Sullivan
SULLIVAN & WORCESTER

Regulatory Compliance Checklist Private Company Governance and Recordkeeping

Corporate Formalities

- Is the Company doing all it can to limit potential personal liability of its stakeholders by observing corporate formalities?
  - Does the Company maintain a minute book with records of all meetings of directors and stockholders, including written consents?
  - Are subsidiary minute books properly maintained?
  - Does the Company hold annual stockholder meetings to elect the Board of Directors?
  - Are the current Officers properly authorized to hold their positions?
  - Has the Board of Directors authorized all material transactions?
  - Have "interested transactions" been properly approved?
  - Have all "228(e) notices" or equivalents been distributed to the necessary stockholders?
  - Do the organizational documents provide for Director and Officer indemnification to the fullest extent permitted by law?
  - Have D&O insurance policies been considered? If so, do they offer sufficient protection, including for Directors and Officers who later leave the Company?

Doing Business

- Is the Company doing all it can to protect its business interests?
  - Does the Company have a current form NDA with potential business partners, including state of the art provisions related to electronic media?
  - Does the Company have a standard form contract with effective provisions regarding confidentiality and assignment of inventions for employees and independent contractors?
  - Does the Company have adequate physical and technology safeguards and appropriate website and social media policies in place to protect the Company's intellectual property?
  - Does the Company have updated terms for standard purchase orders?
  - Do the Company's standard agreements have provisions adequately limiting the liability of the Company?
  - Are provisions regarding dispute resolution favorable to the Company?
  - Are agreements with subsidiaries properly documented (e.g., transfer pricing agreements)?
  - Is the Company in good standing in its jurisdiction of incorporation?
  - Is the Company properly qualified and in good standing in all other jurisdictions required?

Stock Issuances

- Does the Company manage common problems related to issuances of stock and other securities?
  - Have all issuances of securities been conducted in compliance with applicable securities laws?
  - Does the Certificate of Incorporation provide for a sufficient number of authorized shares?
  - Does the Certificate of Incorporation provide for too many authorized shares, which can lead to excessive franchise taxes?
  - Does the Company have adequate agreements among its shareholders relating to transfer restrictions and other matters that are current, reflect the Company's business strategy and are signed by all necessary investors?
  - If the Company is an S-corporation, does it have agreements with its security holders that adequately protect the Company's tax status?
  - Does the Company have current contact information for all of its security holders?
  - Does the Company have EDGAR codes, and does the Company know all of its SEC passwords/access codes (important for private companies that file Form D with the SEC)?

Exit Strategy

- Is the Company ready for an exit?
  - Do the Company's customer and vendor agreements permit a sale of the Company without the consent of such third party?
  - Is the Company in compliance with all debt and equity financing covenants?
  - Does the Company have an accurate capitalization table showing the authorized, issued and outstanding securities of the Company, including all options, warrants and convertible notes?
  - Does the Company maintain an updated stock record book with copies of all issued stock certificates?
  - Does the Company have copies of all options, warrants, convertible securities or other contingent obligations to issue securities reflected in the capitalization table?
  - Does the Company have fully signed copies of all of its contracts?
  - Are all of the Company's contracts kept in organized files?

For more information on private company governance and recordkeeping, please contact:

Lew Segall
Sullivan & Worcester
One Post Office Square
Boston, MA 02109
617 338 2807
lsegall@sullivanlaw.com