

MAYER • BROWN

Preparing for the 2018 US Proxy and Annual Reporting Season

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Overview

- Pay ratio disclosure
- Say-on-pay and other compensation matters
- Proxy access and other shareholder proposals
- Institutional shareholder initiatives
- Trends in proxy disclosure
- Virtual meetings
- Director and officer questionnaires
- Annual report risk factors
- Exhibit hyperlinks and Form 10-K developments
- Certain financial reporting and audit committee matters
- Status of other Dodd-Frank compensation-related rulemaking

Say-on-Pay Statistics

- Average vote in 2017 for Russell 3000 companies was 91.7% in favor
- 1.4% of Russell 3000 companies failed say-on-pay in 2017 (through September 11, 2017)
- 78% received support in excess of 90%
- ISS negative recommendation generally lowers support but does not necessarily result in a failed vote

Source: Semler Brossy, *2017 Say on Pay Results*, September 13, 2017

Other Compensation-Related Proposals

- Say-When-on-Pay
 - Vast majority supported annual voting
- Equity plan voting
 - Only a small number of companies failed to win majority support
 - But highest failure rate since mandatory say-on-pay

Say-on-Pay and Shareholder Engagement

- A year-round process
- Focused presentations
- Carefully consider who from the company participates
- Obtaining shareholder feedback
 - CD&A disclosure of how prior year vote taken into account
 - General governance considerations
 - Identifying which aspects of the compensation program, if any, raise concern
 - Previewing possible changes to the compensation program

Engaging with Proxy Advisory Firms

- Engaging with proxy advisory firms
 - Regarding interpretations of positions
 - Monitoring recommendations for accuracy
- Survey conducted by U.S. Chamber of Commerce's Center for Capital Markets Competitiveness and Nasdaq found:
 - Many public companies find it difficult to have a substantive meeting with a proxy advisory firm regarding recommendations
 - May be denied meeting
 - May get a phone conversation only
 - May only talk to junior analyst
 - But some companies have productive meetings
 - Outreach rarely leads to a new proxy advisory recommendation

Disclosure and Presentation Highlights

- Use of proxy statement summaries to highlight say-on-pay
- Hyperlinked table of contents
- Use of graphics and color
- Emphasis on design
- Plain English
- Online version
- Filing PDF as well as EDGAR copy with SEC

Additional Proxy Statement Elements

- Table of contents and separate sections for CD&A
- Alphabetical index of frequently requested information
- Letter from Board and/or Lead Director
- Q&A with Chairman and/or Lead Director
- Value statement
- Goals description
- Governance graphics as well as compensation graphics
- Supplemental materials

Effective CD&A Disclosure for Say-on-Pay Votes

- Satisfying a disclosure obligation versus advocacy for advisory say-on-pay vote
- Executive Summary
 - Goals of program
 - Recent changes
- Table of contents and distinct sections
- Clarifying link between pay and performance
- Use of graphics

Response to Prior Year Say-on-Pay Vote

- CD&A requirement
- Often part of a discussion of shareholder engagement
- Might describe changes to compensation program
- Might confirm that compensation committee believes the current compensation program best meets the appropriate goals

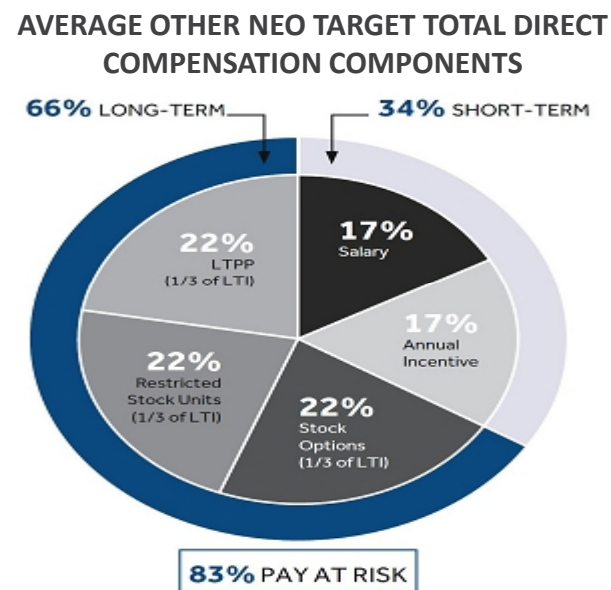
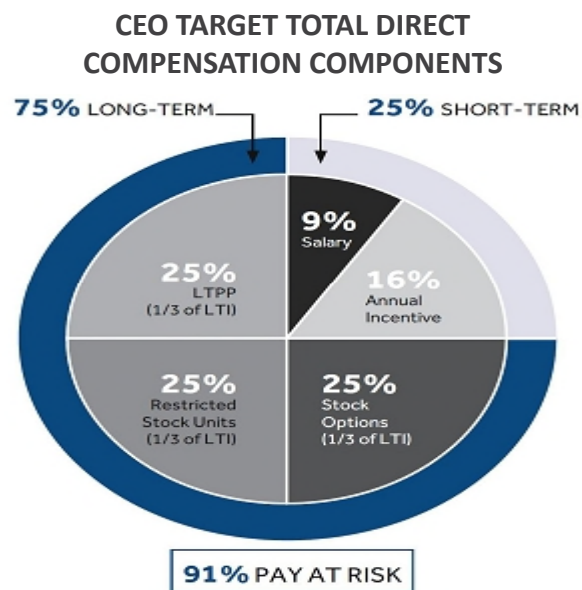
Additional Soliciting Materials

