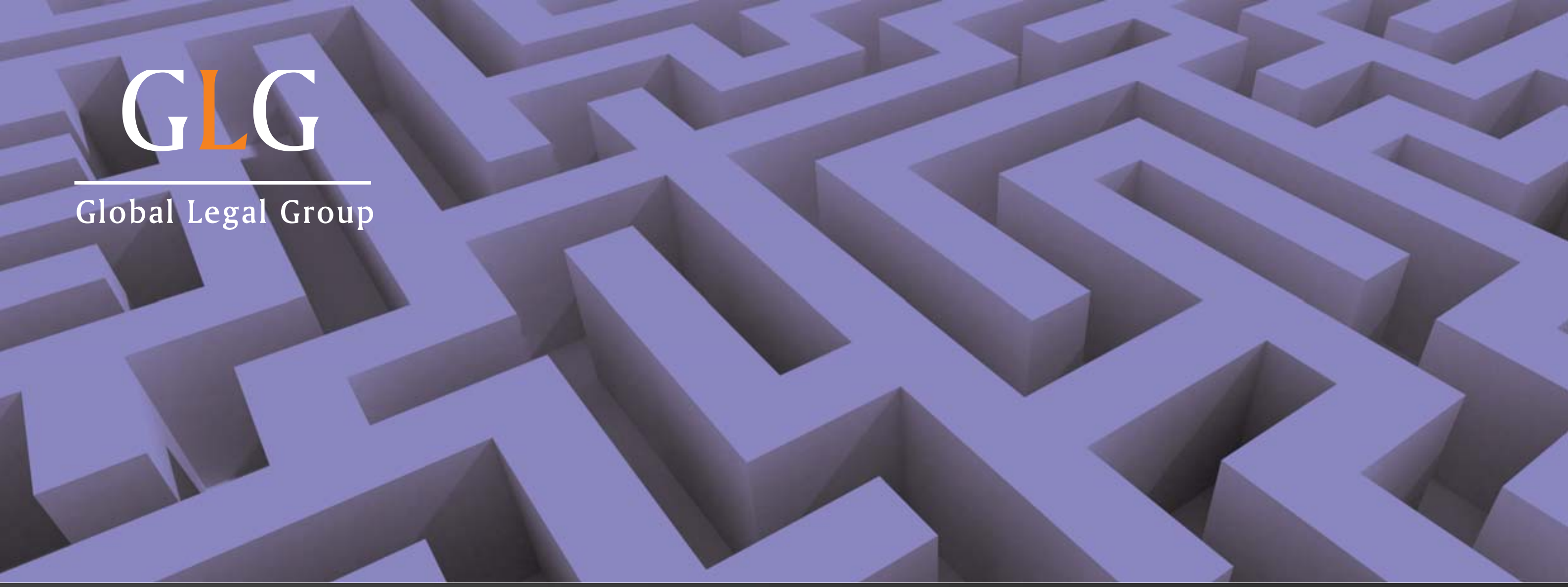

The International Comparative Legal Guide to:

Corporate Governance 2010

A practical insight to cross-border Corporate Governance

Published by Global Legal Group with contributions from:

Al Tamimi & Company
Arias & Muñoz
Arnold Bloch Leibler
Ashurst LLP
Avbreht, Zajc & Partners
Badri & Salim El Meouchi Law Firm
Beiten Burkhardt Rechtsanwaltsgesellschaft mbH
CMS Albiñana & Suárez de Lezo
Cravath, Swaine & Moore LLP
Elvinger, Hoss & Prussen
Haavind
Kunz Schima Wallentin Rechtsanwälte OG
Lee & Ko
Lenz & Staehelin
Osler, Hoskin & Harcourt LLP
Pachiu & Associates
Roschier, Attorneys Ltd.
Siemiątkowski & Davies
Vellani & Vellani
YKVN Lawyers

Chapter 25

USA

John W. White

Cravath, Swaine & Moore LLP

Marc S. Rosenberg

1 Setting the Scene - Sources and Overview

1.1 What are the main corporate entities to be discussed?

The entities discussed in this article are publicly-traded companies listed on the New York Stock Exchange ("NYSE"). The NYSE is the largest equity market in the world; as of March 2010, it was home to approximately 2,400 issuers, including many major U.S. corporations. The NYSE imposes minimum listing standards, regulatory rules and some corporate governance requirements on its listed companies.

