Preparing for the 2019 SEC Reporting Season

December 6, 2018

Preparing for the 2019 SEC Reporting Season

December 6, 2018

Program Materials

Supplemental Materials

Available on Dorsey.com

Dorsey Governance & Compliance Insider Blog: *ISS Provides 2019 Voting Policy Updates* (November 29, 2018)
https://governancecomplianceinsider.com/iss-provides-2019-voting-policy-updates/

Dorsey Governance & Compliance Insider Blog: *Effective Date for Disclosure Simplification* (October 4, 2018)
https://governancecomplianceinsider.com/effective-date-for-disclosure-simplification/

Dorsey Governance & Compliance Insider Blog: *SEC Clarifies Effective Date for Disclosure Simplification Rules* (September 26, 2018)
https://governancecomplianceinsider.com/sec-clarifies-effective-date-for-disclosure-simplification-rules/

Webinar Playback: *Shareholder Proposals: Strategies and Tactics* (September 24, 2018)
https://www.dorsey.com/newsresources/events/videos/2018/09/webinar-playback-shareholder-proposals

Dorsey Governance & Compliance Insider Blog: *SEC Withdraws No Action Letters on Proxy Advisory Firms* (September 13, 2018)
https://governancecomplianceinsider.com/sec-withdraws-no-action-letters-on-proxy-advisory-firms/

Dorsey Governance & Compliance Insider Blog: *Marijuana Investments and Fraud Featured in SEC Investor Alert* (September 13, 2018)
https://governancecomplianceinsider.com/marijuana-investments-and-fraud-featured-in-sec-investor-alert/

Dorsey Governance & Compliance Insider Blog: *New SEC Rules Eliminates Duplicative, Overlapping, Outdated Disclosure Requirements* (August 19, 2018)
https://governancecomplianceinsider.com/new-sec-rules-eliminates-duplicative-overlapping-outdated-disclosure-requirements/

Dorsey Governance & Compliance Insider Blog: *SEC Issues $1.75 Million Penalty Over Perks Disclosures* (July 10, 2018)
https://governancecomplianceinsider.com/sec-issues-1-75-million-penalty-over-perks-disclosures/

Dorsey Governance & Compliance Insider Blog: *SEC Approves Series of Final and Proposed Rules in Line with Stated Priorities* (June 29, 2018)
https://governancecomplianceinsider.com/sec-approves-series-of-final-and-proposed-rules-in-line-with-stated-priorities/

Dorsey Governance & Compliance Insider Blog: *SEC Expands on "Smaller Reporting Companies" Eligible for Scaled Disclosure* (June 29, 2018)
https://governancecomplianceinsider.com/sec-expands-on-smaller-reporting-companies-eligible-for-scaled-disclosure/

Seminar Playback: *SEC Guidance on Cybersecurity Disclosure and Policies* (June 5, 2018)
https://www.dorsey.com/newsresources/events/videos/2018/06/seminar-playback-sec-guidance-on-cybersecurity

Dorsey eUpdate: *Failure to Disclose Leads to $35 Million Penalty in the Yahoo! Cybersecurity Breach* (April 27, 2018)
https://www.dorsey.com/newsresources/publications/client-alerts/2018/04/failure-to-disclose-leads-penalty-yahoo

Dorsey eUpdate: *SEC Issues New Cybersecurity Guidance* (March 1, 2018)
https://www.dorsey.com/newsresources/publications/client-alerts/2018/03/sec-issues-new-cybersecurity-guidance

Dorsey Governance & Compliance Insider Blog: *Disclosure Implications of the Tax Cuts and Jobs Act* (January 29, 2018)
https://governancecomplianceinsider.com/disclosure-implications-of-the-tax-cuts-and-jobs-act/

Dorsey Governance & Compliance Insider Blog: SEC Staff provides Guidance for Public Companies on Tax Cuts and Jobs Act (January 9, 2018)
https://governancecomplianceinsider.com/sec-staff-provides-guidance-for-public-companies-on-tax-cuts-and-jobs-act/

Dorsey eUpdate: S*EC Staff's Latest Guidance Presents Dilemma for Companies Seeking to Exclude Shareholder Proposals on Environmental and Social Issues* (January 3, 2018)
https://www.dorsey.com/newsresources/publications/client-alerts/2018/01/sec-staffs-latest-guidance-on-environmental

For more information on **Corporate Governance and Compliance** matters, see Dorsey's *Governance & Compliance Insider Blog* at https://governancecomplianceinsider.com/.

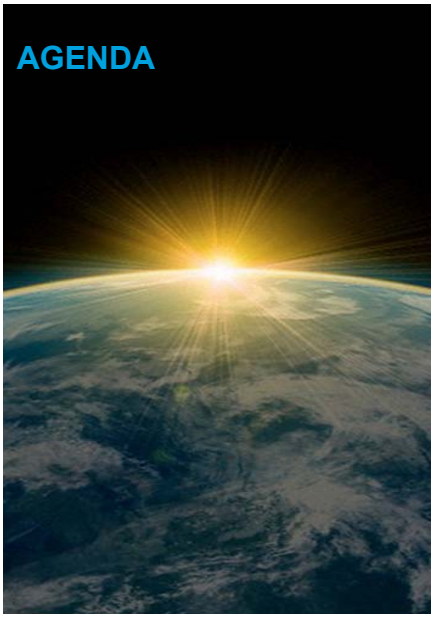
Cross-Border Counselor Blog at https://crossbordercounselor.com/

DORSEY
always ahead

Preparing for the 2019 Proxy Season

Kimberley Anderson
Cam Hoang
Michael Voves
Nicole Strydom

December 6, 2018



AGENDA

- **Proxy In Brief**
  - Disclosure Trends
  - Scaled Disclosure for More Smaller Reporting Companies
  - Proxy Process Roundtable Update
  - CEO Pay Ratio in Years One and Two
  - Say-on-Pay and Say-on-Frequency
  - Tax Reform and Executive Compensation
  - Director Compensation
  - Compensation Plan Proposals
  - Shareholder Proposals
  - ISS 2019 Voting Policies
  - Glass Lewis 2019 Voting Policies
- **10-K In Brief**
  - SEC Comment Trends
  - Risk Factors and MD&A: Trending Issues
  - Disclosure Simplification
  - Critical Accounting Matters
  - Tax Reform and Business Strategy
  - Cybersecurity Disclosure
  - Inline XBRL
  - Reminder on 10-K Cover Page
- **Stock Exchange Update**

DORSEY
always ahead

Proxy in Brief

DORSEY always ahead

Disclosure Trends

Transparency on board composition and board functions:

- The process for board refreshment
- Director skills matrix and diversity graphics
- Analysis of environmental, social and governance (ESG) issues
- Scope and process for enterprise risk management
- Pay for performance
- Auditor engagement and evaluation

Demonstrate the board's contributions to the company!

DORSEY always ahead

Disclosure Trends

If your company doesn't control its ESG story, others will!

- **Environmental, Social and Governance (ESG) Ratings**
- **ESG Performance vs 167 Peer Companies**

ESG Ratings: Sustainalytics on Yahoo! *available at*: https://www.sustainalytics.com/press-release/yahoo-finance-adds-sustainability-scores/

DORSEY always ahead

Disclosure Trends

Expansion of ESG Disclosure in proxy filings:

- Evolving board and committee responsibilities for ESG
- More robust responses to ESG shareholder proposals
- Separate sections on ESG initiatives (see supplemental materials)
- Links or QR Codes to social responsibility reports

But false disclosure may draw enforcement actions and fraud claims.

DORSEY always ahead

Disclosure Trends

- **Proxy summaries are prevalent:** Percentage of companies including proxy summaries increased from 52.6% to 74.0%, a slight decline from 79.0% in 2016
- **Still longer CD&As:** Average CD&A continued to grow in length from 9,400 words to 9,490 words
- **Pay for performance in graphics:** 20.0% of companies included a pay for performance graph, slightly less prevalent than nearly 25.0% in 2016
- **Alternative pay calculations:** 46.0% of companies included a graph showing an alternative pay calculation, such as realized or realizable pay, slightly less prevalent than in prior years

Equilar's Innovations in Proxy Design, February 2018

Scaled Disclosure for More Smaller Reporting Companies

The SEC announced an expansion of the definition of "smaller reporting company" on June 29, 2018:

Criteria	Previous SRC Definition	Revised SRC Definition
Public Float	Public float of less than $75 million	Public float of less than $250 million
Revenues	Less than $50 million of annual revenues and no public float	Less than $100 million of annual revenues and •no public float, or •public float of less than $700 million

Scaled Disclosure for More Smaller Reporting Companies

SEC Goal: Convincing more companies to go public

Regulation Flexibility Act Agenda includes:

- Executive and director compensation disclosure
- Shareholder proposals relating to the election of directors
- A number of access-related items: XBRL, E-deliver, E-proxy, E-forums
- Proxy disclosures
- S-3 eligibility

DORSEY always ahead

Smaller Reporting Companies

The SEC's Corp Fin updated 4 C&DIs:

Regulation S-K CDIs – Sections 102 & 202. Item 10 — General:

- CDI 102.01: an issuer can be both an SRC and accelerated filer
  - SEC staff is working on a rule that would reduce the number of accelerated filers, which must obtain an auditor attestation on internal control over financial reporting
- CDI 102.02: SRC qualification in the event public float/revenue decreases
- CDI 202.01:all annual revenues on consolidated basis need to be included when calculating annual revenues for SRC determination

Exchange Act Forms CDIs – Section 104. Form 10-K:

- CDI 104.13: when SRC disclosure is allowed when issuer is in "limbo"

. . . and withdrew 6 C&DIs

DORSEY always ahead

November SEC Proxy Process Roundtable

- **Proxy voting mechanics and technology**
  - Concerns about accurate vote counting
  - Declining retail shareholder participation
  - Increased interest in universal proxy
  - Use of technology to improve process
- **Shareholder Proposals – Exploring Effective Shareholder Engagement**
  - Proponent eligibility thresholds
  - Resubmission thresholds
  - Request for greater guidance in No-Action letters
- **Proxy Advisory Firms – The Current and Future Landscape**
  - Conflicts of interest
  - Opportunity to correct record

Proxy Advisory Firm Regulation

Investor reliance on proxy advisory firm recommendations to fulfill their fiduciary duties is questioned.

- Withdrawal of two no action letters confirming that recommendations may be relied upon.
- Corporate Governance Reform and Transparency Act of 2017 would require firms to register with the SEC.

CEO Pay Ratio in Year One

- **Overall, the pay ratio numbers were lower than forecasted**, with an average of 144:1 and median of 69.
- **Industry has an important impact on the size of the ratio.** Companies in the consumer discretionary and consumer staples sectors were understandably at the higher end at 384 and 295 on average. At the other end of the spectrum were energy, financials, and utilities, with averages ranging from 59 to 80.
- **There is a close correlation between the size of the pay ratio and revenue.** For those companies under $300M, the average pay ratio was 32, as compared to those companies at $3B and higher, where ratios average close to 290.

CEO Pay Ratio in Year One

- **CACMs**: Almost all companies (82%) included base salary and about 56% also included bonus or other annual incentives. Almost 20% of companies included overtime pay. Only around one in five companies included equity grants, which reflects the fact that stock-based awards are not universally granted at most companies.
- **About 25% of companies took advantage of exemption for up to 5% of non-U.S. employees.**

Pearl Meyer Partners
The CEO Pay Ratio: Data and Perspectives from the 2018 Proxy Season

CEO Pay Ratio in Year Two

- **Identify a median employee once every three years, unless there are significant changes to:**
  - The employee population or employee compensation arrangements that the company reasonably believes would result in a significant change in its pay ratio disclosure; or
  - The original median employee's circumstances so that the company reasonably believes its pay ratio disclosure would significantly change (and then sub in another employee whose compensation is substantially similar).
- **If the same median employee is used, briefly disclose the basis for the reasonable belief that no change occurred that would significantly impact the pay ratio disclosure.**
- See supplemental materials for pay ratio checklist.

Say-on-Pay

Say-on-Pay support falters.

- Average support fell from 92.6% in 2017 to 91.2% in 2018.
- Failure rate more than doubled to 2%, with upswing in failures at S&P 500 firms.
- CalPERS voted against pay programs at 43% of its portfolio companies, versus 18% in 2017.
  - "Over one, two or three years, performance might look good, but over 10 years, the [pay for performance] relationship sometimes just isn't there." Simiso Nzima, Investment Director for Corporate Governance

Say-on-Frequency

Reminder for Smaller Reporting Companies: Non-binding say-on-frequency vote is due for those companies that had their last vote in 2013. Include:

- A statement that the vote concerning the frequency of the "say-on-pay" vote is required by Section 14A of the Securities Exchange Act of 1934, as amended;
- A brief statement that the stockholders may elect to hold such a vote every year, every second year, every third year or abstain from voting; and
- A description of the non-binding effect of the resolution.

Emerging growth companies are exempted from say-on-pay and say-on-frequency votes.

Tax Reform and Executive Compensation

Overview of Section 162(m) Changes

- Performance-Based Pay Exception Eliminated
- Expanded Scope of Covered Employees
  - CFO Now Included
  - Former NEOs Included
- Grandfathering
- Expanded Definition of Publicly Held Corporation

Tax Reform and Executive Compensation

Impact on Stock Incentive Plans

- No Longer Need for Shareholder-Approved Performance Goals
- No Longer Need for Annual Award Limits
  - Caution: Annual Limits Are Best Practice
- No Need to Refresh Performance Goals Every Five Years
- Considerations:
  - Grandfathering
  - Fiscal Year

Tax Reform and Executive Compensation

Impact of Grandfathering

- Negative Discretion
- Contract Renewal
- “New” Covered Employees

Director Compensation Limits

Shareholder lawsuits have prompted companies to impose "meaningful" limits on director compensation.

- 78% of companies impose a fixed value limit vs a fixed share limit.
- 32% of limits cover both stock and cash compensation, vs only stock compensation.
- 49% of companies review director pay annually.
- 84% pay an additional fee to lead directors.
- 55% require a holding period until directors have met stock ownership guidelines.

Willis Towers Watson's survey of 300 companies from the Fortune 500

Compensation Plan Proposals

May 11, 2018: The SEC staff issued a series of C&DIs regarding the proxy rules and Schedules 14A and 14C. Of particular note are the C&DIs pertaining to Item 10 of Schedule 14A.

- Any action on a compensation plan, including amendments, requires all of the disclosure called for under Item 10, including a complete description of any material features of the plan
- A New Plan Benefits Table listing benefits or amounts that will be received by each of the named executive officers and certain groups will only be called for if the plan is: (i) a plan with set benefits or amounts (e.g., director option plans); or (ii) one under which some grants or awards have been made by the board or compensation committee subject to shareholder approval.

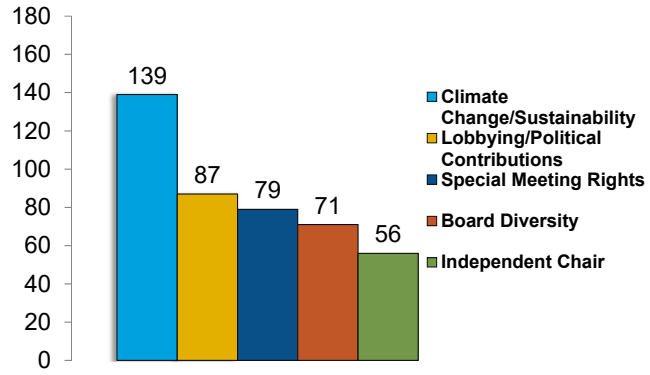
Compensation Plan Proposals

- One of the more substantive changes is found in C&DI 161.03 relating to the New Plan Benefits Table.
  - New guidance now provides more flexibility for an issuer by allowing either a list in the table of all of the individuals and groups for which award and benefit information is required (the old requirement) OR the issuer may utilize a narrative disclosure that accompanies the Table (the alternative).
- See supplemental materials for summary of other C&DIs pertaining to Item 10 of Schedule 14A.

2018 Shareholder Proposal Trends and Developments

- **Fewer proposals submitted:** Overall, the total number of shareholder proposals submitted (788) continued its downward trend from 2017 (827), 2016 (916) and the all-time high in 2015 (943).
- **Higher levels of overall support**. Average votes cast for proposals voted on increased to 32.7%.
- **Many proposals withdrawn or excluded:** As in prior years, many submitted proposals were not voted on because they were withdrawn following discussions with the company (15%) or excluded pursuant to the SEC's no-action letter process (16%).
- **Less no-action relief granted:** The Staff granted 125 (64%) of the no-action requests submitted during the 2018 proxy season, compared to 189 (78%) during the 2017 proxy season, and 143 (68%) during the 2016 proxy season.

