

GOVERNANCE AND COMPLIANCE

Current Environment

Governance and compliance currently stand at the top of the list of significant issues facing corporate America. As a result of recent corporate scandals, such as Enron and WorldCom, that continue to capture headlines today, business leaders find themselves in an ever-changing and unforgiving environment where inattention and missteps can lead to negative press and inquiries from the SEC or the Department of Justice and the possibility for shareholder claims.

These corporate scandals have prompted legislators, regulators and other policymakers to enact and adopt numerous new laws and regulations, such as the Sarbanes-Oxley Act of 2002 and the SEC regulations thereunder. In addition, judicial decisions such as *Disney*, *Abbott Laboratories* and *Emerging Communications* have raised new questions regarding the scope of a director's duty of care. The United States Sentencing Commission has revised the Federal Sentencing Guidelines to require higher standards for effective compliance and ethics programs, and the Nasdaq and NYSE have adopted new requirements for Board and committee composition and governance practices for listed companies. The bodies of laws, regulations and other standards have become much more complex and require a greater investment of time and resources for most public companies and many private companies.

Judges, policymakers, law professors, business leaders and others have spent a lot of intellectual capital toward addressing needed governance reforms, including optimizing Board and Board committee structures, improving shareholder access and communication and developing appropriate business mechanisms for managing enterprise risk and information flow throughout the organization. Much of the recent dialogue has focused on new tools and frameworks targeting the prevention of fraud and other corporate wrongdoing. As a result, we are seeing a trend toward companies focusing their resources on enterprise risk management, creating a culture for proper business ethics and innovative compliance tools designed to prevent criminal and fraudulent conduct.

Our Team

Armstrong Teasdale has combined its existing corporate governance practice area with its compliance practice area to better address the changing landscape of corporate governance, which landscape allows little tolerance for compliance misses. This combination, together with the addition of new attorneys with corporate and prosecutorial experience, has provided Armstrong Teasdale with an expanded knowledge and experience base better aligned with the multifaceted needs of our governance and compliance clients. Whether engaged to counsel public, private or not-for-profit companies, we can assemble the right team to represent clients with regard to director fiduciary duties, assist audit committees and other committees of independent directors in investigating alleged fraud or other wrongdoing and support compliance officers in implementing the latest compliance “best practices.” Attorneys practicing in this area include former federal prosecutors, experienced securities attorneys and former compliance professionals. If serious issues arise, these former prosecutors and federal agents are particularly qualified to conduct a thorough and effective investigation capable of resolving any issue.

Proactive Approach

Frequently, companies engage their outside attorneys only after there has been a governance or compliance misstep, at which point the parties spend much of their limited time and resources in a reactionary posture. Armstrong Teasdale proactively counsels clients on governance and compliance matters targeting prevention of mishaps before they become enterprise crippling scandals.

Attorneys within the Governance and Compliance Practice Area work with clients to support their efforts in adopting the right corporate governance structure to comply with SEC, Nasdaq and NYSE governance requirements, to build a culture for proper business ethics, to adopt enterprise risk management methodologies, to enable transparency in financial reporting, to embed disclosure controls and other controls and to implement effective compliance and ethics programs.

The Governance and Compliance Practice Area can also provide the legal perspective to a company’s IT and process improvement teams as they implement the necessary information systems and processes to support governance and compliance initiatives.

Practice Highlights

In addition to providing the unique insights and approaches of a cross-functional team of attorneys, Armstrong Teasdale's governance and compliance practice can also provide support in more traditional governance and compliance areas, including the following:

- Advising Boards of Directors with respect to their fiduciary duties, particularly with respect to control transactions
- Assisting companies in responding to shareholder proposals
- Acting as outside counsel to audit committees
- Counseling compensation committees with regard to executive compensation matters
- Conducting due diligence reviews of a target's governance and compliance practices
- Establishing whistleblower procedures
- Assessing effectiveness of compliance and ethics programs
- Assisting with the development of Codes of Ethics and governance/compliance policies and procedures, including document retention policies
- Undertaking investigations of suspected fraud or other wrongdoing
- Reviewing coverage under director and officer liability insurance
- Evaluating the effectiveness of anti-takeover measures

Related Practice Areas

- Criminal Defense and Compliance
- Government Contracts
- Healthcare
- Securities