- Additional soliciting materials often, but not always, used to respond to negative proxy advisory recommendations
- Additional soliciting materials are used in other circumstances as well
- Additional soliciting materials must be filed with the SEC
- Types of additional soliciting materials include:
 - Supplements to proxy statements
 - Letters to shareholders
 - Slides
 - Scripts or talking points

Compensation Lawsuits

- First lawsuits alleged breaches of fiduciary duty following failed say-on-pay
- Second wave alleged insufficient compensation disclosures
 - Sought to enjoin the shareholder vote unless the company provided additional compensation disclosures
- Lawsuits challenging specific compensation actions; for example, based on failure to comply with Section 162(m) of the Internal Revenue Code
- Lawsuits regarding outside director compensation
 - Court treatment of director awards as self-dealing decisions
 - Operative standard of review is entire fairness (rather than business judgment rule)
- Publicity surrounding pay-related lawsuits and settlements may have motivated more strenuous responses to negative ISS recommendations

Pie Graphs to Explain Compensation Components



Graphics to Explain Incentive Formula

2016 Annual Incentive Formula



Compensation Cycle Graphics

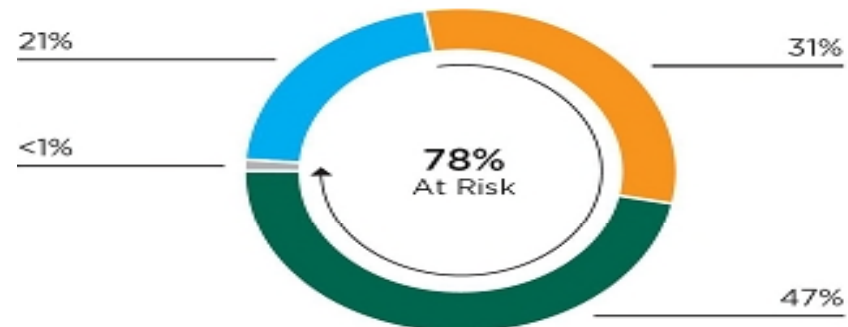


Compensation Risk Graphs



● Salary

● Equity Incentives



● Annual Cash Incentive

● Other

Compensation Governance

What We Do

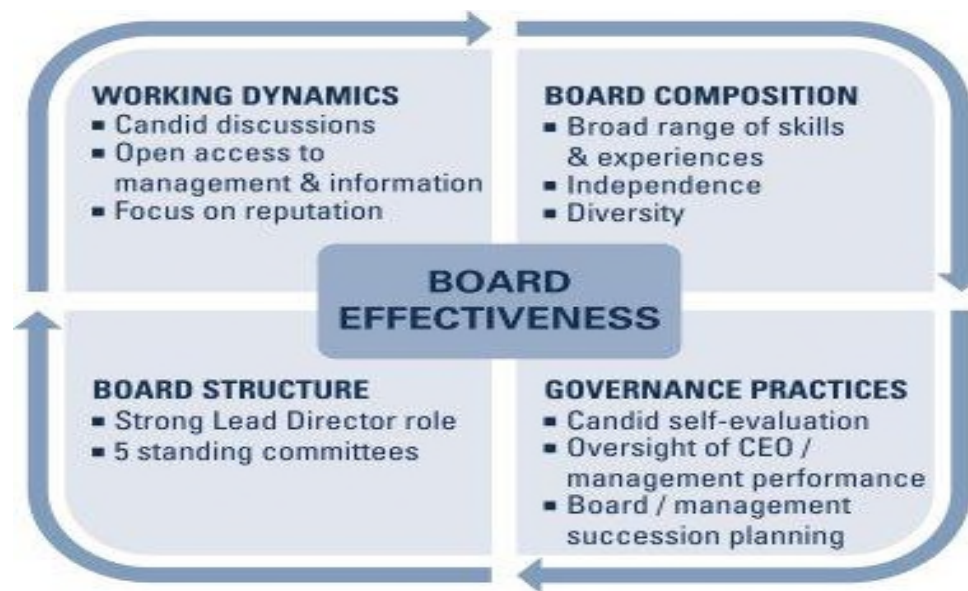
- ✓ Double-trigger change-in-control vesting of long-term incentive awards
- ✓ Responsible use of shares under our long-term incentive program, with share utilization below our peer group median
- ✓ Comprehensive clawback policy that applies to annual incentive, long-term incentive and deferral programs
- ✓ Rigorous stock ownership requirements that continue for 12 months beyond employment
- ✓ Balanced mix of top-line and bottom-line metrics set against rigorous measurable goals within our incentive programs
- ✓ Targets for performance metrics aligned to financial goals communicated to shareholders

