



# Preparing for 10-K and Proxy Season

Securities Law Breakfast Series



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# Agenda

- 2019 Key Issues Recap
- 2019 Final Rules
- Current SEC Proposals
- Form 10-K: Comment Letter Trends
- Governance and Shareholder Issues

# 2019 Key Issues Recap

# Say-on-Pay Votes

# Say-on-Pay—2019 Results

- Despite the attention around failures, large majority approval remained the norm
  - Only 2.4% of the Russell 3000 had a failed say-on-pay vote
  - The average vote result was 90.8% in favor
- Proxy advisory firms retain significant influence in this sphere
  - When ISS recommended an “Against” vote, shareholder support was 31% lower than when ISS recommended a “For” vote
- If a company receives a negative proxy voting recommendation from a proxy advisory firm, it often (but not always) prepares additional material in support of its executive compensation program
  - Remember that in order to use such materials, companies must file them with the SEC as definitive additional soliciting material not later than the date first distributed or used to solicit shareholders

# Say-on-Pay—Trends

- Feedback from engagement meetings in Spring 2019 indicated:
  - A heightened focus on one-time or supplemental awards; and
  - A desire for design that is tightly linked to challenging strategic and financial measures
- It is expected that investors will continue to become more willing to support plans that have moved away from traditional metrics such as TSR and, instead, move toward metrics specific to company circumstances and strategy
- Unique plan design requires clear disclosure and more in-depth engagements to provide investors with context

Source: PJT Partners



# Critical Audit Matters

# CAMs—Effective Dates

- Large accelerated filers—audits for fiscal years ending on or after June 30, 2019
  - Those with a calendar year-end will have to include with the 2019 Form 10-K to be filed in early 2020
- All other filers—audits for fiscal years ending on or after December 15, 2020
- Does not apply to EGCs



# CAMs—Practice Runs

- Companies that will not be subject to the CAM provisions until their 2020 audits may find it useful to conduct a dry run this year
- During implementation practice runs in 2019, auditors worked on identifying and drafting CAMs and conveying them to audit committees
  - For most large firms, the process took up to six months
  - Practice runs resulted in companies addressing existing internal controls or considering new controls and reporting procedures, particularly for compliance with new accounting standards from the FASB

Source: Intelligize; Deloitte; Wall Street Journal

# CAMs—Practice Runs Lessons Learned

- Lessons learned during the dry runs included the following:
  - Practicing the identification and communication of CAMs allowed auditors to gain valuable experience, resulting in a smoother implementation process
  - Deciding whether an account or disclosure was a CAM required significant judgment and was specific to the circumstances of each audit. Therefore, what might be a CAM on one audit might not be a CAM on another audit
  - Communicating CAMs that can be easily understood by a broad readership can be challenging
  - Sharing draft CAMs with management, audit committees, and legal counsel provided an opportunity to set expectations about CAMs and to reach a common understanding about applying the standard's requirements and how the implementation process and timing may work

Source: Deloitte

# CAMs in Practice—Statistics

- No specific number of CAMs is required but PCAOB does expect at least one CAM in most audits
- We have now seen audit reports with CAMs for large accelerated filers with fiscal years ending June 30, 2019.
  - On average, 1.8 CAMs were communicated
  - There was at least one CAM in each audit report
  - The most commonly identified CAMs related to goodwill and intangible assets (27%), revenue recognition (21.3%), accounting for acquisitions (12.4%), and tax contingencies (12.4%)

# Pay Ratio Disclosure

# Pay Ratio Disclosure—Overview

- Third year for mandatory pay ratio disclosure
- Requires disclosure of the ratio of the annual total compensation of a company's median employee to that of its CEO
  - Permits a company to identify its median employee only once every three years as long as the company reasonably believes there has not been a change in its employee population or compensation arrangements that would significantly change the pay ratio
  - If the median employee has left, the company may substitute another employee with substantially similar compensation as the median employee previously identified



