularly involved in transactions with firms throughout the U.S. and abroad.

Attorneys practicing in the Life Sciences and Technology Practice Area have experience in areas where technology based businesses' legal needs are focused. We provide a one-stop shop for our clients, whether the issue is one involving financing, licensing, technology or a combination of multiple areas. For example, we recently assisted a client with a series of integrated transactions involving a venture capital investment, a series of licenses and sub-licenses, product distribution rights, and collaboration with respect to new technology areas.

Client Support and Relationships. The Life Sciences and Technology Practice Area supports clients through:

- Regular in-house training of our attorneys in technology ventures matters
- Involvement in national legal programs to stay current and connected (including involvement in the American Bar Association's Venture Capital Committee and the preparation of chapter on biotechnology company formation for a book [to be] published by the American Bar Association Biotechnology Committee)
- Leadership roles in Technology Gateway and other St. Louis technology-oriented organizations to help build St. Louis technology opportunities
- Initiation of unique events like BioTrends Midwest 2005

The Life Sciences and Technology Practice Area focuses on building strong, long-term relationships with clients. Attorneys regularly attend client board meetings, strategy and planning sessions, and stay involved in many other activities to keep us up-to-date on a client's development and legal needs. We strive to provide our legal services in a practical and efficient way, focusing on the client's business goals and opportunities.

Please contact David Jennings at ext. 7231 or Andy Hoyne at ext. 7369 if we can assist you or your clients with life sciences or technology related projects.

SECURITIES

Corporate Web Site Compliance

Jill Newbold

To date, public companies have not been required to maintain web sites by the SEC, the NYSE, Nasdaq or the AMEX (although the NYSE has proposed that its listed companies be required to maintain web sites). In this Information Age, however, investors have become accustomed to accessing certain information via corporate web sites, even if such information is not required by statute, regulation or exchange listing standards. To the extent a company chooses to maintain a corporate web site, certain compliance issues should be kept in mind. The table below summarizes some of the posting requirements applicable to a public company that maintains a web site.

	SEC	NYSE	Nasdaq/AMEX
Periodic & Current Reports (Forms 10-K, 10-Q, 8-K)	Required for accelerated filers - must be posted as soon as reasonably practicable[1] after filing with the SEC	No requirement	No requirement
Section 16 Filings (Forms 3, 4, 5)	Required for accelerated filers	No requirement	No requirement
All other SEC Filings	Encouraged, but not required	No requirement	No requirement
Code of Ethics	Not required; however, if posted on web site, registrant not required to file code as 10-K exhibit	Required	Required[2]
Corporate Governance Guidelines	No requirement	Required	No requirement
Audit Committee Charter	No requirement	Required	No requirement
Nominating Committee Charter	Not required; however, if posted on web site, registrant not required to include charter as appendix to proxy statement once every 3 years	Required	No requirement
Compensation Committee Charter	No requirement	Required	No requirement
CEO/CFO Certifications	No requirement	No requirement	No requirement
Names and Information Relating to Officers and Directors, Including Committee Membership	No requirement	No requirement	No requirement
Organizational Documents (Articles and Bylaws)	No requirement	No requirement	No requirement
Press Releases	No requirement	No requirement	No requirement
Webcast Recordings	No requirement	No requirement	No requirement
Regulation G Materials	No requirement	No requirement	No requirement

[1] *"As soon as reasonably practicable" has been interpreted to mean that Forms 10-K, 10-Q and 8-K must be posted on the issuer's web site on the same day as filing with the SEC.*

[2] *The code of ethics must be "publicly available." Web site posting of the code would satisfy this requirement.*

SEC FILINGS

Periodic and Current Reports

The SEC requires that all Forms 10-K, 10-Q and 8-K (and any amendments thereto) be posted on an accelerated filer's web site as soon as reasonably practicable after filing with the SEC. In addition, the issuer must disclose the web site address at which the reports may be found (or explain in its Form 10-K why it does not post the filings and whether electronic or paper copies of its filings will be provided by the issuer upon request and free of charge). The web site used for this purpose must be the web site normally used by the issuer for investor relations matters. The SEC recommends that reports remain available on the web site for at least 12 months.