Compensation Governance (cont'd)

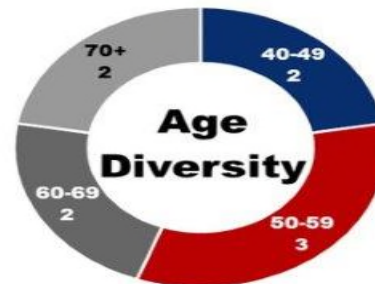
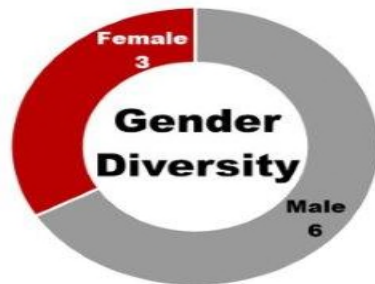
What We Don't Do

- ✗ No employment agreements
- ✗ No supplemental executive retirement plans
- ✗ No resetting of financial targets for performance awards
- ✗ No hedging and pledging of Company stock
- ✗ No tax gross-ups
- ✗ No backdating or repricing of stock option awards

Board Effectiveness Graphics



Board Diversity Graphics



ESG Graphics



Investor Stewardship

- State Street Global Advisors has identified board diversity, and in particular gender diversity, as a key issue for its 2017 proxy voting
 - Voted against the re-election of directors having the responsibility to nominate new board members at 400 companies with all-male board that failed to make significant effort to address gender diversity on their boards
- BlackRock Investment Stewardship Engagement Priorities for 2017-2018 identifies board gender balance, climate risk and human capital management as focus of engagement
- Vanguard open letter articulated focus on climate risk and gender diversity

Other Investors

- Concern over issues such as gender diversity are not limited to a just a few large institutional investors
- Of 129 investors responding to ISS's 2017-2018 Global Policy Survey, 69% consider it problematic for there to be no female directors on a public company board
 - The largest number of these investors identified engaging with the board and/or management as the most appropriate response for shareholders to take on this issue

NYC Comptroller and NYC Pension Funds

- Boardroom Accountability Project 2.0
- Requesting companies to disclose race and gender of their directors
 - Campaign involves 151 US companies
 - 92% of these companies have already adopted proxy access
- Seeking standardized matrix covering skills and demographics
- Dialogue on “board refreshment”

Board Matrix

This sample matrix can help boards and investors assess the level of experience each company director/nominee has in various areas, as well as in the areas of gender, sexual orientation and racial/ethnic diversity, age and tenure.

	Board of Directors							
	Name 1	Name 2	Name 3	Name 4	Name 5	Name 6	Name 7	Name 8
Skills & Experience								
Board of Directors Experience	X			X				
[Specific] Industry Experience		X					X	
CEO/Business Head	X			X				
International	X					X	X	
Human Capital Management/Compensation			X				X	
Finance/Capital Allocation		X			X		X	
Financial literacy/Accounting (Audit Committee Financial Expert or "ACFE")			X			X		
Government/Public Policy	X			X				
Marketing/Sales			X		X			
Environmental Science/Policy/Regulation						X		
Academia/Education								
Risk Management				X				
Corporate Governance		X						X
Technology/Systems					X			X
Business Ethics			X			X		X
Real Estate		X			X			X
[Custom 1]								
Demographic Background								
Board Tenure								
Years	15	15	10	8	7	7	4	1
Sexual Orientation (voluntary)								
LGBTQ	X							
Gender								
Male		X	X	X	X	X		X
Female	X						X	
Non-Binary								
Age								
Years Old	60	63	65	62	60	67	55	47
Race/Ethnicity								
African American/Black	X							
Asian, Hawaiian, or Pacific Islander								
White/Caucasian		X	X	X		X	X	X
Hispanic/Latino					X			
Native American								
Other								

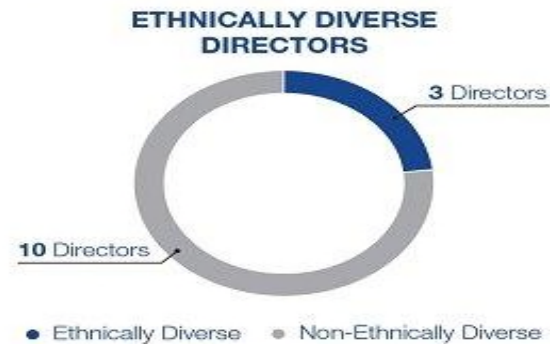
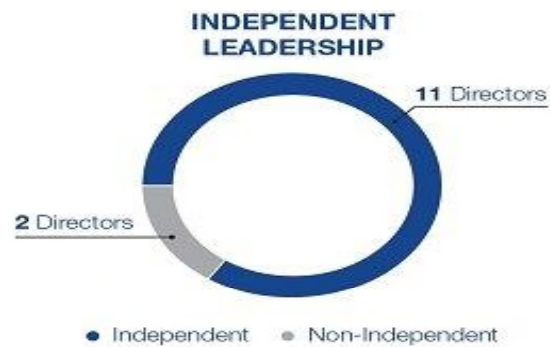
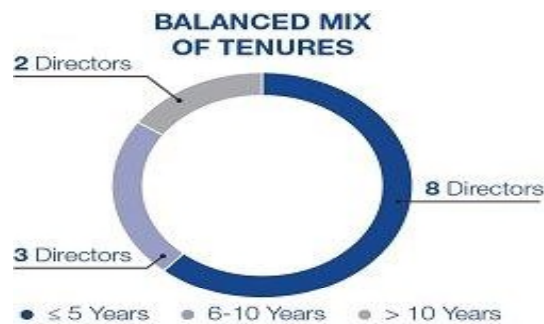
Board Skills Graphic