# Pay Ratio Disclosure—Trends

- Median pay ratio of 169:1 in the S&P 500 and 77:1 in the Russell 3000
  - Up from 165:1 and 72:1, respectively, in 2018
- Median employee compensation was approximately \$70,000 in the S&P 500 and \$66,000 in the Russell 3000
- 10% of the Russell 3000 disclosed an alternate pay ratio
  - Companies most frequently disclose alternate pay ratios to illustrate the impact of: (1) excluding one-time awards for the CEO; (2) using only U.S. employees; or (3) using only full-time or corporate employees
- Proxy advisory firms continue to refrain from using the data to evaluate CEO pay levels or the effectiveness of the company's pay program
- The strong correlation between CEO pay ratio and SOP results could nudge some investors to more closely scrutinize the pay ratio information in the proxy materials.

Source: Semmler Brossy (covering 1,994 constituents of the Russell 3000)



# Pay Ratio Disclosure—Tips

- Consider whether to add more context
  - Particularly helpful to explain any significant change or if a company's ratio differed significant from its peers
- Consider whether it is appropriate to identify a new median employee for the 2020 proxy season
  - If the same median employee is used, then there needs to be a brief description of the basis for the belief that there have not been any changes requiring a newly determined median employee

# Recent SEC Enforcement Actions

# Mylan—Loss Contingency Disclosures

- Related to DOJ probe into whether Mylan overcharged Medicaid by hundreds of millions of dollars for EpiPen
- Didn't disclose any loss contingencies or accrue any estimated losses prior to announcing a \$465 million settlement
  - Public companies facing possible material losses from a lawsuit or government investigation must
    - (1) disclose the loss contingency if a loss is reasonably possible; and
    - (2) record an accrual for the estimated loss if the loss is probable and reasonably estimable
  - Failure to do so made its public filings false and misleading
- SEC complaint also took issue with “hypothetical” risk factor disclosures about government authorities taking contrary positions to its Medicaid submissions
  - CMS had already informed Mylan that a product was misclassified
- Settled for approximately \$30 million

# Comscore—Non-Financial Disclosures

- In 2014 and 2015, Comscore disclosed its net new customers added in quarterly earnings calls and its customer total in periodic filings
- According to the SEC, analysts tracked net new customers added as an important indicator of company performance
  - SEC alleged customer total had slowed or was declining and, to hide that, a Comcast employee approved and implemented multiple changes to the methodology by which the quarterly customer count was calculated.
    - Eventually overstated customer count total by more than 15%
  - Changes were not applied retroactively or publicly disclosed
- Restatement to Form 10-K for FY 2017 reversed approximately \$50 million in revenue due to improper conduct and accounting

# Planet Fitness—Word of Warning

- SEC’s comment letter drew attention to two disclosures:
  - Planet Fitness stated that its media partnership with “Dick Clark’s Rockin’ Eve with Ryan Seacrest” had allowed it “to showcase the Planet Fitness brand and judgement-free philosophy to over a billion TV viewers annually”
  - The filing also included the number of gyms and gym members for Planet Fitness across the United States, which showed a much higher rate of membership for Planet Fitness’ gyms than industry average pursuant to an industry study
- The SEC requested that Planet Fitness substantiate these claims
- While the SEC appears to have accepted the company’s response, this serves as a reminder to ensure that all material is factually supportable
- Raises difficult questions on how to vet non-financial metrics efficiently.
  - One approach is to put a “stake in the ground” as to how customer metrics are calculated—this could be widely available internally or actually in the 10-K

# 2019 Final Rules



# Regulation S-K Modernization

# S-K Modernization—Effective Dates

- Adopted in March 2019
- Effective on May 2, 2019—Except:
  - Exhibit redaction provisions—effective on April 2, 2019
  - Inline XBRL cover page tagging—subject to phase-in requirements

