



Key Issues for Boards 2020

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2020 Board Room Conversation Topics

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■ Overview of 2019 Trends and Hot Topics

Overview of 2019 Trends and Hot Topics

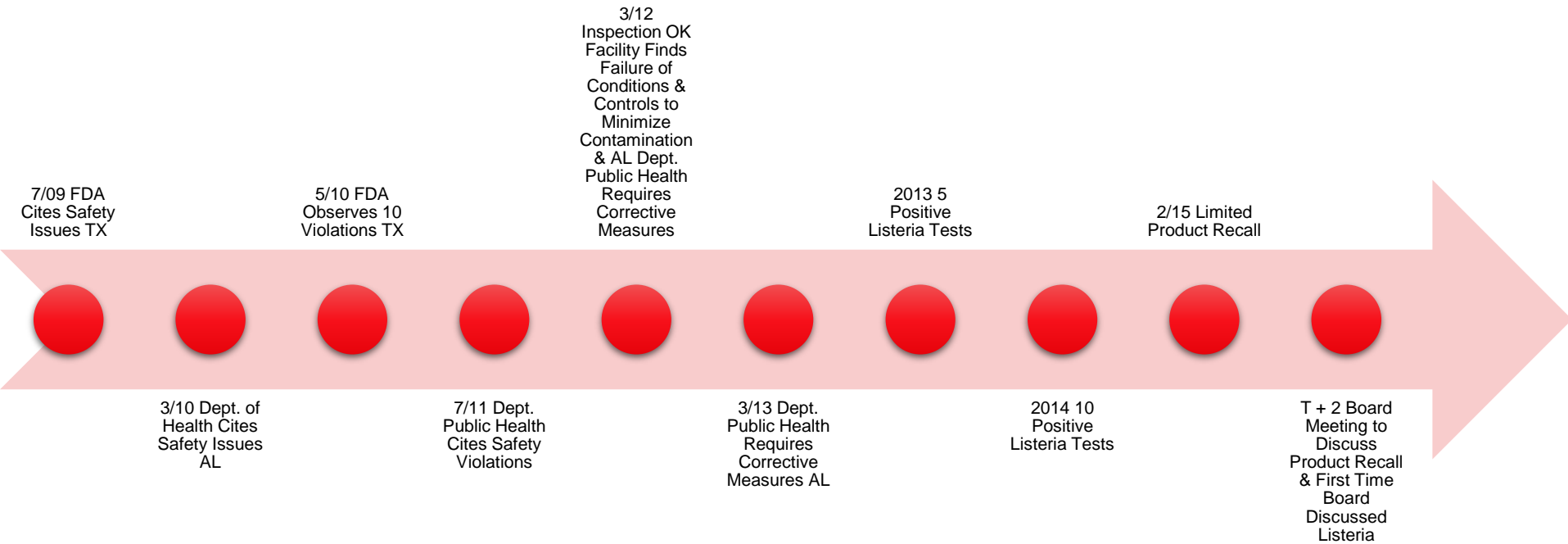
- Emphasis on Profitability and Stricter Governance over High Growth
 - Collective loss of about \$100 billion in value in 2019 alone by some of Silicon Valley's highest valued unicorns.
 - Bizarre and unprecedented unraveling of WeWork in the lead up to its abandoned IPO.
 - Losses by SoftBank Group Corp.'s Vision Fund on its investment in WeWork.
- Questioning of Board Oversight, Composition and Diversity

Crisis	Board Deficiencies
Blue Bell Listeria Outbreak	Failure to Provide Oversight
Boeing 737 Max Crashes	Failure to Provide Oversight Board Interconnections Lack of Expertise Overboarding

■ Effective Board-Level Compliance System

Blue Bell Listeria Outbreak

What Happened at Blue Bell?



■ Blue Bell Listeria Outbreak

- What DID NOT Happen at Blue Bell?
 - None of the information reflecting the growing listeria presence or other food safety issues made it to the Board prior to the recall.
 - Employees claimed that management ignored complaints about factory conditions.

Blue Bell Listeria Outbreak

- What Was Required of the Blue Bell Board?
 - Directors of a Delaware company are required to make a good faith effort to put in place a reasonable board-level system of monitoring and reporting on the company's key risks.
 - Discretion to design context- and industry-specific approaches tailored to their company's business and resources, but they have to at least try.
 - Blue Bell's most critical risk is whether it is ensuring that the only product it makes—ice cream—is safe to eat.
 - Blue Bell directors were required to establish a reasonable compliance system and protocols for food safety.