Board Experience Graphics



Governance Graphics Board Composition



Proxy Access and Shareholder Proposals

- Proxy access
- “Fix it” proposals
- Environmental & social proposals
- Trends for 2018 season

But first, the shareholder proposal process under Rule 14a-8...

Rule 14a-8

Technical Deficiencies – First Line of Defense to Exclude Proposals

- Eligibility: 1% or \$2,000 for 1 year
- Proof of ownership for street holders
- Deadline for submission: See prior year's proxy statement
- 1 proposal per meeting, 500 words or less

Rule 14a-8

Substantive Exclusions (Part I)

- Not a proper subject for shareholder action under applicable state law;
- Would cause the company to violate any state, federal or foreign law to which it is subject;
- Contrary to any of the proxy rules, including Rule 14a-9;
- Relates to a personal claim or grievance of the shareholder, is designed to benefit the individual shareholder or furthers a personal interest not shared by other shareholders at large;
- Relates to operations that account for less than 5% of the company's total assets, or net earnings and gross sales, for its most recent fiscal year and is not otherwise significantly related to the company's business;
- Not within the company's power or authority to implement;
- Relates to the company's ordinary business operations;

(continued on next slide)

Rule 14a-8

Substantive Exclusions (Part II)

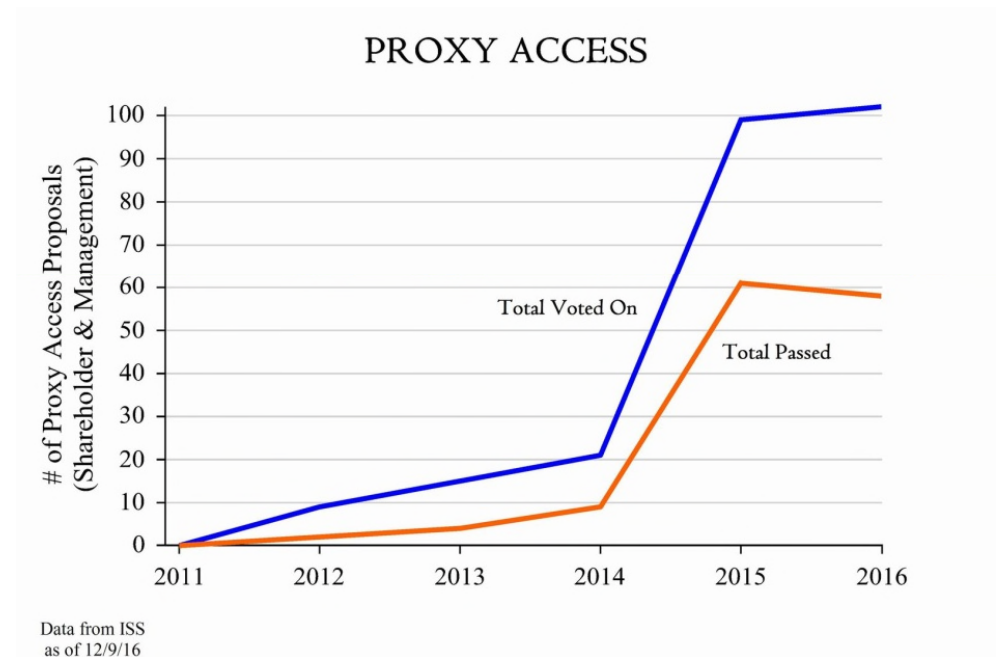
- Would disqualify a nominee who is standing for election, remove a director from office before his or her term expired, questions the competence, business judgment or character of one or more nominees or directors . . . or otherwise could affect the outcome of the upcoming election of directors;
- Directly conflicts with a company proposal to be submitted at the same meeting;
- ***Has already been substantially implemented by the company;***
- Substantially duplicates another proposal submitted by another shareholder that will be included in the proxy materials for the same meeting;
- Deals with substantially the same subject matter as another proposal that has been included in the proxy materials within the preceding 5 years and such proposal did not receive specified levels of shareholder support; and
- Relates to specific amounts of cash or stock dividends.

