28th Annual Tulane Corporate Law Institute

Current Trends in M&A in 2016
March 17, 2016

Eileen Nugent, Moderator
Chief Justice Leo E. Strine, Jr.
Michele M. Anderson
Roger C. Altman
Keith A. Pagnani
Faiza J. Saeed
SEC UPDATES

Discussion Leader:

Michele Anderson
Associate Director, Division of Corporation Finance
U.S. Securities and Exchange Commission
DISCLAIMER

The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein by any employee of the Commission are those of the speaker and do not necessarily reflect the views of the Commission or of the speaker’s colleagues on the staff of the Commission.
SEC Update

• New Chief of the Office of Mergers and Acquisitions – Ted Yu

• Guidance on the proxy “unbundling rule” in M&A Transactions – Exchange Act Rules 14a-4(a) and 14a-4(b)(1)

• Implications under the tender offer rules when inverted companies become takeover targets

• Universal proxy
5 Best Practices for Directors Involved in M&A Processes

1. Do “sunny day” planning to ensure directors understand their company well, and create a collaborative and engaged but directed relationship with management
5 Best Practices for Directors Involved in M&A Processes

2. Stay focused on the principal business objectives in order to achieve outcomes that are in stockholders’ best interests vs. simply managing litigation risk
5 Best Practices for Directors Involved in M&A Processes

3. Stay attuned to, and actively manage, actual and potential conflicts and hit other difficult issues “head on”
5 Best Practices for Directors Involved in M&A Processes

4. Take an active leadership role in the process - directing strategy and remaining engaged to ensure proper implementation of set strategy
5 Best Practices for Directors Involved in M&A Processes

5. Make sure the record accurately reflects what happened and why – especially as it relates to the “tough judgment calls and decisions”