Blue Bell Listeria Outbreak

- What Did Delaware Courts Consider in Allowing a Stockholder Claim to Proceed?
 - No board committee existed to monitor food safety.
 - Board meeting minutes did not reflect regular reporting or discussion of food safety issues.
 - No schedule existed for the board to consider on a regular basis, such as quarterly or biannually, if any key food safety risks existed.
 - No regular process or protocols were in place to require management to keep the board apprised of food safety compliance practices and risks or to deliver to the board key food safety compliance reports or summaries of these reports on a consistent and mandatory basis.

Takeaways: Ensure the Board is Effectively Overseeing Key Risks

- Step Back
 - Conduct a risk assessment, at least annually, to **identify key risks** in your Industry and business.
- Address Each Risk
 - The board should work with its advisors and management to establish, and evaluate the effectiveness of, **board-level systems of monitoring and reporting** on each of the company's key risks.
- Establish a Process
 - Ensure there is a process mandating that the board receive the **right information** at the **right frequency** from the **right person** to alert the board to red flags or evidence of misconduct.
 - Directors must determine what information they need to properly monitor the risk, ensure compliance with law and reduce exposure to liability.

SEC Reminds Audit Committees About Importance of Oversight

- Statement on Role of Audit Committees in Financial Reporting and Key Reminders Regarding Oversight Responsibilities, 12/30/2019
 - Chairman Clayton and other senior SEC officials released statement and requested informally that counsel provide statement to all audit committees.
 - Tone at the Top
 - Clear and candid communications.
 - Engage as reporting and control issues arise.
 - Proactively communicate with independent auditor to understand audit strategy and status.
 - Ask questions regarding issues identified by auditor and understand ultimate resolution.
 - Auditor Independence
 - Periodically consider sufficiency of monitoring processes.
 - Processes should address corporate changes or other events that could affect auditor independence and facilitate timely communication of these events and changes to audit firm.

SEC Reminds Audit Committees About Importance of Oversight

- Statement on Role of Audit Committees in Financial Reporting and Key Reminders Regarding Oversight Responsibilities, 12/30/2019
 - GAAP
 - Promote environment for successful implementation of new standards.
 - Proactively engage with management and auditors as new accounting standards are implemented.
 - Understand management's processes to establish and monitor controls and procedures over adoption of and transition to new standards.
 - Non-GAAP Measures
 - Revisit if, how and why management uses non-GAAP measures and performance metrics in financial reporting, performance evaluation, and internal decision making.
 - Actively engaged in the review and presentation of non-GAAP measures and metrics.

SEC Reminds Audit Committees About Importance of Oversight

- Statement on Role of Audit Committees in Financial Reporting and Key Reminders Regarding Oversight Responsibilities, 12/30/2019
 - Internal Control over Financial Reporting (ICFR)
 - Ensure detailed understanding of identified ICFR issues and proactively engage to aid in resolution.
 - Understand and monitor management's remediation plans with respect any material weaknesses.
 - Communications to the Audit Committee from the Independent Auditor
 - Review Public Company Accounting Oversight Board Auditing Standard 1301.
 - Reference Rate Reform (LIBOR)
 - Understand management's plan to identify and address risks associated with the expected discontinuation of LIBOR.
 - Focus on impact on accounting and financial reporting and any related issues associated with financial products and contracts that reference LIBOR.
 - Critical Audit Matters (CAMs)
 - Engage in a substantive dialogue with the auditor regarding CAMs included in the auditor's report.

Housekeeping Tips

■ Board Meeting Calendar & Agenda

- At the beginning of each year, part of the board's process for creating its annual meeting calendar should be to schedule quarterly or semi-annual updates, reports and summaries on important topics for presentation to the full board.
- In setting the meeting agenda, attention should be paid to which individuals are presenting to the board.
 - Are presenters reliable and competent in the relevant matters?
 - For areas that require autonomy from senior management or increased board oversight, directors should demand that updates on these matters be presented by the specific individual within the company with the day-to-day operational responsibility for that area.

■ Consider if the Following Safeguards Make Sense for Certain Risks:

- Dedicated committee to monitor key risks;
- Executive sessions held to regularly discuss certain key matters; or
- Third-party monitors, auditors, or consultants engaged to assist with compliance and oversight functions.

■ Housekeeping Tips

■ Effective Channels for Anonymous Reporting

- Ensure that effective channels exist for employee reporting of misconduct.
- [Audit committee or risk management committee / Designated independent director] should be notified promptly of certain types of allegations with potential to result in a material adverse financial impact.