The other major U.S. stock exchange is the Nasdaq Stock Market, which lists many smaller businesses as well as some of the largest technology companies in the world. Nasdaq's standards and rules are generally similar to those of the NYSE, but may sometimes differ in important respects.

1.2 What are the main legislative, regulatory and other corporate governance sources?

The fundamental source of governance requirements in the U.S. is the basic corporation law of the individual state in which the company is incorporated. Because over half of U.S. publicly-traded companies are incorporated in Delaware, the discussion below is generally based on the Delaware General Corporation Law ("DGCL") and Delaware case law. There are critical distinctions among states, however, so it is imperative to consult the laws of the state of incorporation in connection with any significant governance matter.

All companies have a certificate of incorporation or "charter" that, among other things, specifies the basic obligations and rights of the board of directors, which generally functions in a supervisory or oversight capacity; management, which is primarily responsible for the day-to-day conduct of the company's business; and the shareholders. Most companies also have bylaws, committee charters and other governance instruments that provide more specific and detailed guidance (relating, for example, to the process for nominating directors).

By offering securities to the public, U.S. companies subject themselves to several federal statutory schemes administered by the Securities and Exchange Commission ("SEC"). Until 2002, federal corporate law was primarily concerned with ensuring that public companies made appropriate disclosure to investors, while the substantive regulation of corporate governance was almost entirely the province of the states. The most important federal laws regulating disclosure and marketplace behaviour are:

- The Securities Act of 1933, which regulates the process by which securities may be offered and sold to the public, including by specifying the information that must be provided to investors.
- The Securities Exchange Act of 1934 (the "Exchange Act"), which sets forth periodic and other reporting requirements for public companies and their significant shareholders, as well as disclosure and procedural requirements in connection with voting by shareholders and transactions that could result in changes in control.

Companies listed on stock exchanges must also abide by the listing standards and rules of their stock exchange.

In response to a series of corporate scandals, the U.S. enacted the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), which both increased disclosure requirements and effectively federalised some aspects of substantive corporate law for public companies. For example, Sarbanes-Oxley requires that the audit committee of the board of any public company have primary responsibility for the appointment, compensation and oversight of the work of a company's independent auditor.

In response to the financial crisis of 2007 and 2008, the U.S. Congress is considering various pieces of legislation that would, in part, impose additional corporate governance reforms including proposals to require independence of boards' compensation committees and to mandate that directors must be elected by majority votes (rather than plurality votes which inhere at many U.S. public companies today).

1.3 What are the current topical issues, developments and trends in corporate governance?

Corporate governance and corporate governance reform have taken on a heightened importance and urgency over the past year. The more prominent current issues include:

Proxy access. Currently, only individuals nominated by the company for seats on the board of directors are included in the company's proxy statement and card – which are printed and mailed at company expense. Shareholders who wish to nominate someone else must do so using their own proxy, at their own expense, which poses a significant deterrent for many investors. In recent years, there have been calls for a federal right to "proxy access", pursuant to which shareholders can include their own director nominees on the company proxy card, at company expense. The SEC recently issued a proposal in this area which will, if adopted, give a proxy access right to at least some shareholders meeting specified criteria. Although the proposed rulemaking has received considerable debate and severe criticism from corporate circles, there is a significant likelihood that the SEC will adopt this rule in some form in 2010. Because the SEC's authority to adopt a proxy access regime has been informally challenged, pending congressional legislation would also give the SEC explicit authority to allow proxy access. The DGCL was also recently amended to authorise Delaware corporations to adopt proxy access-related bylaws.

