

Governance Matters

Board of Directors: Independence Requirements

- Independence / Committee Requirements
 - A majority of the board must be independent; and
 - The board's audit, compensation and nominating/corporate governance committees must all be comprised entirely of independent directors
- There are, however, IPO transition rules that delay these requirements:
 - Each committee must have one independent director upon initial listing;
 - A majority of each committee must be independent within 90 days of initial listing;
 - Each committee must reach full independence within one year of initial listing; and
 - A majority of the board must be independent within one year of initial listing
- Private equity designees may be considered independent, although certain special rules apply to the audit committee

Board of Directors for a Controlled Company

- A “Controlled Company” has more than 50% of the voting power for the election of directors held by an individual, a group or another company
 - This can be a single owner or a group of owners who have agreed to vote in concert in connection with the election of director, such as:
 - Voting agreement that gives one or more Sponsors the right to designate directors
 - Voting agreement whereby one Sponsor agrees to vote as directed by another Sponsor
- A Controlled Company is exempt from the following requirements:
 - Majority Independent Board;
 - Independent Compensation Committee; and
 - Independent Nominating & Governance Committee
- A Controlled Company is still required to have an independent Audit Committee
- A Controlled Company relying upon these exemptions must disclose in its annual meeting proxy statement that is a Controlled Company and the basis for that determination

Committee Charters / Governance Policies

- Develop and adopt detailed charters for each Board committee
- Develop and adopt general corporate governance policies, such as:
 - Governance Guidelines
 - Code of Conduct
 - Financial Code of Ethics
 - Audit Committee Pre-Approval Policy
 - Whistleblower Policy
 - Related Persons Transactions Policy
 - Stock Ownership & Retention Guidelines
 - Insider Trading Policy
 - Short-Swing Trading and Reporting Policy
 - Regulation FD Policy
 - Document Retention Policy