■ Message from the SEC – 12/19 Statement Wasn't a Rule or Regulation

- Audit committees must take a proactive role in oversight – don't be complacent.

■ Environmental, Social and Corporate Governance (ESG) Considerations

Environmental, Social and Corporate Governance (ESG) Considerations

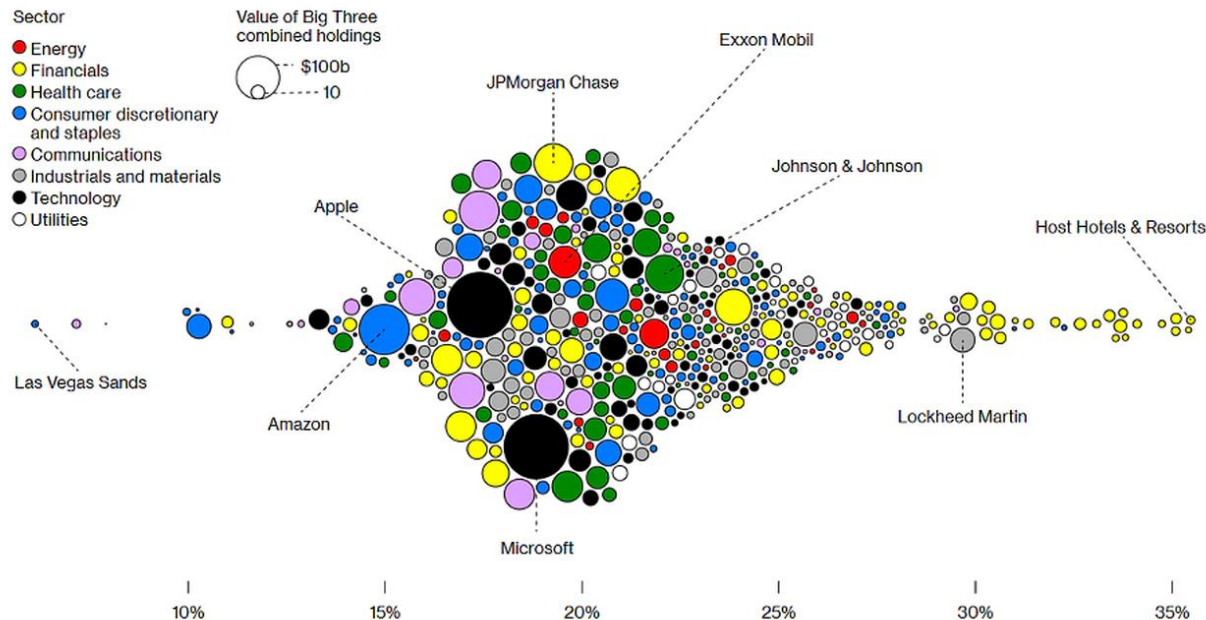
- What are ESG Considerations?
 - Moving target and lots of confusion.
 - What's covered – the ESG umbrella covers an array of topics, including:
 - Sustainability & Climate Change;
 - Board Diversity; and
 - Human Capital.
- Focus on Long-Term Returns
- Looking Back on the Last Proxy Season
 - 2019 proxy season was the third consecutive year in which ESG proposals accounted for the majority of shareholder proposals, and many pushed for company action on ESG disclosures, strategies, and goals.

Importance ESG Considerations to Institutional Investors

- BlackRock, Vanguard and State Street Combined Hold Approx. 80% of All Indexed Money. All Three Focus on Corporate Commitment to Sustainability.

The Big Three's Stake in Corporate America

As investors pile into index funds, BlackRock, Vanguard, and State Street have become the leading shareholders in many public companies. With combined ownership ranging from 35.5% at Host Hotels & Resorts to 6.1% at Las Vegas Sands, on average the Big Three own 22% of the typical S&P 500 company.



Importance ESG Considerations to Institutional Investors

- BlackRock: Larry Fink's 2020 Letter to CEOs
 - Theme: climate risk is investment risk.
 - Climate change is the top issue being raised by BlackRock's clients around the world.
 - Anticipates significant reallocation of capital in response to climate risks sooner than most anticipate.
 - Initiatives aimed at placing sustainability at the center of their investment approach:
 - Voting against management teams that fail to make progress on sustainability.
 - Exiting investments with high sustainability-related risks.
 - Making sustainability integral to portfolio construction and risk management.
 - Pressing companies to disclose plans "for operating under a scenario where the Paris Agreement's goal of limiting global warming to less than two degrees is fully realized."