Most Commonly Submitted Proposals



DORSEY always ahead

Shareholder Proposals: SLB 14I

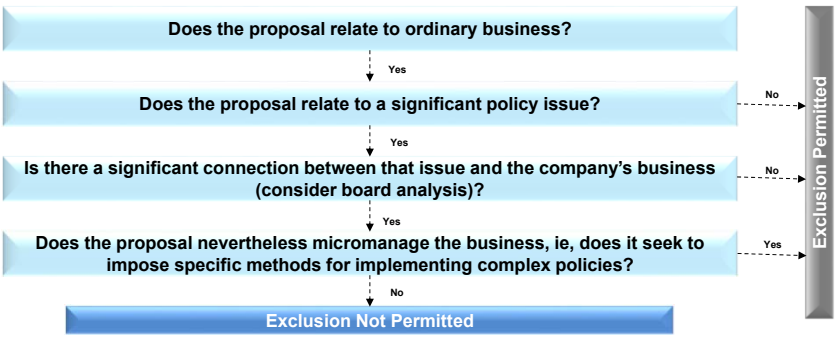
On November 1, 2017, the SEC Division of Corporation Finance issued a Staff Legal Bulletin No. 14I (SLB 14I) addressing:

- the scope and application of **the "ordinary business" exception** under Rule 14a-8(i)(7),
- the scope and application of **the "economic relevance" exception** under Rule 14a-8(i)(5),
- the **eligibility** of proposals submitted on behalf of shareholders, and
- **the use of graphs and images** consistent with Rule 14a-8(d).

DORSEY always ahead

Rule 14a-8(i)(7): Ordinary Business

- Framework for thinking through the ordinary business exception:



DORSEY always ahead

Shareholder Proposals: SLB 14J

On October 23, 2018, the SEC Division of Corporation Finance issued a Staff Legal Bulletin No. 14J (SLB 14J) addressing:

- **Helpful vs less helpful board analysis**
  - Helpful: focus on board's analysis and specific substantive factors the board considered in arriving at its conclusion
  - Less helpful: board's conclusions or process without discussing specific factors considered
  - A recent shareholder vote is more likely to be indicative of a topic's significance to a company and its shareholders.
- **Affirms existing framework for micromanagement analysis**: a proposal may probe too deeply into matters of a complex nature if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."

DORSEY always ahead

Shareholder Proposals: SLB 14J

- **Defines scope of "ordinary business" exclusion for executive and director compensation proposals**:
  - Where the focus appears to be on the ordinary business matter (vs executive or director compensation), the proposal may be excludable
  - Example: a proposal that the board prohibit payment of incentives to executives unless the company first adopts a process to fund retirement accounts of certain retirees is excludable, because it focuses on employee benefits
  - Where the compensation is broadly available, and the company demonstrates that the executives' or directors' eligibility to receive the compensation does not implicate significant compensation matters, the proposal may be excludable
  - Example: a proposal that seeks to limit when senior executive officers will receive golden parachutes, if the provision broadly applies to a significant portion of the general workforce, may be excludable

Shareholder Proposals: SLB 14J

- **Defines scope of "ordinary business" exclusion for executive and director compensation proposals**:
  - Proposals that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies, can be excluded on the basis of micromanagement
  - Example: a proposal detailing the eligible expenses covered under a company's relocation expense policy such as the type and duration of temporary living assistance, as well as the scope of eligible participants and amounts covered, may be excludable

ISS 2019 Voting Policies

ISS released its 2019 Proxy Voting Guidelines for meetings on or after February 1, 2019:

- Expanded circumstances when **ISS may recommend against** directors:
  - Absence of Board **Gender Diversity**
    - Effective for meetings held on or after February 1, 2020
    - Recommend "against" or a "withhold" vote for the chair of a company's nominating committee if there are no women on the company's board
  - Poor Board Meeting **Attendance**
  - Management **Ratification Proposals**
    - Recommend "against" or "withheld" when a board asks shareholders to ratify existing charter or bylaw provisions, unless they align with best practice
  - Lack of Board Responsiveness to Failed Ratification Proposals
- Including Five-Year TSR in Initial Screen of Director Performance Evaluations
- Use of EVA Data in Financial Performance Assessment

ISS 2019 Voting Policies

- **Reverse Stock Splits**
  - Recommend a vote "for" a reverse stock split if (1) the number of authorized shares available to the company is also proportionately reduced or (2) the effective increase in authorized shares is equal to or less than the allowable increase calculated in accordance with ISS policy
  - Case-by-case approach, including the following factors: (1) whether the company has received a notification of potential delisting from a stock exchange, (2) there is substantial doubt about the company's ability to continue as a going concern without additional financing, (3) the rationale provided by the company, or (4) other factors as applicable.
- **Impact of Significant Controversies on Social and Environmental Proposals**
  - Expansion of factors considered on a case-by-case approach
  - Consider whether there are significant controversies, fines, penalties or litigation associated with the company's social or environmental proposals.

ISS 2019 Voting Policies

Non-employee director excessive pay policy:

- No adverse director recommendations in 2019
- Methodology for identifying pay outliers to be revised
- First possible adverse vote recommendations will be delayed until 2020

See supplemental materials for 2019 Americas Proxy Voting Guidelines Updates.

ESG Ratings: ISS's E&S QualityScore

- **Environmental and Social pillars each have category scores and one overall score; no overall E&S score**
  - Management of Environmental Risks and Opportunities Carbon & Climate; Waste & Toxicity; and Natural Resources. Under the categories there are 12 subcategories in total.
  - Product Safety, Quality & Brand; Stakeholders & Society; Labor Health & Safety; and Human Rights. Under the categories there are 25 subcategories in total.
- **Decile scores, 1–10**, represent a relative measure based on the raw score calculations of peer companies within a specific industry group
- As with the Governance score, the Environmental and Social scores have **no impact** on ISS' benchmark proxy voting recommendations.
- **Not currently presented on external channels such as Yahoo! Finance**, though they may expand to external websites in the future, and such channels already include other ESG metrics and analyses
- **Companies may verify and update data online**; profiles updated daily at 5 am Eastern and annually by industry group

Glass Lewis 2019 Voting Policies

Glass Lewis released its 2019 proxy voting policy guidelines on October 24, 2018:

- **Board gender diversity**
  - Voting against nominating committee chair of a board with no female members
- **Conflicting and Excluded Proposals**
  - Regarding conflicting proposals on special meeting rights
- **Diversity Reporting**
  - Voting in favor of shareholder proposals requesting additional disclosure on employee diversity
- **Environmental and Social Risk Oversight**
  - Codified approach to reviewing how boards are overseeing environmental and social issues

Glass Lewis 2019 Voting Policies

- **D & O Compensation**
  - Expanded policies to include excise tax gross-ups, severance/sign-on arrangements, grants of front-loaded awards, clawback provisions and CD&A disclosure for SRCs
- **Auditor Ratification**
  - Codified additional factors considered when reviewing auditor ratification proposals
- **Virtual Shareholder Meetings**
  - Recommend voting against governance committee for a virtual-only shareholder meeting without robust disclosure in the proxy statement confirming availability of the same rights and opportunities to participate at an in-person meeting
- **Written Consent Shareholder Proposals**
  - Recommend against shareholder proposals requesting shareholder right to action by written consent when issuer already has proxy access and a special meeting right of 15% or lower.

See supplemental materials for Summary for 2019 United States Policy Guidelines.

10-K in Brief

DORSEY always ahead

Risk Factors and MD&A

Trending Issues Across Industries:

- Trade Policy
- Tax Reform
- E-commerce/Digital Taxes
- Cybersecurity/Data Privacy Compliance (see supplemental materials for other cyberrisks)
- Environmental/Regulatory

Drafting Tips:

- Use descriptive captions for the risk and its impact
- Review peer risk factors, but tailor the risks to the company
- Consider probability and severity of risk
- Limit discussion to risk (vs mitigation)
- Organize risks (industry/company/investment) and list from most to least significant
- An abstract discussion may not be enough if a specific risk has materialized (cybersecurity)
- Disclose when in doubt ("cautionary language" safe harbor), but be prepared for questions

DORSEY always ahead

SEC Comment Letter Trends

- The Sarbanes-Oxley Act requires the SEC to review each registrant at least once every three years, though registrants may be reviewed more frequently, but not receive letters.
- The SEC staff consistently reviews more than half of registrants every year, though it targets one third.

SEC Fiscal 2017 Annual Performance Report

- SEC comment letters on periodic reports continued to decline, from 5,352 in 2013 to 2,081 in 2018 (see supplemental materials).
- Nearly half the decrease in 2018 was attributable to the decline in comments non non-GAAP measures.
- In 2019, the SEC staff is expected to focus on accounting under new accounting standards (revenue recognition, leases and credit impairment), disclosures about cybersecurity and accounting for income tax reform.

Trends in SEC Comment Letters, EY

SEC Comment Letter Trends

Top 10 Most Frequent Areas of SEC Comment

***See* SEC Comments and Trends - September 2018, Ernst & Young available at:**
http://www.ey.com/Publication/vwLUAssetsAL/SECCommentsTrends_04321-181US_24September2018/$FILE/SECCommentsTrends_04321-181US_24September2018.pdf

- .

Disclosure Simplification

Effective for quarters beginning **after November 5, 2018.**

- **Regulation S-X, Amended Rules 8-03(a)(5) and 10-01(a)(7):**
  - **Analyze changes in stockholders' equity and the amount of dividends per share for each class of shares for "the current and comparative year-to-date [interim] periods, with subtotals for each interim period."**
- SEC staff allowed for the changes in shareholders' equity to be included for the first time in the Form 10-Q for the quarter that begins after November 5, 2018. *See CD&I 105.09*

Critical Audit Matters – A Reminder

PCAOB adopted enhancements to the auditor's report

- Communications of **critical audit matters (CAMs)** will take effect for audits for fiscal years ending on or after **June 30, 2019** for large accelerated filers; and for audits for fiscal years ending on or after **December 15, 2020** for all other companies to which the requirements apply.
- **Examples of questions that audit committees should be asking auditors:**
  - What would the critical audit matters be this year?
  - What would be the close calls?
  - When could those matters have been raised, and which ones could have been identified at the *start* of the audit cycle?
  - What does the auditor expect to say about those matters?
  - When would we expect to see a draft report or at least a draft of the critical audit matters?

Critical Audit Matters

CAMs are any matters arising from the audit of the financial statements communicated, or required to be communicated, to the audit committee and that:

- relate to accounts or disclosures that are material to the financial statements, and
- involve especially challenging, subjective, or complex auditor judgment.

Three examples of critical audit matters (fact-specific):

- allowance for sales returns,
- valuation allowance for deferred tax assets, and
- fair value of untraded, fixed maturity securities.

Appendix 5 to the Proposed Standard

Critical Audit Matters

In determining CAMs, the auditor will be required to take into account specific factors such as:

- the auditor's risk assessment,
- areas in the financial statements that involved the application of significant judgment or estimation by management,
- significant unusual transactions, and
- the nature and extent of audit effort and evidence necessary to address the matter.

Critical Audit Matters

The auditor's report will be required to:

- identify the CAM;
- describe the principal considerations that led the auditor to determine the matter is a CAM;
- describe how it was addressed in the audit; and
- make reference to the relevant financial statement accounts and disclosures.

If the auditor determines there are no CAMs, the auditor must state so in the auditor's report.

Tax Reform and Business Strategy

"….companies should explain to investors how the significant changes to tax law fit into their long-term strategy. What will you do with increased after-tax cash flow, and how will you use it to create long-term value? This is a particularly critical moment for companies to explain their long-term plans to investors."

Larry Fink, BlackRock CEO – 2018 Annual Letter to CEOs

- changes in the deductibility of interest and changes in cash flow may cause a company to reassess its capital structure and mix of debt and equity;
- capital allocation decisions, including decisions about investment in the business versus returning cash to shareholders, might need to be revisited in light of the increased liquidity resulting from lower tax rates and/or repatriation of foreign earnings; and
- reassessment of the corporate footprint and intra-group pricing arrangements might be appropriate in light of the new international provisions

KPMG – Tax reform: Key areas for audit committee focus

Cybersecurity Disclosure

SEC released updated guidance on disclosure obligations on cybersecurity risks and cyber incidents.

- Enhanced guidance on disclosure of cybersecurity issues, but within the existing disclosure framework
- New focus on policies and procedures

Commission Statement and Guidance on Public Company Cybersecurity Disclosures – February 21, 2018

See supplemental materials for SEC guidance.

Cybersecurity Disclosure

The standard for disclosure remains MATERIALITY:

- Is there a substantial likelihood that a reasonable investor would consider the information important in making an investment decision or that the disclosure of the omitted information would have been viewed by the reasonable investor as having significantly altered the total mix of information available? *(TSC Industries v. Northway)*
- As part of a materiality analysis, a company should consider the indicated probability that an event will occur and the anticipated magnitude of the event. *(Basic v. Levinson)*

The materiality of cybersecurity risks or incidents depends on:

- their nature, extent and potential magnitude, and
- the range of harm that such incidents could cause, including reputation, financial performance, customer and vendor relationships, and the possibility of litigation or regulatory investigations or actions

Cybersecurity Disclosure

- **Omitted information can be material**
- **Materiality is a judgment call:** No bright lines, unlike the state law notification requirements
- **Technical and compromising information should not be disclosed**
- **SEC staff may contact company counsel for an analysis of why a breach was not material**, when they see a news report that a hack has occurred (according to recent Congressional testimony by Bill Hinman, SEC Chief of Division of Corporation Finance)
- **Disclosure may impact 10-K sections** including the description of business, MD&A, changes in internal controls, reserves reported in financial statements, risk factors

Cybersecurity Disclosure

Timing of Disclosure

- **Disclosure required prior to securities offering:** Where a company has become aware of a material incident or risk, SEC expects appropriate disclosure sufficiently prior to the offer and sale of securities and steps to prevent insider trading.
- **Use Current Reports**: Timely disclosure may require a current report on Form 8-K. Item 8.01 may be used to report information not otherwise called for by the form, but of importance to security holders.
- Companies may have a **duty to correct** prior disclosure that the company determines was untrue, or where the company omitted a material fact necessary to make the disclosure not misleading, at the time it was made.
- Companies may have a **duty to update** disclosure that becomes materially inaccurate after it is made (for example, when the original statement is still being relied upon by reasonable investors).

Cybersecurity Disclosure

SEC guidance has a new focus on policies and procedures.

- Disclosure controls and procedures related to cybersecurity disclosure
- Insider trading policies and procedures
- Regulation FD and selective disclosure policies
- SEC guidance does not specify IT-related policies and procedures, but examples would include:
  - Network security
  - Security governance
  - Compliance
  - Risk management
  - Incident response
  - Business continuity

Cybersecurity Disclosure

Board Oversight Among S&P 100:

- 41% of companies included cybersecurity experience among the key director qualifications highlighted or considered by the board.
- 84% disclosed that at least one board-level committee was charged with cybersecurity oversight (70% disclosed audit committee oversight; 20% disclosed non-audit-focused committee oversight).
- 24% identified at least one management "point person(s)" for reporting to the board (e.g., the CISO or CIO).

EY Cybersecurity Disclosure Benchmarking – September 2018

- 32% of directors report being briefed on cybersecurity at least quarterly; 54% are briefed at least annually. 9% reported no briefings at all, on par with last year.

BDO's 2018 Cyber Governance Survey of 145 Public Companies

Inline XBRL

July 3, 2017: SEC adopts rules requiring the use of Inline XBRL.

- Inline XBRL allows filers to embed financial data into the body of an SEC filing, when is currently attached as an exhibit.
- Exhibits will still be required to provide contextual information about the embedded XBRL tags in the filing.
- XBRL website posting requirements were eliminated as of the effective date of the rule.

Inline XBRL

Operating Companies (includes SRCs, EGCs and FPIs)	Compliance Date (temporary hardship exemptions available)
Large accelerated filers that prepare their financial statements in accordance with U.S. GAAP	Fiscal periods ending on or after June 15, 2019
Accelerated filers that prepare their financial statements in accordance with U.S. GAAP	Fiscal periods ending on or after June 15, 2020
All other filers (including FPIs that prepare their financial statements in accordance with IFRS)	Fiscal periods ending on or after June 15, 2021

Reminder on 10-K Cover Pages

In connection with Smaller Reporting Company rulemaking:

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company", and "emerging growth company" in Rule 12b 2 of the Exchange Act.:

Large accelerated filer []□
Accelerated filer []
Non accelerated filer []□ ~~(Do not check if a smaller reporting company)~~
Smaller reporting company []□
Emerging growth company []□

(change effective September 10, 2018)

In connection with Inline XBRL rulemaking:

- **Indicate by check mark whether the registrant has submitted electronically ~~and posted on its corporate Web site, if any,~~ every Interactive Data File required to be submitted ~~and posted~~ pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).**

(change effective September 17, 2018)

NASDAQ Update

Nasdaq Rule 5635(d) amended to change the definition of "market value" for purposes of shareholder approval of private placement transactions:

- shareholder approval would be required prior to an issuance of 20% or more at a price that is less than the lower of the closing price or the five-day average closing price
- eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value

Other existing shareholder approval requirements, eg, for issuances for equity compensation plans and resulting in a change in control, remain in place.

