

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

HANSEL ORREGO and JAYEON KIM,)
Derivatively on Behalf of)
GROUPON, INC.,)
)
Plaintiffs,)
)
v.)
)
ERIC LEFKOFSKY, PETER BARRIS,)
KEVIN EFRUSY, MELLODY)
HOBSON, BRAD KEYWELL,)
THEODORE LEONSIS, ANDREW)
MASON, HOWARD SCHULTZ,)
JOSEPH DEL PRETO, and JASON)
CHILD,)
)
Defendants,)
)
and)
)
GROUPON, INC.,)
)
Nominal Defendant)

Case No. 12 CH 12420
Consolidated with 12 CH 19431
Calendar 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: GROUPON DERIVATIVE
LITIGATION

)
) Master Docket No. 12-CV-5300
)
) Hon. Andrea R. Wood
)
) Hon. Mary M. Rowland
)
)
)

EXHIBIT A TO STIPULATION OF SETTLEMENT

CORPORATE GOVERNANCE REFORMS

These reforms are designed to strengthen the Board of Directors' (the "Board") overall oversight of Groupon's operations, compliance, enterprise risks, and disclosures. Except as otherwise provided herein, the reforms will be implemented and maintained for a period of five

(5) years from the Effective Date. Unless otherwise provided herein, for an additional period of five (5) years after the initial five (5) year term from implementation, the reforms may only be modified upon a majority vote of the then-sitting Board.

1. Shareholder Proposals

The Nominating and Corporate Governance Committee's Charter shall be revised to provide that it shall review shareholder proposals that have been properly submitted, consistent with proxy rules, to determine whether such shareholder proposal is in the best interest of the Company. The committee shall make recommendations to the Board for or against such shareholder proposal and the reasons for such a recommendation.

2. Board of Directors

A. Board Independence

A majority of the Board shall be comprised of Independent Directors, in accordance with the standards required by the Nasdaq Global Select Market (Nasdaq). A director shall be deemed independent only if he or she meets the independence standards set forth under Rule 5605(a)(2) of the Nasdaq Stock Market Rules, including any related instructions and interpretive guidance thereunder, as such standards may be amended or modified by Nasdaq from time to time.

B. Director Orientation and Continuing Education

Within the first year of their election or appointment, any new members who are elected to the Board following the Effective Date must participate in a total of four-hours of programs on Corporate Governance Guidelines and Best-in-Class Practices offered by the General Counsel or other legal staff or outside counsel designated by the General Counsel. All such continuing education may be accomplished by in-person or internet-based training, or through written materials, which would take approximately four hours to review, and shall cover issues including compliance with law and regulation, Generally Accepted Accounting Principles ("GAAP"), the Sarbanes-Oxley Act of 2002, as amended, corporate governance, assessment of risk, compliance auditing, and reporting requirements for publicly-traded corporations. In addition, continuing education will be available for all directors annually on an elective basis.

C. Meetings in Executive Session

The Independent Directors of the Board shall meet in executive session at each regularly scheduled meeting of the Board, with a minimum requirement to meet at least three (3) times annually outside the presence of any director who serves as an officer of Groupon.

3. Audit Committee

A. Composition and Number of Meetings

The Audit Committee Charter shall be revised to require that at least two members of the Audit Committee be a "financial expert" as defined under applicable SEC rules. Further, the Audit Committee Charter shall be revised to require that the Audit Committee shall meet at least six

(6) times annually, which includes meetings prior to (a) the commencement of significant audit procedures; (b) completion of the audit; and (c) all Form 10-Qs.

B. Audit Committee Charter

The current charter of the Audit Committee shall be amended to provide for the below provisions.

The election of the Audit Committee Chair shall be made by sitting members of the Audit Committee.

A representative of the Disclosure Committee shall report to the Audit Committee at least once each quarter and more frequently, as necessary.

The Audit Committee shall review with a representative of the Disclosure Committee any Form 10-Q, Form 10-K, or Form 8-K of the Company that includes an earnings release, to ensure sufficient material risk disclosures.

The Chair of the Audit Committee shall meet with the outside auditors as least four (4) times annually, including before the filing of Groupon's quarterly and annual reports with the SEC.

The Audit Committee shall review and discuss any material, proposed compliance-related disclosures in the "Management's Discussion and Analysis of Financial Condition and Results of Operation" section of the Company's Annual Report on Form 10-K and Quarterly Report on Form 10-Q.

By no later than one year from the Effective Date, the Audit Committee shall select and retain an independent auditing firm to conduct an assessment of the internal audit department's conformance with the Institute of Internal Auditors' (the "IIA") definition of Internal Auditing, Code of Ethics, and Standards for the Professional Practice of Internal Auditing. These external assessments shall be conducted three times over the course of a ten (10) year period. The auditor's report and findings from these assessments shall be provided to the Audit Committee. The Audit Committee, in the exercise of its discretion, shall determine which findings or recommendations, if any, to disclose in Groupon's proxy statement and which, if any recommendations, should be implemented. This policy of obtaining independent assessments of the internal audit function may be discontinued after ten (10) years.