Importance ESG Considerations to Institutional Investors

■ State Street

- In 2019, State Street Introduced the Responsibility Factor or R-Factor.
 - Tool to measure performance of business operations and governance in relation to ESG considerations that State Street considers to be financially material.
 - Goal of increasing and improving ESG reporting at public companies.
 - R-Factor scores provided upon request to designated company representatives.
- In January 2020, State Street Messaged that ESG Progress Was No Longer Optional.
 - Three out of four companies were put on notice by State Street as to their failure to make meaningful progress on ESG considerations.
 - Voting action against boards in the major stock indexes that have been “consistently underperforming” on ESG considerations.

Board Diversity

- Diversity of Gender, Race and Skills
- Goldman Sachs January 2020 Board Diversity Announcement
 - Starting on July 1, 2020, Goldman will no longer take companies public in the United States and Europe if they do not have at least one diverse director on their board, with a focus on women.
 - By 2021, the bank intends to raise threshold to two diverse directors.
- California Quota Statute Mandating Board Gender Diversity (SB 826)
 - As of 12/31/2019, all domestic CA general corporations and all public corporations with a principal executive office located in CA are required to have at least 1 female director.
 - By the end of 2021, that number increases to a minimum of 2 female directors if the corporation has 5 directors or 3 female directors if the corporation has 6 or more directors.
 - Other states are considering similar legislation.

Human Capital

- Key Categories of Information:
 - Workforce demographics
 - Stability
 - Composition
 - Skills and capabilities
 - Culture and empowerment
 - Health and safety
 - Productivity and compensation
 - Human rights commitments
- SEC Proposed Rule Adding a Human Capital Resources Disclosure.
 - Current disclosure rules were drafted when companies relied significantly on property, plant and equipment to drive value. Then, disclosure of number of employees was sufficient information for making investment decisions.
 - Now human capital and intellectual property frequently represent an essential resource and driver of performance for many companies.

Why Should I Care, I'm Private / a Small-Cap Company?

- Public Company Bleed
 - Large-cap public companies are increasingly passing their sustainability-related demands onto private companies and small-cap public companies that are their suppliers, partners and acquisition targets.
- ESG Considerations are NOT Just an Investor Focus
 - Customers and employees are increasingly considering ESG issues in determining if they would like to enter a business relationship with a company.
 - Recent Millennial Surveys:
 - 42% of respondents said that they have started or deepened existing business relationships because they believed a company's products or services had a positive impact on society or the environment.
 - 64% of respondents consider the social and environmental commitments of the companies for which they are considering working and will not take a job with a company lacking strong corporate social responsibility values.

Housekeeping Tips

- Prepare to Engage in Conversations on ESG Issues:
 - Senior management should prepare to present the board with strategies for addressing ESG considerations.
 - Start board-level discussions in upcoming meetings about what management has been focusing on. For example, on human capital, issues may include employee turnover, difficulty filling open positions, skillsets or diversity initiatives.
 - Actively engage with your stockholder base to determine what issues are important to them.
 - Anticipate investor requests for information on your sustainability strategies and goals and on the company's human capital strategies and goals.
- Board Oversight
 - If ESG considerations are critical to a company's business, the board should ensure proper oversight of the company's progress on these issues.

Housekeeping Tips

- Consider How to Disclose ESG Efforts
 - Recognized disclosure standards:
 - Global Reporting Initiative (GRI);
 - Sustainability Accounting Standards Board (SASB); and
 - Task Force on Climate-Related Financial Disclosures (TCFD).
 - Where to disclose:
 - Stand-alone sustainability reports posted to corporate websites.
 - Sustainability data in the proxy statements or other filings and investor documents.
 - Preparing for the new SEC human capital resources disclosures, to the extent those disclosures would be material.
- Consider Desirability of Subjecting ESG Disclosures to Internal Controls or Requiring Sustainability Reports to Undergo an Audit

■ Who are Your Stakeholders?

You May Need to Focus on a Broader Set of “Stakeholders”

- 2019 Business Roundtables Statement on the Purpose of a Corporation
 - Signed by 180 CEO’s.
 - Corporate commitment to deliver value to all “stakeholders,” including:
 - Customers;
 - Employees;
 - Suppliers;
 - Communities; and
 - Stockholders.