# S-K Modernization—Cover Pages

- All cover page data on Forms 10-K, 10-Q, and 8-K must be tagged with Inline XBRL
- Cover pages of Forms 10-K, 10-Q, and 8-K must include the company's securities exchange or principal U.S. market, trading symbol, and class of securities registered under Section 12
- For Form 10-K, the Section 16 report checkbox has been deleted

# S-K Modernization—Form 10-K— Properties

- Prior Requirement: Item 102 formerly required disclosure of “the location of the principal plants, mines, and other materially important physical properties of the registrant and its subsidiaries”
- New Requirement: Item 102 now only requires disclosure “[t]o the extent material . . . [of] the location and general character of the registrant’s principal physical properties”

# S-K Modernization—Form 10-K— MD&A

	Prior Requirement	New Requirement
Periods covered	3-year period covered by the financial statements (other than for SRCs, which only present 2 years of financial statements)	Discussion of the earliest year may be omitted if such discussion was already included in a prior filing and the registrant discloses the location of such disclosure
Discussion required	Period-to-period comparisons and reference to selected financial data specifically mentioned as potentially being appropriate or necessary	May use principles-based presentation—“registrants may use any presentation that in the registrant’s judgment enhances a reader’s understanding”

# S-K Modernization—Confidential Treatment

- Companies are no longer required to submit confidential treatment requests to redact information from exhibits
- Redacted information:
  - Must not be material
  - Must be likely to cause competitive harm to the company if publicly disclosed



# S-K Modernization—Confidential Treatment

- Exhibit index must indicate that portions of the exhibits have been omitted
- First page of the redacted exhibit must include a prominent statement on the first page that certain information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed
- Redacted information must be indicated with brackets in the filed version of the exhibit
- SEC will continue to selectively review filings and may request supplemental information to determine if redacted information is appropriate

# S-K Modernization—New Exhibit— Description of Capital Stock

- Historically, Item 202 of Regulation S-K required registrants to provide a brief description of their registered capital stock, debt securities, warrants, rights, American Depositary Receipts, and other securities
- The revised rules require registrants to provide the information required by Item 202(a)-(d) and (f) as an exhibit to Form 10-K, rather than limiting this disclosure to registration statements

# S-K Modernization—Additional Changes

- **Incorporation by Reference.** Rule addressing incorporation by reference, has been amended to prohibit financial statements from incorporating by reference, or cross-referencing, information that is contained outside of the financial statements unless otherwise specifically permitted or required by the SEC's rules, US GAAP or IFRS, whichever is applicable
- **Heading for Section 16 Disclosure.**
  - Heading for disclosure of late Section 16 filings (i.e., Forms 3, 4 and 5) has been changed to "Delinquent Section 16(a) Reports" (instead of "Section 16(a) Beneficial Ownership Reporting Compliance")
  - An instruction permits this caption to be excluded if there are no delinquencies to report
  - Because this disclosure typically appears in the proxy statement and is incorporated by reference into the Form 10-K, companies will need to address this change in their proxy statements
- **Additional Hyperlinks.** Registrants must now provide hyperlinks to information that is incorporated by reference if that information is available on EDGAR at the time the form is filed, whether or not the information is in a document filed as an exhibit

# Hedging Disclosure

# Hedging Disclosure—Compliance Deadline

- Companies (other than EGCs and SRCs) must comply with these disclosure requirements for proxy and information statements for elections of directors during fiscal years beginning on or after July 1, 2019
  - Meaning this will be the first proxy season in which most public companies will need to include the new hedging disclosure in their proxy statements
- SRCs and EGCs must comply for elections of directors during fiscal years beginning on or after July 1, 2020



# Hedging Disclosure—New Reg. S-K Item 407(i)

- Public companies must describe any practices or policies regarding the ability of employees (including officers), directors or their designees to hedge or offset any decrease in the market value of registrant equity securities—must either:
  - Provide a fair and accurate summary of any practices or policies that apply, including the categories of persons covered and any categories of hedging transactions that are specifically permitted and any categories that are specifically disallowed; or
  - Disclose the practices or policies in full
- If the company does not have any such practices or policies, it must disclose that fact or state that hedging transactions are generally permitted