Rule 14a-8

- Financial CHOICE Act
 - Passed by House in June 2017; Senate has not yet taken action
 - Increases ownership threshold to 1% for a period of 3 years
 - Prohibits “proposals by proxy”
- 14a-8 reform a priority for SEC Chair Clayton?
 - “[H]ow much cost should the quiet shareholder, the ordinary shareholder, bear for the idiosyncratic interests of others?”
- U.S. Chamber of Commerce recommendations to SEC

Proxy Access

- Adopted by 425+ companies (60% of S&P 500)
- Over 170 proposals submitted in 2017
- Only 30% voted on, due to negotiated withdrawals and omissions
- 58.2% average support



Proxy Access

Market Standard - 3/3/20/20

- **3%** for **3** years ownership threshold
- Aggregation of up to **20** shareholders
- Limit of **20%** of the board for proxy access nominees (often with a minimum of 2 nominees)

Proxy Access

“Fix-It” Proposals

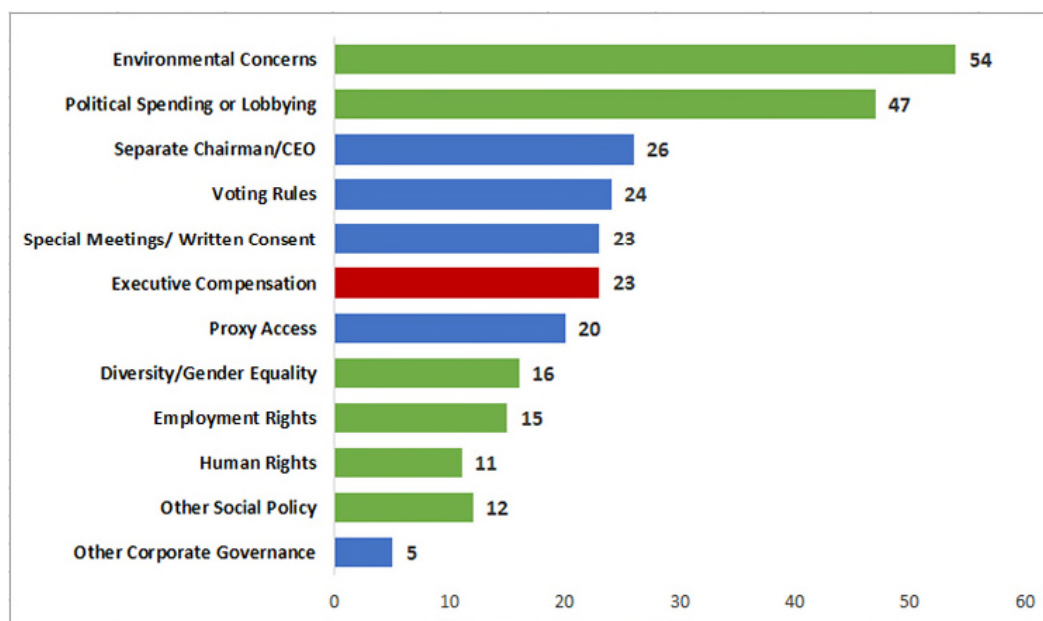
- “Single issue” versus “enhancement package”
- Recent examples:
 - Oshkosh (November 2016) – Permitted exclusion for partial adoption of enhancement package in line with market standard
 - H&R Block (July 2017) – Denied exclusion of proposal to eliminate aggregation cap
- Frequency: **Moderate** to **High**
- Support: **Low**



H&R BLOCK

Environmental & Social Proposals

2017 Shareholder Proposals by Subtype*



*For 225 of 250 companies with annual meetings scheduled through the end of June 2017.

Source: Proxymonitor.org database.

Environmental & Social Proposals

Climate Change Proposals

- Three “2°C proposals” received majority support in 2017
- Sponsored by New York State Common Retirement Fund and California Public Employees Retirement System
- Frequency: **High**
- Support: **High**

ExxonMobil



Environmental & Social Proposals

Board & Workplace Diversity Proposals

- Most board diversity proposals withdrawn following agreement to address through recruitment
- 2 proposals received majority support
- Frequency: **Moderate**
- Support: **Moderate**

COGNEX



Environmental & Social Proposals

Gender Pay Gap Proposals

- Half of these proposals withdrawn following agreement to comply
- Likely to be refiled in 2018
- Frequency: **Low** to **Moderate**
- Support: **Low**

Other Proposals

- Political spending and lobbying
 - Frequency: **High**
 - Support: **Low** to **Moderate**
- Independent chairman
 - Frequency: **Moderate**
 - Support: **Low**
- Traditional governance reform
 - Frequency: **Low**
 - Support: **Low**
- Holy Land principles
 - Frequency: **Moderate**
 - Support: **Low**
- Human rights committee
 - Frequency: **Low**
 - Support: **Low**
- Sustainability report
 - Frequency: **Low**
 - Support: **Moderate**

What to Expect in 2018?