NYSE Update

- **NYSE has eliminated the requirement that listed companies provide hard copies of EDGAR-filed proxy materials to the Exchange**
  - **If the proxy materials are included in their entirety (together with proxy card) in an EDGAR filing**
- **NYSE proposal to make conforming changes to its smaller reporting company definition in Section 303A.00**
  - **relating to the exemption from certain compensation committee requirements**
  - **conforms to the new SEC definition**
- **Proposed amendments to its shareholder approval rules similar to the recent Nasdaq rule amendments outlined on the prior page**

Thank You and Happy Holidays!

Meet the Panel

Kimberley R. Anderson
Partner
Dorsey & Whitney LLP
Seattle, Washington
anderson.kimberley@dorsey.com
(206) 903-8803

Kimberley has over 20 years of experience helping clients finance their business through strategic public and private offerings of equity and debt securities and advance their strategic goals through mergers, acquisitions and divestitures. She guides clients through complex and ever-changing SEC requirements and listing standards on the NYSE, NASDAQ and NYSE American and the evolving best practices in corporate governance, compliance and disclosure, allowing clients to focus on moving their business forward with confidence. Kimberley has extensive experience in Canadian cross-border transactions and particular depth in the oil and gas, clean energy, mining and natural resources, manufacturing and technology industries. Kimberley is a frequent speaker and author on corporate compliance, SEC disclosure, and other securities law topics, and currently serves as co-editor of Dorsey's corporate governance and compliance blog, Governance & Compliance Insider. Kimberley has served in various leadership roles at Dorsey for the past several years, including currently serving as Co-Chair of the Capital Markets & Corporate Compliance Practice Group, and previously on the firm's Management Committee.

DORSEY™ always ahead

Meet the Panel

Cam C. Hoang
Partner
Dorsey & Whitney LLP
Minneapolis, Minnesota
hoang.cam@dorsey.com
(612) 492-6109

Cam helps clients with corporate matters including governance and SEC compliance, securities offerings, and mergers and acquisitions. Prior to her return to Dorsey, Cam was Senior Counsel and Assistant Secretary at General Mills, Inc., where she helped the company achieve its corporate governance and SEC compliance objectives, worked on securities offerings and M&A transactions, risk management, foundation governance, and general corporate and commercial matters. Before joining General Mills in 2005, Cam was an associate for five years in the Dorsey Corporate Group in Minneapolis. Cam is a co-editor of Dorsey's corporate governance and compliance blog, http://governancecomplianceinsider.com/.

DORSEY™ always ahead

Meet the Panel

Michael J. Voves
Partner
Dorsey & Whitney LLP
Minneapolis, Minnesota
voves.michael@dorsey.com
(612) 343-8266

Michael is a Partner in Dorsey's Benefits and Compensation Group and head of the firm's Executive Compensation practice group. Michael advises clients on ERISA, tax and related issues affecting pension, 401(k), ESOP, non-qualified and executive compensation arrangements. He has extensive experience drafting, designing, implementing and administering retirement, equity and incentive programs for large companies with sophisticated and specialized needs. Michael has made various presentations on ERISA and executive compensation topics for professional groups and clients. Michael is an active member of the National Association of Stock Plan Professionals, including the Twin Cities chapter organization.

DORSEY™ always ahead

Meet the Panel

Nicole H. Strydom
Associate
Dorsey & Whitney LLP
Minneapolis, Minnesota
strydom.nicole@dorsey.com
(612) 492-6214

Nicole focuses on providing service-oriented and effective counsel to her clients. She assists public companies with respect to their capital markets activities, including equity and debt offerings, and ongoing disclosure and compliance issues, including periodic and current reporting and proxy statement requirements. Nicole has also served clients on stock and asset deals in a broad range of sizes, as well as on a variety of general corporate matters. With a prior career as a professional cellist in a symphony, Nicole brings a unique perspective to her practice.

DORSEY™ always ahead

Additional Resources

Supplemental materials will be circulated by e-mail after the presentation, and additional resources will be available on Dorsey.com.

About Dorsey's Corporate Governance & Compliance Group

Overview

We track the latest developments, trends and best practices and provide the practical advice you need to drive your business with confidence.

All businesses today face high-stakes compliance and complex corporate governance issues. Public companies also face increasing shareholder activism and daunting disclosure requirements.

Dorsey guides clients through these challenges, providing the right governance, disclosure and compliance strategies to fit their size, stage of development, business and industry. Dorsey lawyers have deep experience advising a wide range of public companies on:

Board Fiduciary Responsibility

- Board fiduciary duties in oversight and decision-making
- Governance best practices
- Board and committee composition and charters
- Communicating with shareholders

SEC Disclosure and Compliance

- SEC periodic reporting and proxy rules
- Communicating with the public markets (Regulation FD)
- Sales of restricted and control securities, beneficial ownership reporting and avoiding short-swing profit liability
- Responding to SEC queries, investigations and enforcement

Ethics and Compliance Programs

- Insider trading prevention
- Codes of conduct and ethics policies
- Whistleblower complaints
- Anti-corruption policies and procedures
- Government investigations and enforcement proceedings

Representative Clients

Dorsey represents over 85 public companies in the areas of 1934 Act compliance and SEC disclosure matters, and many more in a broader range of corporate governance matters. These companies include businesses ranging from emerging companies to brands recognized worldwide covering a wide range of industries.

DORSEY
always ahead

Preparing for the 2019 SEC Reporting Season

December 6, 2018

Supplemental Materials

C&DI Summary and Cybersecurity Risk Factors

C&DIs on Item 10, Schedule 14A

Any action on a compensation plan, including amendments, requires all of the disclosure called for under Item 10, including a complete description of any material features of the plan

A New Plan Benefits Table listing benefits or amounts that will be received by each of the named executive officers and certain groups will only be called for if the plan is: (i) a plan with set benefits or amounts (e.g., director option plans); or (ii) one under which some grants or awards have been made by the board or compensation committee subject to shareholder approval.

If a registrant is required to disclose the New Plan Benefits Table, it should list in the table all of the individuals and groups for which award and benefit information is required, even if the amount to be reported is “0”. Alternatively, the registrant can use narrative disclosure that accompanies the Table.

A registrant cannot include other information, such as that called for by Item 10(b) of Schedule 14A, in the New Plan Benefits Table.

For option plans, no “dollar value” information should be given in the New Plan Benefits Table (i.e., no Black-Scholes or other valuation). The number of shares underlying the options should be provided in the “Number of Units” column.

Disclosure of actual awards made under an existing plan for the prior fiscal year is not required.

Discretionary awards or benefits would not be considered to be determinable for purposes of disclosure under the New Plan Benefits Table.

Disclosure of benefits or amounts in the New Plan Benefits Table is required only in the case of plans that have objective criteria for determining the compensation payable—such that the registrant can take the criteria and, assuming the variables of last year, determine what would have been paid under the plan had it been in place then. An example would be a bonus or LTIP with award opportunities based upon a fixed percentage of salary and actual payment earned based upon fixed measures (such as percentage growth in earnings over previous years).

The “market value of the securities underlying the options, warrants, or rights as of the latest practicable date may be presented as either: (i) market price per share or (ii) aggregate market value of the total number of shares underlying all options (granted or available for grant) under the plan.

The requirement that the registrant state separately the amount of options received or to be received covers only those options under the plan upon which action is being taken. No disclosure is required if a new plan is being considered, even if the registrant has other plans under which there have been or will be options granted, and even if a previous or existing plan appears identical to the new plan in all but name.

The requirement that the registrant must state separately the amount of options received or to be received does not need to appear in a table.

The requirement that the registrant state separately the amount of options received or to be received applies to all options received at any time (not just last year) and options to be received (if determinable) by the specified persons and groups. The information called for under this item requirement should be given for each individual and group (including those for which the amount of options received or to be received is "0").

C&DIs on Proxy Rules and Schedule 14A and 14C

Clarification on certain items, including:

- Proxy solicitation exemptions, including explanation of what does or does not count towards the "Rule of 10" private solicitation exemption.
- A separate shareholders' annual report need not be filed when the same information is already included in a proxy statement contained in a Form S-4 filed for the same shareholder meeting.
- When a registrant has an advance notice by-law or charter provision governing timely notice, it may exercise discretionary voting authority even when such advance notice provision does not specifically reference discretionary voting authority.
- What constitutes a "reasonable time" for notice of a matter to be submitted to shareholders when the registrant either changed its annual meeting date by more than 30 days or did not hold an annual meeting the previous year: facts and circumstances test.
- A broker search letter is not a proxy solicitation when it is sent to a broker and only requests information about the number of copies of proxy materials needed to forward to beneficial owners.
- Where a registrant holds a special meeting to elect a new director and the annual shareholder meeting was 3 months prior, the proxy materials for the special meeting must still include information on all directors and executive officers and their compensation.
- A proxy statement seeking shareholder approval of an increase in authorized common shares and the elimination of an authorized but unissued class of preferred stock need not include or incorporate financial statements unless the authorization is sought in connection with an exchange, merger or similar transaction.

Other highlights:

126.06: Clarification that a Notice of Exempt Solicitation may be submitted voluntarily by a soliciting party who is not required to do so, provided that that the written soliciting material is submitted under the cover of Notice of Exempt Solicitation and such cover notice clearly states that the notice is being provided on a voluntary basis.

126.07: When submitting a Notice of Exempt Solicitation on EDGAR, the written soliciting material must appear after the name of the registrant and the name and address of the person relying on the exemption.

151.01: Note A to Schedule 14A requires that certain information be provided in a proxy statement when shareholders are asked to approve the authorization of additional securities to be used to acquire a specified company when there is no separate opportunity to vote on the acquisition, even when the securities will be sold in a public offering for cash to finance the transaction. The new CD&I provides that the required information under Note A need not be included in a situation where the registrant has alternative means for fully financing the acquisition and may choose to use those other means instead of using the proceeds from the offering. However, if the cash proceeds from the public offering are expected to be used to pay any material portion of the consideration for the acquisition, then Note A would apply.

SEC Enforcement Priorities

The SEC's Fiscal 2018 Enforcement Division Report highlights the Division's enforcement actions for the period ending September 30th:

- 821 enforcement actions (vs 754 last year), including 490 stand along cases (vs follow on administrative proceedings and delinquent filings)
- Breakdown of stand alone actions: Investment advisory issues (22%), Securities offerings (25%), Issuer reporting/accounting and auditing (16%), Market manipulation (7%), Insider trading (10%), and Broker-dealer misconduct (13%), other areas (7%)
- Focus on retail investor initiatives and misconduct involving ICOs and digital assets

Cybersecurity Risk Factors

Risk factors:

- Risks to operational performance due to denials of service and the destruction of systems, potentially resulting in impediments to account access and transaction execution
- Loss or exposure of consumer data
- Theft or exposure of intellectual property
- Investor losses resulting from the theft of funds or market value declines in companies subject to cyberattacks,
- Regulatory, reputational and litigation risks resulting from cyber incidents,
- Incurring significant remediation costs,
- Risks related to intrusions of critical infrastructure such as the power grid or communications systems
- Risks related to vendors that may have a weakness that could be exploited and used to attack the company's systems

Based on SEC Chairman Jay Clayton's Statement on Cybersecurity
September 20, 2017

DORSEY
always ahead

CEO PAY RATIO PREPARATION AND DISCLOSURE CHECKLIST
(as of February 23, 2018)

1) Which companies are required to disclose the pay ratio?

Most public companies are required to disclose the pay ratio. However, foreign private issuers, MJDS filers, emerging growth companies, registered investment companies, and smaller reporting companies are exempt from the rule.

2) What pay ratio is to be disclosed, where and when?

Effectiveness of Pay Ratio Rule: The pay ratio rule becomes effective on a company's first full fiscal year beginning on or after January 1, 2017. For a calendar year company, this means the initial pay ratio disclosure would relate to calendar year 2017 compensation and be disclosed in the company's 2018 proxy statement.

Required Disclosure:

- Item 1: The median of the annual total compensation of all employees, except the principal executive officer (PEO)
- Item 2: The annual total compensation of the PEO
- Item 3: The ratio of the amount in Item 1 to the amount in Item 2
- For purposes of the ratio required in Item 3:
    - The amount in item 1 shall equal one (eg, 1 to 100) or, alternatively,
    - The ratio may be expressed narratively as the multiple that the amount in item 2 bears to the amount in item 1 (eg, 100 times)
- Briefly describe the methodology used to identify the median employee. We have made judgments as to required versus optional disclosure in certain sections of this memo.

Optional but Recommended Disclosure: Disclose that the pay ratio is a reasonable estimate calculated in a manner consistent with Item 402(u) of Regulation S-K. (C&DI 128C.06)

Optional but Recommended Disclosure: In adopting the pay ratio rule, the SEC expressly sought to provide flexibility to each company to determine the methodology that best suits its own facts and circumstances. The pay ratio should not be compared to other companies' pay ratios, because it is based on a methodology specific to the company, and certain material assumptions, adjustments and estimates have been made in the calculation of the pay ratio.

Optional Disclosure: If the ratio is skewed vs peers or vs other years, consider disclosing an alternative pay ratio:

- Pay ratio excluding part-time, seasonal and temporary workers
- Pay ratio excluding non-US employees
- Historical pay ratio trends

Alternative pay ratios may be disclosed as long as they are clearly identified, not misleading and not presented with greater prominence than the required pay ratio.

Optional Disclosure: Briefly explain any significant difference between the number of employees described in the 10-K vs the proxy statement.

Placement of the Pay Ratio:

- Disclose the pay ratio in the 10-K for the last completed fiscal year, or if later, the proxy statement for the next annual meeting, but no later than 120 days after fiscal year end.
- In the proxy statement, the pay ratio is not required to be disclosed in the CD&A, unless it is part of the executive compensation decision-making process for the company. Many companies are putting the pay ratio in a less prominent place, eg, after the executive compensation tables.

Incorporate pay ratio preparation and disclosure into disclosure controls and procedures, because the pay ratio is "filed" information, which is subject to the CEO/CFO Sarbanes-Oxley certifications.

Pay ratio disclosure is subject to Section 18 liability for material misstatements or omissions. However, according to the SEC's interpretive release, if a company uses reasonable estimates, assumptions or methodologies, the pay ratio and related disclosure will not provide the SEC with a basis for enforcement action unless the disclosure is made or reaffirmed without a reasonable basis or was provided other than in good faith.

Develop a communications strategy to address questions about the pay ratio from stakeholders including employees, unions, media, and investors. This strategy could be, at minimum, preparing a Q&A to address any questions, or it could contemplate communications initiated by the company. Consider whether communications constitute proxy soliciting materials, or otherwise trigger SEC filing obligations.

3) Who is included in the employee population from which the median employee is identified?

The employee population includes:

- Full-time, part-time, seasonal and temporary employees,
- US and non-US employees (but see exemptions below), and
- Employees from consolidated subsidiaries.

The employee population excludes:

- The PEO,
- Independent contractors and other workers who do not qualify as employees, and
- Furloughed employees based on facts and circumstances (C&DI 128C.04).

Independent contractors and leased workers include those:

- Who are employed, and whose compensation is determined by, an unaffiliated third party (consultants who determine their own compensation can generally be excluded), or
- Who are independent contractors according to a widely used test in other legal and regulatory contexts, such as for employment law or tax purposes (SEC Interpretive Release).

Use the employee population or statistical sampling and/or other reasonable methods to determine the median employee. Statistical sampling is typically most useful in cases where an international employee population and multiple payroll systems make it difficult to gather compensation data across the entire population. In the adopting release, the SEC declines to specify requirements for statistical sampling, such as appropriate sample sizes, confidence levels or other requirements. Examples of sampling methods that could be appropriate to use (alone or in combination), depending on the facts and circumstances, include:

- Simple random sampling,
- Stratified sampling,
- Cluster sampling, and
- Systemic sampling.

Companies may combine the use of reasonable estimates with the use of statistical sampling or other reasonable methodologies. (For more guidance, see the Division of Corporation Finance Guidance on Calculation of Pay Ratio Disclosure)

Recommended Disclosure: Disclose the number of employees in the employee population, and that the employee population includes full-time, part-time, seasonal and temporary employees, as well as employees from consolidated subsidiaries, and excludes the PEO.

Required Disclosure: Disclose the basis for excluding any independent contractors, leased workers, furloughed employees, or other workers who are not employees

Required Disclosure: Briefly describe the use of statistical sampling and/or other reasonable methodologies to identify the median employee.

Optional Disclosure: Disclose that the pay ratio includes compensation that is not necessarily comparable to that of the PEO, including non-annualized compensation for part-time, seasonal and temporary employees, and compensation for non-US employees.

