

March 17, 2007

Minutes

In a recent Delaware decision Vice Chancellor Leo Strine condemned the common practice of providing drafts of board and committee meeting minutes to directors for approval a substantial (several months in the case in question) period of time after the meeting. He said this practice is “to state the obvious, not confidence-inspiring.” It bears emphasis that not only Delaware courts, but even more so courts in other jurisdictions, frequently regard minutes as the best record of what happened at the meeting. So too the SEC and other regulatory agencies. Courts and regulators will consider the minutes more reliable than the description in a proxy statement or the directors testimony, which is frequently (and understandably) characterized by lapses of memory and lack of precision.

Minutes should be reasonably detailed, reflect the substance of the discussions at the meeting and make clear reference to the documents that were furnished to the directors before and at the meeting. If there were significant discussions with or among directors prior to the meeting, consideration should be given to making appropriate reference to them in the minutes. Drafts of minutes should be prepared promptly after the meeting and circulated promptly to the directors and other persons involved in the meeting.

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