- Potential reform to shareholder approval process to limit investor participation
- Surge of “fix-it” proposals, particularly to lift aggregation caps
- Increase in frequency and support for climate change proposals
- Continued discussion on gender diversity and equality proposals
- Steady stream of political spending and lobbying proposals

Pay Ratio Disclosure Rule

- Section 953(b) of the Dodd-Frank Act
- Proposed in 2013; adopted on August 5, 2015
- Disclosure generally required for the first fiscal year commencing on or after January 1, 2017
 - Required in proxy statements for the 2018 annual meeting
 - Include in any filing that requires executive compensation disclosure
- *Exempt companies*: emerging growth companies, smaller reporting companies, foreign private issuers, MJDS filers, registered investment companies

Pay Ratio Disclosure Rule: Overview

- Pay Ratio Disclosure, new Item 402(u) of Regulation S-K:
 - Median annual total compensation of all company employees (except CEO);
 - Annual total compensation of CEO;
 - The ratio of these two amounts (either numerically in relation to 1, as in 50-to-1, or narratively as a multiple of the other, as in 50 times; and
 - Brief non-technical overview of the methodology used to identify the median employee and his or her compensation

Pay Ratio Disclosure Rule: Employees Covered

- “Employee” is an individual employed by the company or any of its consolidated subsidiaries:
 - U.S. employees
 - Non-U.S. employees with two exemptions
 - Full-time, part-time, seasonal or temporary employees
 - NOT independent contractors or “leased” workers, unless the company determines their compensation
- Median employee can be determined on any day within the last three months of the fiscal year

Pay Ratio Disclosure Rule: Non-U.S. Employee Data Privacy Exemption

- May exclude employees in jurisdictions with data privacy laws that make the company unable to comply with the rule without violating those laws
- The company must exercise reasonable efforts to comply with the disclosure requirements including, at a minimum:
 - Seeking or using an exemption, and obtaining a legal opinion if no exemption granted (include as an exhibit)
- If the company uses an exemption:
 - It must: list excluded jurisdictions and the approximate number of employees excluded, identify the specific data privacy law, exclude all non-U.S. employees in the jurisdiction, explain how complying with the rule violates such law and disclose the company's efforts to seek or use an exemption

Pay Ratio Disclosure Rule: Non-U.S. Employee *de minimis* Exemption

- If a company's non-U.S. employees equal 5% or less of the company's total employees, the company may exclude **all** non-U.S. employees
- or
- If a company's non-U.S. employees exceed 5% of the company's total employees, the company may exclude **up to 5%** of its total employees who are non-U.S. employees
- A company using the *de minimis* exemption must disclose:
 - The jurisdiction(s) involved, approximate number of employees excluded in each jurisdiction, total number of U.S. and non-U.S. employees irrespective of the exemption (data privacy or *de minimis*), and total number of U.S. and non-U.S. employees used for the *de minimis* calculation
- Employees excluded pursuant to the data privacy exemption count toward the 5% *de minimis* exemption

Pay Ratio Disclosure Rule: The Median Employee

- Identify the “median employee” using a method based on the company’s own facts and circumstances
 - Based on any consistently used compensation measure
 - A company may identify the median employee based on total compensation of the full employee population or may use a statistical sample or another reasonable method
- Disclose the date used to identify the median employee
- Identify once every three years, unless a change in employee population or compensation arrangements would result in a significant change to the pay ratio disclosure

Pay Ratio Disclosure Rule: The Median Employee (cont'd)

- After identification, median employee total compensation is generally calculated following the summary compensation table requirements
- Reasonable estimates
- Certain adjustments allowed
 - Annualize compensation for all permanent employees
 - Cost-of-living adjustment
 - Present median employee's total compensation and pay ratio without the adjustments for context

Pay Ratio Disclosure Rule: Transition Rules

- *Exempt company* (e.g., EGCs, SRCs, etc.)
 - First fiscal year in which it exits exempt status
- *IPO company*
 - Not required in an IPO prospectus or certain Form 10 registration statements
- *Business combinations/acquisitions*
 - Acquired employees may be omitted from the identification of the median employee for the fiscal year in which the transaction became effective
 - Company must disclose the approximate number of employees omitted

SEC Guidance

- SEC Release 34-10415 (September of 2017)
 - Use of reasonable estimates, assumptions and methodologies and statistical sampling
 - Use of internal records
 - Independent contractors
- Division of Corporation Finance Guidance Guidance (September of 2017)
 - 4 examples of sampling and other reasonable methodologies
 - 3 hypothetical examples

SEC Guidance (cont'd)

- CDIs (October of 2016 and September of 2017)
 - Inability to use hourly rates as a CACM
 - Time period issues involved in identifying the median employee
 - Furloughed employees
 - Any measure that reasonably reflects annual comp may be a CACM
 - May refer to the ratio as a reasonable estimate

Pay Ratio Disclosure Rule: Practical Considerations

- *Liability*: Pay ratio disclosures will be considered “filed,” not “furnished,” and therefore will be subject to certifications by the CEO and CFO and to potential securities law liabilities
- *2018 compliance date is coming up quickly*
- *Impact on Employee Morale*
- *Where to include the disclosure in the proxy statement*
- *Whether to disclose more than just the required information*
- *Recognition of pay equality as a political issue*
- *Local laws tied to SEC pay ratio disclosure*

