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Soderquist on Corporate Law and Practice

Fourth Edition

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Soderquist on Corporate Law and Practice provides essential information about the landscape of corporate law—fundamental concepts, practice considerations, historical context, and recent developments—and presents the ways in which specialized areas of corporate law, particularly federal securities law and the law of unincorporated entities, intersect with and relate to state corporate law. This fourth supplement to the Fourth Edition reflects the latest developments in the major areas of corporate law, including the following:

Mandatory Charter Provisions: Corporate Name. A corporate name must be distinguishable from the name of another corporation that is incorporated or registered to do business in the state or whose corporate name has been reserved for future use. Delaware provides an exception to this “distinguishable requirement.” See § 4:4.2[A] for details.

No-Pay and Fee-Shifting Charter and Bylaw Provisions. In recent years, companies have adopted no-pay and fee-shifting charter or bylaw provisions to eliminate frivolous lawsuits and to discourage unwanted tender offers and lawsuits brought by activist shareholders. See §§ 4:4.3[B] and 6:4.2[C][1] for a comparison of these provisions, as well as a discussion of the approach taken by Oklahoma, which is different from Delaware’s approach.

Correcting Certain Types of Defective Corporate Acts. Corporations sometimes fail to adhere to all proper substantive and procedural requirements when engaging in corporate acts that would otherwise be a valid exercise of corporate power under the applicable corporate statute. See § 4:8.3 for a list of specific transactions that are of particular concern, as well as discussion of statutes enacted by Delaware and Texas that provide two ways to correct one or more of those defective corporate acts.

Capitalization via the Internet: Crowdfunding. The Internet allows companies to raise capital by soliciting many small contributions from a large number of people. For a discussion of crowdfunding and of how the securities laws regulate offers to sell securities made through social media, see *new* §§ 5:9 and 14:2.3[C].

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Bylaw Provisions: Special Issues. New discussions cover a number of types of bylaw provisions that have received considerable attention lately, including: proxy access bylaw provisions (*new* § 6:4.2[C][3]); consent-to-sue bylaw provisions (*new* § 6:4.2[C][4]); director elections (*new* § 6:4.2[C][5]).

Election, Appointment, Removal of Directors. Chapter 8’s discussion of the procedures for electing and removing directors, as well as challenges thereto, has been significantly updated and expanded. *See new* §§ 8:2.8[A], [A][1], [A][2], [B], and [C]. Similarly, *new* §§ 8:2.12[A]–[B] expand the discussion of director and shareholder rights of inspection of corporate books and records.

Delegation to Board Committees. Under modern statutes, directors may also act through a committee established by the board. The discussion of common committees has been expanded to include audit committees (*new* § 8:3.4[B][3]); compensation committees (*new* § 8:3.4[B][4]); executive committees (*new* § 8:3.4[B][5]); and nominating committees (*new* § 8:3.4[B][6]).

Director Compensation. Director compensation and its administration and governance have increasingly been subject to close scrutiny by shareholders recently. *See new* § 8:3.7. *See also new* § 8:4.5[B], covering the awarding of executive compensation.

Yates Memorandum. The DOJ’s 2015 “Yates memorandum,” which established that the DOJ would sharpen its focus on determining individual and corporate liability in connection with civil and criminal investigations of wrongdoing, has prompted renewed interest in the adequacy of company indemnification and advancement provisions. *See* § 9:4.1[A].

Transfers of Corporate Control: Special Issues. New discussions examine the **impact of increased litigation**—specifically lawsuits challenging mergers and other corporate combinations (*new* § 13:1.2[B][1])—as well as **disclosure-only settlement agreements**, which have become the most common expedited way of settling challenges to mergers (*new* § 13:1.2[B][2]), and **inversion** (the process by which a U.S.-incorporated company combines with a company incorporated in a foreign country with a more favorable tax regime (*new* § 13:6)).

Expansion of Penalties for Securities Law Violations. Dodd-Frank increased the SEC’s powers to impose penalties for securities laws violations, including a substantial increase in the size of administrative fines that may be imposed. Consequently, there has been an increase in prosecutions brought in an administrative forum rather than in federal court. *See new* § 14:5.6.

Increased Scrutiny of Accounting Issues. The SEC has announced that it plans to pay increasing attention to accounting issues, including stepping up vigilance with respect to companies using other-than-GAAP measures for reporting such items as company market share, earnings, or other indicators of financial performance. *See new* § 15:5.1[B].

With this Release #4, the **Index** and the **Tables of Authorities** also have been updated.

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FILING INSTRUCTIONS

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