

KEY POINTS FROM BCLP'S RECENT PUBLIC COMPANY UPDATE PROGRAM

Feb 10, 2025

BCLP hosted its annual CLE event, "Public Company Update and Other Trending Topics," in St. Louis recently.

Some of the key issues covered by the event, along with some takeaway considerations for companies, include the following:

- **SEC Rules Update.** Tips on dealing with recent SEC rulemaking on insider trading policies, option grant practices and cybersecurity disclosure, California's recent leniency announcement on its climate rules and risk factor considerations for this year.
- On insider trading policies, companies should consider (1) addressing 10b5-1 plans more directly, including as a process on approval, modification and termination, (2) covering gifts as part of any pre-approval processes and (3) the scope of coverage of so-called "shadow" trading.
- On option-grant policies, consideration should be given to (1) adopting a written policy, if there is only an "unwritten process", (2) the timing of option grants relative to potential disclosure obligations, and (3) regularizing processes around "new hires" to address potential disclosure issues.
- Companies should consider the SEC's recent focus on AI-washing and cybersecurity.
- Companies should prepare for EDGAR Next, which goes live March 24, 2025 with compliance required by September 15, 2025.
- **Shareholder Activism.** Considerations regarding advanced notice bylaws in the context of the current environment for activism and shareholder proposals.
 - The Delaware Court of Chancery recently held certain advance notice provisions invalid. Companies should review those provisions, especially "wolf pack" and "daisy chain" language, including developing a record of review of those provisions.

- Companies should consider more engagement with shareholders, taking steps to prepare for activists, and developing a comprehensive defense strategy.

- **SEC Enforcement.** The big picture on recent SEC enforcement results, the enforcement process, whistleblower protections, the sanctions process and predictions about enforcement priorities in the second Trump administration.
 - The SEC recently brought several settled enforcement actions against companies for allegedly impeding employees from communicating with the SEC, such as by requiring employees to forgo whistleblower awards or forbidding employees from communicating with the government voluntarily. Companies should consider reviewing outstanding agreements, policies, and procedures in response to SEC guidance.
 - During the second Trump Administration, we expect the SEC to take a less aggressive approach to corporate disclosure cases, though the SEC may continue to focus in part on alleged misrepresentation about companies' AI offerings or capabilities.
 - We also expect the SEC to take a less aggressive approach to cases concerning companies' alleged failures to disclose cyber breaches or to establish adequate cybersecurity controls.
 - For further discussion of key themes articulated in published dissents by continuing Commissioners, see our recent post "[What will happen when the SEC minority becomes the majority?](#)"

- **M&A/Corporate.** Recent Delaware decisions resolving mergers and acquisitions disputes, including:
 - Cases emphasizing that relationships of "respect, loyalty and affection" should be considered when assessing director independence.
 - The Delaware Supreme Court's recent focus on inadequate disclosures of financial advisor conflicts and fee arrangements to minority shareholders.
 - The importance of precise definitions and proper drafting of post-closing purchase price adjustments, how arbitrators and Delaware may review contract provisions, and the very narrow ability to challenge an arbitration award.

- **Benefits and Compensation.** Benefits and compensation trends, including Department of Labor (DOL) cybersecurity guidance, employee benefits plan considerations regarding

forfeiture lawsuits, SECURE, CARES, and SECURE 2.0 Acts, the increased focus on health and welfare compliance, and executive compensation considerations on impeding whistleblower activity and other areas.

- On DOL cybersecurity guidance, companies should consider the DOL's April 2021 and September 2024 cybersecurity guidance, including establishing a comprehensive cybersecurity program and incorporating review of benefit plan vendors' cybersecurity practices into its vendor selection process and holding them to certain standards in service agreements.
- 401(k) plan forfeiture lawsuits related to a plan sponsor's use of forfeited employer contributions are on the rise. Consider reviewing your plan's terms regarding discretion.
- There is increased regulatory attention being paid to health and welfare benefits and companies should consider reviewing their health and welfare benefits programs.

The program also reviewed the recent and current political landscape, see the [presentation slides](#).

The event was hosted by BCLP partners Bill Cole, Rob Endicott, Tyler Mark, Josh Hess, Jack Oliver, Emmet Ong, Stephanie Hosler, and Steve Evans and associate Meredith Silliman. Jeff Smith from the Missouri Workforce Housing Association was a special guest speaker.

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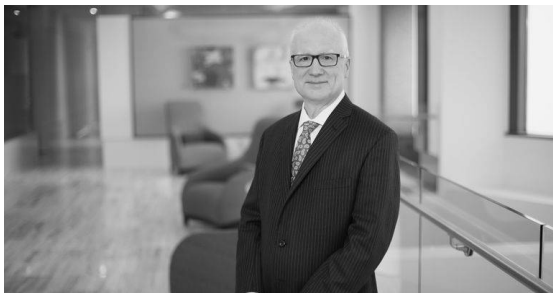


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