4) Who can be exempted from the employee population?

If any non-US employees are excluded from a jurisdiction, the company must exclude all employees in that jurisdiction under the following de minimis or data privacy exemptions.

De Minimis Exemption: Up to 5% of non-US employees may be excluded.

Data Privacy Exemption: Non-US employees may be excluded if gathering the data necessary for the pay ratio calculation would violate data privacy rules.

In order to exclude employees based on the data privacy exemption, the company must:

- Make reasonable efforts to obtain the information, including seeking an exemption from the data privacy rules, and
- Obtain, and file as an exhibit, a legal opinion on the inability of the company to obtain the necessary information without violating the data privacy rules, including the company's inability to obtain an exemption.

Any employees excluded under the data privacy exemption count towards the 5% de minimis cap if the company intends to use both exemptions.

The number of employees excluded under the data privacy exemption may exceed the 5% de minimis cap, but then the de minimis exemption may not be used.

Business Combination Exemption: Employees from a business combination that is effective in the fiscal year may be excluded. Acquired employees from a business combination shall be included in the total employee count in the year following the transaction for purposes of evaluating whether a significant change has occurred that requires re-identification of the median employee.

Required Disclosure:

- If the de minimis exemption is used, list the jurisdictions excluded, the approximate number of employees excluded from each jurisdiction based on this exemption, the total number of US and non-US employees irrespective of the data privacy or de minimis exemption, and the total number of US and non-US employees used for the de minimis calculation.
- If the data privacy exemption is used, list the excluded jurisdictions, the specific data privacy rule, explain how compliance with the pay ratio rule violates the data privacy rules (including efforts to seek an exemption), and the approximate number of employees exempted from each jurisdiction based on this exemption.

- If the business combination exemption is used, disclose the approximate number of employees omitted and identify the acquired business.

Disclosure in Subsequent Years: If the business combination exemption is used, provide a brief explanation of whether including acquired employees in the next year constitutes a substantial change requiring re-identification of a new median employee.

5) What is the determination date for identifying the employee population?

The determination date must be within three months of the end of the fiscal year. Companies are considering dates that will produce the most consistent and predictable outcomes year to year. Common alternatives are:

- October 1st (earliest date available),
- December 31st (fiscal year end), and
- A date dependent on seasonal employment patterns.

Required Disclosure for Current and Subsequent Years: Identify the determination date, and if it changes from the previous year, identify the change and a brief explanation about the reasons for the change.

Optional Disclosure: Describe reasons for choosing the original determination date.

6) What is the measurement period for compensation used to determine the median employee?

The measurement period:

- Does not have to include the determination date for the employee population, and
- Does not have to be a full annual period.

The measurement period may be the company's prior fiscal year so long as there has not been a change in the company's employee population or employee compensation arrangements that would result in a significant change of its pay distribution to its workforce. (C&DI 128C.03)

Recommended Disclosure for Current and Subsequent Years: Identify the measurement period, and if it changes from the previous year, identify the change and a brief explanation about the reasons for the change.

Optional Disclosure: Describe reasons for selecting the original measurement period.

7) What "consistently applied compensation measure" (CACM) can be used to identify the median employee?

The CACM should:

- Be consistently applied to all employees included in the calculation, and

- Reasonably reflect the annual compensation of employees (C&DI 128C.01). For example, a company may use internal records that reasonably reflect annual compensation, even if those records do not include very element of compensation, such as equity awards widely distributed to employees.

The CACM should be easy to gather on a timely and reliable basis across jurisdictions. Commonly used CACM include W-2 wages, salaries and tips, or other information derived from tax and/or payroll records; or total cash compensation.

If the CACM is recorded on a basis other than the fiscal year (eg, the calendar year vs a May 31st fiscal year end), the company may use the same annual period that is used to derive those amounts as a measurement period.

Do not use hourly or annual rates of pay alone, without taking into account the number of hours actually worked (C&DI 128C.02).

Required Disclosure for Current and Subsequent Years: Disclose the CACM used, if it is other than annual total compensation, and if it changes from the previous year, identify the change and a brief explanation about the reasons for the change.

Optional Disclosure: Describe the reasons for selecting the original CACM.

8) How frequently must the median employee be identified? And how much information about the median employee should be disclosed?

Identify the median employee only once every three years and calculate total compensation for that employee each year, if during the last completed fiscal year, there has been no change in employee population or employee compensation arrangements that the company reasonably believes would result in a significant change to its pay ratio disclosure.

In subsequent years, if there has been a change that the company reasonably believes would result in a significant change in its pay ratio disclosure, the company shall re-identify the median employee for that fiscal year.

In subsequent years, if there has been a change in the original median employee's circumstances that the company reasonably believes would result in a significant change in its pay ratio disclosure, the company may use another employee whose compensation is substantially similar to the original median employee based on the compensation measure used to select the original median employee.

When the median employee's compensation has anomalous characteristics that have a significant impact on the pay ratio, the company may substitute another employee with substantially similar compensation to the original identified median employee (SEC Interpretive Release).

Required Disclosure: Registrants are not required to, and should not, disclose any personally identifiable information about the median employee other than his/her compensation.

Optional Disclosure: Companies may choose to generally identify an employee's position to put the compensation in context, but are not required to and should not do so if providing the information could identify the specific individual.

Required Disclosure for Subsequent Years: If there have been no changes that the company reasonably believes would significantly affect the pay ratio disclosure, disclose that it is using the same median employee in its pay ratio calculation and describe briefly the basis for its reasonable belief. For example, the company could disclose that there has been no change in its employee population or employee compensation arrangements that it believes would significantly impact the pay ratio disclosure.

9) How is annual total compensation calculated?

Annual total compensation means total compensation for the last completed fiscal year.

- Total compensation shall be determined in accordance with the rules for calculating total compensation for the Summary Compensation Table (Item 402(c) (x)).
- The company may annualize total compensation for all permanent employees (full-time or part-time) that were employed for less than the full fiscal year, such as new hires or employees on LOA).
- But do not make a full-time equivalent adjustment for part-time employees (C&DI 128C.02).
- If a non-salaried employee is the median employee, "base salary" refers to "wages plus overtime."

Cost-of-living adjustments (COLA) to the compensation of employees in jurisdictions other than the jurisdiction in which the PEO resides may be used. The company must use the same COLA in calculating the median employee's annual total compensation and disclose the employee's jurisdiction.

If there is more than one PEO serving during the fiscal year, the company may either combine the compensation provided to each PEO for the time served as PEO, or annualize the compensation of the PEO serving as of the determination date.

Personal benefits that aggregate less than $10,000 and compensation under non-discriminatory benefit plans may be included in annual total compensation for the median employee as long as these items are also included for the PEO.

Required Disclosure: If COLA is used, disclose the median employee's jurisdiction and briefly describe the COLA used to identify the median employee and the COLA used to calculate the median employee's annual total compensation, including the measure used as the basis for the COLA. Also disclose the median employee's annual total compensation and pay ratio without the COLA, identifying the median employee without COLA.

Required Disclosure: If multiple PEOs served during the year, describe the methodology used to calculate his/her total annual compensation.

Required Disclosure: Explain any difference between the PEO's annual total compensation used in the pay ratio and what is reflected in the Summary Compensation Table, if material.

Required Disclosure: If PEO annual total compensation is not yet determined, disclose that the pay ratio is not calculable until the PEO salary or bonus, as applicable, is determined. Disclose the date that the PEO's actual total compensation is expected to be determined. The pay ratio shall then be disclosed under Item 5.02(f) of a Form 8-K filing that discloses the PEO's salary or bonus in accordance with instruction 1 to Item 402(c)(2)(iii) and (iv).

Optional Disclosure: Disclose any unusual factors impacting median employee or CEO compensation that won't impact the calculation in subsequent years.

Optional Disclosure: Disclose the other elements of compensation included in the median employee's total annual compensation.

10) What material assumptions, adjustments or estimates were used to identify the median employee or to determine total compensation or any elements of total compensation?

Companies may use reasonable estimates both in the methodology used to identify the median employee and in calculating the total annual compensation or any elements of total compensation for employees other than the PEO.

See Division of Corporation Finance on Calculation of Pay Ratio Disclosure (09.21.17) for examples of situations where registrants may use reasonable estimates, examples of reasonable methodologies and hypothetical examples of the use of reasonable estimates, statistical sampling and other reasonable methods.

Required Disclosure: Briefly describe any material assumptions, adjustments (including COLA), or estimates used to identify the median employee or to determine total compensation or any elements of total compensation, which shall be consistently applied. The required descriptions should be a brief overview; it is not necessary to provide technical analyses or formulas.

Required Disclosure for Subsequent Years: If there are changes to the methodology or material assumptions, adjustments or estimates from those used in the prior fiscal year, and if the effects of any such change are significant, briefly describe the change and the reasons for the change. Also disclose if the company changes from using COLA to not using it, or vice versa.

Examples of material assumptions, adjustments and estimates may include compensation included or excluded in the CACM, estimates built into the CACM, COLA, exchange rates used to convert foreign compensation into US dollars, statistical sampling assumptions (such as lognoramal distribution of employee population), the basis for valuation of stock awards, and estimates of benefits included in annual total compensation, such as the actuarial present value of pension benefits or death benefits.

Applicable rules and guidance:

Adopting release: https://www.sec.gov/rules/final/2015/33-9877.pdf

Item 402(u) of Regulation S-K: https://www.law.cornell.edu/cfr/text/17/229.402

SEC Interpretive Guidance on Pay Ratio Disclosure: https://www.sec.gov/rules/interp/2017/33-10415.pdf

Division of Corporation Finance on Calculation of Pay Ratio Disclosure: https://www.sec.gov/corpfin/announcement/guidance-calculation-pay-ratio-disclosure

Pay Ratio Compliance Disclosures and Interpretations (Section 128C): https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm

Sample pay ratio disclosure for company with primarily domestic workforce:

The following pay ratio and supporting information compares the annual total compensation of our employees other than our CEO (including full-time, part-time, seasonal and temporary employees) and the annual total compensation of our CEO, as required by Section 953(b) of the Dodd-Frank Act. The pay ratio is a reasonable estimate calculated in a manner consistent with Item 402(u) of Regulation S-K.

For 2017, our last completed fiscal year:

- The median of the annual total compensation of all employees of our company (other than our CEO) was $[ ]; and
- The annual total compensation of our CEO, as reported in the Summary Compensation Table included in this Proxy Statement, was $[ ].

Based on this information, the ratio of the annual total compensation of our CEO to the median of the annual total compensation of all other employees was [ ] to 1.

To determine the pay ratio, we took the following steps:

We determined that as of [insert date], the determination date, our employee population consisted of approximately [insert number] individuals, primarily located in the United States. This population consists of our full-time, part-time, temporary and seasonal employees. [**If non-US employees are excluded**: Excluded from our employee population are [insert number] non-US employees, including approximately [insert number] individuals who are located in [break down by each foreign jurisdiction]. Excluding these employees, our employee population that was used to calculate the pay ratio consisted of [insert number] individuals.] [**If acquired employees are excluded**: Excluded from our employee population are approximately [insert number] employees who joined our company as part of our acquisition of [identify business] during the fiscal year.] [**If independent contractors are excluded**: We excluded certain independent contractors who are employed by, and whose compensation is determined by, an unaffiliated third party. [or describe other basis for exclusion]].

To identify the median employee, we compared the [insert CACM] over a period of [insert measurement period]. Adjustments, estimates and assumptions used in calculating this compensation measure include: [insert adjustments, estimates and assumptions]. [**Optional**: In making this determination, we annualized the compensation of approximately [ ] full-time and part-time permanent employees who were hired in 2017 but who did not work for us for the entire year.] [**Optional**: We selected the determination date and measurement period, because they are recent periods for which employee census and compensation information are readily available. We selected [insert CACM] because the information can be gathered for each employee from existing payroll systems in a timely and reliable manner, and because the measure is a reasonable reflection of total compensation for purposes of identifying the median employee.]

Once we identified our median employee, we calculated such employee's annual total compensation for 2017 in accordance with the requirements of Item 402(c)(2)(x) of Regulation S-K, resulting in annual total compensation of $[insert number]. [**Optional**: The median employee's annual total compensation includes [list elements of compensation]]. Adjustments, estimates and assumptions used to calculate total annual compensation, or elements of total annual compensation, include: [insert adjustments, estimates and assumptions].

With respect to the CEO, we used the amount reported as total compensation in the Summary Compensation Table included in this Proxy Statement. Any adjustments, estimates and assumptions used to calculate total annual compensation are described in footnotes to the Summary Compensation Table.

[**Optional**: In adopting the pay ratio rule, the SEC expressly sought to provide flexibility to each company to determine the methodology that best suits its own facts and circumstances. Our pay ratio should not be compared to other companies' pay ratios, because it is based on a methodology specific to the company, and certain material assumptions, adjustments and estimates have been made in the calculation of the pay ratio.]

[**Optional**: The pay ratio includes compensation that is not necessarily comparable to that of the CEO, including non-annualized compensation for part-time, seasonal and temporary employees, and compensation for non-US employees.]

GLASS LEWIS

2019

PROXY PAPER™

GUIDELINES

AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE

UNITED STATES

Table of Contents

Guidelines Introduction

SUMMARY OF CHANGES FOR THE 2019 UNITED STATES POLICY GUIDELINES

Glass Lewis evaluates these guidelines on an ongoing basis and formally updates them on an annual basis. This year we've made noteworthy revisions in the following areas, which are summarized below but discussed in greater detail in the relevant section of this document:

BOARD GENDER DIVERSITY

Our policy regarding board gender diversity, announced in November 2017, will take effect for meetings held after January 1, 2019. Under the updated policy, Glass Lewis will generally recommend voting against the nominating committee chair of a board that has no female members. Depending on other factors, including the size of the company, the industry in which the company operates and the governance profile of the company, we may extend this recommendation to vote against other nominating committee members. Also, when making these voting recommendations, we will carefully review a company's disclosure of its diversity considerations and may refrain from recommending shareholders vote against directors of companies outside the Russell 3000 index, or when boards have provided a sufficient rationale for not having any female board members. Such rationale may include, but is not limited to, a disclosed timetable for addressing the lack of diversity on the board, and any notable restrictions in place regarding the board's composition, such as director nomination agreements with significant investors.

CONFLICTING AND EXCLUDED PROPOSALS

We have codified our policy regarding conflicting special meeting shareholder resolutions:

- In instances where companies place on the ballot both a management and shareholder proposal requesting different thresholds for the right to call a special meeting, Glass Lewis will generally recommend voting for the lower threshold (in most instances, the shareholder proposal) and recommend voting against the higher threshold.

- In instances where there are conflicting management and shareholder special meeting proposals and the company does not currently maintain a special meeting right, Glass Lewis may consider recommending that shareholders vote in favor of the shareholder proposal and recommending that shareholders abstain from voting on management's proposal.

- In instances where companies have excluded a special meeting shareholder proposal in favor of a management proposal ratifying an existing special meeting right, Glass Lewis will typically recommend against the ratification proposal as well as members of the nominating and governance committee.

Glass Lewis will also be making note of instances where the SEC has allowed companies to exclude shareholder proposals, which may result in recommendations against members of the governance committee. In recent years, we have seen the dynamic nature of the considerations given by the SEC when determining whether companies may exclude certain shareholder proposals. We understand that not all shareholder proposals serve the long-term interests of shareholders and value and respect the limitations placed on shareholder proponents when submitting proposals to a vote of shareholders, as certain shareholder proposals can unduly burden companies. However, in the event that we believe that the exclusion of a shareholder proposal was detrimental to shareholders, we may, in very limited circumstances, recommend against the members of the governance committee.

ENVIRONMENTAL AND SOCIAL RISK OVERSIGHT

We have codified our approach to reviewing how boards are overseeing environmental and social issues. For large cap companies and in instances where we identify material oversight issues, Glass Lewis will review a company's overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues. Glass Lewis will also note instances where such oversight has not been clearly defined by companies in their governance documents.

Further, we have clarified that, in instances where it is clear that companies have not properly managed or mitigated environmental or social risks to the detriment of shareholder value, or when such mismanagement has threatened shareholder value, Glass Lewis may consider recommending that shareholders vote against members of the board who are responsible for oversight of environmental and social risks. In the absence of explicit board oversight of environmental and social issues, Glass Lewis may recommend that shareholders vote against members of the audit committee. In making these determinations, Glass Lewis will carefully review the situation, its effect on shareholder value, as well as any corrective action or other response made by the company.

RATIFICATION OF AUDITOR: ADDITIONAL CONSIDERATIONS

We have codified additional factors we will consider when reviewing auditor ratification proposals, and extended our discussion of auditor ratification to reflect updated disclosure standards. Specifically, additional factors we will consider include the auditor's tenure, a pattern of inaccurate audits, and any ongoing litigation or significant controversies which call into question an auditor's effectiveness. In limited cases, these factors may contribute to a recommendation against auditor ratification.