You May Need to Focus on a Broader Set of “Stakeholders”

- Airbnb Inc. & the “True 21st-Century Company”
 - 5 step roadmap for benefiting all stakeholders:
 - Identify stakeholders;
 - Establish principles and metrics for serving stakeholders;
 - Update corporate governance and compensation;
 - Report on progress; and
 - Share success.
 - Stakeholder Metrics Include:
 - Carbon footprint of travel facilitated by the Airbnb platform to monitor benefit provided to its communities;
 - Host earnings over time to monitor benefit provided to its hosts; and
 - Number of personal safety incidents to monitor benefit provided to its guests.

You May Need to Focus on a Broader Set of “Stakeholders”

- How Will Airbnb Ensure Progress?
 - “Stakeholder Committee” of the board
 - Evaluates performance against stakeholder metrics.
 - Employee compensation
 - Bonuses tied to performance of the stakeholder metrics and social goals.
 - Stakeholder Day
 - Offers programming for all of Airbnb’s stakeholders.
 - Reports on the company’s progress.

Housekeeping Tips

- What is the purpose of your company? Who are your stakeholders?
 - Identify the broader purpose of your company and the constituencies to which your business should focus on providing value.
 - Investors, customers, employees and policy-makers are demanding that corporations, stewarded by their boards, make positive contributions to society and benefit all stakeholders.
- Consider the Airbnb 5 Step Roadmap for benefiting all stakeholders:
 - Identify stakeholders;
 - Establish principles and metrics for serving stakeholders;
 - Update corporate governance and compensation;
 - Report on progress; and
 - Share success.

Cybersecurity & Risk Assessment

Increased Importance of Cybersecurity to the Board

- High Profile Breaches:
 - Target: total cost around \$200M
 - Sony: estimated cost around \$100M
 - Maersk: estimated cost between \$250 to \$300M
 - Equifax: up to \$700M settlement
 - Marriot: \$126M charge related to data breach and lowered 2019 financial projections
 - Uber: \$148 settlement with multistate AG investigation and a mandated Corporate Integrity Program with direct reporting to board at every meeting
- Cybersecurity is a Critical Risk Requiring Board Oversight

Increased Importance of Cybersecurity to the Board

- Ransomware Attacks:
 - Average days from attack to network restoration is over 16 days
 - Attacks increased over 97% in past two years
- Phishing Scams:
 - Top vector for hackers and ransomware attacks
- Negligence:
 - Top source for data breach

Increased Importance of Cybersecurity to the Board

- California Consumer Privacy Act (CCPA)
 - Effective January 1, 2020, CCPA applies to businesses with at least \$25M in annual revenue that collect or use any personal information of natural persons who are California residents.
 - “Personal information” is broadly defined and includes information like email addresses and postal addresses.
 - CCPA creates a private right of action for California residents to sue a company for data breaches involving certain information, if that company failed to maintain reasonable security measures.
 - Damages are either actual damages or a range between \$100 and \$750 per consumer per incident, whichever is greater.
- SEC
 - Recent examination observation guidelines focus on cybersecurity and resiliency practices.

Key Principles for Incident Response Preparedness

- Detection
 - Internal or external teams to monitor and test IT systems
- Response
 - Establish framework enabling rapid incident response
- Breach Impacts Entire Company: Preparedness Should, Too.
 - Don't Silo Cybersecurity to the IT Department.
- Board Must Understand How Breaches Could Impact the Business.
 - Likelihood of incident occurrence and type
 - Data, information and assets desirable and/or vulnerable to a potential attacker
 - Impact of compromised confidential information on business contracts

Establish Framework for Responding to Incident

- Establishing Protocol for Responding to Cyber Incident:
 - Clearly document escalation plan to follow at time of crisis.
 - Assign responsibilities from IT up through the board.
 - Parties can include:
 - IT department;
 - Third-party incident response or crisis management company;
 - Internal and/or external communications or PR team;
 - Management;
 - Internal and external counsel;
 - Board;
 - Insurance carrier;
 - Law enforcement (FBI);
 - SEC; and
 - Vendors.

