

Counsel to Boards of Directors of Public and Private Companies

The attorneys of Halloran Farkas + Kittila LLP provide counsel to boards of directors of public and private companies. With decades of experience advising boards of directors of leading public and private corporations and their investors, the firm is uniquely qualified to provide critical and practical counsel on corporate and entity governance. Each of the attorneys of the firm brings expertise and experience that allows the firm to address most major corporate governance and other issues confronting companies in all types of settings and transactions.

Overview of Services

- Independent Counsel on Corporate Governance Matters
 - Advising boards of directors and standing and special committees on critical governance matters and corporate governance principles and procedures to comply with Sarbanes-Oxley Act, Dodd-Frank Act and other federal and state corporate laws and listing standards of NYSE, NASDAQ and American Stock Exchange, and institutional investor requirements. Preparing and commenting upon board and committee governance guidelines, charters and policies.
 - Advising management and boards of directors of corporations preparing for a merger or other corporate transaction or an initial public offering, on corporate governance compliance
- Special counsel to boards of directors for investigations and oversight and review of results of special investigations
- Risk and liability assessments including major litigation risk reviews

Independent Counsel on Corporate Governance Matters

The corporate governance area generally is well within the wheelhouse of HFK. For years HFK attorneys have advised companies, boards and management on corporate governance matters.

Corporate Governance

Michael Halloran was General Counsel of Bank of America for several years in which he directly advised the Board and all of its Committees on all their matters. He and other HFK attorneys have done the same for boards and their company management.

Mr. Halloran is well known in this area in particular. In 2015 he was elected to the American College of Governance Counsel, a select group of American lawyers specializing in governance matters. He is Co-Chair of an American Bar Association Task Force on Governance in Business Combinations which is about to produce a Handbook for Directors on the governance aspects

of handling merger and acquisition matters. He is a member of the ABA Committee on Corporate Governance and is active in its matters. He has written articles on various corporate governance matters, such as Separation or not of the Chairman and the CEO, The CEO Succession Challenge, Delaware cases on director duties and responsibilities, etc. He has spoken widely on corporate governance matters.

Executive and Director Compensation

Ever since the important *Disney* case in Delaware, Compensation Committees of Boards have usually had independent counsel. This is because the area is specialized and requires active and knowledgeable counsel who can advise on the intricacies of compensation arrangements and the validity of benchmarking.

With the advent of the recent Delaware Supreme Court *In re Investors Bancorp* case placing higher bars for justification of director compensation (reported on by Jay McMillan in our HFK Blog at [www. hfk.law/blog](http://www.hfk.law/blog)), the need for independent counsel in the director compensation area is important to defend board compensation decisions.

Audit Committee Counsel

Ever since the Sarbanes Oxley Act in 2002 and the Dodd Frank Act in 2010, Audit Committees of Boards and Corporate Governance and Nominating Committees have usually relied on the advice of outside counsel as the complexities of compliance have been growing. HFK attorneys have advised such committees on the methods and means of complying with SEC, PCAOB and other regulatory agency requirements, as well as the statutory requirements now applicable to the activities of those committees on an ongoing basis.

Special Counsel to Boards of Directors for Investigations

The attorneys of the firm have directed and performed board and corporate investigations where potential problems were alleged by regulators or whistleblowers or in connection with defense of suits brought by shareholders or customers, and prepared reports either on a confidential basis to the board and regulators or for public dissemination by the company.

Board members have had confidence in the measured approach of HFK attorneys in this regard, their ability to separate out the material from the immaterial, the relevant and irrelevant, facts, circumstances and conclusions. They have presented their conclusions to the board or its special litigation or other committees, or regulators and public bodies.

Risk and Liability Assessments

Where special board committees have been formed to assess whether to proceed with a shareholder derivative suit demand they have in many cases reported after investigation that

the demand is not actionable or not worth pursuing under the circumstances. Where risk committees are in need of special counsel to help assess risk in the context of regulatory compliance or report to the full board, this new Dodd Frank requirement for financial institutions -and spreading to other companies—has been addressed by HFK attorneys. In most cases these engagements are confidential, but with client consent references to board members we have represented can be given.

This entire area requires specialized legal knowledge. HFK attorneys have it. Questions regarding keeping investigations attorney-client privileged, allowing separate counsel for certain board members or management, responding to regulators or Congressional bodies, advising if actions should be defended or brought, and many other questions in this area are well within their expertise.

Ted Kittila and Jay McMillan, Wilmington Delaware partners of the firm, have litigated shareholder and other actions involving boards and corporate governance matters, and have performed corporate investigations. Denny Roja specializes in advising on similar, complex corporate matters for private companies.