VIRTUAL-ONLY SHAREHOLDER MEETINGS

Our policy regarding virtual-only shareholder meetings, announced in November 2017, will take effect for meetings held after January 1, 2019. Under this new policy, for companies that opt to hold their annual shareholder meeting by virtual means, and without the option of attending the meeting in person, Glass Lewis will examine the company's disclosure of its virtual meeting procedures and may recommend voting against members of the governance committee if the company does not provide disclosure assuring that shareholders will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

Examples of effective disclosure include: (i) addressing the ability of shareholders to ask questions during the meeting, including time guidelines for shareholder questions, rules around what types of questions are allowed, and rules for how questions and comments will be recognized and disclosed to meeting participants; (ii) procedures, if any, for posting appropriate questions received during the meeting, and the company's answers, on the investor page of their website as soon as is practical after the meeting; (iii) addressing technical and logistical issues related to accessing the virtual meeting platform; and (iv) procedures for accessing technical support to assist in the event of any difficulties accessing the virtual meeting.

EXECUTIVE COMPENSATION

ADDED EXCISE TAX GROSS-UPS

When analyzing the performance of the board's compensation committee, we will now include the inclusion of new excise tax gross-up provisions as an additional factor that may contribute to a negative voting recommendation. When new excise tax gross-ups are provided for in executive employment agreements, we will consider recommending against members of the compensation committee, particularly in situations where a company previously committed not to provide any such entitlements in the future.

CONTRACTUAL PAYMENTS AND ARRANGEMENTS

We have extended our policy regarding contractual payments and arrangements, and clarified the terms that may contribute to a negative voting recommendation on a say-on-pay proposal. When evaluating severance and sign-on arrangements, we consider general U.S. market practice, as well as the size and design of entitlements.

EXECUTIVE COMPENSATION DISCLOSURE FOR SMALLER REPORTING COMPANIES

When analyzing the performance of a board's compensation committee, we will consider the impact of materially decreased CD&A disclosure when formulating our recommendations and may consider recommending against members of the committee where a reduction in disclosure substantially impacts shareholders' ability to make an informed assessment of the company's executive pay practices.

In June 2018, the SEC adopted amendments to raise the thresholds in the definition of "smaller reporting company" (or "SRC"), thereby significantly expanding the number of companies eligible to comply with reduced disclosure requirements. Specifically, a company with less than $250 million of public float, or a company with less than $100 million in annual revenues and either no public float or a public float of less than $700 million will be eligible. Under the lower disclosure standard, a company is only required to disclose two years of summary compensation table information rather than three, and for the top three named executive officers rather than five. Additionally, SRCs are not required to provide a compensation discussion and analysis, or tables detailing grants of plan-based awards to executives.

GRANTS OF FRONT-LOADED AWARDS

We have added a discussion of grants of front-loaded awards. We believe that there are certain risks associated with the use of this structure. When evaluating such awards, Glass Lewis takes quantum, design and the company's rationale for granting awards under this structure into consideration.

RECOUPMENT PROVISIONS ("CLAWBACKS")

We have clarified our policy regarding "Recoupment Provisions ("Clawbacks")", as we are increasingly focusing attention on the specific terms of recoupment policies beyond whether a company maintains a "clawback" that simply satisfies the minimum legal requirements.

OTHER EXECUTIVE COMPENSATION CLARIFICATIONS

In addition to the above, we have clarified and formalized several aspects of our current executive compensation policy guidelines. These include updated language in our discussion of how peer groups contribute to recommendations, revising our description of the pay-for-performance model, and adding discussion on the consideration of discretion in incentive plans. We have also added an explanation of the structure and disclosure ratings in our Proxy Papers and addressed certain recent developments in our discussion of director compensation and bonus plans.

CLARIFYING AMENDMENTS

While we have not changed our current approach to the following topics, we have codified our policies pertaining to the following:

AUDITOR RATIFICATION PROPOSALS AT BUSINESS DEVELOPMENT COMPANIES ("BDCS")

We have clarified why we do not recommend voting against members of the audit committees of business development companies for failing to include auditor ratification on the ballot alongside a proposal to issue shares below NAV.

DIRECTOR RECOMMENDATIONS ON THE BASIS OF COMPANY PERFORMANCE

With regard to our voting recommendations on the basis of company performance, we have clarified that in addition to the company's stock price performance, we consider the company's overall corporate governance, pay-for-performance alignment and responsiveness to shareholders, and that our recommendation is not based solely on stock price performance in the bottom quartile of the company's sector.

DIRECTOR AND OFFICER INDEMNIFICATION

We have added a section clarifying our approach to analyzing indemnification provisions for directors and officers. While Glass Lewis strongly believes that directors and officers should be held to the highest standard when carrying out their duties to shareholders, some protection from liability is reasonable to protect them against certain suits so that these officers feel comfortable taking measured risks that may benefit shareholders. As such, we find it appropriate for a company to provide indemnification and/or enroll in liability insurance to cover its directors and officers so long as the terms of such agreements are reasonable.

NOL PROTECTIVE AMENDMENTS

Previously, when companies proposed the adoption of a NOL Poison Pill in addition to a separate proposal seeking approval of "protective amendments" to restrict certain share transfers, we would generally support adoption of the NOL Pill while opposing the protective amendment, on the grounds that the pill itself would be sufficiently restrictive to protect the company's deferred tax assets. Given that it is common practice in the United States to seek approval of both proposals simultaneously in order to appropriately protect such assets, we have clarified that in cases where companies propose adoption of both a NOL Poison Pill and an additional bylaw amendment restricting certain share transfers, we may support both as long as we find the terms to be reasonable.

OTC-LISTED COMPANIES

We have added a section clarifying our approach to analyzing OTC-listed companies and our recommendations relating to lack of sufficient disclosure. Specifically, we have clarified that in cases where shareholders are not provided with information regarding the composition of the board, its key committees or other basic governance practices, we generally hold the chair of the board's governance committee responsible, or the chair of the board in cases where no governance committee is disclosed.

QUORUM REQUIREMENTS

We have added a section clarifying our approach to analyzing quorum requirements for shareholder meetings. Glass Lewis generally believes that a company's quorum requirement should be set at a level high enough to ensure that a broad range of shareholders is represented in person or by proxy, but low enough that the company can transact necessary business.

We generally believe that a majority of outstanding shares entitled to vote is an appropriate quorum for the transaction of business at shareholder meetings. However, should a company seek shareholder approval of a lower quorum requirement we will generally support a reduced quorum of at least one-third of shares entitled to vote, either in person or by proxy. When evaluating such proposals, we also consider the specific facts and circumstances of the company such as size and shareholder base.

HOUSEKEEPING CHANGES

Lastly, we have made several minor edits of a housekeeping nature, including the removal of several outdated references, in order to enhance clarity and readability.

A Board of Directors that Serves the Interests of Shareholders

ELECTION OF DIRECTORS

The purpose of Glass Lewis' proxy research and advice is to facilitate shareholder voting in favor of governance structures that will drive performance, create shareholder value and maintain a proper tone at the top. Glass Lewis looks for talented boards with a record of protecting shareholders and delivering value over the medium- and long-term. We believe that a board can best protect and enhance the interests of shareholders if it is sufficiently independent, has a record of positive performance, and consists of individuals with diverse backgrounds and a breadth and depth of relevant experience.

INDEPENDENCE

The independence of directors, or lack thereof, is ultimately demonstrated through the decisions they make. In assessing the independence of directors, we will take into consideration, when appropriate, whether a director has a track record indicative of making objective decisions. Likewise, when assessing the independence of directors we will also examine when a director's track record on multiple boards indicates a lack of objective decision-making. Ultimately, we believe the determination of whether a director is independent or not must take into consideration both compliance with the applicable independence listing requirements as well as judgments made by the director.

We look at each director nominee to examine the director's relationships with the company, the company's executives, and other directors. We do this to evaluate whether personal, familial, or financial relationships (not including director compensation) may impact the director's decisions. We believe that such relationships make it difficult for a director to put shareholders' interests above the director's or the related party's interests. We also believe that a director who owns more than 20% of a company can exert disproportionate influence on the board, and therefore believe such a director's independence may be hampered, in particular when serving on the audit committee.

Thus, we put directors into three categories based on an examination of the type of relationship they have with the company:

Independent Director — An independent director has no material financial, familial or other current relationships with the company, its executives, or other board members, except for board service and standard fees paid for that service. Relationships that existed within three to five years[1] before the inquiry are usually considered "current" for purposes of this test.

Affiliated Director — An affiliated director has, (or within the past three years, had) a material financial, familial or other relationship with the company or its executives, but is not an employee of the company.[2] This includes directors whose employers have a material financial relationship with the

1 NASDAQ originally proposed a five-year look-back period but both it and the NYSE ultimately settled on a three-year look-back prior to finalizing their rules. A five-year standard is more appropriate, in our view, because we believe that the unwinding of conflicting relationships between former management and board members is more likely to be complete and final after five years. However, Glass Lewis does not apply the five-year look-back period to directors who have previously served as executives of the company on an interim basis for less than one year.

2 If a company does not consider a non-employee director to be independent, Glass Lewis will classify that director as an affiliate.

company.[3] In addition, we view a director who either owns or controls 20% or more of the company's voting stock, or is an employee or affiliate of an entity that controls such amount, as an affiliate.[4]

We view 20% shareholders as affiliates because they typically have access to and involvement with the management of a company that is fundamentally different from that of ordinary shareholders. More importantly, 20% holders may have interests that diverge from those of ordinary holders, for reasons such as the liquidity (or lack thereof) of their holdings, personal tax issues, etc.

Glass Lewis applies a three-year look back period to all directors who have an affiliation with the company other than former employment, for which we apply a five-year look back.

Definition of **"Material"**: A material relationship is one in which the dollar value exceeds:

- $50,000 (or where no amount is disclosed) for directors who are paid for a service they have agreed to perform for the company, outside of their service as a director, including professional or other services; or

- $120,000 (or where no amount is disclosed) for those directors employed by a professional services firm such as a law firm, investment bank, or consulting firm and the company pays the firm, not the individual, for services.[5] This dollar limit would also apply to charitable contributions to schools where a board member is a professor; or charities where a director serves on the board or is an executive;[6] and any aircraft and real estate dealings between the company and the director's firm; or

- 1% of either company's consolidated gross revenue for other business relationships (e.g., where the director is an executive officer of a company that provides services or products to or receives services or products from the company).[7]

Definition of **"Familial"** — Familial relationships include a person's spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces, nephews, in-laws, and anyone (other than domestic employees) who shares such person's home. A director is an affiliate if: i) he or she has a family member who is employed by the company and receives more than $120,000 in annual compensation; or, ii) he or she has a family member who is employed by the company and the company does not disclose this individual's compensation.

Definition of **"Company"** — A company includes any parent or subsidiary in a group with the company or any entity that merged with, was acquired by, or acquired the company.

Inside Director — An inside director simultaneously serves as a director and as an employee of the company. This category may include a board chair who acts as an employee of the company or is paid as an employee of the company. In our view, an inside director who derives a greater amount of income as a result of affiliated transactions with the company rather than through compensation paid by the company (i.e., salary, bonus, etc. as a company employee) faces a conflict between making decisions that are in the best interests of the company versus those in the director's own best interests. Therefore, we will recommend voting against such a director.

---

3 We allow a five-year grace period for former executives of the company or merged companies who have consulting agreements with the surviving company. (We do not automatically recommend voting against directors in such cases for the first five years.) If the consulting agreement persists after this five-year grace period, we apply the materiality thresholds outlined in the definition of "material."

4 This includes a director who serves on a board as a representative (as part of his or her basic responsibilities) of an investment firm with greater than 20% ownership. However, while we will generally consider him/her to be affiliated, we will not recommend voting against unless (i) the investment firm has disproportionate board representation or (ii) the director serves on the audit committee.

5 We may deem such a transaction to be immaterial where the amount represents less than 1% of the firm's annual revenues and the board provides a compelling rationale as to why the director's independence is not affected by the relationship.

6 We will generally take into consideration the size and nature of such charitable entities in relation to the company's size and industry along with any other relevant factors such as the director's role at the charity. However, unlike for other types of related party transactions, Glass Lewis generally does not apply a look-back period to affiliated relationships involving charitable contributions; if the relationship between the director and the school or charity ceases, or if the company discontinues its donations to the entity, we will consider the director to be independent.

7 This includes cases where a director is employed by, or closely affiliated with, a private equity firm that profits from an acquisition made by the company. Unless disclosure suggests otherwise, we presume the director is affiliated.

Additionally, we believe a director who is currently serving in an interim management position should be considered an insider, while a director who previously served in an interim management position for less than one year and is no longer serving in such capacity is considered independent. Moreover, a director who previously served in an interim management position for over one year and is no longer serving in such capacity is considered an affiliate for five years following the date of his/her resignation or departure from the interim management position.

VOTING RECOMMENDATIONS ON THE BASIS OF BOARD INDEPENDENCE

Glass Lewis believes a board will be most effective in protecting shareholders' interests if it is at least two-thirds independent. We note that each of the Business Roundtable, the Conference Board, and the Council of Institutional Investors advocates that two-thirds of the board be independent. Where more than one-third of the members are affiliated or inside directors, we typically[8] recommend voting against some of the inside and/or affiliated directors in order to satisfy the two-thirds threshold.

In the case of a less than two-thirds independent board, Glass Lewis strongly supports the existence of a presiding or lead director with authority to set the meeting agendas and to lead sessions outside the insider chair's presence.

In addition, we scrutinize avowedly "independent" chairs and lead directors. We believe that they should be unquestionably independent or the company should not tout them as such.

COMMITTEE INDEPENDENCE

We believe that only independent directors should serve on a company's audit, compensation, nominating, and governance committees.[9] We typically recommend that shareholders vote against any affiliated or inside director seeking appointment to an audit, compensation, nominating, or governance committee, or who has served in that capacity in the past year.

Pursuant to Section 952 of the Dodd-Frank Act, as of January 11, 2013, the SEC approved new listing requirements for both the NYSE and NASDAQ which require that boards apply enhanced standards of independence when making an affirmative determination of the independence of compensation committee members. Specifically, when making this determination, in addition to the factors considered when assessing general director independence, the board's considerations must include: (i) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the listed company to the director (the "Fees Factor"); and (ii) whether the director is affiliated with the listing company, its subsidiaries, or affiliates of its subsidiaries (the "Affiliation Factor").

Glass Lewis believes it is important for boards to consider these enhanced independence factors when assessing compensation committee members. However, as discussed above in the section titled Independence, we apply our own standards when assessing the independence of directors, and these standards also take into account consulting and advisory fees paid to the director, as well as the director's affiliations with the company and its subsidiaries and affiliates. We may recommend voting against compensation committee members who are not independent based on our standards.

8 With a staggered board, if the affiliates or insiders that we believe should not be on the board are not up for election, we will express our concern regarding those directors, but we will not recommend voting against the other affiliates or insiders who are up for election just to achieve two-thirds independence. However, we will consider recommending voting against the directors subject to our concern at their next election if the issue giving rise to the concern is not resolved.

9 We will recommend voting against an audit committee member who owns 20% or more of the company's stock, and we believe that there should be a maximum of one director (or no directors if the committee is comprised of less than three directors) who owns 20% or more of the company's stock on the compensation, nominating, and governance committees.

INDEPENDENT CHAIR

Glass Lewis believes that separating the roles of CEO (or, more rarely, another executive position) and chair creates a better governance structure than a combined CEO/chair position. An executive manages the business according to a course the board charts. Executives should report to the board regarding their performance in achieving goals set by the board. This is needlessly complicated when a CEO chairs the board, since a CEO/chair presumably will have a significant influence over the board.

While many companies have an independent lead or presiding director who performs many of the same functions of an independent chair (e.g., setting the board meeting agenda), we do not believe this alternate form of independent board leadership provides as robust protection for shareholders as an independent chair.

It can become difficult for a board to fulfill its role of overseer and policy setter when a CEO/chair controls the agenda and the boardroom discussion. Such control can allow a CEO to have an entrenched position, leading to longer-than-optimal terms, fewer checks on management, less scrutiny of the business operation, and limitations on independent, shareholder-focused goal-setting by the board.

A CEO should set the strategic course for the company, with the board's approval, and the board should enable the CEO to carry out the CEO's vision for accomplishing the board's objectives. Failure to achieve the board's objectives should lead the board to replace that CEO with someone in whom the board has confidence.

Likewise, an independent chair can better oversee executives and set a pro-shareholder agenda without the management conflicts that a CEO and other executive insiders often face. Such oversight and concern for shareholders allows for a more proactive and effective board of directors that is better able to look out for the interests of shareholders.

Further, it is the board's responsibility to select a chief executive who can best serve a company and its shareholders and to replace this person when his or her duties have not been appropriately fulfilled. Such a replacement becomes more difficult and happens less frequently when the chief executive is also in the position of overseeing the board.

