Introduction

Kate Scavello
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Kate Scavello oversees all day-to-day legal operations and provides strategic legal support for Alarm.com Incorporated and its subsidiaries. Kate advises the company on a wide range of legal matters, including commercial agreements, transactions, securities, corporate finance, compliance, litigation, intellectual property, employment, and regulatory issues as well as general corporate matters. Kate holds an A.B. from Princeton University and an M.A. and J.D. from the University of Virginia.

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Joseph Turitz is a strategic business advisor to the board and executive management. Joseph's practice focuses on corporate, governance, securities, debt and equity financing, policy, business development, M&A, and joint venture matters. Previously, Joseph served as General Counsel and in other capacities for two financial services companies, CapitalSource Inc. and Berkeley Point Capital LLC. Joseph earned a J.D. from Georgetown University and a B.A. from Columbia University.

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Amy Steacy is the Deputy General Counsel of CustomInk, LLC, a leading provider of custom merchandise for groups and communities headquartered in Fairfax, Virginia. Prior to joining Custom Ink in 2012, Amy was a corporate transactional attorney, with an emphasis in mergers and acquisitions, at two international law firms. Amy received her J.D., magna cum laude, from George Mason University School of Law (now Antonin Scalia Law School) and her B.S. in Political Science from Truman State University.

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Tom Knox advises clients on corporate, financing, technology transactions and sourcing matters, serving as a strategic advisor to companies in the technology, media, life sciences, transportation, manufacturing and government services sectors. Tom was recently named 2017 Lawyer of the Year in Washington, D.C., for venture capital law by Best Lawyers and continues to be Band 1 ranked for Corporate/M&A in Northern Virginia by Chambers USA.
Program Roadmap

• Roles of Corporate Counsel
• Corporate Governance
  • Planning & Executing Board Meetings
  • Dealing with Directors & Officers
  • Dealing with Stockholders
• Corporate Transactions
  • Mergers & Acquisition
  • Strategic Alliances & Joint Ventures
  • Financing Transactions
• Related Hot Topics
  • Implications of New Tax Law
  • Blockchain & Initial Coin/Token Offerings
  • CFIUS
  • Privacy & Data Security
  • FCPA & Anti-Corruption Law
Roles of Corporate Counsel

• Roles of corporate counsel as team member:
  • Translator
    • Boiling down complexity to digestible chunks
  • Solutions facilitator
    • “Negotiating with your own side”
  • Risk management and crisis manager
  • Legal/business executive
    • Legal function management (supervising internal and external counsel, legal function and budget)
    • Cross-functional team manager
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Effective Board Meetings

• Frequency

• Setting agendas and priorities
  • Who is responsible for the agenda?
  • What items are on the agenda?

• Board materials
  • Preparing materials
  • Notice

• Invitees

• Conduct of meeting
Effective Board Meetings (cont’d)

• Keeping minutes
  • Scope and content
  • Level of detail

• Consequences of poor process
  • *Amalgamated Bank v. Yahoo!, Inc. (Del. Ch. 2016)*
Corporate Governance

• Roles and responsibilities of board of directors
• Roles and responsibilities of officers
• Independence of directors
  • Sandys v. Pincus (Del. 2016)
Fiduciary Duties

• Duty of care
  • What is the duty?
  • What constitutes a breach?
  • Takeaways from case law

• Duty of loyalty
  • What is the duty?
  • What constitutes a breach? What does not?
  • Takeaways from case law

• Duty of good faith
  • What is the duty, and how do courts apply it?
  • *Kahn v. Stern (Del. Ch. 2017)*
Fiduciary Duties (cont’d)

• Why do they matter?

• Business judgment rule
  • What is the business judgment rule?
  • How do courts apply the business judgment rule?
  • Outcomes based on applicability of the business judgment rule

• Entire fairness standard
  • What is the entire fairness standard, and when does it apply?
    • “Fair dealing”
    • “Fair price”
Dealing with Stockholders

• Stockholder requests for information
  • Statutory authority—Section 220

• Key concept: “proper purpose”

• Curiosity is not enough – but threshold is low
  • Rodgers v. Cypress Semiconductor Corp. (Del. Ch. 2017)

• Desire to value stock may be “proper purpose”
  • Private company issue
    • Jefferson v. Dominion Holdings, Inc. (Del. Ch. 2014)
Managing the Cap Table

• Handling options, other equity incentives
  • Management of the cap table varies widely by company
  • Practicalities of keeping the table updated

• Dealing with common issues
  • Departing employees
  • ISO requirements
  • Understand Rule 701’s limitations

• Electronic cap tables
  • Carta (f/k/a eShares), CapShare, Capyx
  • Blockchain ledger technology (8 Del. C. 219 & 224)
Delaware as State of Choice

• Well-understood statute
• Highly developed case law
• Specialized court system
  • Court of Chancery
  • Direct appeal to state Supreme Court
• Responsive state agency
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Mergers and Acquisitions

• Planning for the acquisition from the “sell” side
• Preparing a program from the “buy” side
• Understanding process and timing
  • NDAs, term sheets / LOIs
  • Due diligence
  • Structuring & negotiation
  • Signing and closing
  • Post-closing
• Earnout issues
Strategic Alliances and Joint Ventures

• Motivations, advantages and disadvantages
• Structuring and funding alliances and JVs
• Choice of entity or structure
• Identifying and mitigating legal risks
  • Deadlock
    • In re GR BURGR, LLC (Del. Ch. 2017)
Financing Transactions

- Equity financings
- Debt financings
- Credit agreements
- Post-closing compliance
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Implications of New Tax Law

• Corporate tax rate reduced to 21%
  • Changed rates may affect choice of entity analysis for joint ventures and capital raising
  • Dividends-received deductions for dividends of less than 80% controlled subsidiaries are modified to leave the effective rate of corporate tax on dividends income unchanged

• Business interest deductions limited to 30% of “adjusted taxable income”

• Net operating loss (NOL) deductions shelter not more than 80% of a taxable income

• Tax deferral for compensatory issuances of illiquid stock

• Increased opportunities for immediate deduction for investments in depreciable qualified business use property
Blockchain and Initial Coin/Token Offerings

• What is blockchain?

• Potential regulatory issues

• SEC guidance on token offerings
CFIUS

• Foreign Investment Risk Review Modernization Act

• Broad expansion of CFIUS jurisdiction
  • Strong emphasis on cybersecurity
  • Review of investments in “critical technology” and “critical infrastructure”
  • Authority to scrutinize investments that could give foreign investors access to personally identifiable information of Americans
Privacy and Data Security

- GDPR: European General Data Protection Regulation

- FTC increased enforcement actions against “social media influencers”

- New DOJ policy significantly restricts government’s practice of seeking non-disclosure orders under the Stored Communication Acts

- New set of guiding principles from Consumer Financial Protection Bureau for financial data-sharing and aggregation
FCPA and Anti-Corruption Law

• DOJ’s new FCPA Corporate Enforcement Policy (2017)

• FCPA enforcement—*Kokesh v. SEC*

• Intersection of FCPA and data privacy in cross-border investigations

• Argentina’s new law targeting corporate corruption (November 2017, effective 2018)
Questions / Discussion

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