The minutes of the Audit Committee shall be maintained by Groupon for no less than ten (10) years.

4. Rotation of Independent Audit Partner

At least once every five (5) years, or more often as necessary, the Board shall retain a new independent audit/relationship partner at its independent auditor firm.

5. Compensation Committee

The current charter of the Compensation Committee shall be amended to provide for the below provisions.

- i. Cash incentive compensation plans for executives shall link pay to achievement of financial goals set in advance by the Compensation Committee;
- ii. An independent compensation consultant shall be retained to review and report on management and director compensation; and
- iii. The minutes of the Compensation Committee shall be maintained by Groupon for no less than ten (10) calendar years.

In addition, the Company agrees that:

- i. Executive compensation must be submitted to an annual non-binding shareholder vote. The results of the shareholder vote shall be disseminated to the public in the Company's Form 8-K reporting the results of the annual meeting;
- ii. Stock options to executives and employees must be accounted for in the Company's financial statements as a cost; and
- iii. The Company shall be entitled to recover any bonus, retention, or other incentive compensation paid to executives to the extent such incentives were based on materially inaccurate financial statements or performance criteria.

6. Publication of Corporate Governance Policies

The Company shall place the following corporate governance policies on the Company's website for public access and review: Audit Committee Charter, Compensation Committee Charter, Nominating & Governance Committee Charter, Corporate Governance Guidelines, and Global Code of Conduct.

7. Creation of Director of Compliance

The Company has created the position of Director of Compliance who reports directly to the General Counsel. The responsibilities of the Director of Compliance include, but are not limited to, oversight and administration of the Company's corporate governance policies (including the Global Code of Conduct and Anti-Corruption Policy), fostering a culture that integrates compliance and ethics into business processes and practices, and maintaining and monitoring a system for reporting and investigating potential compliance and ethics concerns. The Director of Compliance shall be primarily responsible for managing the Company's ethics and compliance program and for assisting the General Counsel as well as the Audit Committee and the Board in fulfilling their oversight duties with regard to the Company's compliance with applicable laws and regulations. The Director of Compliance will head the Company's Compliance Team under the oversight of the General Counsel and will report quarterly to the Audit Committee on progress towards compliance goals.

The Director of Compliance's primary responsibilities shall include the following:

- Works with the General Counsel to evaluate and define the goals of Groupon's Global Ethics and Compliance program in light of trends and changes in laws which may affect Groupon, and creates a framework for reporting to the Audit Committee.
- Manages and oversees Groupon's Ethics and Compliance program, implementing procedures for monitoring and evaluating the program's performance, and communicating with and informing the General Counsel and the Audit Committee regarding progress toward meeting program goals.
- Advises Groupon's General Counsel and Audit Committee and in such capacity shall: (i) have responsibility for assessing organizational risk for misconduct and noncompliance with applicable laws and regulations; (ii) report material risks relating to compliance issues to the General Counsel within three business (3) days of identification of these risks; and (iii) make recommendations for further evaluation and/or remedial action within deadlines established by the General Counsel.
- Presents quarterly reports to the Audit Committee regarding significant investigations and, where necessary, recommends remedial action.
- Employs third-party consultants and/or legal advisors, as necessary, to assist in the assessment of internal risk.
- Works with Groupon's General Counsel, Internal Audit, and other key functional areas to evaluate the adequacy of Groupon's internal controls over compliance, and develops proposals for improving these controls.
- Oversees employee training in risk assessment and compliance and develops more comprehensive programs (for example, Anti-Corruption/FCPA compliance).

8. Revisions to Corporate Governance Policies

A. Groupon Global Code of Conduct

The Global Code of Conduct shall be revised to provide that, if “you become aware of a failure by the Company to comply with accounting procedures mandated by the Federal securities laws, SEC rules, or any other applicable securities rules, regulations, or guidance or if you, or anyone else you are aware of, are asked to discharge your/their respective duties in a manner that fails to comply with any such rules, regulations, or guidance, you shall immediately report the event via email to legalcompliance@groupon.com or using Groupon's Ethics Reporting Service, EthicsPoint, available at <https://secure.ethicspoint.com/domain/media/en/gui/31495/index.html>.”

The Global Code of Conduct shall be further revised to provide that, if “you are asked to improperly report revenue, or falsify any other records related to compliance with the applicable Federal securities laws, SEC rules, or any other applicable securities rules, regulations, or guidance, or are aware of falsification by anyone else in the Company, you shall immediately

report the event via email to legalcompliance@groupon.com or using Groupon's Ethics Reporting Service, EthicsPoint, available at <https://secure.ethicspoint.com/domain/media/en/gui/31495/index.html>."