# Hedging Disclosure—In Practice

- At mid-November, with 40 proxies filed:
  - 100% had hedging policies in place
  - 62% had hedging policies that cover directors and all employees
  - 58% disclosed policies that prohibit both transactions in company stock with a hedging function and derivative transactions generally
  - 60% included their hedging disclosure only in the CD&A section

Source: FW Cook

# Current SEC Proposals

# Regulation of Proxy Advisors

# Disclosure and other Obligations on Proxy Advisors

- SEC proposed a rule on November 5<sup>th</sup> to significantly modify the proxy disclosure and solicitation process, proposing the following changes:
  - Amend Exchange Act Rule 14a-1(l), which defines the terms “solicit” and “solicitation,” to specify the circumstances when a person who furnishes proxy voting advice will be deemed to be engaged in a solicitation subject to the proxy rules
  - Modify Rule 14a-9 to include examples of when failing to disclose certain information in the proxy voting advice could be considered misleading within the meaning of the rule

# Disclosure and other Obligations on Proxy Advisors (cont'd.)

- Revise Rule 14a-2(b) to condition certain exemptions relied upon by proxy advisors on their compliance with three new requirements. In order to avoid complying with the full range of rules applicable to proxy solicitations, proxy advisors would have to
  - disclose material conflicts of interest in their proxy voting advice,
  - provide the company with an opportunity to review and comment on their advice before it is issued; and,
  - if requested by the company, include in their voting advice a hyperlink directing the recipient of the advice to a written statement that sets forth the company's position on the advice

# Shareholder Proposal Thresholds



# Tightening Shareholder Proposal Thresholds

- SEC also recently proposed the following on November 5, 2019:
  - Applying the one-proposal rule to “each person” rather than “each shareholder,” which would effectively prohibit a shareholder-proponent from submitting one proposal in their own name and simultaneously submit another proposal in a representative capacity.
  - Increasing the current thresholds of 3%, 6% and 10% for resubmission of matters voted on once, twice or three or more times in the last five years to 5%, 15% and 25%, respectively.
  - Permitting exclusion of a proposal that’s received 25% approval on its most recent submission if it has been voted on 3 times in the last 5 years and both received less than 50% of the votes cast and experienced at least a 10% decline in support

# Tightening Shareholder Proposal Thresholds (cont'd.)

- Amend Rule 14a-8(b) to replace the current \$2,000/1% ownership for at least 1 year threshold with 3 alternative thresholds for submission:
  - continuous ownership of at least \$2,000 of the company's securities for at least 3 years;
  - at least \$15,000 of the company's securities for at least 2 years; or
  - at least \$25,000 of the company's securities for at least 1 year

# Regulation S-K Modernization

# Reg. S-K—Continued Modernization

- In August 2019, the SEC proposed amendments to modernize disclosure requirements found in Regulation S-K
  - Aim is more principles-based approach to descriptions of business, legal proceedings and risk factor disclosures for public companies as well as reduce repetition
- The proposed list includes human capital resources, including any human capital measures or objectives on which management focuses in managing the business, such as measures related to the attraction, development and retention of personnel

# Reg. S-K Modernization—Practical Guidance

- Rules are not likely to be effective for the upcoming Form 10-K filing season
- Issuers should consider, however, updating their business disclosures with an eye towards using those disclosures as a “base” disclosure if the rules are adopted
  - Significant momentum behind human capital disclosures
  - In a study of the Fortune 100’s 2019 proxy statements, disclosures included:
    - Workforce Diversity - 50%; Workforce Compensation - 34%; Culture Initiatives - 22%; Workforce Health & Safety - 22%; Workforce Skills & Capabilities - 22%; and Workforce Stability - 6%

