Blogs

Changing your fiscal year-end? Why would you want to do that? This is the kind of oddball topic that might surface only once or twice during your career.

Most companies have a fiscal year-end that matches the calendar year. Their quarters end on March 31st, June 30th, September 30th and December 31st - with the fiscal year also ending December 31st. But there are plenty of companies that have fiscal year-ends at other times. For example, most companies in the retail sector have fiscal years that end on January 31st.

Here are some of the more typical reasons why a company may want to change their fiscal year-end:

1. **Match peers**. Perhaps your company has fallen out of sync with its peers in the industry. Having the same fiscal year will help the market compare directly when looking at your quarterly and annual results, leading to better benchmarking. On the flip side, if you're changing your fiscal year-end so it will no longer match your peers, it would be prudent to have a good reason that the market will appreciate.

2. **Seasonality has changed**. Maybe seasonal business fluctuations have changed, and it makes sense to match your financial reporting for the ebbs and flows of your company's operations.

3. **Help for liquidity**. Perhaps a change in fiscal year will allow for better cash management and assist with liquidity purposes or debt covenant compliance.

Changing a fiscal year-end is not something that should be taken lightly. It shouldn't be done on a whim with the notion that you can change it back if it doesn't feel right. It will cost you time and resources and will require a big adjustment both internally (for some departments, particularly the financial reporting team and perhaps the sales department) and externally (for investors and analysts who closely follow you).

Regardless of the reason, when considering a change in fiscal years, here are six things to keep in mind from the lawyer's perspective:

1. **Read your charter and bylaws**. Typically, a company's bylaws will state the fiscal year-end or provide that the fiscal year will be fixed by the board of directors. A change in fiscal year often requires approval by the board of directors and occasionally, an amendment to the bylaws. While infrequent, some companies decide to seek shareholder approval for a change in fiscal years. Read your charter and bylaws to understand the requirements.

2. **Be prepared to file an Item 5.03 8-K with the SEC**. Changing fiscal years triggers an Item 5.03 8-K filing for public companies in most cases. The reporting obligations under Form 8-K vary depending on the way in which a fiscal year is changed. Read the requirements of Item 5.03 of Form 8-K and be prepared to file within four business days of the change.

3. **Think ahead to the "transition report" you'll be filing with the SEC**. SEC rules require public companies that change their fiscal years to file a "transition report" covering the "transition period." The transition period is the period between the closing of the most recent fiscal year and the opening date of the newly selected fiscal year. A transition report covers the transition period and must include interim period financial statements.

   Depending on the length of the transition period, a transition report may be required to be filed on Form 10-KT or Form 10-QT. If the transition period is less than one month, no transition report is required, but then transition period financial statements must be included in the next Form 10-Q.

   Sections 1360 and 1365 of the SEC's "Financial Reporting Manual" are helpful resources to understand the SEC's requirements regarding changes in fiscal year and transition reports.

4. **Reverse mergers may change fiscal years**. In a reverse merger, the target company's financial statements typically survive and become the post-merger company's financial statements. Depending on the fiscal year of the target company, reverse mergers may effectively change a company's fiscal year.

5. **Consider the annual meeting date**. Changing fiscal year-ends could warrant a change in a company's annual meeting date. Of course, this will change when your company's proxy season occurs. Be sure to check state law

and stock exchange rules for requirements regarding the frequency of annual meetings.

6. **Think through the many downstream effects**. Changes in fiscal year have many downstream effects. Review the accounting, budgeting, and financial reporting processes to anticipate the effects of changing fiscal years. Talk with the company's auditors to understand the audit-related implications. Changing fiscal years winds up being a lot of work for the auditors and the financial reporting team.

Review agreements and compensation plans to determine how they will be affected. Consider the interplay between fiscal years for financial reporting and tax reporting. Changes in fiscal years for tax reporting could require IRS clearance and transition-year tax returns.

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