Rather than providing direct access to the required reports, an issuer may hyperlink to its reports via a third-party service (including the SEC's web site), if:

- the periodic and current reports are available within the required time frame,
- access is free of charge,
- all information in the reports is retrievable,
- the user can effectively access the information, including exhibits and attachments,
- the hyperlink is on the issuer's web site that is normally used for investor relations, and
- any hyperlink leads directly to the issuer's filings (or a list of the filings) and not the home page or general search page of the third-party service.

Section 16 Filings

The SEC also requires accelerated filers to post their insiders' Section 16 filings on their web sites. Forms 3, 4 and 5 must be posted on the issuer's web site by the end of the business day after filing, and must remain accessible for at least 12 months following posting.

Section 16 filings may also be provided via a hyperlink to a third-party service if the requirements described above are met and:

- the hyperlink leads directly to a web site containing only the Section 16 forms filed with respect to the issuer, and
- the hyperlink caption clearly indicates that it leads to such Section 16 forms.

If a company does not use a hyperlink to a third-party web site to post these filings, it must implement a policy requiring prompt receipt of electronic copies of the filings from the insiders who file them in a format that can easily be posted on the issuer's web site.

All Other SEC Filings

Although the SEC, the NYSE, Nasdaq and the AMEX do not require a public company to post its other SEC filings, the SEC encourages companies to do so.

CORPORATE GOVERNANCE DOCUMENTS

Code of Ethics

The SEC requires annual report disclosure regarding whether or not the company has adopted a code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. In addition, the code of ethics must be filed as an exhibit to the annual report, or a statement must be included in the annual report indicating that the company will provide a copy of the code, free of charge, upon request. Posting the code of ethics on the company's web site is an alternative to the latter requirement. In addition, a company may avoid an otherwise required Form 8-K filing for certain amendments to, or waivers from, the code of ethics by posting the amendment or waiver on its web site. In order to take advantage of this disclosure method, the issuer must disclose its intention to provide web site disclosure of amendments or waivers in its annual report, and information regarding amendments and waivers must be available on the web site for at least 12 months.

A company listed on the NYSE is required to post its code of ethics on its web site.

Corporate Governance Guidelines

NYSE companies are required to adopt corporate governance guidelines that address certain identified topics, and the NYSE listing standards require that the corporate governance guidelines be posted on the issuer's web site. Although the SEC, Nasdaq and the AMEX do not have similar requirements, many non-NYSE companies have proactively adopted corporate governance guidelines and post them on their web sites.

Board Committee Charters

The SEC requires that an issuer disclose whether or not its board of directors has a nominating committee, and if so, whether the nominating committee has adopted a charter. If the nominating committee has adopted a

charter, the proxy statement should disclose that the charter is available on the issuer's web site and disclose the web site address. Otherwise, the issuer must include a copy of the nominating committee charter as an appendix to its proxy statement at least once every three years. If the nominating committee charter is not available on the issuer's web site, the issuer must identify when the charter was included as an appendix to the proxy statement for any year in which it is not included.

The NYSE listing standards require public companies to post on their corporate web sites the charters of their board committees, including the audit, compensation and nominating/corporate governance committees (or committees performing equivalent functions).

OTHER INFORMATION

In addition to the required web site disclosures, many companies have opted to provide additional information to investors via their web sites. Some information that can often be found on public companies' web sites includes:

- Press releases

  NOTE: *If a company decides to include press releases on its web site, positive and negative news must be equally accessible and available.*

- Regulation G information

  Under Regulation G, if a non-GAAP financial measure is released orally, telephonically, by webcast, by broadcast or other similar means, certain information must be disclosed, including a reconciliation to the most directly comparable GAAP number. Assuming that certain criteria are met, this requirement may be satisfied by posting the information on the issuer's web site. The SEC suggests that this information be available on the company's web site for at least 12 months.

- Webcast archives

  In connection with Regulation FD compliance, many public companies publicly announce information relating to their earnings calls in advance and allow the public to participate through a link on their web sites. A rebroadcast of the call is then available on the web sites for several days or weeks following the call.