■ Establish Framework for Responding to Incident

- Prepare Board Process
 - Current contact information for all board members
 - Means to convene board meeting on short notice
 - Board should review response plan on a regular basis
- Identify Key External Advisors and Responsibilities
 - Identify third-party incident response or crisis management company, communications or PR team, external counsel and insurance carrier
 - Determine responsibilities of advisors and consider putting advisors on retainer
- Identify Key Vendors, Local FBI Contact and Regulators
- Investor Communications
 - Determine contact person for investor and media inquiries

■ Preparedness to Enable Rapid Initial Response

- Challenging to Respond Effectively if Starting from Scratch at Time of Incident.
- Don't Let the Plan Collect Dust.
 - Relevant parties should know their roles and be familiar with the incident response plan.
 - Test response of IT and management to an incident.
 - Conduct tabletop exercises for board and external advisers.
 - Establish lines of communication prior to an incident – know your network.
- Keep Counsel in the Loop.
 - Maintaining attorney-client privilege is paramount.
- CISO or Incident Coordinator Should Lead with Advise of Counsel.

■ Establish Framework for Responding to Incident

- Determine Your Policy on Payment of Ransoms
 - Will you pay or not?
 - Consider risks involved with payments (e.g., payments to sanctioned wallet).
- Insurance Company Requirements
 - Requirement to contact FBI.
 - Who is permitted to negotiate and handle contacts.
- Contacting Law Enforcement Triggers Other Events
 - FinCEN has had greater success in recovering funds when victims or financial institutions report unauthorized and fraudulently induced wire transfers to law enforcement within 24 hours.
 - Suspicious Activity Reports (SARs)

■ Additional Considerations for Public Companies

- Provide Accurate Material Information to Investors
 - Ensure disclosure committee or audit committee is informed about material incidents to ensure disclosure obligations are not overlooked.
 - Revisit your risk factors and MD&A.

- Restrict Trading by Insiders Involved in Incident Response

■ Regulatory Compliance Framework

Robust Compliance Policy and Program are a Must to Help Mitigate Regulatory Risks

- Renewed Focus by Regulators on Compliance:
 - U.S. antitrust and foreign competition laws and intersection with data management and privacy issues;
 - Trade Sanctions, including Department of Treasury Office of Foreign Assets Control (OFAC), Commerce and State Department; and
 - U.S. Foreign Corrupt Practices Act (FCPA).

Robust Compliance Policy and Program are a Must to Help Mitigate Regulatory Risks

- High Profile Investigations and Enforcement Actions:
 - DOJ probe of Google and FTC's investigation of Facebook with focus on ad tools.
 - Trump administration restriction of U.S. technology sales to Huawei.
 - SEC enforcement actions against Microsoft & Juniper Networks resulting from product sales by foreign subsidiaries through third-party channels
 - DOJ criminal and civil investigations for antitrust and FCPA violations; and
 - OFAC investigations involving direct and indirect contacts in/with sanctioned countries/entities.

OFAC and Other Trade Sanctions

- Governments are using economic sanctions as policy tools, and sanctions programs are changing weekly or even daily
- Violations can relate to transactions with U.S. citizens with U.S. bank accounts
- USG issued guidance on components of an effective sanctions compliance program (“SCP”)
 - One of the Five Essential Components is Management Commitment.
- Benefits of an Effective SCP:
 - Mitigation of a civil monetary penalties;
 - Mitigation of a penalty when the sanctions compliance program results in remedial steps being taken; and
 - Considered as a factor in regulators analysis as to whether a case is deemed “egregious.”

Antitrust

- DOJ Announced Plans to Incentivize Compliance:
 - Unlike before, compliance programs are a factor prosecutors now consider in deciding whether to charge a company in criminal antitrust investigations.
 - Due to the way prosecutors now evaluate corporate compliance programs, it is imperative that:
 - The program is designed with the specific antitrust risks the company faces in mind;
 - There is a comprehensive, well-documented follow-through; and
 - Any potential issues be brought to counsel's and management's attention as quickly as possible.

FCPA

- Recent DOJ guidance directs prosecutors to assess corporate compliance programs based on three factors:
 - Is the compliance program well designed?
 - Should be dynamic and responsive to company's unique risks and incident history
 - Data-driven decision-making
 - Is it implemented earnestly and in good faith?
 - Does it work in practice?
- Benefits of an effective FCPA program:
 - Delayed prosecution or declination to prosecute if:
 - Voluntary self-disclosure of misconduct;
 - Full cooperation; and
 - Timely and appropriate remediation.
 - Ability to avoid appointment of a Monitor
 - Lower Penalties

Why Should I Care, I'm Private? / Should I Be Concerned About Companies I Acquire?