Clawback Proposal

- Section 954 of the Dodd-Frank Act
- SEC proposed rules on July 1, 2015
- Comment period ended on September 14, 2015
- The proposal directs the stock exchanges to establish listing standards that prohibit the listing of any security of a company that does not adopt and implement a written policy requiring the recovery of certain incentive-based executive compensation
- Private ordering resulting from concerns of proxy advisory firms

Pay-for-Performance Proposal

- Section 953(a) of the Dodd-Frank Act
- SEC proposed rules on April 29, 2015
- Comment period ended on July 6, 2015
- The proposed rule would require companies to include a new table in their proxy statements showing the relationship between compensation actually paid and performance, with performance measured both by company TSR and peer group TSR

Hedging Policy Disclosure Proposal

- Section 955 of the Dodd-Frank Act
- SEC proposed rules on February 9, 2015
- Comment period ended on April 20, 2015
- The proposed rule would require companies to disclose whether they permit employees and directors to hedge the company's securities
- Many companies already discuss hedging policies in their CD&A – either to address concerns of proxy advisory firms or in response to Item 402(b) of Regulation S-K, which requires disclosure of material information necessary to understand compensation policies and includes hedging policies as an example of information that should be provided, if material

Other Disclosure Issues – New Audit Report Standard

- PCAOB AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*
- Content & formatting changes effective December 15, 2017
 - Auditor tenure
 - Auditor independence
 - Addressees (shareholders and board)
 - Changes to standardized language
 - Changes to standardized form

Other Disclosure Issues – New Audit Report Standard

- Critical Audit Matters (“**CAMs**”) – any matter arising from the audit that was communicated or required to be communicated to the AC and that:
 - 1) relates to accounts or disclosures that are material to the financials; and
 - 2) involved especially challenging, subjective or complex auditor judgment
 - Risks of material misstatement, including significant risks
 - Significant judgment or estimation by management
 - Nature and timing of significant unusual transactions and related effort and judgment
 - Auditor subjectivity in applying audit procedures
 - Nature and extent of effort required, including specialized skills/knowledge
 - Nature of audit evidence obtained
- Effective annual periods ending on/after 6/30/2019 for **LAFs** and 12/15/2020 for **other filers**

Other Disclosure Issues – Audit Committee Reporting

- Possible Revisions to Audit Committee Disclosures (2015 SEC concept release):
 - Oversight of auditors
 - Process for appointing/retaining auditors
 - Consideration of audit firm and engagement team qualifications
- PCAOB standards and investor pressure
- Voluntary disclosures:
 - Auditor qualifications considered by audit committee
 - Choice of auditor “in best interests of the company”
 - Explanations for increases in auditor fees

Coca-Cola 2017 Proxy Overview / Auditors

Annual Evaluation and Selection of Independent Auditors

The Audit Committee annually evaluates the performance of the Company's Independent Auditors, including the senior audit engagement team, and determines whether to reengage the current Independent Auditors or consider other audit firms. Factors considered by the Audit Committee in deciding whether to retain include:

- EY's global capabilities;
- EY's technical expertise and knowledge of the Company's global operations and industry;
- the quality and candor of EY's communications with the Audit Committee and management;
- EY's independence;
- the quality and efficiency of the services provided by EY, including input from management on EY's performance and how effectively EY demonstrated its independent judgment, objectivity and professional skepticism;
- external data on audit quality and performance, including recent PCAOB reports on EY and its peer firms; and
- the appropriateness of EY's fees, EY's tenure as Independent Auditors, including the benefits of a longer tenure, and the controls and processes in place that help ensure EY's continued independence.

Benefits of Longer Tenure

- **Enhanced audit quality** – EY's significant institutional knowledge and deep expertise of the Company's global business, accounting policies and practices and internal control over financial reporting enhance audit quality.
- **Competitive fees** – Because of EY's familiarity with the Company, audit and other fees are competitive with peer companies.
- **Avoid costs associated with new auditor** – Bringing on new Independent Auditors would be costly and require a significant time commitment which could lead to management distractions.

***“is in the best interests of
the Company and its
shareowners”***

General Electric 2016 Proxy Overview / Auditors

We Engaged KPMG After a Rigorous Review Process

The Audit Committee is directly responsible for the appointment, compensation (including advance approval of the audit fee), retention and oversight of the independent registered public accounting firm that audits our financial statements and our internal control over financial reporting. The committee has selected KPMG as our independent auditor for 2017. KPMG has served as our independent auditor since 1909.