Majority voting for directors. Most states' laws (including the DGCL) provide for the election of director candidates who receive the most affirmative votes, without regard to the number of votes that might be voted against the candidate. In the case of uncontested elections, even a single affirmative vote is sufficient to elect a candidate. Under this "plurality" standard, "withhold" campaigns undertaken to express disapproval of a particular candidate or an entire board are purely symbolic. In recent years, shareholders have put forth proposals that would require a nominee to receive at least a majority of the votes cast in order to be elected. This is often accomplished through a policy that requires a candidate who does not receive majority support to submit his or her resignation to the board, which then decides whether to accept the resignation. Over the last three years, shareholder proposals to have the company adopt a majority voting standard have garnered substantial shareholder support, causing many companies to adopt this standard. In 2006, the DGCL was amended to provide that shareholder-adopted bylaws that increase the voting requirements to elect directors may not be amended or rescinded by the board and to uphold the enforceability of a director's offer to resign in the event he or she does not receive a majority vote for re-election.

Separation of chief executive officer and chairman positions. Although many major U.S. companies continue to combine the roles of chief executive officer ("CEO") and chairman of the board ("Chair"), this practice is increasingly under attack. In recent years, support for shareholder proposals seeking independent board chairs has increased. The SEC recently adopted requirements that require a company to disclose whether it combines or separates the positions of CEO and Chair and why it believes that structure is the most appropriate. If a company has not separated the CEO and Chair roles, it also needs to disclose whether and why it has a lead independent director and that lead director's specific role in the company's leadership. Various pieces of legislation pending in the U.S. Congress have also included provisions that would require disclosure about the CEO/Chair relationship and some (although none currently under active consideration) would require that those roles be held by different people at U.S. public companies.

Removal of anti-takeover devices. U.S. law generally permits companies to maintain a variety of anti-takeover devices that make it difficult for an acquiror to obtain control without the acceptance of the company's board. These arrangements include classified boards, which provide that only one-third of the directors will be up for re-election in any given year; requirements that mergers be approved by a supermajority of shareholders (more than a simple majority); and restrictions on the rights of shareholders to call special meetings or to act by written consent. While these "defences" were common until early last decade, there continues to be a substantial movement toward their elimination in order to shift power to shareholders. Some legislation pending in the U.S. Congress also contemplates various restrictions or disclosure requirements related to classified boards.

Right to call special meetings. Although the corporate laws of many states, including Delaware, do not explicitly provide shareholders the right to call a special meeting, this source of shareholder empowerment has proven to be of substantial importance to some shareholders. Accordingly, shareholders at many companies make proposals to amend a company's bylaws to either (i) allow shareholders to call a special meeting or (ii) lower the stock ownership level required for them to do so if shareholders already have such a right.

Say on pay. Activist shareholders have sought a direct voice on compensation by urging the adoption of "say on pay" proposals seeking an annual advisory vote on management compensation. As the volume and support for such proposals continue to increase, many companies have agreed to conduct say on pay votes. Pending legislation in Congress would require public companies to hold annual, non-binding votes to approve executive compensation.

Management compensation. Investors continue to pressure companies to modify their management compensation policies, particularly with respect to golden parachutes, clawbacks and performance-related compensation. Congressional developments are also possible on these compensation-related issues.

Broker discretionary voting. The SEC recently approved an amendment to the NYSE rules to prohibit brokers from voting in uncontested director elections without specific instructions from beneficial owners. The amended rule applies to all voting by brokers who are NYSE members and went into effect for all elections held on or after January 1, 2010.

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

In general, the operation and management of a company in the ordinary course of business is left to the appointed officers of the corporation, who are subject to the supervision and oversight of the board. Shareholders may nonetheless affect the operation and management of corporations in material ways:

- The most important shareholder power is the right to elect directors, generally at annual meetings. Shareholders also have the right to nominate their own slate of director candidates, but generally do not because of the significant expense involved in soliciting proxies for those nominees. Until recently, contested elections were very rare unless the dissident shareholder was simultaneously attempting to take over the company. More recently, activist shareholders have increasingly put forth "short slates", or lists of candidates who would represent only a minority position on the board.
- Directors may also be removed by shareholders, as further discussed in question 3.2.
- Exchange Act Rule 14a-8 requires companies to include in their proxy statement certain proposals submitted by shareholders for consideration by the shareholders at annual or special meetings. While the rules impose significant restrictions on the kinds of proposals the company is required to include, they nevertheless have enabled shareholders to promote policies such as say on pay and majority voting.
- Shareholders have the power, without the approval of the board, to adopt, amend or repeal bylaws (so long as any changes would not cause the bylaws to be inconsistent with the charter).
- Shareholders have the right to approve (but not to propose) fundamental corporate transactions. This generally includes statutory mergers, a sale, lease or exchange of all or substantially all of the company's property and assets, a dissolution of the company and amendments to the charter.
- Stock exchange listing standards also give shareholders the right to approve certain transactions, such as issuances of securities representing 20% or more of the outstanding voting power of the company.

2.2 Can shareholders be liable for acts or omissions of the corporate entity/entities?

Shareholders generally are not personally liable for the acts or omissions of the corporation, which is a limited liability entity. The circumstances under which courts have made exceptions to this general rule ("piercing the corporate veil") are almost never applicable to public shareholders of large publicly-traded companies.

2.3 Can shareholders be disenfranchised?

Shareholders may only be disenfranchised under a limited number of circumstances. For example, in a short-form merger, where a parent corporation that already owns 90% or more of a subsidiary merges the two together, the shareholders of neither corporation get approval rights.

Some critics argue that certain defensive measures and other steps taken by companies, such as advance notice bylaws (which require that shareholders submit director nominations and other proxy proposals during a specified period well in advance of the meeting) or some supermajority voting requirements, can effectively disenfranchise shareholders. Generally, a board may only take defensive measures if it finds there is a threat to the corporation and the defensive measure is proportionate and reasonable in relation to the threat posed.

2.4 Can shareholders seek enforcement action against members of the management body?

Shareholders may file derivative claims or direct claims against either the directors of the company or its officers.

Derivative claims are brought by shareholders on behalf of a corporation to enforce the rights of the corporation and are usually brought for breach of fiduciary duties; if successful, relief goes solely to the corporation, which also reimburses the litigation costs incurred by the shareholder. Before filing a derivative claim, a shareholder must first make a demand on the board to pursue redress, or must show that a demand is futile.

To avoid these procedural requirements, plaintiff shareholders will often characterise their claims as direct claims. In a direct claim, a shareholder generally seeks to enforce his or her own rights stemming from share ownership, including his or her voting, statutory and liquidity rights. For example, shareholders have successfully characterised a breach of fiduciary duty that resulted in diluted voting power as a direct, rather than a derivative, claim. Direct claims by shareholders are often filed as class actions.

2.5 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

Persons who directly or indirectly acquire beneficial ownership of more than 5% of a class of equity securities generally must disclose and keep current certain information regarding their holdings. Institutional investors not seeking to influence or control the company are often permitted to provide more summary information, and to file less frequently.

A beneficial owner that directly or indirectly owns more than 10% of any class of equity securities is subject to additional reporting requirements and is also subject to "short-swing profit" rules. If triggered, these rules require a 10% holder to turn over to the company any profits realised on any purchase and sale (or sale and purchase) made within a six-month period.

Several laws may also limit the rights of a significant shareholder. For example, once passive investors beneficially own 20% or more of a class of equity securities, they have to wait 10 days after disclosing that acquisition before they can vote their shares or acquire any additional shares of that issuer. In addition, DGCL Section 203, an anti-takeover provision which shareholders can choose to opt out of by amending the company's charter or bylaws, makes it difficult to consummate hostile transactions (takeovers that occur without approval of the company's board) by placing restrictions on a corporation's ability to engage in a business combination with an "interested stockholder" (generally defined as an owner of 15% or more of the outstanding voting stock of the corporation) for three years from when such shareholder became interested. Furthermore, the federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 generally requires that when the value of a contemplated acquisition and the size of its parties exceed specified thresholds, the parties must notify the Federal Trade Commission and Department of Justice and wait a specified time before consummating the transaction. This waiting period allows those agencies to decide whether to challenge the proposed transaction on competition grounds.