- Names and information about their directors and officers, which may include biographies and photos

- Lists of board committees and their members

- Corporate organizational documents, such as the company's articles of incorporation and bylaws

- Information regarding officer and director stock ownership and/or transactions in company stock

INCORPORATION BY REFERENCE

The SEC has taken the position that providing a company's web site address, without more, will not constitute incorporation by reference. Issuers must take care, however, to avoid steps that will constitute incorporation by reference of other information on their web sites. The SEC generally considers any information that may be accessed from a hyperlink in a prospectus to be part of that prospectus. Companies should make reasonable efforts to ensure that web site addresses provided do not become active links when posted on their web sites. In addition, issuers should clearly state the intention not to incorporate information from the web sites. Similar precautions should be taken with respect to current and periodic filings, as they may be incorporated into, and become a part of, a prospectus.

CURRENT INFORMATION

Generally, companies should continuously monitor and update their web sites to ensure that information is current and outdated information is deleted or marked appropriately. By doing so, companies can provide their shareholders and the general public with a more accurate understanding of the company.

Please contact Jill Newbold at ext. 7980 for assistance with these or any other securities law questions.

Private Business Changes Create Opportunities for Income and Estate Tax Savings

John Dooling

Private business owners enter into hundreds of transactions every year to create opportunities for their businesses. Frequently these transactions also create opportunities for saving income tax or shifting value for later estate tax savings.

The transactions that usually generate these opportunities are those that produce a change in the business—an acquisition of a business, entering into a new product line, acquiring a new building or new equipment, or even settling a lawsuit. By structuring the ownership properly, control can be separated from income and value to achieve tax savings.

Following are some composites of tax planning strategies we have advised for our clients. The names have been changed to protect the taxpayers.

The Plant: XYZ Manufacturing's plant was obsolete and created roadblocks to efficient production. XYZ is owned by Jim, who is gradually giving stock to his son John, who runs day to day operations. Jim has two other children, Len and Wendy, and he wants to make sure they receive an equal share of his estate, but don't interfere with the operation of XYZ. Len and Wendy are a little jealous of the salary that John earns.

Jim creates Newco to buy the land and building for the new plant. Newco has 1 voting share, owned by Jim, and 999 non-voting shares, owned equally by Len and Wendy. It is a subchapter S corporation. XYZ enters into a long term lease for the land and building, and guarantees the loan for Newco to make the purchase. The rent pays off the loan and then produces an income for Len and Wendy. XYZ uses the proceeds from selling the old plant to make leasehold improvements to outfit the new plant.

Newco is not part of Jim's estate for estate tax purposes. And eventually Len and Wendy will indirectly receive an income from XYZ.

The Product: Steve has been tinkering with a new formulation for an adhesive for his flooring business. Or rather he has been paying a lab to create the new formula. He has done so through Sticky LLC, owned by his grandchildren. He is the manager. Steve lends the money to Sticky for the experiments and testing.

If the formula pays off, Sticky will arrange for manufacturing and distribution, or the flooring company will license it. The income will be taxed to Steve's grandchildren, and provide a fund for their education.

The Settlement: Matt and Mark inherited the Ace Company from their father. Dad didn't want there to be a stalemate so he gave Matt 51% of the stock. After 20 years in the business Mark wanted to be his own boss, so he formed a new company and started calling on Ace's customers. Since he didn't bother to tell Matt, or stop taking a salary from Ace, when Matt found out he fired Mark and sued him for breach of his duty as an employee and director.

To settle the lawsuit Mark agreed to sell his stock back to the company for $600,000. Matt negotiated to have the right to decide who the buyer would be. Matt created a trust for the benefit of his wife, children and grandchildren, and that trust purchased the stock from Mark. It borrowed the money to do so from Ace.

The income from the trust's 49% interest in Ace is used to pay off the loan. And the excess income goes to the children, taxed at lower rates, or to pay for the grandchildren's college education.

Ace is now worth $5,000,000. The shares owned by the trust are not part of Matt's estate or that of his wife, saving the estate tax on $2,500,000. Matt gave his wife 2% of the stock of Ace, so he also owns a minority interest in Ace, and it will have a discounted value in his estate.

Please contact John Dooling at ext. 7282 for assistance with tax structuring questions.

Director & Officer Financial Protection in M&A Transactions

John Goltermann

When looking to structure the ongoing director and officer insurance program after a merger or acquisition, one must consider the existing conflict of interest that may exist between the target's former directors and officers and the acquirer's directors and officers. This article outlines certain issues regarding coverage for claims pre and post acquisition.