The Audit Committee annually reviews KPMG's independence and performance in deciding whether to retain KPMG or engage a different independent auditor. In the course of these reviews, the committee considers, among other things:

- **KPMG's historical and recent performance on the GE audit**, including the results of an internal, worldwide survey of KPMG's service and quality;
- **KPMG's capability and expertise** in handling the breadth and complexity of our worldwide operations;
- **An analysis of KPMG's known legal risks and any significant legal or regulatory proceedings** in which it is involved (including an interview with KPMG's chairman and CEO and General Counsel and a review of the number of audit clients reporting restatements as compared to other major accounting firms);
- **External data on audit quality and performance**, including recent Public Company Accounting Oversight Board (PCAOB) reports on KPMG and its peer firms;
- **Appropriateness of KPMG's fees** for audit and non-audit services, on both an absolute basis and as compared to its peer firms; and
- **KPMG's independence and tenure as our auditor**, including the benefits and independence risks of having a long-tenured auditor and controls and processes that help ensure KPMG's independence (as described below).

Benefits of a Long-Tenured Auditor

HIGHER AUDIT QUALITY. Through more than 100 years of experience with GE and over 1,350 statutory GE audits annually in more than 80 countries, KPMG has gained institutional knowledge of and deep expertise regarding GE's global operations and businesses, accounting policies and practices, and internal control over financial reporting.

EFFICIENT FEE STRUCTURE. KPMG's aggregate fees are competitive with peer companies because of KPMG's familiarity with our business.

NO ONBOARDING OR EDUCATING NEW AUDITOR. Bringing on a new auditor requires a significant time commitment that could distract from management's focus on financial reporting and internal controls.

"Based on this evaluation, the Audit Committee believes that KPMG is independent and that it is in the best interests of GE and our shareowners to retain KPMG as our independent auditor for 2017."

Apple Inc. Proxy Overview / Auditors

As provided in its charter, in addition to evaluating Deloitte & Touche's independence, the Audit Committee assessed Deloitte & Touche's performance as independent auditor during fiscal year 2017, consistent with the approach described in "Audit Committee Annual Evaluation of the External Auditor" published by the Center for Audit Quality. The Committee assessed the performance of the Deloitte & Touche lead audit engagement partner and the audit team. The Committee reviewed a variety of indicators of audit quality including:

- The quality and candor of Deloitte & Touche's communications with the Audit Committee and management
- How effectively Deloitte & Touche maintained its independence and employed its independent judgment, objectivity, and professional skepticism
- The level of engagement and value provided by the Deloitte & Touche national office
- The depth and expertise of the global Deloitte & Touche audit team
- The quality of insight demonstrated in Deloitte & Touche's review of the Company's assessment of internal control over financial reporting and remediation of control deficiencies
- Available external data about quality and performance including reports of the PCAOB on Deloitte & Touche and its peer firms and Deloitte & Touche's response to those reports
- The appropriateness of Deloitte & Touche's fees, taking into account the size and complexity of the Company and the resources necessary to perform the audit
- Deloitte & Touche's knowledge of our global operations, accounting policies and practices, and internal control over financial reporting
- Deloitte & Touche's tenure as the Company's independent auditor and safeguards in place to maintain its independence

"is in the best interest of the Company and its shareholders"

Other Disclosure Issues

- Revenue Recognition from Contracts with Customers (ASU No. 2014-09)
 - FY beginning after December 15, 2017
 - Full retrospective method vs. modified retrospective method
 - Consider impact on Form S-3 filed in 2018
- Exhibit Hyperlinks
 - Exhibits filed as part of a report
 - Exhibits incorporated by reference to prior filings

Other Disclosure Issues – Non-GAAP

- Regulation G and Item 10(e) of Regulation S-K
- Use in proxy statements
 - Target levels for incentive compensation
 - All other non-GAAP disclosures subject to Reg G and 10(e)
- Cross-references to reconciliation
 - *Pay-related disclosures*: may use a prominent cross-reference to proxy statement annex
 - *Measures included in 10-K*: may use a prominent cross-reference to specific 10-K pages

Other Disclosure Issues – Risk Factor Updates

- Review existing risk factors
- Consider new/expanded risk factors
 - Cybersecurity/Privacy
 - Political changes
 - Brexit
 - Climate Change/Sustainability
 - Shareholder activism
 - Others based on specific industry/location/challenges

Other Disclosure Issues – Form 10-K

- Optional Item 16 of Form 10-K
 - Summary of information in Form 10-K
 - Brief, presented fairly and accurately
 - Include hyperlink/cross-reference for each item summarized
 - Only reference information included in 10-K when filed
 - Need not update for Part III information that is in a later-filed proxy or information statement
- 10-K cover page – emerging growth company additions

Other Annual Meeting Matters – Virtual Meetings

- Increasing numbers of virtual-only meetings
 - 200 through Q3 2017
 - 155 in 2016; 26 in 2012
- Criticism includes shareholder proposals and policies by investors to vote against directors
- Hybrid physical/virtual vs. virtual-only

Other Annual Meeting Matters

- Planning and preparation
- D&O questionnaires
- Logistics
- Security
- Admissions

Reminders

- A recording and link to the materials from this program will be distributed by email to you in the next day or two.
- For those applying for CLE credit, please note that certificates of attendance will be distributed within 30 days of the program date.



QUESTIONS?

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