

**Crisis At The Company: The Role Of Independent Directors In Steering The Company To Safe Waters**

Tuesday, October 25, 2022

Agenda8:30 – 9:30 AM **Registration, Networking, and Continental Breakfast**9:30 AM **Welcome**9:30 – 10:30 AM **Hypothetical 1:**

ACME Products is a public company and a burgeoning manufacturing business. ACME's largest and most profitable product lines are from its anvil division. A relatively new executive employee raises concerns about potential accounting errors in the anvil division. He claims that the company may be billing for anvils and recognizing revenue prior to shipping, in order to meet quarterly sales targets. At the same time, the company receives an anonymous complaint through its whistle blower hotline about premature revenue recognition stating that the CFO directed this accounting treatment. The GC advises the CEO of the employees' concerns and the whistle blower complaint.

The company does not alert the Board and instead, the CEO and GC decided that the GC would lead an investigation. The complainant, who works for the CFO, believes the GC, who has worked with the CEO and CFO for 20 years, is not independent. The whistleblower contacts the company's auditors directly and reports his substantive and procedural concerns. The auditors then contact the audit committee and demands that it conduct an independent investigation with outside counsel. The auditors refuse to sign off on any SEC filings/financial statements until the investigation is complete.

The Audit Committee hires independent counsel to conduct the investigation and that counsel engages an accounting firm to assist it. The Audit Committee investigation has not concluded, but has progressed far enough to know that it looks like the company has overstated its revenue for several prior periods and its prior financials are inaccurate.

Moderator

- John C. Grugan, Partner, Ballard Spahr LLP

Panelists

- Stacie L. Roberts, Vice President, Corporate Governance, Chesapeake Utilities Corporation
- April Hamlin, Partner, Ballard Spahr LLP
- Timothy D. Katsiff, Partner, Ballard Spahr LLP
- David J. Margules, Partner, Ballard Spahr LLP
- Jessica Case Watt, Partner, Ballard Spahr LLP

10:30 AM – 10:40 AM **Break**

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Agenda – Page 210:40 AM – 11:40 AM **Hypothetical 2:**

The Company decides to alert the SEC prior to the public announcement that its prior financials cannot be relied on. Shortly thereafter the Company receives a subpoena from the SEC and the DOJ also now decides to subpoena the company. The Company's 10-K annual report is due to be filed at around the same time the Audit Committee determines that the financials must be restated but before the Audit Committee investigation is completed. The Company will not be able to file its 10-K on time and must file a notice with the SEC that it will be late filing its annual report. In that filing, the Company discloses that it is conducting an investigation requested by its auditors. On this news, the company's stock price drops and the world (and all the shareholders and plaintiffs firms) knows there is a problem with the company. Almost immediately, the company is sued for securities fraud and shareholders either file derivative complaints or make demand on the board to bring claims against the officers and directors.

Now that the company has reported that it is doing an investigation and can't file its 10-K on time, the stock exchange sends notice that the company is out of compliance with the exchange's rules and faces potential de-listing.

The Company's auditors require review across all business units and discovers potential FCPA violations involving sales of anvils in foreign countries.

Moderator

- Laura E. Krabill, Partner, Ballard Spahr LLP

Panelists

- Justin P. Klein, Director, John L. Weinberg Center for Corporate Governance
- David L. Axelrod, Partner, Ballard Spahr LLP
- M. Norman Goldberger, Partner, Ballard Spahr LLP
- Kahlil C. Williams, Partner, Ballard Spahr LLP

11:40 AM – 12:45 PM **Lunch and Networking**