- If you are an investment fund acquiring a portfolio company or a strategic buyer, it is imperative to :
 - Conduct thorough due diligence;
 - Obtain sufficient reps and warranties on antitrust, trade and anti-bribery/anti-corruption issues;
 - Review and audit target's compliance policies and programs to ensure they are complete, robust and sufficient to reflect the risks of the industry; and
 - Take any necessary corrective steps to avoid or mitigate successor liability for potential misconduct.

■ **Tabletop Exercises to Schedule for 2020**

Tabletop Exercises – Test & Improve Crisis Response

- What is a Tabletop Exercise?
 - Discussion-based practice sessions where the board, members of management and external advisers are assembled to discuss plans for reacting to a crisis situation and their respective roles during such crisis.
 - Generally legal counsel or another facilitator guides participants through a discussion of various scenarios and escalation plans.

- Consider Tabletop Exercises To Be Scheduled for the Board in 2020.
 - Cybersecurity incident response.
 - Internal corporate malfeasance response.
 - Other areas deemed relevant by the board.

■ Attorney Biographies

Valeska Pederson Hintz

Partner, The Tech Group and Corporate Governance & Compliance

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Valeska's practice focuses on initial public offerings, corporate governance, mergers and acquisitions, SEC reporting and compliance, risk management and venture capital financings. She has represented investment banks, private equity funds and venture capitalists in a variety of equity transactions, including public offerings and private placements.

With a breadth of experience in the technology field, Valeska is highly attuned to the business and legal challenges that technology companies routinely face today. She has worked with companies in a wide array of industries, including software, media, adtech, biotechnology, computer, semiconductor, consumer goods, blockchain and social networking.

Prior to joining Lowenstein Sandler, Valeska was in-house counsel at a late-stage biotechnology company, and worked in the finance and strategic marketing departments of a public semiconductor company. She was also an associate at Wilson Sonsini Goodrich & Rosati and at Latham & Watkins.

Select Representative Transactions:

- Acquirer's counsel to Altair Engineering Inc. (ALTR) in its \$176 million tender offer for Datawatch Corporation (DWCH).
- Acquirer's counsel to Target Corporation (TGT) in its acquisition of Powered Analytics, an in-store personalization company, for an undisclosed amount.
- Issuer counsel to Altair Engineering Inc. (ALTR) in its \$156 million initial public offering.
- Issuer counsel to Aceto Corporation (ACET) in its \$200 million shelf registration.
- Underwriter's counsel to Macquarie Capital Markets Canada Ltd. in the 144A offering and U.S. legal aspects related to the Qylur Intelligent Systems Inc. initial public offering on the TSX Venture Exchange in Canada.



Education

- Fordham University School of Law (J.D. 2006), cum laude, *Fordham International Law Journal*
- The University of Texas at Austin (B.B.A. 2003), cum laude, Dean's List, Engineering Route to Business: Electrical Engineering and Financial Management

Bar Admissions

- California
- Texas
- Commonwealth of Virginia

Valeska Pederson Hintz

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Select Representative Transactions (*Con't*):

- Seller's counsel to The Go Daddy Group, Inc. (GDDY) in its \$2.25 billion sale to a group of investors led by KKR & Co. L.P. and Silver Lake Partners.*
- Acquirer's counsel to eBay Inc. (EBAY) in its acquisition of Bill Me Later, Inc. (BML) for \$820 million in cash and \$125 million in outstanding options.*
- Acquirer's counsel to eBay in its acquisition of VuVox Network Corporation, a visual media company that enables users to share and produce personal media, for an undisclosed amount.*
- Acquirer's counsel to BMC Software, Inc. (BMC) in its \$800 million tender offer for BladeLogic, Inc. (BLOG).*
- Acquirer's counsel to Trulia, Inc. (TRLA) in its \$335 million acquisition of Market Leader, Inc. (LEDR).*
- Acquirer's counsel to Verigy Ltd. (VRGY) in its \$422 million acquisition of LTX-Credence (LTXC).*
- Issuer counsel to RingCentral, Inc. (RNG) in its \$97.5 million initial public offering.*
- Issuer counsel to Splunk Inc. (SPLK) in its \$229.5 million initial public offering.*
- Underwriter's counsel to Morgan Stanley & Co. Incorporated, in its \$227 million initial public offering of Solazyme, Inc. (SZYM).*
- Issuer counsel to ServiceSource International, Inc. (SREV) in its \$119.4 million initial public offering.*
- Issuer counsel to DuPont Fabros Technology Inc. (DFT) in its \$640 million initial public offering.*
- Issuer counsel to Avago Technologies Limited (AVGO) in the filing of its \$400 million initial public offering.*

* Denotes representations while working at another law firm.