Glass Lewis believes that the installation of an independent chair is almost always a positive step from a corporate governance perspective and promotes the best interests of shareholders. Further, the presence of an independent chair fosters the creation of a thoughtful and dynamic board, not dominated by the views of senior management. Encouragingly, many companies appear to be moving in this direction — one study indicates that only 10 percent of incoming CEOs in 2014 were awarded the chair title, versus 48 percent in 2002.[10] Another study finds that 51 percent of S&P 500 boards now separate the CEO and chair roles, up from 37 percent in 2009, although the same study found that only 28 percent of S&P 500 boards have truly independent chairs.[11]

We do not recommend that shareholders vote against CEOs who chair the board. However, we typically recommend that our clients support separating the roles of chair and CEO whenever that question is posed in a proxy (typically in the form of a shareholder proposal), as we believe that it is in the long-term best interests of the company and its shareholders.

Further, where the company has neither an independent chair nor independent lead director, we will recommend voting against the chair of the governance committee.

10 Ken Favaro, Per-Ola Karlsson and Gary L. Nelson. "The $112 Billion CEO Succession Problem." (*Strategy+Business*, Issue 79, Summer 2015).
11 Spencer Stuart Board Index, 2017, p. 24.

PERFORMANCE

The most crucial test of a board's commitment to the company and its shareholders lies in the actions of the board and its members. We look at the performance of these individuals as directors and executives of the company and of other companies where they have served.

We find that a director's past conduct is often indicative of future conduct and performance. We often find directors with a history of overpaying executives or of serving on boards where avoidable disasters have occurred serving on the boards of companies with similar problems. Glass Lewis has a proprietary database of directors serving at over 8,000 of the most widely held U.S. companies. We use this database to track the performance of directors across companies.

VOTING RECOMMENDATIONS ON THE BASIS OF PERFORMANCE

We typically recommend that shareholders vote against directors who have served on boards or as executives of companies with records of poor performance, inadequate risk oversight, excessive compensation, audit- or accounting-related issues, and/or other indicators of mismanagement or actions against the interests of shareholders. We will reevaluate such directors based on, among other factors, the length of time passed since the incident giving rise to the concern, shareholder support for the director, the severity of the issue, the director's role (e.g., committee membership), director tenure at the subject company, whether ethical lapses accompanied the oversight lapse, and evidence of strong oversight at other companies.

Likewise, we examine the backgrounds of those who serve on key board committees to ensure that they have the required skills and diverse backgrounds to make informed judgments about the subject matter for which the committee is responsible.

We believe shareholders should avoid electing directors who have a record of not fulfilling their responsibilities to shareholders at any company where they have held a board or executive position. We typically recommend voting against:

1. A director who fails to attend a minimum of 75% of board and applicable committee meetings, calculated in the aggregate.[12]

2. A director who belatedly filed a significant form(s) 4 or 5, or who has a pattern of late filings if the late filing was the director's fault (we look at these late filing situations on a case-by-case basis).

3. A director who is also the CEO of a company where a serious and material restatement has occurred after the CEO had previously certified the pre-restatement financial statements.

4. A director who has received two against recommendations from Glass Lewis for identical reasons within the prior year at different companies (the same situation must also apply at the company being analyzed).

Furthermore, with consideration given to the company's overall corporate governance, pay-for-performance alignment and board responsiveness to shareholders, we may recommend voting against directors who served throughout a period in which the company performed significantly worse than peers and the directors have not taken reasonable steps to address the poor performance.

12 However, where a director has served for less than one full year, we will typically not recommend voting against for failure to attend 75% of meetings. Rather, we will note the poor attendance with a recommendation to track this issue going forward. We will also refrain from recommending to vote against directors when the proxy discloses that the director missed the meetings due to serious illness or other extenuating circumstances.

BOARD RESPONSIVENESS

Glass Lewis believes that any time 20% or more of shareholders vote contrary to the recommendation of management, the board should, depending on the issue, demonstrate some level of responsiveness to address the concerns of shareholders. These include instances when 20% or more of shareholders (excluding abstentions and broker non-votes): WITHHOLD votes from (or vote AGAINST) a director nominee, vote AGAINST a management-sponsored proposal, or vote FOR a shareholder proposal. In our view, a 20% threshold is significant enough to warrant a close examination of the underlying issues and an evaluation of whether or not a board response was warranted and, if so, whether the board responded appropriately following the vote, particularly in the case of a compensation or director election proposal. While the 20% threshold alone will not automatically generate a negative vote recommendation from Glass Lewis on a future proposal (e.g., to recommend against a director nominee, against a say-on-pay proposal, etc.), it may be a contributing factor to our recommendation to vote against management's recommendation in the event we determine that the board did not respond appropriately.

With regards to companies where voting control is held through a dual-class share structure with disproportionate voting and economic rights, we will carefully examine the level of approval or disapproval attributed to unaffiliated shareholders when determining whether board responsiveness is warranted. Where vote results indicate that a majority of unaffiliated shareholders supported a shareholder proposal or opposed a management proposal, we believe the board should demonstrate an appropriate level of responsiveness.

As a general framework, our evaluation of board responsiveness involves a review of publicly available disclosures (e.g., the proxy statement, annual report, 8-Ks, company website, etc.) released following the date of the company's last annual meeting up through the publication date of our most current Proxy Paper. Depending on the specific issue, our focus typically includes, but is not limited to, the following:

- At the board level, any changes in directorships, committee memberships, disclosure of related party transactions, meeting attendance, or other responsibilities;
- Any revisions made to the company's articles of incorporation, bylaws or other governance documents;
- Any press or news releases indicating changes in, or the adoption of, new company policies, business practices or special reports; and
- Any modifications made to the design and structure of the company's compensation program, as well as an assessment of the company's engagement with shareholders on compensation issues as discussed in the CD&A, particularly following a material vote against a company's say-on-pay.

Our Proxy Paper analysis will include a case-by-case assessment of the specific elements of board responsiveness that we examined along with an explanation of how that assessment impacts our current voting recommendations.

THE ROLE OF A COMMITTEE CHAIR

Glass Lewis believes that a designated committee chair maintains primary responsibility for the actions of his or her respective committee. As such, many of our committee-specific voting recommendations are against the applicable committee chair rather than the entire committee (depending on the seriousness of the issue). However, in cases where we would ordinarily recommend voting against a committee chair but the chair is not specified, we apply the following general rules, which apply throughout our guidelines:

- If there is no committee chair, we recommend voting against the longest-serving committee member or, if the longest-serving committee member cannot be determined, the longest-serving board member serving on the committee (i.e., in either case, the "senior director"); and

- If there is no committee chair, but multiple senior directors serving on the committee, we recommend voting against both (or all) such senior directors.

In our view, companies should provide clear disclosure of which director is charged with overseeing each committee. In cases where that simple framework is ignored and a reasonable analysis cannot determine which committee member is the designated leader, we believe shareholder action against the longest serving committee member(s) is warranted. Again, this only applies if we would ordinarily recommend voting against the committee chair but there is either no such position or no designated director in such role.

On the contrary, in cases where there is a designated committee chair and the recommendation is to vote against the committee chair, but the chair is not up for election because the board is staggered, we do not recommend voting against any members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.

AUDIT COMMITTEES AND PERFORMANCE

Audit committees play an integral role in overseeing the financial reporting process because stable capital markets depend on reliable, transparent, and objective financial information to support an efficient and effective capital market process. Audit committees play a vital role in providing this disclosure to shareholders.

When assessing an audit committee's performance, we are aware that an audit committee does not prepare financial statements, is not responsible for making the key judgments and assumptions that affect the financial statements, and does not audit the numbers or the disclosures provided to investors. Rather, an audit committee member monitors and oversees the process and procedures that management and auditors perform. The 1999 Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees stated it best:

> *A proper and well-functioning system exists, therefore, when the three main groups responsible for financial reporting — the full board including the audit committee, financial management including the internal auditors, and the outside auditors — form a 'three legged stool' that supports responsible financial disclosure and active participatory oversight. However, in the view of the Committee, the audit committee must be 'first among equals' in this process, since the audit committee is an extension of the full board and hence the ultimate monitor of the process.*

STANDARDS FOR ASSESSING THE AUDIT COMMITTEE

For an audit committee to function effectively on investors' behalf, it must include members with sufficient knowledge to diligently carry out their responsibilities. In its audit and accounting recommendations, the Conference Board Commission on Public Trust and Private Enterprise said "members of the audit committee must be independent and have both knowledge and experience in auditing financial matters."[13]

We are skeptical of audit committees where there are members that lack expertise as a Certified Public Accountant (CPA), Chief Financial Officer (CFO) or corporate controller, or similar experience. While we will not necessarily recommend voting against members of an audit committee when such expertise is lacking, we are more likely to recommend voting against committee members when a problem such as a restatement occurs and such expertise is lacking.

Glass Lewis generally assesses audit committees against the decisions they make with respect to their oversight and monitoring role. The quality and integrity of the financial statements and earnings reports, the completeness of disclosures necessary for investors to make informed decisions, and the effectiveness of the internal controls should provide reasonable assurance that the financial statements are materially free from errors. The independence of the external auditors and the results of their work all provide useful information by which to assess the audit committee.

13 Commission on Public Trust and Private Enterprise. The Conference Board. 2003.

When assessing the decisions and actions of the audit committee, we typically defer to its judgment and generally recommend voting in favor of its members. However, we will consider recommending that shareholders vote against the following:[14]

1. All members of the audit committee when options were backdated, there is a lack of adequate controls in place, there was a resulting restatement, and disclosures indicate there was a lack of documentation with respect to the option grants.

2. The audit committee chair, if the audit committee does not have a financial expert or the committee's financial expert does not have a demonstrable financial background sufficient to understand the financial issues unique to public companies.

3. The audit committee chair, if the audit committee did not meet at least four times during the year.

4. The audit committee chair, if the committee has less than three members.

5. Any audit committee member who sits on more than three public company audit committees, unless the audit committee member is a retired CPA, CFO, controller or has similar experience, in which case the limit shall be four committees, taking time and availability into consideration including a review of the audit committee member's attendance at all board and committee meetings.[15]

6. All members of an audit committee who are up for election and who served on the committee at the time of the audit, if audit and audit-related fees total one-third or less of the total fees billed by the auditor.

7. The audit committee chair when tax and/or other fees are greater than audit and audit-related fees paid to the auditor for more than one year in a row (in which case we also recommend against ratification of the auditor).

8. All members of an audit committee where non-audit fees include fees for tax services (including, but not limited to, such things as tax avoidance or shelter schemes) for senior executives of the company. Such services are prohibited by the Public Company Accounting Oversight Board ("PCAOB").

9. All members of an audit committee that reappointed an auditor that we no longer consider to be independent for reasons unrelated to fee proportions.

10. All members of an audit committee when audit fees are excessively low, especially when compared with other companies in the same industry.

11. The audit committee chair[16] if the committee failed to put auditor ratification on the ballot for shareholder approval. However, if the non-audit fees or tax fees exceed audit plus audit-related fees in either the current or the prior year, then Glass Lewis will recommend voting against the entire audit committee.

12. All members of an audit committee where the auditor has resigned and reported that a section 10A[17] letter has been issued.

---

14 As discussed under the section labeled "Committee Chair," where the recommendation is to vote against the committee chair but the chair is not up for election because the board is staggered, we do not recommend voting against the members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.

15 Glass Lewis may exempt certain audit committee members from the above threshold if, upon further analysis of relevant factors such as the director's experience, the size, industry-mix and location of the companies involved and the director's attendance at all the companies, we can reasonably determine that the audit committee member is likely not hindered by multiple audit committee commitments.

16 As discussed under the section labeled "Committee Chair," in all cases, if the chair of the committee is not specified, we recommend voting against the director who has been on the committee the longest.

17 Auditors are required to report all potential illegal acts to management and the audit committee unless they are clearly inconsequential in nature. If the audit committee or the board fails to take appropriate action on an act that has been determined to be a violation of the law, the independent auditor is required to send a section 10A letter to the SEC. Such letters are rare and therefore we believe should be taken seriously.

13. All members of an audit committee at a time when material accounting fraud occurred at the company.[18]

14. All members of an audit committee at a time when annual and/or multiple quarterly financial statements had to be restated, and any of the following factors apply:

    - The restatement involves fraud or manipulation by insiders;
    - The restatement is accompanied by an SEC inquiry or investigation;
    - The restatement involves revenue recognition;
    - The restatement results in a greater than 5% adjustment to costs of goods sold, operating expense, or operating cash flows; or
    - The restatement results in a greater than 5% adjustment to net income, 10% adjustment to assets or shareholders equity, or cash flows from financing or investing activities.

15. All members of an audit committee if the company repeatedly fails to file its financial reports in a timely fashion. For example, the company has filed two or more quarterly or annual financial statements late within the last five quarters.

16. All members of an audit committee when it has been disclosed that a law enforcement agency has charged the company and/or its employees with a violation of the Foreign Corrupt Practices Act (FCPA).

17. All members of an audit committee when the company has aggressive accounting policies and/or poor disclosure or lack of sufficient transparency in its financial statements.

18. All members of the audit committee when there is a disagreement with the auditor and the auditor resigns or is dismissed (e.g., the company receives an adverse opinion on its financial statements from the auditor).

19. All members of the audit committee if the contract with the auditor specifically limits the auditor's liability to the company for damages.[19]

20. All members of the audit committee who served since the date of the company's last annual meeting, and when, since the last annual meeting, the company has reported a material weakness that has not yet been corrected, or, when the company has an ongoing material weakness from a prior year that has not yet been corrected.

We also take a dim view of audit committee reports that are boilerplate, and which provide little or no information or transparency to investors. When a problem such as a material weakness, restatement or late filings occurs, we take into consideration, in forming our judgment with respect to the audit committee, the transparency of the audit committee report.

COMPENSATION COMMITTEE PERFORMANCE

Compensation committees have a critical role in determining the compensation of executives. This includes deciding the basis on which compensation is determined, as well as the amounts and types of compensation

18 Research indicates that revenue fraud now accounts for over 60% of SEC fraud cases, and that companies that engage in fraud experience significant negative abnormal stock price declines—facing bankruptcy, delisting, and material asset sales at much higher rates than do non-fraud firms (Committee of Sponsoring Organizations of the Treadway Commission. "Fraudulent Financial Reporting: 1998-2007." May 2010).

19 The Council of Institutional Investors. "Corporate Governance Policies," p. 4, April 5, 2006; and "Letter from Council of Institutional Investors to the AICPA," November 8, 2006.

to be paid. This process begins with the hiring and initial establishment of employment agreements, including the terms for such items as pay, pensions and severance arrangements. It is important in establishing compensation arrangements that compensation be consistent with, and based on the long-term economic performance of, the business's long-term shareholders returns.

Compensation committees are also responsible for the oversight of the transparency of compensation. This oversight includes disclosure of compensation arrangements, the matrix used in assessing pay for performance, and the use of compensation consultants. In order to ensure the independence of the board's compensation consultant, we believe the compensation committee should only engage a compensation consultant that is not also providing any services to the company or management apart from their contract with the compensation committee. It is important to investors that they have clear and complete disclosure of all the significant terms of compensation arrangements in order to make informed decisions with respect to the oversight and decisions of the compensation committee.

Finally, compensation committees are responsible for oversight of internal controls over the executive compensation process. This includes controls over gathering information used to determine compensation, establishment of equity award plans, and granting of equity awards. For example, the use of a compensation consultant who maintains a business relationship with company management may cause the committee to make decisions based on information that is compromised by the consultant's conflict of interests. Lax controls can also contribute to improper awards of compensation such as through granting of backdated or spring-loaded options, or granting of bonuses when triggers for bonus payments have not been met.

Central to understanding the actions of a compensation committee is a careful review of the Compensation Discussion and Analysis ("CD&A") report included in each company's proxy. We review the CD&A in our evaluation of the overall compensation practices of a company, as overseen by the compensation committee. The CD&A is also integral to the evaluation of compensation proposals at companies, such as advisory votes on executive compensation, which allow shareholders to vote on the compensation paid to a company's top executives.

When assessing the performance of compensation committees, we will consider recommending that shareholders vote against the following:[20]

1. All members of a compensation committee during whose tenure the committee failed to address shareholder concerns following majority shareholder rejection of the say-on-pay proposal in the previous year. Where the proposal was approved but there was a significant shareholder vote (i.e., greater than 20% of votes cast) against the say-on-pay proposal in the prior year, if the board did not respond sufficiently to the vote including actively engaging shareholders on this issue, we will also consider recommending voting against the chair of the compensation committee or all members of the compensation committee, depending on the severity and history of the compensation problems and the level of shareholder opposition.