# Form 10-K: SEC Comment Letter Trends



# Comment Letters—Volume and Composition

- Comment letters on Forms 10-K and 10-Q declined 34% from the 12-month period ended June 30, 2018, to the 12-month period ended June 30, 2019
  - This follows a 25% drop from the 12-month period ended June 30, 2017, to the 12-month period ended June 30, 2018
- Non-accelerated filers only received 14% of comment letters in the 12-month period ending June 30, 2019, reflecting the SEC's Staff's focus on larger issuers

Source: Ernst & Young

# Most Frequent Comment Areas

1. Revenue recognition (5<sup>th</sup> in 2018)—most companies reflected their adoption of the new revenue standard in their annual financial statements for the first time in their 2018 annual reports
2. Non-GAAP financial measures
3. MD&A
4. Fair value measurements
5. Intangible assets and goodwill

Source: Ernst & Young

# Most Frequent Comment Areas (cont.)

6. Income taxes
7. State sponsors of terrorism
8. Segment reporting
9. Acquisitions and business combinations
10. Signatures/exhibits/agreements

Source: Ernst & Young

# Revenue Recognition Comment Letters—Key Takeaways

- The SEC staff has asked registrants to further explain and sometimes provide their analysis for certain judgments and estimates made in their application of the standards
- The SEC staff focused on areas of judgment and asked registrants how they, among other things:
  - Identified performance obligations in contracts with customers, including how they support their conclusions that certain promised goods and services are or are not separately identifiable
  - Determined whether they are a principal or an agent in contracts with customer
  - Satisfied performance obligations (i.e., over time or at a point in time) and why the method they used to measure progress toward satisfaction of an over-time performance obligation is reliable
  - Disaggregated revenue disclosures and determined the categories for disaggregation
- Registrants appear to have been able to resolve these comments in the same manner as comments on other topics

# Non-GAAP Financial Measures—Most Common Issues

- The following are five common non-GAAP financial measures issues that drew Staff scrutiny:
  - GAAP measure not given enough prominence
  - Reconciliation between GAAP and non-GAAP measures is missing or does not start with the GAAP measure
  - Non-GAAP measure is not presented consistently between periods or the reason for changing a non-GAAP measure is not disclosed
  - Management fails to adequately explain why a non-GAAP measure is useful to investors
  - Use of an individually-tailored accounting principle (a company cannot make up its own GAAP)

Source: PwC

# Future Areas of Focus—Comment Letters

- New leases standard as more annual reports are reviewed that reflect adoption
- Phase-out of LIBOR (anticipated to occur in 2021). Potential disclosures the SEC staff cited include:
  - Risks, if material, related to the transition and how they are being mitigated
  - The status of company efforts to date and the significant matters pertaining to the transition that have not yet been addressed
  - Material exposures to LIBOR that the company has identified but cannot yet estimate their effect



# Governance and Shareholder Issues

# 2019 Proxy Season Shareholder Proposals

# Governance-Related Proposals

- Number of governance-related proposals continued to trend downwards in 2019
  - 236 reached a vote, with 43 receiving majority support; of those receiving majority support:
    - 16 in eliminating or reducing supermajority voting and/or adopting simple majority for all items
    - 5 or less in proxy access, executive compensation, and declassifying the board, among others

# Lobbying/Political Contributions

- Proposals as to disclosure of political lobbying payments and/or contributions were a significant topic in 2019
  - 64 went to a vote with three receiving majority shareholder support
  - The proponents of these proposals varied, with the majority coming from individual shareholders, faith-based groups and pension funds
  - Given the focus on the 2020 U.S. presidential election, this is likely to increase

# Change in No-Action Requests

- This is the first proxy season where the SEC's will no longer automatically provide a written response to all no-action requests submitted pursuant to Rule 14a-8
  - Will issue a written response “where it believes doing so would provide value, such as more broadly applicable guidance about complying with Rule 14a-8”
  - May respond orally to some requests
    - A decision to “decline to state a view” should not be interpreted as indicating that the company must include the proposal according to the SEC
      - Other steps for additional comfort before excluding such a proposal are possible, such as going to court
  - Companies should consider how this change interacts with the proxy advisory firms’ updated proxy voting policies