In addition to statutory limitations on shareholder rights, a number of takeover defences can have a similar impact. For example, poison pills dramatically dilute a shareholder's holdings if the shareholder acquires a certain percentage of the company's stock without board approval.

2.6 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

Companies are generally required to hold an annual meeting for shareholders to elect directors. Any other proper business may also be transacted at annual meetings, which typically also ratify the selection of a corporation's independent accountants and consider properly submitted shareholder proposals. The board usually has the authority to set the time and place of such meetings. Written notice of the meeting must be given 10 to 60 days in advance and is usually accompanied by a proxy statement describing the matters to be voted on. Unless the charter or bylaws specify otherwise, a majority of the shareholder voting power must be present in person or by proxy in order for business to be transacted.

Special meetings may also be called as needed to consider items (such as a merger) that arise between annual meetings. Such meetings may be called by the board and often may also be called by the shareholders, although Delaware law generally permits companies to limit or eliminate that right via charter or bylaw provisions. As discussed in question 1.3, the ability to call a special meeting has become a significant issue for some activist investors.

Unless prohibited by the charter, any action that may be taken by shareholders at an annual or special meeting may also be taken without a meeting with the written consent of shareholders having at least the minimum number of votes that would be necessary to take the action at a meeting.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

In the U.S., the concept of a "management body" is something of a misnomer. The ultimate responsibility for overseeing the business of a corporation is held by the board of directors. The board counts among its most important functions the retention and supervision of corporate officers, who generally carry out the day-to-day management of the business. U.S. companies have a single board that may have as members both "inside" executives and non-employee, independent directors. Although companies listed on the NYSE are required only to have a majority of their board be independent, many significantly limit the number of inside executives on the board.

3.2 How are members of the management body appointed and removed?

Members of the board are elected by the shareholders at annual meetings. Directors hold office until the expiration of their term and election of their successor, unless they resign or are removed from office at an earlier time. Scheduled director terms generally range from one to three years, with the latter being typical for classified boards. In the event a seat becomes vacant on the board (including because the board has voted to expand its size), it may typically be filled by a majority vote of the remaining directors.

Any director or the entire board may be removed by shareholders with cause or without cause, although higher supermajority thresholds may apply. In addition, members of a classified board may be removed only for cause, unless the charter provides otherwise.

3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

As discussed in question 1.3, management compensation has been subject to increasing shareholder and regulatory scrutiny. The remuneration of directors, however, has been a less controversial topic. Unless otherwise restricted by the charter or bylaws, the board has the authority to set its own compensation. Companies listed on the NYSE must have a compensation committee composed entirely of independent directors whose responsibilities include authority over the remuneration of the CEO. In addition, shareholders of listed companies must be given the opportunity to vote on all equity-compensation plans (including material revisions), with limited exemptions. As discussed in question 3.8, companies must provide extensive disclosure related to management and director compensation in their annual reports.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Directors and officers are required under the federal securities laws to publicly disclose their holdings, and to update ownership reports within two days of any changes. Like 10% shareholders (question 2.5), directors and officers are subject to the "short-swing profit" rules of Section 16 of the Exchange Act. Share ownership does not, by itself, impinge on a director's independence from the company.

3.5 What is the process for meetings of members of the management body?

The board may meet anywhere and as often as it deems necessary. Companies typically establish advance notice requirements in their organisational documents. Subject to rules set out in their organisational documents, directors may participate in a board meeting via telephone conference or any other means by which all participants can hear one another and may unanimously agree, in writing, to take any action without a meeting. Increasingly, companies are instituting policies requiring director attendance at both board and shareholder meetings.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Directors and officers owe fiduciary duties to the corporation and its shareholders. A fiduciary must act in the best interest of the corporation, putting other interests aside (the "duty of loyalty") and must discharge his or her duty in good faith, and with a degree of skill, diligence and care that a reasonably prudent person would exercise in similar circumstances (the "duty of care"). Unless these duties are breached, courts generally will defer to the business judgments of directors.