2. All members of the compensation committee who are up for election and served when the company failed to align pay with performance if shareholders are not provided with an advisory vote on executive compensation at the annual meeting.[21]

---

20 As discussed under the section labeled "Committee Chair," where the recommendation is to vote against the committee chair and the chair is not up for election because the board is staggered, we do not recommend voting against any members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.

21 If a company provides shareholders with a say-on-pay proposal, we will initially only recommend voting against the company's say-on-pay proposal and will not recommend voting against the members of the compensation committee unless there is a pattern of failing to align pay and performance and/or the company exhibits egregious compensation practices. However, if the company repeatedly fails to align pay and performance, we will then recommend against the members of the compensation committee in addition to recommending voting against the say-on-pay proposal. For cases in which the disconnect between pay and performance is marginal and the company has outperformed its peers, we will consider not recommending against compensation committee members. In addition, if a company provides shareholders with a say-on-pay proposal, we will initially only recommend voting against the company's say-on-pay proposal and will not recommend voting against the members of the compensation committee unless there is a pattern of failing to align pay and performance and/or the company exhibits egregious compensation practices. However, if the company repeatedly fails to align pay and performance, we will then recommend against the members of the compensation committee in addition to recommending voting against the say-on-pay proposal.

3. Any member of the compensation committee who has served on the compensation committee of at least two other public companies that have consistently failed to align pay with performance and whose oversight of compensation at the company in question is suspect.

4. All members of the compensation committee (during the relevant time period) if the company entered into excessive employment agreements and/or severance agreements.

5. All members of the compensation committee when performance goals were changed (i.e., lowered) when employees failed or were unlikely to meet original goals, or performance-based compensation was paid despite goals not being attained.

6. All members of the compensation committee if excessive employee perquisites and benefits were allowed.

7. The compensation committee chair if the compensation committee did not meet during the year.

8. All members of the compensation committee when the company repriced options or completed a "self tender offer" without shareholder approval within the past two years.

9. All members of the compensation committee when vesting of in-the-money options is accelerated.

10. All members of the compensation committee when option exercise prices were backdated. Glass Lewis will recommend voting against an executive director who played a role in and participated in option backdating.

11. All members of the compensation committee when option exercise prices were spring-loaded or otherwise timed around the release of material information.

12. All members of the compensation committee when a new employment contract is given to an executive that does not include a clawback provision and the company had a material restatement, especially if the restatement was due to fraud.

13. The chair of the compensation committee where the CD&A provides insufficient or unclear information about performance metrics and goals, where the CD&A indicates that pay is not tied to performance, or where the compensation committee or management has excessive discretion to alter performance terms or increase amounts of awards in contravention of previously defined targets.

14. All members of the compensation committee during whose tenure the committee failed to implement a shareholder proposal regarding a compensation-related issue, where the proposal received the affirmative vote of a majority of the voting shares at a shareholder meeting, and when a reasonable analysis suggests that the compensation committee (rather than the governance committee) should have taken steps to implement the request.[22]

15. All members of the compensation committee when the board has materially decreased proxy statement disclosure regarding executive compensation policies and procedures in a manner which substantially impacts shareholders' ability to make an informed assessment of the company's executive pay practices.

16. All members of the compensation committee when new excise tax gross-up provisions are adopted in employment agreements with executives, particularly in cases where the company previously committed not to provide any such entitlements in the future.

22 In all other instances (i.e., a non-compensation-related shareholder proposal should have been implemented) we recommend that shareholders vote against the members of the governance committee.

NOMINATING AND GOVERNANCE COMMITTEE PERFORMANCE

The nominating and governance committee, as an agent for the shareholders, is responsible for the governance by the board of the company and its executives. In performing this role, the committee is responsible and accountable for selection of objective and competent board members. It is also responsible for providing leadership on governance policies adopted by the company, such as decisions to implement shareholder proposals that have received a majority vote. (At most companies, a single committee is charged with these oversight functions; at others, the governance and nominating responsibilities are apportioned among two separate committees.)

Consistent with Glass Lewis' philosophy that boards should have diverse backgrounds and members with a breadth and depth of relevant experience, we believe that nominating and governance committees should consider diversity when making director nominations within the context of each specific company and its industry. In our view, shareholders are best served when boards make an effort to ensure a constituency that is not only reasonably diverse on the basis of age, race, gender and ethnicity, but also on the basis of geographic knowledge, industry experience, board tenure and culture.

Regarding the committee responsible for governance, we will consider recommending that shareholders vote against the following:[23]

1. All members of the governance committee[24] during whose tenure a shareholder proposal relating to important shareholder rights received support from a majority of the votes cast (excluding abstentions and broker non-votes) and the board has not begun to implement or enact the proposal's subject matter.[25] Examples of such shareholder proposals include those seeking a declassified board structure, a majority vote standard for director elections, or a right to call a special meeting. In determining whether a board has sufficiently implemented such a proposal, we will examine the quality of the right enacted or proffered by the board for any conditions that may unreasonably interfere with the shareholders' ability to exercise the right (e.g., overly restrictive procedural requirements for calling a special meeting).

2. The governance committee chair,[26] when the chair is not independent and an independent lead or presiding director has not been appointed.[27]

3. In the absence of a nominating committee, the governance committee chair when there are less than five or the whole nominating committee when there are more than 20 members on the board.

4. The governance committee chair, when the committee fails to meet at all during the year.

5. The governance committee chair, when for two consecutive years the company provides what we consider to be "inadequate" related party transaction disclosure (i.e., the nature of such transactions and/or the monetary amounts involved are unclear or excessively vague, thereby preventing a share-

23 As discussed in the guidelines section labeled "Committee Chair," where we would recommend to vote against the committee chair but the chair is not up for election because the board is staggered, we do not recommend voting against any members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.

24 If the board does not have a committee responsible for governance oversight and the board did not implement a shareholder proposal that received the requisite support, we will recommend voting against the entire board. If the shareholder proposal at issue requested that the board adopt a declassified structure, we will recommend voting against all director nominees up for election.

25 Where a compensation-related shareholder proposal should have been implemented, and when a reasonable analysis suggests that the members of the compensation committee (rather than the governance committee) bear the responsibility for failing to implement the request, we recommend that shareholders only vote against members of the compensation committee.

26 As discussed in the guidelines section labeled "Committee Chair," if the committee chair is not specified, we recommend voting against the director who has been on the committee the longest. If the longest-serving committee member cannot be determined, we will recommend voting against the longest-serving board member serving on the committee.

27 We believe that one independent individual should be appointed to serve as the lead or presiding director. When such a position is rotated among directors from meeting to meeting, we will recommend voting against the governance committee chair as we believe the lack of fixed lead or presiding director means that, effectively, the board does not have an independent board leader.

holder from being able to reasonably interpret the independence status of multiple directors above and beyond what the company maintains is compliant with SEC or applicable stock exchange listing requirements).

6. The governance committee chair, when during the past year the board adopted a forum selection clause (i.e., an exclusive forum provision)[28] without shareholder approval, or if the board is currently seeking shareholder approval of a forum selection clause pursuant to a bundled bylaw amendment rather than as a separate proposal.

7. All members of the governance committee during whose tenure the board adopted, without shareholder approval, provisions in its charter or bylaws that, through rules on director compensation, may inhibit the ability of shareholders to nominate directors.

8. The governance committee chair when the board takes actions to limit shareholders' ability to vote on matters material to shareholder rights (e.g., through the practice of excluding a shareholder proposal by means of ratifying a management proposal that is materially different from the shareholder proposal).

In addition, we may recommend that shareholders vote against the chair of the governance committee, or the entire committee, where the board has amended the company's governing documents to reduce or remove important shareholder rights, or to otherwise impede the ability of shareholders to exercise such right, and has done so without seeking shareholder approval. Examples of board actions that may cause such a recommendation include: the elimination of the ability of shareholders to call a special meeting or to act by written consent; an increase to the ownership threshold required for shareholders to call a special meeting; an increase to vote requirements for charter or bylaw amendments; the adoption of provisions that limit the ability of shareholders to pursue full legal recourse — such as bylaws that require arbitration of shareholder claims or that require shareholder plaintiffs to pay the company's legal expenses in the absence of a court victory (i.e., "fee-shifting" or "loser pays" bylaws); the adoption of a classified board structure; and the elimination of the ability of shareholders to remove a director without cause.

Regarding the nominating committee, we will consider recommending that shareholders vote against the following:[29]

1. All members of the nominating committee, when the committee nominated or renominated an individual who had a significant conflict of interest or whose past actions demonstrated a lack of integrity or inability to represent shareholder interests.

2. The nominating committee chair, if the nominating committee did not meet during the year.

3. In the absence of a governance committee, the nominating committee chair[30] when the chair is not independent, and an independent lead or presiding director has not been appointed.[31]

4. The nominating committee chair, when there are less than five or the whole nominating committee when there are more than 20 members on the board.[32]

---

28 A forum selection clause is a bylaw provision stipulating that a certain state, typically where the company is incorporated, which is most often Delaware, shall be the exclusive forum for all intra-corporate disputes (e.g., shareholder derivative actions, assertions of claims of a breach of fiduciary duty, etc.). Such a clause effectively limits a shareholder's legal remedy regarding appropriate choice of venue and related relief offered under that state's laws and rulings.

29 As discussed in the guidelines section labeled "Committee Chair," where we would recommend to vote against the committee chair but the chair is not up for election because the board is staggered, we do not recommend voting against any members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.

30 As discussed under the section labeled "Committee Chair," if the committee chair is not specified, we will recommend voting against the director who has been on the committee the longest. If the longest-serving committee member cannot be determined, we will recommend voting against the longest-serving board member on the committee.

31 In the absence of both a governance and a nominating committee, we will recommend voting against the board chair on this basis, unless if the chair also serves as the CEO, in which case we will recommend voting against the longest-serving director.

32 In the absence of both a governance and a nominating committee, we will recommend voting against the board chair on this basis, unless if the chair also serves as the CEO, in which case we will recommend voting against the the longest-serving director.

5. The nominating committee chair, when a director received a greater than 50% against vote the prior year and not only was the director not removed, but the issues that raised shareholder concern were not corrected.[33]

6. The nominating committee chair when the board has no female directors and has not provided sufficient rationale or disclosed a plan to address the lack of diversity on the board.

In addition, we may consider recommending shareholders vote against the chair of the nominating committee where the board's failure to ensure the board has directors with relevant experience, either through periodic director assessment or board refreshment, has contributed to a company's poor performance.

BOARD-LEVEL RISK MANAGEMENT OVERSIGHT

Glass Lewis evaluates the risk management function of a public company board on a strictly case-by-case basis. Sound risk management, while necessary at all companies, is particularly important at financial firms which inherently maintain significant exposure to financial risk. We believe such financial firms should have a chief risk officer reporting directly to the board and a dedicated risk committee or a committee of the board charged with risk oversight. Moreover, many non-financial firms maintain strategies which involve a high level of exposure to financial risk. Similarly, since many non-financial firms have complex hedging or trading strategies, those firms should also have a chief risk officer and a risk committee.

Our views on risk oversight are consistent with those expressed by various regulatory bodies. In its December 2009 Final Rule release on Proxy Disclosure Enhancements, the SEC noted that risk oversight is a key competence of the board and that additional disclosures would improve investor and shareholder understanding of the role of the board in the organization's risk management practices. The final rules, which became effective on February 28, 2010, now explicitly require companies and mutual funds to describe (while allowing for some degree of flexibility) the board's role in the oversight of risk.

When analyzing the risk management practices of public companies, we take note of any significant losses or writedowns on financial assets and/or structured transactions. In cases where a company has disclosed a sizable loss or writedown, and where we find that the company's board-level risk committee's poor oversight contributed to the loss, we will recommend that shareholders vote against such committee members on that basis. In addition, in cases where a company maintains a significant level of financial risk exposure but fails to disclose any explicit form of board-level risk oversight (committee or otherwise)[34], we will consider recommending to vote against the board chair on that basis. However, we generally would not recommend voting against a combined chair/CEO, except in egregious cases.

ENVIRONMENTAL AND SOCIAL RISK OVERSIGHT

Glass Lewis understands the importance of ensuring the sustainability of companies' operations. We believe that an inattention to material environmental and social issues can present direct legal, financial, regulatory and reputational risks that could serve to harm shareholder interests. Therefore, we believe that these issues should be carefully monitored and managed by companies, and that companies should have an appropriate oversight structure in place to ensure that they are mitigating attendant risks and capitalizing on related opportunities to the best extent possible.

33 Considering that shareholder discontent clearly relates to the director who received a greater than 50% against vote rather than the nominating chair, we review the severity of the issue(s) that initially raised shareholder concern as well as company responsiveness to such matters, and will only recommend voting against the nominating chair if a reasonable analysis suggests that it would be most appropriate. In rare cases, we will consider recommending against the nominating chair when a director receives a substantial (i.e., 20% or more) vote against based on the same analysis.

34 A committee responsible for risk management could be a dedicated risk committee, the audit committee, or the finance committee, depending on a given company's board structure and method of disclosure. At some companies, the entire board is charged with risk management.

Glass Lewis believes that companies should ensure appropriate board-level oversight of material risks to their operations, including those that are environmental and social in nature. Accordingly, for large cap companies and in instances where we identify material oversight issues, Glass Lewis will review a company's overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues. Glass Lewis will also note instances where such oversight has not been clearly defined by companies in their governance documents.

Where it is clear that a company has not properly managed or mitigated environmental or social risks to the detriment of shareholder value, or when such mismanagement has threatened shareholder value, Glass Lewis may consider recommending that shareholders vote against members of the board who are responsible for oversight of environmental and social risks. In the absence of explicit board oversight of environmental and social issues, Glass Lewis may recommend that shareholders vote against members of the audit committee. In making these determinations, Glass Lewis will carefully review the situation, its effect on shareholder value, as well as any corrective action or other response made by the company.

DIRECTOR COMMITMENTS

We believe that directors should have the necessary time to fulfill their duties to shareholders. In our view, an overcommitted director can pose a material risk to a company's shareholders, particularly during periods of crisis. In addition, recent research indicates that the time commitment associated with being a director has been on a significant upward trend in the past decade.[35] As a result, we generally recommend that shareholders vote against a director who serves as an executive officer of any public company while serving on more than two public company boards and any other director who serves on more than five public company boards.

Because we believe that executives will primarily devote their attention to executive duties, we generally will not recommend that shareholders vote against overcommitted directors at the companies where they serve as an executive.

When determining whether a director's service on an excessive number of boards may limit the ability of the director to devote sufficient time to board duties, we may consider relevant factors such as the size and location of the other companies where the director serves on the board, the director's board roles at the companies in question, whether the director serves on the board of any large privately-held companies, the director's tenure on the boards in question, and the director's attendance record at all companies. In the case of directors who serve in executive roles other than CEO (e.g., executive chair), we will evaluate the specific duties and responsibilities of that role in determining whether an exception is warranted.

We may also refrain from recommending against certain directors if the company provides sufficient rationale for their continued board service. The rationale should allow shareholders to evaluate the scope of the directors' other commitments, as well as their contributions to the board including specialized knowledge of the company's industry, strategy or key markets, the diversity of skills, perspective and background they provide, and other relevant factors. We will also generally refrain from recommending to vote against a director who serves on an excessive number of boards within a consolidated group of companies or a director that represents a firm whose sole purpose is to manage a portfolio of investments which include the company.

35 For example, the 2015-2016 NACD Public Company Governance Survey states that, on average, directors spent a total of 248.2 hours annual on board-related matters during the past year, which it describes as a "historically high level" that is significantly above the average hours recorded in 2006. Additionally, the 2015 Spencer Stuart Board Index indicates that the average number of outside board seats held by CEOs of S&P 500 companies is 0.6, down from 0.7 in 2009 and 0.9 in 2004.

OTHER CONSIDERATIONS

In addition to the three key characteristics — independence, performance, experience — that we use to evaluate board members, we consider conflict-of-interest issues as well as the size of the board of directors when making voting recommendations.

Conflicts of Interest

We believe board members should be wholly free of identifiable and substantial conflicts of interest, regardless of the overall level of independent directors on the board. Accordingly, we recommend that shareholders vote against the following types of directors:

1. A CFO who is on the board: In our view, the CFO holds a unique position relative to financial reporting and disclosure to shareholders. Due to the critical importance of financial disclosure and reporting, we believe the CFO should report to the board and not be a member of it.

2. A director who provides — or a director who has an immediate family member who provides — material consulting or other material professional services to the company. These services may include legal, consulting,[36] or financial services. We question the need for the company to have consulting relationships with its directors. We view such relationships as creating conflicts for directors, since they may be forced to weigh their own interests against shareholder interests when making board decisions. In addition, a company's decisions regarding where to turn for the best professional services may be compromised when doing business with the professional services firm of one of the company's directors.

3. A director, or a director who has an immediate family member, engaging in airplane, real estate, or similar deals, including perquisite-type grants from the company, amounting to more than $50,000. Directors who receive these sorts of payments from the company will have to make unnecessarily complicated decisions that may pit their interests against shareholder interests.

