Going Private – The Pros and Cons of Moving From Public to Private

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Many companies have been considering going private as a part of their efforts to reduce expenses. "Going private" transactions describe the process of shareholders, management, or affiliates of a public company taking the company private by reducing the number of its shareholders to fewer than 300 thereby suspending the company's obligation to file public reports with the Securities and Exchange Company. This article will set out the benefits and detriments associated with a going private transaction, which a company should consider before making a determination whether going private is in the best interest of the company and its shareholders.

Why Go Private?

Reporting companies are required to expend significant resources in connection with their '34 Act obligations, including, but not limited to, higher external auditing and accounting costs, higher costs of internal controls, increased SEC reporting costs, increased legal consulting costs, increased D&O insurance costs, and special board meeting fees. In addition, the high cost of disclosure and compliance of remaining a public company has been exacerbated by the new XBRL reporting requirements. Suspending a company's reporting obligations will help reduce or eliminate these costs.

In addition, reporting companies are required to disclose information to the public, including to actual or potential competitors, that may be helpful to these competitors in challenging a company's business operations and to take market share, employees and customers away. Suspending a company's public reporting obligations will help to protect sensitive information from required or inadvertent disclosure to its competitors.

Moreover, operating as a non-SEC reporting company will reduce the burden on management and employees that arises from SEC reporting requirements, thus allowing management and employees to focus more of their attention on the company's core business. Operating a non-SEC reporting company may eliminate the pressure and expectation to produce short-term per share earnings and may increase management's flexibility to consider and initiate actions that may produce long-term benefits and growth.

Finally, smaller companies may receive only limited benefits from being reporting companies because of the company's small size, the lack of analyst coverage and the limited trading of shares.

What Are the Detriments of Going Private?

By going private a company will no longer have access to the public capital markets and may experience increased difficulty in raising capital in the future from only private sources. This may limit a smaller company's ability to expand its business or raise additional working capital necessary to operate the company's business. Among the small companies who have gone private, who must raise new capital, there is some consternation with the increased difficulty and the possibility of once again becoming public.

By going private a company's shareholders will lose the benefits of registered securities such as access to information concerning the company that is required to be disclosed in periodic reports to the SEC. Additionally, the company's shareholders will lose certain statutory safeguards since the company will no longer be subject to the requirements of the Sarbanes-Oxley Act.

The value and liquidity of a company's shares could be reduced as a result of the company no longer being a publicly reporting company. In addition, a company's directors and officers will have an increased potential for liability resulting from a going private transaction.

Additionally, should a company again exceed the threshold number of shareholders, the company would have to incur significant costs associated with filing past reports and/or filing a new registration statement.

It may be useful to note that going private transactions are not usually initiated by the shareholders who will lose the benefits of information provided by SEC compliance, but by management seeking to avoid the burdens.

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