Corporations may include exculpation clauses in their certificates of incorporation limiting, or eliminating altogether, the personal liability of directors to the corporation or its shareholders for breach of fiduciary duty, other than with respect to (1) breaches of the duty of loyalty, (2) acts of bad faith, (3) unlawful payments of dividends and (4) transactions from which the director derived improper personal benefit. Such exculpation clauses are very common for publicly-traded companies.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body?

The board's most important corporate governance responsibilities have traditionally related to the retention and development of senior management, together with a focus on substantial strategic issues. More recently, Sarbanes-Oxley and other legal requirements have imposed a number of additional, direct responsibilities on the board. See the discussion in question 1.2.

3.8 What public disclosures concerning management body practices are required?

Companies are required to file an annual report that includes the following disclosures about the board and its practices:

- a list of all the directors, including biographical and shareholding information, information about the experience, qualifications, attributes and skills of each director, and disclosure of any business relationships they have with the company;
- information concerning the operation of the board, including: the identification of independent directors; the committees of the board, their members and functions; the total number of board and committee meetings held in the last fiscal year, along with directors' attendance rates; and information related to the diversity of the board and its directors;
- company policies concerning business ethics and conflicts of interest, and any relevant waivers that have been granted;
- information relating to the separation of the CEO and Chair positions as discussed in question 1.3;
- information relating to the role of the board in the company's risk oversight and its effect, if any, on the organisation of the board's leadership structure; and
- information relating to the remuneration paid to directors.

The annual report is also required to include information about officers of the company that is generally comparable to that required for directors. In addition, the company is required to provide extensive disclosure concerning management compensation, including an analysis detailing compensation policy and objectives. The SEC recently amended its compensation disclosure rules to require new disclosures about the relationship of the company's compensation policies and practices to its risk profile, if material.

Between annual reports, the company is required to make prompt disclosure of significant changes relating to governance matters, including changes in the composition of the board or management, material changes in management compensation arrangements and changes to the company's organisational documents.

3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

In third-party legal claims brought against directors or officers, corporations may indemnify for all expenses, including adverse judgments, as long as the individuals acted in good faith and in a manner reasonably believed to be in the best interests of the corporation.

In addition to indemnifying its directors and officers, public companies typically purchase liability insurance. The insurance may provide coverage in a broader range of circumstances than might be covered by a company indemnity. Director and officer liability insurance does not cover illegal or fraudulent conduct.

4 Corporate Social Responsibility

4.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Beyond the need to comply with laws and regulations that are generally applicable in the U.S., there are few if any corporate law requirements that address social responsibility. Matters of social responsibility are instead addressed in the context of the best interest of the company and the risk that the company's prospects and valuation could suffer if it develops an unsavoury reputation among customers, employees and other interested parties. Recently, companies have faced more shareholder proposals relating to social and environmental matters; also companies often disclose on their websites any positive social and environmental accomplishments.

4.2 What, if any, is the role of employees in corporate governance?

U.S. law does not provide for a labour board or other vehicle for employee participation in corporate governance, nor does the board have any explicit legal duty to take into account the interests of employees in making business judgments. As a result, non-executive employees have no formal role in U.S. corporate governance other than as shareholders generally (although for some companies, employees have a substantial, if not the largest, shareholder stake). Nevertheless, practical considerations dictate that the board and management generally consider the interests of employees, particularly in labour-intensive businesses. In addition, some states (but not Delaware) have "other constituency" statutes that explicitly permit, but do not require, directors to consider the interest of employees and other non-shareholder constituents in deciding whether to oppose a takeover bid.

There are also whistleblower statutes that enable employees to submit concerns regarding a company's corporate governance. Sarbanes-Oxley requires audit committees to establish confidential and anonymous processes allowing employees to submit concerns regarding a company's accounting, auditing or internal control matters.

5 Transparency

5.1 Who is responsible for disclosure and transparency?

Corporate disclosure is generally within the purview of executive management, who is charged with preparing various reports and certifying to their accuracy, and can face criminal liability for material deficiencies in a certified report. The board exercises oversight responsibility. In addition to the required management signatures on all SEC filings, members of the board are also required to sign (and thereby assume personal liability for) some of the company's more significant periodic reports and securities offering documents.