All reports to legalcompliance@groupon.com or using Groupon's Ethics Reporting Service, EthicsPoint, available at <https://secure.ethicspoint.com/domain/media/en/gui/31495/index.html>, regarding failure to comply with accounting procedures mandated by the Federal securities laws, SEC rules, or any other applicable securities rules, regulations, or guidance shall be reported to the General Counsel or his designee.

The General Counsel or his designee shall report quarterly to the Audit Committee regarding the substance of any reports that involve employees at the level of Senior Vice President and above and relate to Code of Conduct violations and failure to comply with accounting procedures mandated by the Federal securities laws, SEC rules, regulations, or guidance, or any other GAAP/securities laws.

B. Code of Ethics for Senior Financial Officers

Paragraphs 2-4 of the Code of Ethics for Senior Financial Officers shall be amended to provide that, in addition to the Audit Committee (as is currently listed in the Code), each Senior Financial Officer shall promptly notify the General Counsel of any issues set forth in paragraphs 2-4 of that Code.

C. Disclosure Controls and Procedures

The Disclosure Controls and Procedures and Disclosure Committee Charter shall be amended as follows. The Disclosure Committee members shall consist of Groupon's Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer, General Counsel, in-house Corporate & Securities counsel at the level of Associate General Counsel or senior, and other representatives from key functional areas of the Company.

The purpose of the Disclosure Committee shall be amended to include that the Disclosure Committee purpose is to ensure effective procedures and protocols are in place at the Company to provide reasonable assurances that SEC filings reporting financial results of the Company and press releases that accompany any such SEC filings are complete and accurate.

The Disclosure Committee Charter shall be amended to provide that: (i) the committee hold regular meetings prior to each annual and quarterly Exchange Act filing and ad-hoc meetings from time to time as directed by the Disclosure Committee Chairperson; and (ii) a Disclosure Committee representative shall report at least quarterly to the Audit Committee.

The responsibilities of the Disclosure Committee shall be amended to include the following:

- i. review each Exchange Act report prior to filing with the SEC to assess whether the report is accurate and complete in all material respects; and

- ii. evaluate the materiality of information or events affecting the Company.

The Disclosure Committee Charter shall be revised by deleting the clause, “The Committee may designate three or more members, at least one of whom shall be the Chief Financial Officer or the Chief Accounting Officer, who can, acting together, approve Disclosure Statements when time does not permit the full Committee to meet.”

As a member of and in conjunction with the Disclosure Committee, in-house Corporate & Securities counsel at the level of Associate General Counsel or senior shall review Groupon’s draft quarterly and annual reports on Forms 10-Q and 10-K, prior to their publication to ensure the accuracy, completeness, and timeliness of disclosures relating to legal compliance issues and material risks to Groupon’s compliance with applicable laws and regulations, and working with the General Counsel to report any material issues with respect to such matters that may merit disclosure to Groupon’s Audit Committee.

9. Employee Training Regarding GAAP and Legal Compliance

Groupon’s Chief Accounting Officer shall conduct quarterly accounting and SEC update meetings with all members of Groupon’s accounting team that have responsibility for SEC reporting and/or establishing the Company’s accounting policies. At these meetings, materials will be distributed summarizing all new U.S. GAAP and SEC reporting matters that (1) are applicable for the Company’s current quarterly reporting period; and (2) have been issued by the applicable standard-setting or regulatory body and will become effective in a future reporting period.

10. Forfeiture of Bonuses and Profits for Restatements

If Groupon is required under GAAP to prepare an accounting restatement to correct an accounting error on an interim or annual financial statement included in a report on Form 10-Q or Form 10-K of the Company, due to material noncompliance with any financial reporting requirement under the federal securities laws, the Board shall determine whether the restatement was caused by the knowing misconduct of the Chief Executive Officer or Chief Financial Officer.

- i. If the Board determines that knowing misconduct by the Chief Executive Officer or Chief Financial Officer has occurred and caused such restatement, it shall take the steps necessary to secure reimbursement from the Chief Executive Officer or Chief Financial Officer that the Board has determined has engaged in such misconduct, of:

- a. any bonus or other incentive-based or equity-based compensation received by the Chief Executive Officer or Chief Financial Officer from Groupon during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such error; and

- b. any net profits realized by the Chief Executive Officer or Chief Financial Officer from the sale of Groupon securities during that 12-month period.

ii. Any monies recovered under this provision may be held in constructive trust for the benefit of Groupon if the Board, in its discretion, determines that it is appropriate to do so.

iii. This provision does not purport to limit Section 304 of the Sarbanes-Oxley Act in any way, but any monies recovered under this provision shall be deemed by Groupon to have been recovered under Section 304 of the Sarbanes-Oxley Act.