

SPECIAL COMPENSATION COMMITTEE COUNSEL

Special committees are under the spotlight as never before. Just a few years ago, not many directors would have considered a special committee appointment to be a particularly onerous task. Any hand-wringing usually was limited to meetings of the audit committee. How things have changed.

Today, service on the special committee is loaded with risk, and the threats are multi-faceted. Shareholders are filing lawsuits to hold directors personally liable for rich executive compensation packages. The SEC is bringing enforcement actions against independent directors, pressuring them to act as effective “gatekeepers” or “sentries” of the marketplace. Activist investors are campaigning against the reelection of directors who

approve pay packages investors don’t like. The IRS is auditing corporate executive compensation plans and the personal tax returns of participating executives. And, of course, scores of special committees have become immersed in highly publicized option backdating scandals that will reverberate in board rooms for some time to come.

Special special committee counsel can help the special committee confront these threats head-on, and, more important, focus on the committee’s critical task of designing compensation packages that will attract and retain talented executives. Womble Carlyle offers the resources and expertise special committees need to meet these challenges.

1

Why have special committees been under attack?

The reason special committees have faced these problems is this: Someone – a plaintiff’s lawyer, a powerful investor group, the SEC or the Department of Justice – perceived that the management imposed its will on the company in the face of a special committee charged with responsibility for preventing that from happening. The NYSE and the NASDAQ Stock Market both require a listed company to have a special committee that meets the applicable definition of “independent.” But recent history has shown that being “independent” isn’t enough; special committees must also act that way. This means engaging in the deliberative process of becoming informed, asking the tough questions and acting prudently.

2

What are the chief threats to the independence of special committees?

Threats to the committee’s independence can come from both inside and outside the company. Of course, committee members must be prepared to deal at arms’ length with the company’s chairman or chief executive officer, who has an important role to play in developing an executive compensation program that is consistent with the company’s compensation philosophy. However, it also is important for the special committee to be thoughtful in seeking outside advice, for example, from compensation consultants and legal counsel. When making decisions that later may be challenged in litigation, the committee should rely on consultants and counselors who are able to give independent advice untainted by relationships with the company’s management.

3

We already have a legal team. Can’t our regular attorneys advise the special committee?

Yes, in many cases. Though many special committees have decided to retain special special committee counsel to advise it on an ongoing basis, a company’s general counsel or regular outside counsel often can provide routine legal advice to the special committee without substantial risk to the committee. However, the recent option backdating controversy has proven that what might once have been considered routine – the timing of option grants, for example – is routine no longer. As a result, even more special committees can be expected to engage special counsel to advise committee members on an ongoing basis.

4

How can Womble Carlyle help us meet these challenges?

To help special committees fulfill their role as stewards of their companies’ executive compensation programs, Womble Carlyle has assembled a team of lawyers who are highly regarded in their fields – employee benefits and executive compensation, tax, corporate governance, securities and labor and employment law. Led by Michael D. Gunter (a Charter Fellow in the American College of Employee Benefits Counsel and named by National Law Journal as one of the top 40 employee benefits lawyers in the country), and Diane J. Fuchs (a Director and Past President of the American College of Employee Benefits Counsel and former Chair of the Employee Benefits Committee of the American Bar Association’s Tax Section), this team of advisers has an impressive history of helping their clients develop executive compensation plans and programs that achieve the well-considered goals of the company.

TEAM LEADER



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Mike has more than 30 years’ experience in all areas of employee benefits. This includes extensive work with compensation committees on executive compensation programs, including various types of equity-based arrangements. His expertise also extends to tax-qualified retirement plans, nonqualified deferred compensation arrangements and welfare benefit plans. Clients describe Mike as an astute analyst of complex employee benefits situations, able to quickly identify key issues and craft solutions that anticipate and solve potential problems. He is a member of the American College of Employee Benefits Counsel and has been listed in Best Lawyers in America every year since 1987. Due to his expertise, Mike serves as Womble Carlyle’s Employee Benefits Counsel, responsible for the firm’s various employee benefit plans.

OUR CLIENTS

Womble Carlyle attorneys counsel corporate clients in the South Atlantic region and all across the country. Our client list includes:

- Manufacturing companies
- Banks and financial institutions
- Hospitals and other medical service providers
- Venture capital concerns
- Colleges and universities
- Service firms
- Non-profit groups
- Governmental entities

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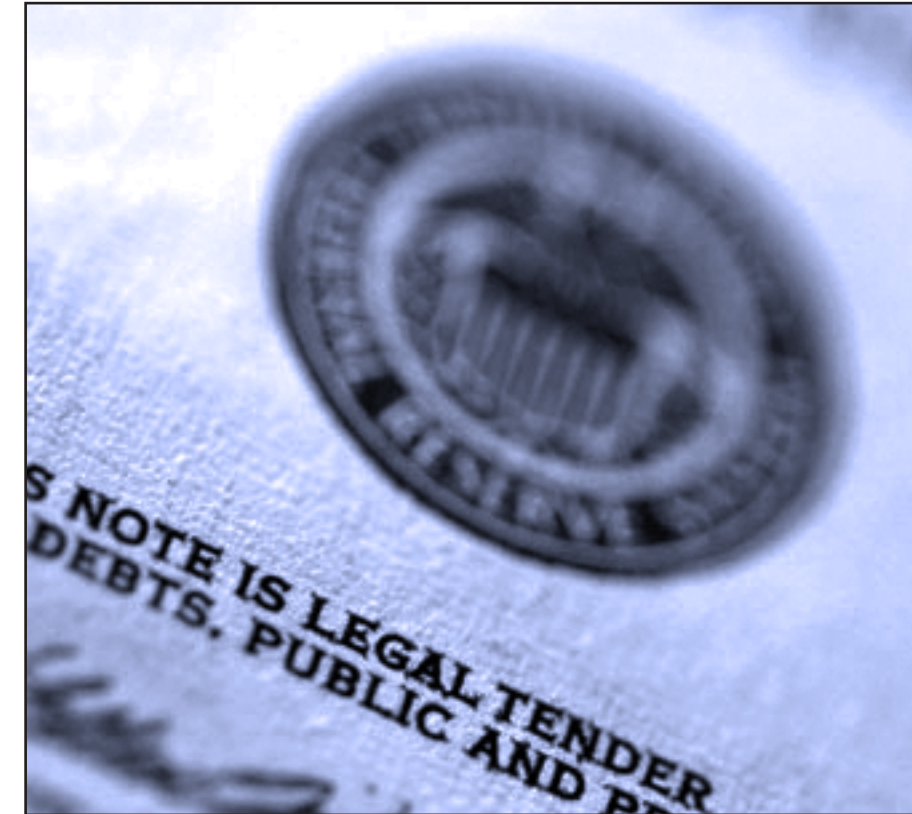
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