# SEC Staff Legal Bulletin No. 14K

- In October 2019, the SEC issued additional guidance on
  - the significant policy exception to the “ordinary business operations” rationale for excluding shareholder proposals;
  - board analyses provided in no-action requests to demonstrate that the policy issue raised by the proposal is not significant to the company;
  - the scope and application of “micromanagement” as a basis to exclude a proposal; and
  - proof of ownership letter requirements



# Environmental and Social Disclosure

# E&S Disclosures—Overview

- For the third year in a row, the number of E&S shareholder proposals filed surpassed governance-focused proposals
  - Nearly half of E&S shareholder proposals that went into a vote received above 30 percent support, representing a close to ten percentage point increase over the prior year
- There are a number of rating companies and voluntary disclosure frameworks
  - Investors themselves are increasingly creating sustainability data screens for investment and stewardship purposes
- Adding voluntary E&S disclosures may be an opportunity to control the message and provide a basis to direct shareholder engagement in this area
- Companies should be cognizant of securities law and other legal ramifications
  - May be prudent to describe corporate E&S initiatives in aspirational items rather than as commitments to achieve specific results
  - Disclaimers may be appropriate
  - One goal is to avoid characterization of the disclosures as false or misleading for liability purposes

# ISS Climate Awareness Scorecard

- ISS announced in August 2019 that it will start to include this in some of its research reports
- Initial reports are out and include three sections
  - (1) Climate Risk Exposure (including Industry Climate Risk Exposure and Incident-Based Risk Exposure),
  - (2) Climate Performance (including Current Climate Performance and Forward-Looking Climate Performance), and
  - (3) Climate Disclosure
- Keep in mind that not all institutional investors subscribe to ISS and even those who do may not use this data point.
  - There are a lot of ESG ratings out there. The only way to know which ones your investors are using—if any—is to talk with them

# Director Overboarding

# Overboarding Pushback in 2019

- Proxy advisory firm and investor new or stricter policies on overboarding seemed to contribute to the highest level of significant director election opposition in the US since 2011 last year
- The cap of public directorships is variable across policies, typically at four to six
  - Five is general policy for both ISS and Glass Lewis
- Different thresholds may apply for directors who serve as executive officers
  - ISS generally permits up to three board seats (including own board) for CEO and up to five for other named executive officers
  - Glass Lewis generally permits up to two board seats (including own board) for CEO or other named executive officers

# Overboarding Action Items

- Action items for overboarding include:
  - reviewing the policies of largest investors and of the proxy advisory firms as part of review of board composition, board refreshment strategies, and recruiting new directors;
  - reviewing corporate governance guidelines to determine whether to adopt or update company-specific overboarding policies;
  - considering other time constraints of directors and potential directors that may adversely affect board service, including the individual's full-time job, responsibilities at not-for-profit boards or privately held company boards, and time-consuming committee assignments or other board leadership roles at the company or on other boards (e.g., lead independent director, board chair, audit committee membership, etc.); and
  - being prepared to discuss overboarding issues when engaging with institutional investors



# Board Diversity

# Pressure from Proxy Advisory Firms and Institutional Investors

- ISS:
  - Will generally recommend an against or withhold vote for the chair of the nominating committee and possibly other directors when no women on the board
  - Will consider mitigating factors such as commitment to appointing at least one female in the near term or the presence of a female on the board at the preceding annual meeting
- Glass Lewis:
  - Will generally recommend voting against the chair of the nominating committee of a board that has no female members
  - Will, depending on the circumstances, possibly extend that negative recommendation to all members of the nominating committee
- BlackRock and State Street also have policies for voting against nominating committee members based on board composition

