Board Access to Corporate Records:
How Much is Enough?

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The Board of Directors is responsible for oversight of the corporation's compliance systems. However, the board typically relies on the officers they are responsible for monitoring for access to corporate records to validate such compliance. What if the directors had access to a compliance system where they could instantly access an electronic copy of every material corporate record?

The risks of serving on the board of a public company have never been greater. Directors face the risk of personal liability under state corporate law, Federal Securities laws and Sarbanes-Oxley and the relentless threat of plaintiff's counsel. To mitigate this risk, directors are spending a large portion of their time on compliance issues rather than strategic issues. They are forced to look backwards at legal and compliance obligations rather than forward at strategic opportunities and threats. The result, it is harder to recruit talented candidates to serve on boards, it is less enjoyable to be a director than it used to be, and corporations no longer get the benefits of board wisdom focused primarily on strategic issues.

This focus on compliance has an unintended consequence: massive volumes of legal records are routinely shipped to directors to review as part of the compliance process. These Board packages shipped in paper format at the last minute make it hard for directors to devote time to study the issues and reflect. Instead, just managing the paper records consumes their time. Furthermore, each director must individually archive and access past board materials for future reference. Conscientious directors are forced to become file clerks just to manage these records.

To address the problems associated with the distribution of board packages and communication among directors, several companies have created secure "virtual board rooms." While this helps to manage board materials at meeting time, is it an adequate tool to perform the board's oversight responsibilities? These virtual board rooms contain only the scrubbed legal records provided by senior management. Can the board provide effective oversight if the management team being monitored is the primary source of legal records about the corporation's compliance?

Imagine what a board could do with a comprehensive system that captures and digitizes all material legal records in real time and places them in a secure, web-accessible repository. What if the system:

- Classified each record by S-K item number, division, customer, vendor, or other relevant criteria?
- Provided access to key data extracted from the records?
- Permitted full text search of every record?

- Verified the Corporation's compliance with SOX Section 302?

Suppose that a board meeting was held at a company that had implemented such a system. Rather than receiving a paper board package in the mail, directors log on to a secure website to view the board package. Directors can study the materials and reflect on the issues well in advance of the meeting. Having the time to reflect and access to the Corporation's legal records is critical for this board meeting in particular, as the agenda contains some items with high risk profiles.

THE RISKY ISSUES	HOW THE SYSTEM HELPED
CEO Interested Transaction The first agenda item is the approval of an interested transaction. An affiliated partnership set up with the CEO as the general partner as part of an off balance sheet arrangement three years ago now needs to be terminated.	**CEO Interested Transaction** Using the system, the director found the executed partnership agreement in seconds by running a search for the name of the CEO. The director could then do a full text search of the 85-page agreement for "termination" to see the Corporation's rights and duties in such a situation. By typing in S-K Item 303 (MD & A), the director instantly accesses all other affiliated partnership agreements to which the Corporation is a party and then conducts a full text search on "termination" to see how the other provisions compare. With 8 such agreements, the director instantly downloads the key terms extracted from each one to an Excel Spreadsheet to discuss at the board meeting.
Proxy Statement Disclosure of Executive Compensation The draft Proxy Statement disclosing Long-Term Incentive Plans is complex and contains some tricky disclosure issues.	**Proxy Statement Disclosure of Executive Compensation** To verify the appropriate disclosure required by S-K Item 402 (Executive Compensation), the director searches by that S-K Item number to access a PDF copy of the contract being summarized in the Proxy. The director prints a copy of the contract to bring to the board meeting to discuss the apparent discrepancy in the disclosure.

10-K Discloses 40% Revenue Increase

The draft 10-K reflects a 40% increase in revenue over the preceding year but doesn't seem to be comprehensive in the description of the contracts under which the revenue was booked.

Disclosure of 40% Revenue Increase

To verify the 40% increase in revenue, the director runs a "What's New" search to see new customer contracts executed during the prior year and sorts by amount of revenue to determine any concentration issues. The director then opens a PDF of the sales contract which accounted for 5% of the revenue increase and notes that it is dated December 30, 2008 but was not entered into the system until February 15, 2009. Concerned that the contract may have been back-dated to inflate 2008 earnings, the director brings the contract and report to the meeting for discussion.

Review of Compliance Systems Required under SOX Section 302

Last year, the Corporation reported a failure to have in place an effective system of disclosure controls and procedures.

Section 302 was adopted in parallel with Section 404, but is focused on legal records rather than financial controls. Such a system is intended to ensure compliance with applicable laws and regulations.

To remedy this deficiency, the Corporation implemented a Software as a Service platform for managing enterprise content with multiple applications designed to manage specific legal processes, such as proxy preparation, M & A, and SEC compliance.

The 10-K discloses that this system has resolved the problem and the board needs proof.

Review of Compliance Systems Required under SOX Section 302

The directors want to verify that the Corporation has remediated the problem disclosed in last year's 10-K. To satisfy Section 302, the Corporation must have a system that:

- Captures information potentially subject to disclosure;
- Accumulates information for testing;
- Responds to CEO and CFO inquires;
- Scales with growth; and
- Accommodates new legal requirements.

The Corporation's General Counsel presented a series of reports to show by department the date of each contract, when it was input into the system, the number of documents filed per division, the dollar value of all leases executed in the last quarter, and other critical business information otherwise trapped inside legal document and records.

CONCLUSION

The system described above exists today: the VeriComply Vault.

Unlike board portals, that limit a director's view to what is "published," the VeriComply Vault provides direct access to departmental and enterprise records. The board can view data extracted from those records to verify compliance.

This transparency is critical in the current regulatory and economic environment to effectively manage enterprise risk and discharge fiduciary duties. As an added dividend, board members have more time to focus on strategic issues and enhance shareholder value.

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