5.2 What corporate governance related disclosures are required?

The principal governance-related disclosure requirements are described in question 3.8.

5.3 What is the role of audit and auditors in such disclosures?

In the U.S., the role of auditors is typically confined to providing reasonable assurance as to the accuracy of the company's financial statements and attesting to management's annual assessment of the company's internal control over financial reporting (which is designed to ensure that the company correctly captures and reports financial data). In narrow circumstances, such as a significant accounting disagreement with management, the auditors may take on an obligation to make direct public disclosures of their own.

5.4 What corporate governance information should be published on websites?

Companies listed on the NYSE are required to publish on the company's website the charters of their compensation, nominating and audit committees, as well as their corporate governance guidelines. All publicly-traded companies are required to publish on their website their code of ethics and information concerning the beneficial ownership of directors, officers and holders of more than 10% of any class of equity security. Foreign companies that choose to list on the NYSE must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies. It is customary, though not required, for companies to provide additional information on the company's website, including other public filings, press releases and financial data.

John W. White

Cravath, Swaine & Moore LLP
Worldwide Plaza, 825 Eighth Avenue
New York, New York 10019
USA

Tel: *+1 212 474 1732*
Fax: *+1 212 474 3700*
Email: *jwhite@cravath.com*
URL: *www.cravath.com*

John is a partner in Cravath's corporate department and is co-chair of the Corporate Governance and Board Advisory practice. From March 2006 through December 2008, John served as Director of the Division of Corporation Finance at the U.S. Securities and Exchange Commission, which oversees disclosure and reporting by public companies in the United States.
John's practice at Cravath focuses on representing and counseling public companies and their advisors on a wide variety of matters including corporate governance, public reporting, public financings and restatements and other financial crises.
While at the SEC, John led the Division in important rulemaking efforts related to executive compensation disclosure, international financial reporting standards (IFRS), SOX 404 internal control provisions, oil and gas reserves disclosure, cross-border tender offer rules, and regulations for foreign private issuers' registration, reporting and deregistration. He also played an integral role in the SEC's response to the various market crises in 2008.

Marc S. Rosenberg

Cravath, Swaine & Moore LLP
Worldwide Plaza, 825 Eighth Avenue
New York, New York 10019
USA

Tel: *+1 212 474 1676*
Fax: *+1 212 474 3700*
Email: *mrosenberg@cravath.com*
URL: *www.cravath.com*

Marc is a corporate partner at Cravath and serves as co-chair of the Corporate Governance and Board Advisory practice. Marc's practice includes counseling boards of directors, board committees and senior management in connection with SEC investigations, governance issues and other special situations, along with securities work and mergers and acquisitions.
Marc was recently recognised as one of the 100 Most Influential Voices in the Boardroom by the National Association of Corporate Directors. He was named a leading corporate governance lawyer by PLC *Cross-Border: Corporate Governance and Directors' Duties 2008/09* and in securities law by *The Best Lawyers in America* in 2009 and 2010. He was cited as a leading capital markets practitioner by *Chambers USA: America's Leading Lawyers for Business* and *Chambers Global: The World's Leading Lawyers for Business* in 2008, and was also recognised for his capital markets and governance experience by *The Legal 500* in 2008 and 2009.

CRAVATH, SWAINE & MOORE LLP

Cravath, Swaine & Moore LLP's experience providing counsel to some of the world's largest corporations has led to the development of a substantial corporate governance practice. During the current financial crisis, we have provided corporate governance advice to numerous clients facing difficult choices and evaluating complex and often unprecedented transactions under tight timeframes. Our clients in this area have included the independent directors or boards of directors of Citigroup, Fannie Mae, General Motors, Merrill Lynch and Morgan Stanley. In these and other contexts, we assist directors and senior management in fulfilling their fiduciary duties while also availing themselves of all available legal protections.

This article appeared in the 3rd edition of The International Comparative Legal Guide to:
Corporate Governance 2010; published by Global Legal Group Ltd, London.