Public Company Advisory

US public companies require complex and nuanced advisory services encompassing securities law, disclosure obligations, corporate governance, industry-specific regulations, capital markets, commercial matters, strategic posture and investor relations. Our attorneys counsel public company boards, committees and management as to compliance, risk management, reporting and shareholder engagement. We draw on our deep multidisciplinary experience across capital markets, finance, M&A and corporate governance to provide guidance that not only accounts for the legal requirements applicable to public reporting companies, but we also provide optionality where feasible after considering how regulators are likely to apply the rules and how investors and counterparties may react to a given situation.

Counsel at every stage of the public company lifecycle

Companies face distinct demands at every stage of the public company lifecycle, from corporate readiness at the time of initial public offering (IPO) or alternative public offering (APO) as to governance and disclosure matters, to ongoing guidance designed to address day-to-day responsibilities of being a public company, as well as episodic matters that arise in a transactional or litigation context. In our role as external counsel, we regularly advise on:

- Public company policies and their implementation;
- Internal controls, disclosure controls and procedures, and independent auditor matters; and
- Conflicts of interest and transactions with controlling stockholders.

SEC reporting and disclosure

Today's disclosure landscape favors reporting designed to withstand both regulatory and investor scrutiny. Our Public Company Advisory attorneys draft and review periodic reports, with particular attention to non-GAAP disclosures, comprehensive MD&A, robust forward-looking statements and prophylactic risk factors. That work spans the full range of reporting under the Securities Exchange Act of 1934 (the Exchange Act), including:

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- Annual and Quarterly on Forms 10-K and 10-Q, and Current Reports on Forms 8-K, as well as earnings releases and conference call scripts;
- Review and analysis of, and response to, SEC comment letters on Exchange Act reports and proactive engagement with the SEC staff, as needed;
- Materiality analyses to determine whether and when disclosure is required and the scope thereof, if applicable;
- Beneficial ownership reporting under Sections 13 and 16 (including filings of Forms 3, 4 and 5 and Schedules 13G and 13D);
- Compensation and benefit plan disclosure; and
- Technology and industry-specific matters.

Securities law and stock exchange compliance

We guide companies in complying with federal securities laws, the evolving, continued listing requirements of the NYSE and Nasdaq, and current public company best practices. Our broad national presence allows us to advise clients on state corporate laws in leading business jurisdictions of California, Delaware, Florida, Illinois, New York, North Carolina and Texas.

Annual meetings, proxy statements and shareholder proposals

Annual meeting and proxy materials require disciplined preparation. Our support in this area includes:

- Drafting and reviewing annual proxy statements;
- Preparing and updating director and officer questionnaires;
- Advising on governance-related matters and disclosures, including responses to stockholder proposals; and
- Providing legal support for annual meetings of shareholders and board meetings.

Shareholder engagement and activism

Our attorneys advise boards and management teams on shareholder engagement and on the guidance and voting policies of proxy advisory firms such as ISS and Glass Lewis. We also counsel clients on the design and delivery of shareholder communications that support long-term shareholder value. We guide clients in the proactive use of defensive tactics to ward off shareholder activism, and then work with clients to address any such activity that may arise to achieve optimal resolution.

Public company compliance

Public company status requires disciplined policies and informed judgment. We advise on the compliance framework that governs the conduct of the company and its insiders, including:

- Compliance with Regulation FD and selective disclosure issues, and investor communications more generally;
- Insider trading and Section 16 compliance policies, equity incentive and employee stock purchase plans, and 10b5-1 trading plans; and
- Related party transactions, including required board and committee reviews and disclosures.

Capital markets and strategic transactions

We advise our public company clients on a wide variety of equity and debt securities offerings and other capital raising transactions necessary to fund their businesses. We also provide counsel on M&A and commercial transactions as they may arise. For more information on our Capital Markets practice, click here.

Representation of foreign private issuers

Foreign private issuers accessing US markets confront layered disclosure, governance, compliance and capital markets considerations that require compliance with multiple regulatory systems. We work together with leading local counsel in jurisdictions outside the United States where we do not practice. We draw on our deep cross-border experience from Asia, Canada, Europe, Latin America and the Middle East to the United States to help clients navigate these often murky waters, including:

- US exchange listings (including dual listings) and continued listing compliance, and cross-border capital raises, including offerings under the US-Canadian Multijurisdictional Disclosure System (MJDS);
- Form 20-F and Form 6-K reporting, Form F-1 and F-3 registration statements, internal and disclosure controls and procedures, and IFRS financial statement reporting;
- SEC, NYSE and Nasdaq filing and review process coordination and response and cross-border regulatory coordination.