# New Diversity Disclosure C&DIs

- In February 2019, SEC issued two C&DIs addressing disclosure of a directors self-identified diversity characteristics
  - If considered and the individual has consented to the company's disclosure, the Staff expects the company's proxy statement will include identification of the characteristics and how they were considered
  - The Staff also expects the proxy statement's description of company diversity policies
    - to discuss how the company considers the self-identified diversity attributes of nominees,
    - as well as any other qualifications its diversity policy takes into account
- If including self-identified diversity characteristics, a company may want to develop questions for director and officer questionnaires to that end

# Increasing Disclosure in Practice

- 45% of the Fortune 100 explicitly disclosed the racial and ethnic diversity of the board of directors, up from 23% since 2016
- 36% disclosed the level of overall diversity on the board, up from 13%, since 2016.
- 75% of the Fortune 100 now use a skills matrix to highlight the diversity of relevant director qualifications in an easily readable format, up from 30% in 2016

# Proxy Advisor Policy Updates

# ISS Updated Proxy Voting Policies for 2020

- Problematic Governance Structure - Newly Public Companies:
  - Creates a policy to address problematic capital structures at newly public companies and provide a framework for addressing acceptable sunset requirements.
- Share Repurchase Program Proposals:
  - Provides safeguards against certain abusive practices
- Board Accountability - Restrictions on Shareholders' Rights:
  - Will generally recommend that shareholders vote against or withhold from members of the governance committee until shareholders are provided with an unfettered ability to amend the bylaws or a proposal providing for such unfettered right is submitted for shareholder approval



# ISS Updated Proxy Voting Policies for 2020 (cont.)

- Independent Board Chair Shareholder Proposals:
  - Will likely support a proposal at companies where boards rely on a weak lead independent director role or there is evidence that directors failed to oversee material risks facing the company or did not adequately respond to shareholders' concerns
- Equity-Based and Other Incentive Plans - Evergreen Provisions:
  - Will include a plan's containing an evergreen feature as an overriding factor in the U.S. Equity Plan Scorecard analysis
- Board Composition - Diversity:
  - Absent a "firm commitment" to achieve gender diversity within a year, will recommend against the nominating committee chair (or other directors as appropriate) if the board lacks a female director

# Glass Lewis Updated Proxy Voting Policies for 2020—Governance Committee

- Director Attendance:
  - Will generally recommend voting against the governance committee chair when
    - (i) records for board and committee meeting attendance are not disclosed; or
    - (ii) it is indicated that a director attended less than 75% of meetings but disclosure is sufficiently vague that it is not possible to determine which specific director's attendance was lacking
- SEC Declines to State a View and SEC Verbal No-Action Relief:
  - Will generally recommend voting against the governance committee members when
    - (i) the company fails to include a shareholder resolution in situations where SEC has declined to state a view on exclusion; or
    - (ii) the SEC has verbally permitted a company to exclude a shareholder resolution, there is no written record provided by the SEC about such determination, and the company does not provide some disclosure concerning this no-action relief while excluding the resolution

# Glass Lewis Updated Proxy Voting Policies for 2020—Compensation Committee

- Say on Frequency:
  - Will recommend against all members of the compensation committee when the board adopts a frequency for its advisory vote on executive compensation other than the frequency approved by a plurality of shareholders
- Say on Pay:
  - Clarified what it considers to be an appropriate response following low shareholder support for a say-on-pay proposal
  - Amended its guidelines to state that it expects a robust disclosure of engagement activities and specific changes made in response to shareholder feedback
    - May recommend against the upcoming say-on-pay proposal absent such disclosure

# Glass Lewis Updated Proxy Voting Policies for 2020—Additional Updates

- Gender Pay Equity:
  - Will review, on a case-by-case basis, proposals that request that companies disclose their median gender pay
- Audit Fee Disclosure:
  - Will recommend voting against the audit committee chair when fees paid to an issuer's external auditor are not disclosed
- Contractual Payments to Executives:
  - Clarified its approach to state that, in general, it disfavors contractual agreements that are excessively restrictive in favor of the executive

# Additional Questions and Discussion

# Thank You

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