Education

- Fordham University School of Law (J.D. 2006), cum laude, *Fordham International Law Journal*
- The University of Texas at Austin (B.B.A. 2003), cum laude, Dean's List, Engineering Route to Business: Electrical Engineering and Financial Management

Bar Admissions

- California
- Texas
- Commonwealth of Virginia

Kathleen A. McGee

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Kathleen is a highly accomplished technology and regulatory lawyer and former prosecutor with more than 17 years' experience in the public sector. Her practice has a dual focus on compliance and investigations.

As Bureau Chief of the Bureau of Internet & Technology for the New York State Attorney General's Office, Kathleen was at the forefront of regulation, enforcement initiatives, and public policy involving privacy, data security, and consumer protection, among other issues. Earlier in her career, she served as Director of the Office of Special Enforcement in the New York City Mayor's Office, where, as lead counsel, she directed litigation on a number of intellectual property and civil nuisance matters and was a policy leader on issues ranging from data analytics to human trafficking. While with the Mayor's Office, Kathleen also developed the New Business Acceleration Team to streamline regulations and fast-track new business development. Kathleen started her legal career as an Assistant District Attorney for the Bronx County District Attorney's Office in New York, where she prosecuted domestic violence, child abuse, and sex crimes.

Kathleen's public sector experience gives her an edge in counseling emerging and mature companies on a broad spectrum of regulatory issues concerning technology, data security, and privacy. She has in-depth knowledge of matters involving unfair, deceptive, or abusive acts and practices (UDAAPs), as well as the Children's Online Privacy Protection Rule (COPPA), the Consumer Financial Protection Bureau, the Securities and Exchange Commission, the Federal Communications Commission, and the Federal Trade Commission. In addition, Kathleen's experience in municipal government and her understanding of how the administrative code affects business has given her a unique perspective on the intersection of commerce and the law. Clients appreciate her insights into how to identify unanticipated problems and develop creative, business-focused solutions.

Kathleen also provides counsel to individuals and companies facing investigations. As outside counsel on internal investigations, she is an effective fact-finder on matters such as alleged employee malfeasance and intellectual property claims, among others. She also represents clients in government-facing investigations, including white collar criminal defense. Clients in this area benefit from both her sophisticated grasp of technology-related criminal matters and her on-the-ground experience as a lead prosecutor in both jury and bench trials.



Education

- Boston University (J.D. 2001)
- University of Chicago (M.A. 1996)
- Sarah Lawrence College (B.A. 1994)

Bar Admissions

- New York

Zarema A. Jaramillo

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Zarema's practice focuses on complex antitrust matters including mergers & acquisitions, joint venture transactions, and high-stakes class action litigation dealing with price fixing and monopolization issues. Zarema represents clients before the U.S. Federal Trade Commission, the U.S. Department of Justice, and foreign competition agencies. She also counsels clients contemplating complex transactions that may be affected by antitrust statutes including Hart-Scott-Rodino. In addition, Zarema advises clients on compliance with U.S. and foreign anti-bribery and anti-corruption regulations, U.S. sanctions and export controls, and foreign investment reporting requirements.

She represents clients in many sectors including financial services, pharmaceutical, high technology, and telecommunications. Her work in the pharmaceutical sector includes high-profile investigations and complex class action litigation. She also counsels and defends clients with respect to regulatory compliance with international laws, including the Foreign Corrupt Practices Act, Export Administration Regulations, and Office of Foreign Assets Control economic sanctions. Her work with financial institutions and their executives centers on securities class actions, shareholder derivative claims, and investigations by the U.S. Securities and Exchange Commission.

Zarema's clients benefit from her extensive experience in and understanding of the U.S. government. She served as a trade specialist for the U.S. Department of Commerce's International Trade Administration in the Office of China and as the Program Manager of the U.S. Department of Commerce Corporate Governance Program in the Office of Russia. During her tenure in these roles, she provided guidance to U.S. companies regarding U.S., Russian, Chinese, and multilateral treaties; regulations; and dispute-resolution mechanisms. To help them comply with international standards, she designed and implemented training programs for business and legal practitioners in Russia and Central Asia that addressed corporate governance, intellectual property rights protection, and commercial dispute resolution.

Zarema is fluent in Russian and proficient in French.



Education

- American University, Washington College of Law (J.D. 2005)
- Baldwin-Wallace College (B.A. 2000)

Bar Admissions

- District of Columbia
- New York