AGENDA

SEC Brings ‘Novel’ Charges, $175K Fine Against Ex-Director over Independence

The former CEO and director also faces a five-year officer-and-director bar

By Nick Muscavage | October 4, 2024

The former chairman and CEO of **Church & Dwight**, the parent company of baking soda company **Arm & Hammer**, has agreed to $175,000 in fines and a five-year officer-and-director bar after regulators brought "novel" charges against him claiming that he failed to properly disclose his non-independence.

The **Securities and Exchange Commission** on Monday filed charges against **James Craigie** for allegedly allowing misstatements to be included in the company's proxy statements. Craigie, the SEC claims, withheld information about his close personal relationship with an executive who was considered for CEO of Church & Dwight, causing the company's 2021 and 2022 proxy statements to incorrectly categorize him as independent.

The SEC's charges come at a time of heightened scrutiny on board independence following recent decisions from the **Delaware Chancery Court** that looked closely at independent directors' relationships with their CEOs. With these developments in mind, board members should be encouraged to err on the side of over-disclosure in their D&O questionnaires or consider expanding on the questions circulated to directors and officers, sources said.

Church & Dwight appointed Craigie as CEO in 2004, and he held that role for over 11 years, according to the SEC. He served on Church & Dwight's board of directors as its non-executive chairman from 2007 to 2019 and as a non-independent director from 2004 to 2019.

Craigie then became an independent director at Church & Dwight four years after retiring as CEO. The **New York Stock Exchange** requires a cooling-off period of three years before a departing executive can become an independent board member.

Church & Dwight's board "relied substantially" on Craigie to disclose any information in his D&O questionnaire that could affect his independence, according to the SEC. The questionnaires used by the company sought disclosure of material relationships and included examples such as banking, consulting, charitable and familial relationships. While the company noted the list of examples was not exhaustive, it did not include friendships.

Securities and Exchange Commission. Photo credit: Bloomberg.

The questionnaire also asked if directors had "any other relationship" with Church & Dwight or its management. In 2021, 2022 and 2023, Craigie answered "no," according to the SEC.

All the while, Craigie was angling for the board to select the Church & Dwight executive he was friends with for CEO and used his role as an independent director to relay updates to the executive, who remained unnamed in the SEC's charges.

Craigie failed to disclose that between 2020 and 2023 he regularly vacationed with the executive and the executive's spouse and paid for the airfare and lodging of domestic and international trips for the couple and others on the trips, dropping more than $100,000 on the excursions. The SEC noted that Craigie, who told the executive not to tell anyone at the company of their friendship, did not pay for vacations or expenses for other Church & Dwight executives.

When he learned of the CEO selection process at the company in 2022, Craigie suggested that the board consider an executive at an external company — one that Craigie's friend at Church & Dwight also worked at and whose tenure overlapped with the candidate's, according to the SEC. Craigie also did not disclose to the board that he and the candidate had attended his friend's international birthday vacation celebration.

He then separately told his friend that, if this candidate were hired, it would provide a viable path for his friend to succeed that person as CEO, according to the SEC.

The details of Craigie's charges almost seem to be ripped straight from the script of **HBO** television show "Succession," said **Francis Byrd**, a partner at consultancy **Alchemy Strategies Partners** and an advisor on corporate governance with over two decades of experience.

"I've never seen anything like this."

It's not unusual that CEOs may have some favorites among their direct reports or others a rung below them, whom they'd like to mentor to succeed them, Byrd said.

"What is unusual are the steps that Craigie took to make that happen," he said. "That's what's really unusual here."

Craigie allegedly interfered with one of the board's most critical duties, according to **Lawrence Cunningham**, director of the Weinberg Center for Corporate Governance at the **University of Delaware**.

"The board's most important job is picking the CEO and then creating a succession plan," he said. Craigie was allegedly "tampering with the most important function of the board."

It's worth noting that the SEC found no faults with Church & Dwight's approach to its director independence process, Cunningham said. Many companies follow the same process, which includes sending out questionnaires, so most boards will not run into this kind of problem, he added.

Still, there are lessons that board members can learn from the case.

The SEC's charges are "novel" because they are "pinpointing one director's actions, and that's extraordinarily rare on its own," Cunningham said. The SEC has brought disclosure enforcement actions before, but not many deal with internal governance matters, particularly issues of board independence.

Nomination and governance committees, which typically oversee D&O questionnaires, should make a note of Craigie's case to review it for their next quarterly meeting, Cunningham said. Directors should also be encouraging their colleagues and officers to "err on the side of over-inclusion" in their questionnaires, he said.

While companies should not be turning D&O questionnaires into "lie detector tests," directors should be encouraged to be honest and open in their responses, Byrd said.

The other companies where Craigie recently served as a board member may want to go back and review the questionnaires he filled out, he added. These companies include **Bloomin' Brands** and **Newell Brands**, where Craigie was a director until 2023 and served as chair of both companies' compensation committees.

Church & Dwight, Bloomin' Brands and Newell Brands did not respond to requests for comment. Craigie could not be reached for comment.

Companies can also set standards for independence above what listing exchanges require, he added. If Church & Dwight had a policy forbidding a former executive from serving as an independent board member, Craigie likely wouldn't have been as intimately involved in the CEO succession process.

ISS' policy states that there is no cooling-off period for CEOs and their board independence. If someone worked as a chief executive, they would always be considered non-independent on that company's board, according to **Chan Pedris**, executive director of advisory Americas at **ISS-Corporate**.

The corporate consulting arm of ISS released a report in July that found that the Delaware Chancery Court could more frequently look at nontraditional and nonfinancial factors in evaluating board independence. Such was the case when Chancellor **Kathaleen McCormick's** opinion invalidated **Elon Musk's** $56 billion pay package at **Tesla**, writing that the shareholder vote to approve the compensation was not fully informed because "the proxy statement inaccurately described key directors as independent."

Now with the SEC chiming in on board independence, "it's incumbent on directors to kind of police themselves" to ensure they are being honest about conflicts, Pedris said.

"It just comes down to integrity and having a strong code of conduct where directors take their oaths very seriously," he said. "There's no other way."