In a stock acquisition or a merger transaction where the target survives, the acquirer must include the target company in its D&O insurance program for any wrongful acts committed after the transaction. If the transaction is structured such that the target company will not exist after closing, this will not be an issue. However, if the target is to become a subsidiary of the acquiring company, the main issue is the extent to which the current insurer of the acquirer is to receive notice of the acquisition and underwrite coverage for the target.

Many D&O insurance policies provide for automatic coverage for a predetermined threshold listed in the policy. The threshold is typically based on a percentage of assets of the acquirer. The standard range is 10% to 15%. If the target asset threshold exceeds the limit in the policy, the policy usually dictates the resulting increase in premium and the components of underwriting for the target's coverage. In addition, many policies provide for automatic coverage for a limited number of days, usually between 60 to 90 days.

Another issue arises in connection with coverage for claims made after the close of the transaction, for wrongdoings of the directors and officers of the target company committed before the close of the transaction. If directors and officers of the target will be replaced after closing, the directors and officers of the target should purchase a non-cancelable extended run-off policy that cannot be modified by the acquirer. Normally, the term of a run-off policy is 4 to 6 years. The target's directors and officers would generally prefer a run-off policy rather than a provision in the transaction document requiring the acquirer to maintain director and officer insurance on the directors and officers of the target, because if the acquirer breached this provision of the agreement, the target's directors and officers would have no insurance coverage. The conflict between the target and acquirer arises in the run-off policy where the target's directors and officers want to maximize their personal coverage (Coverage Part A[1]) and are less concerned with corporate balance sheet protection (Coverage Part B[2] and Coverage Part C[3]).

The target's directors and officers, if not remaining with the acquirer, will not have an interest in protecting the company on an ongoing basis. The target's directors and officers can protect themselves by purchasing a stand alone coverage part A policy, which has broader terms and conditions than what would be found in a typical director and officer run-off policy. Also, the limit of the insurance would not decrease by claims paid under the Coverage Part B and Coverage Part C of a typical run-off policy. In contrast, the acquirer will want to maximize the coverage under Coverage Parts B and Coverage Part C.

This conflict needs to be discussed by both sets of directors and officers. Typically, the acquirer and the target directors and officers will compromise on a base run-off policy containing Coverage Part A, Coverage Part B, and Coverage Part C and also a run-off policy containing stand alone Coverage Part A.

These are just a few of the issues that need to be addressed prior to an acquisition being completed as to the D&O insurance program.

[1] *Director and officer liability for non-indemnifiable losses; direct coverage to the directors and officer ("Coverage Part A").*

[2] *Director and officer liability for indemnifiable loss by the company; coverage for company's indemnification of directors and officers for their liability ("Coverage Part B").*

[3] *Entity coverage for securities claims only ("Coverage Part C").*

Please contact Mike Jefferies at ext. 7017 for assistance with these or other M&A questions.

IN-HOUSE MONTHLY CLE PROGRAMS

Upcoming Presentations and Programs

Armstrong Teasdale CLE programs are held on the fourth Thursday of each month at 11:45 a.m. in the training room on the 8th floor.

July 27, 2006
Marty Hereford, "Immigration Issues"

August 24, 2006
Jonathan Igoe and John Dooling, "Trust and Estates Overview and Update"

September 28, 2006
Tom Bradshaw and Jim Martin, "White Collar Crime"

Recent Presentations and Programs

March 23, 2006
Mark Stoneman, "Accounting for Attorneys"

April 27, 2006
Jonathan Igoe, Vance Miller and Larry Sewell, "Employee Issues in Strategic Business Transactions, Part 1"

May 25, 2006
Jonathan Igoe, Vance Miller and Larry Sewell, "Employee Issues in Strategic Business Transactions, Part 2"

June 22, 2006
Glenn Davis and Mark Stoneman, "Antitrust Issues"

To view the PowerPoint slides from past CLE presentations, go to the training and development section on the Intranet.

If you have any questions regarding this material, please do not hesitate to call your regular Armstrong Teasdale contact or any of the Practice Area Leaders noted on the first page.

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