



How does your company form a Disclosure Committee?

How to form a Disclosure Committee has been a common concern for many small public companies ever since the adoption of the Sarbanes-Oxley Act and the SEC's rules in regards to the implementation. Many companies do not have a formal committee but still have solid controls surrounding the various SEC filings. Is that enough? What exactly are the requirements of a public company in regards to a Disclosure Committee?

There is currently no legal obligation for any company to maintain a Disclosure Committee. It has been recommended by the SEC that all reporting companies should establish a formal committee that would consider that materiality of certain information as well as determine the company's disclosure obligations. The SEC does, however, require that reporting companies maintain controls and procedures "designed to ensure that information required to be disclosed by an issuer in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms." A company's Disclosure Committee is usually in charge of complying with this requirement.

As there is no formal requirement to have a committee, there is also no specific instruction on who needs to be on it. However, there are certain individuals who should be considered if a committee is being created. Logical choices for the committee include individuals from Internal Audit, Legal, Investor Relations and the Accounting Department. Also important would be any individual with strong knowledge about the company's primary business units.

The length and frequency of disclosure committee meetings varies by company, but the majority will meet at least quarterly and have a sub-group that may meet more frequently to discuss less material issues. These sub-committee's usually consist of the attorneys. Minutes of the meetings should be kept and be kept in a similar fashion to the Board of Directors meeting.

In conclusion, although not required, forming a solid Disclosure Committee is a solid business practice and will go a long way in ensuring that the company filings are disclosing all relevant information to the public.