4. Interlocking directorships: CEOs or other top executives who serve on each other's boards create an interlock that poses conflicts that should be avoided to ensure the promotion of shareholder interests above all else.[37]

5. All board members who served at a time when a poison pill with a term of longer than one year was adopted without shareholder approval within the prior twelve months.[38] In the event a board is classified and shareholders are therefore unable to vote against all directors, we will recommend voting against the remaining directors the next year they are up for a shareholder vote. If a poison pill with a term of one year or less was adopted without shareholder approval, and without adequate justification, we will consider recommending that shareholders vote against all members of the governance committee. If the board has, without seeking shareholder approval, and without adequate justification, extended the term of a poison pill by one year or less in two consecutive years, we will consider recommending that shareholders vote against the entire board.

36 We will generally refrain from recommending against a director who provides consulting services for the company if the director is excluded from membership on the board's key committees and we have not identified significant governance concerns with the board.
37 We do not apply a look-back period for this situation. The interlock policy applies to both public and private companies. We will also evaluate multiple board interlocks among non-insiders (i.e., multiple directors serving on the same boards at other companies), for evidence of a pattern of poor oversight.
38 Refer to Section V. Governance Structure and the Shareholder Franchise for further discussion of our policies regarding anti-takeover measures, including poison pills.

Size of the Board of Directors

While we do not believe there is a universally applicable optimum board size, we do believe boards should have at least five directors to ensure sufficient diversity in decision-making and to enable the formation of key board committees with independent directors. Conversely, we believe that boards with more than 20 members will typically suffer under the weight of "too many cooks in the kitchen" and have difficulty reaching consensus and making timely decisions. Sometimes the presence of too many voices can make it difficult to draw on the wisdom and experience in the room by virtue of the need to limit the discussion so that each voice may be heard.

To that end, we typically recommend voting against the chair of the nominating committee (or the governance committee, in the absence of a nominating committee) at a board with fewer than five directors or more than 20 directors.

CONTROLLED COMPANIES

We believe controlled companies warrant certain exceptions to our independence standards. The board's function is to protect shareholder interests; however, when an individual, entity (or group of shareholders party to a formal agreement) owns more than 50% of the voting shares, the interests of the majority of shareholders are the interests of that entity or individual. Consequently, Glass Lewis does not apply our usual two-thirds board independence rule and therefore we will not recommend voting against boards whose composition reflects the makeup of the shareholder population.

Independence Exceptions

The independence exceptions that we make for controlled companies are as follows:

1. We do not require that controlled companies have boards that are at least two-thirds independent. So long as the insiders and/or affiliates are connected with the controlling entity, we accept the presence of non-independent board members.

2. The compensation committee and nominating and governance committees do not need to consist solely of independent directors.

    - We believe that standing nominating and corporate governance committees at controlled companies are unnecessary. Although having a committee charged with the duties of searching for, selecting, and nominating independent directors can be beneficial, the unique composition of a controlled company's shareholder base makes such committees weak and irrelevant.

    - Likewise, we believe that independent compensation committees at controlled companies are unnecessary. Although independent directors are the best choice for approving and monitoring senior executives' pay, controlled companies serve a unique shareholder population whose voting power ensures the protection of its interests. As such, we believe that having affiliated directors on a controlled company's compensation committee is acceptable. However, given that a controlled company has certain obligations to minority shareholders we feel that an insider should not serve on the compensation committee. Therefore, Glass Lewis will recommend voting against any insider (the CEO or otherwise) serving on the compensation committee.

3. Controlled companies do not need an independent chair or an independent lead or presiding director. Although an independent director in a position of authority on the board — such as chair or presiding director — can best carry out the board's duties, controlled companies serve a unique shareholder population whose voting power ensures the protection of its interests.

Size of the Board of Directors

We have no board size requirements for controlled companies.

Audit Committee Independence

Despite a controlled company's status, unlike for the other key committees, we nevertheless believe that audit committees should consist solely of independent directors. Regardless of a company's controlled status, the interests of all shareholders must be protected by ensuring the integrity and accuracy of the company's financial statements. Allowing affiliated directors to oversee the preparation of financial reports could create an insurmountable conflict of interest.

Board Responsiveness at Dual-Class Companies

With regards to companies where voting control is held through a dual-class share structure with disproportionate voting and economic rights, we will carefully examine the level of approval or disapproval attributed to unaffiliated shareholders when determining whether board responsiveness is warranted. Where vote results indicate that a majority of unaffiliated shareholders supported a shareholder proposal or opposed a management proposal, we believe the board should demonstrate an appropriate level of responsiveness.

SIGNIFICANT SHAREHOLDERS

Where an individual or entity holds between 20-50% of a company's voting power, we believe it is reasonable to allow proportional representation on the board and committees (excluding the audit committee) based on the individual or entity's percentage of ownership.

GOVERNANCE FOLLOWING AN IPO OR SPIN-OFF

We believe companies that have recently completed an initial public offering ("IPO") or spin-off should be allowed adequate time to fully comply with marketplace listing requirements and meet basic corporate governance standards. Generally speaking, Glass Lewis refrains from making recommendations on the basis of governance standards (e.g., board independence, committee membership and structure, meeting attendance, etc.) during the one-year period following an IPO.

However, some cases warrant shareholder action against the board of a company that have completed an IPO or spin-off within the past year. When evaluating companies that have recently gone public, Glass Lewis will review the terms of the applicable governing documents in order to determine whether shareholder rights are being severely restricted indefinitely. We believe boards that approve highly restrictive governing documents have demonstrated that they may subvert shareholder interests following the IPO. In conducting this evaluation, Glass Lewis will consider:

1. The adoption of anti-takeover provisions such as a poison pill or classified board
2. Supermajority vote requirements to amend governing documents
3. The presence of exclusive forum or fee-shifting provisions
4. Whether shareholders can call special meetings or act by written consent
5. The voting standard provided for the election of directors
6. The ability of shareholders to remove directors without cause
7. The presence of evergreen provisions in the Company's equity compensation arrangements

8. The presence of a dual-class share structure which does not afford common shareholders voting power that is aligned with their economic interest

In cases where a board adopts an anti-takeover provision preceding an IPO, we will consider recommending to vote against the members of the board who served when it was adopted if the board: (i) did not also commit to submit the anti-takeover provision to a shareholder vote at the company's first shareholder meeting following the IPO; or (ii) did not provide a sound rationale or sunset provision for adopting the anti-takeover provision in question.

In our view, adopting an anti-takeover device unfairly penalizes future shareholders who (except for electing to buy or sell the stock) are unable to weigh in on a matter that could potentially negatively impact their ownership interest. This notion is strengthened when a board adopts a classified board with an infinite duration or a poison pill with a five- to ten-year term immediately prior to going public, thereby insulated management for a substantial amount of time.

In addition, shareholders should also be wary of companies that adopt supermajority voting requirements before their IPO. Absent explicit provisions in the articles or bylaws stipulating that certain policies will be phased out over a certain period of time, long-term shareholders could find themselves in the predicament of having to attain a supermajority vote to approve future proposals seeking to eliminate such policies.

DUAL-LISTED OR FOREIGN-INCORPORATED COMPANIES

For companies that trade on multiple exchanges or are incorporated in foreign jurisdictions but trade only in the U.S., we will apply the governance standard most relevant in each situation. We will consider a number of factors in determining which Glass Lewis country-specific policy to apply, including but not limited to: (i) the corporate governance structure and features of the company including whether the board structure is unique to a particular market; (ii) the nature of the proposals; (iii) the location of the company's primary listing, if one can be determined; (iv) the regulatory/governance regime that the board is reporting against; and (v) the availability and completeness of the company's SEC filings.

OTC-LISTED COMPANIES

Companies trading on the OTC Bulletin Board are not considered "listed companies" under SEC rules and therefore not subject to the same governance standards as listed companies. However, we believe that more stringent corporate governance standards should be applied to these companies given that their shares are still publicly traded.

When reviewing OTC companies, Glass Lewis will review the available disclosure relating to the shareholder meeting to determine whether shareholders are able to evaluate several key pieces of information, including: (i) the composition of the board's key committees, if any; (ii) the level of share ownership of company insiders or directors; (iii) the board meeting attendance record of directors; (iv) executive and non-employee director compensation; (v) related-party transactions conducted during the past year; and (vi) the board's leadership structure and determinations regarding director independence.

We are particularly concerned when company disclosure lacks any information regarding the board's key committees. We believe that committees of the board are an essential tool for clarifying how the responsibilities of the board are being delegated, and specifically for indicating which directors are accountable for ensuring: (i) the independence and quality of directors, and the transparency and integrity of the nominating process; (ii) compensation programs that are fair and appropriate; (iii) proper oversight of the company's accounting, financial reporting, and internal and external audits; and (iv) general adherence to principles of good corporate governance.

In cases where shareholders are unable to identify which board members are responsible for ensuring oversight of the above-mentioned responsibilities, we may consider recommending against certain members of the board. Ordinarily, we believe it is the responsibility of the corporate governance committee to provide thorough disclosure of the board's governance practices. In the absence of such a committee, we believe it is appropriate to hold the board's chair or, if such individual is an executive of the company, the longest-serving non-executive board member accountable.

MUTUAL FUND BOARDS

Mutual funds, or investment companies, are structured differently from regular public companies (i.e., operating companies). Typically, members of a fund's advisor are on the board and management takes on a different role from that of regular public companies. Thus, we focus on a short list of requirements, although many of our guidelines remain the same.

The following mutual fund policies are similar to the policies for regular public companies:

1. **Size of the board of directors** — The board should be made up of between five and twenty directors.

2. **The CFO on the board** — Neither the CFO of the fund nor the CFO of the fund's registered investment advisor should serve on the board.

3. **Independence of the audit committee** — The audit committee should consist solely of independent directors.

4. **Audit committee financial expert** — At least one member of the audit committee should be designated as the audit committee financial expert.

The following differences from regular public companies apply at mutual funds:

1. **Independence of the board** — We believe that three-fourths of an investment company's board should be made up of independent directors. This is consistent with a proposed SEC rule on investment company boards. The Investment Company Act requires 40% of the board to be independent, but in 2001, the SEC amended the Exemptive Rules to require that a majority of a mutual fund board be independent. In 2005, the SEC proposed increasing the independence threshold to 75%. In 2006, a federal appeals court ordered that this rule amendment be put back out for public comment, putting it back into "proposed rule" status. Since mutual fund boards play a vital role in overseeing the relationship between the fund and its investment manager, there is greater need for independent oversight than there is for an operating company board.

2. **When the auditor is not up for ratification** — We do not recommend voting against the audit committee if the auditor is not up for ratification. Due to the different legal structure of an investment company compared to an operating company, the auditor for the investment company (i.e., mutual fund) does not conduct the same level of financial review for each investment company as for an operating company.

3. **Non-independent chair** — The SEC has proposed that the chair of the fund board be independent. We agree that the roles of a mutual fund's chair and CEO should be separate. Although we believe this would be best at all companies, we recommend voting against the chair of an investment company's nominating committee as well as the board chair if the chair and CEO of a mutual fund are the same person and the fund does not have an independent lead or presiding director. Seven former SEC commissioners support the appointment of an independent chair and we agree with them that "an independent board chair would be better able to create conditions favoring the long-term interests of fund shareholders than would a chair who is an executive of the advisor." (See the comment letter sent to the SEC in support of the proposed rule at http://www.sec.gov/news/studies/indchair.pdf.)

4. **Multiple funds overseen by the same director** — Unlike service on a public company board, mutual fund boards require much less of a time commitment. Mutual fund directors typically serve on dozens of other mutual fund boards, often within the same fund complex. The Investment Company Institute's ("ICI") Overview of Fund Governance Practices, 1994-2012, indicates that the average number of funds served by an independent director in 2012 was 53. Absent evidence that a specific director is hindered from being an effective board member at a fund due to service on other funds' boards, we refrain from maintaining a cap on the number of outside mutual fund boards that we believe a director can serve on.

DECLASSIFIED BOARDS

Glass Lewis favors the repeal of staggered boards and the annual election of directors. We believe staggered boards are less accountable to shareholders than boards that are elected annually. Furthermore, we feel the annual election of directors encourages board members to focus on shareholder interests.

Empirical studies have shown: (i) staggered boards are associated with a reduction in a firm's valuation; and (ii) in the context of hostile takeovers, staggered boards operate as a takeover defense, which entrenches management, discourages potential acquirers, and delivers a lower return to target shareholders.

In our view, there is no evidence to demonstrate that staggered boards improve shareholder returns in a takeover context. Some research has indicated that shareholders are worse off when a staggered board blocks a transaction; further, when a staggered board negotiates a friendly transaction, no statistically significant difference in premium occurs.[39] Additional research found that charter-based staggered boards "reduce the market value of a firm by 4% to 6% of its market capitalization" and that "staggered boards bring about and not merely reflect this reduction in market value."[40] A subsequent study reaffirmed that classified boards reduce shareholder value, finding "that the ongoing process of dismantling staggered boards, encouraged by institutional investors, could well contribute to increasing shareholder wealth."[41]

Shareholders have increasingly come to agree with this view. In 2016, 92% of S&P 500 companies had declassified boards, up from approximately 40% a decade ago.[42] Management proposals to declassify boards are approved with near unanimity and shareholder proposals on the topic also receive strong shareholder support; in 2014, shareholder proposals requesting that companies declassify their boards received average support of 84% (excluding abstentions and broker non-votes), whereas in 1987, only 16.4% of votes cast favored board declassification.[43] Further, a growing number of companies, nearly half of all those targeted by shareholder proposals requesting that all directors stand for election annually, either recommended shareholders support the proposal or made no recommendation, a departure from the more traditional management recommendation to vote against shareholder proposals.

Given our belief that declassified boards promote director accountability, the empirical evidence suggesting staggered boards reduce a company's value and the established shareholder opposition to such a structure, Glass Lewis supports the declassification of boards and the annual election of directors.

BOARD COMPOSITION AND REFRESHMENT

Glass Lewis strongly supports routine director evaluation, including independent external reviews, and periodic board refreshment to foster the sharing of diverse perspectives in the boardroom and the generation of new ideas and business strategies. Further, we believe the board should evaluate the need for changes to board composition based on an analysis of skills and experience necessary for the company, as well as the results of

39 Lucian Bebchuk, John Coates IV, Guhan Subramanian, "The Powerful Antitakeover Force of Staggered Boards: Further Findings and a Reply to Symposium Participants," 55 Stanford Law Review 885-917 (2002).
40 Lucian Bebchuk, Alma Cohen, "The Costs of Entrenched Boards" (2004).
41 Lucian Bebchuk, Alma Cohen and Charles C.Y. Wang, "Staggered Boards and the Wealth of Shareholders: Evidence from a Natural Experiment," SSRN: http://ssrn.com/abstract=1706806 (2010), p. 26.
42 Spencer Stuart Board Index, 2016, p. 14.
43 Lucian Bebchuk, John Coates IV and Guhan Subramanian, "The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy".

the director evaluations, as opposed to relying solely on age or tenure limits. When necessary, shareholders can address concerns regarding proper board composition through director elections.

In our view, a director's experience can be a valuable asset to shareholders because of the complex, critical issues that boards face. This said, we recognize that in rare circumstances, a lack of refreshment can contribute to a lack of board responsiveness to poor company performance.

On occasion, age or term limits can be used as a means to remove a director for boards that are unwilling to police their membership and enforce turnover. Some shareholders support term limits as a way to force change in such circumstances.

While we understand that age limits can aid board succession planning, the long-term impact of age limits restricts experienced and potentially valuable board members from service through an arbitrary means. We believe that shareholders are better off monitoring the board's overall composition, including the diversity of its members, the alignment of the board's areas of expertise with a company's strategy, the board's approach to corporate governance, and its stewardship of company performance, rather than imposing inflexible rules that don't necessarily correlate with returns or benefits for shareholders.

However, if a board adopts term/age limits, it should follow through and not waive such limits. If the board waives its term/age limits, Glass Lewis will consider recommending shareholders vote against the nominating and/or governance committees, unless the rule was waived with sufficient explanation, such as consummation of a corporate transaction like a merger.

BOARD DIVERSITY

Glass Lewis recognizes the importance of ensuring that the board is comprised of directors who have a diversity of skills, thought and experience, as such diversity benefits companies by providing a broad range of perspectives and insights.[44] Glass Lewis closely reviews the composition of the board for representation of diverse director candidates and will generally recommend against the nominating committee chair of a board that has no female members.

Depending on other factors, including the size of the company, the industry in which the company operates, the state in which the company is headquartered, and the governance profile of the company, we may extend this recommendation to vote against other nominating committee members. When making these voting recommendations, we will carefully review a company's disclosure of its diversity considerations and may refrain from recommending shareholders vote against directors of companies outside the Russell 3000 index, or when boards have provided a sufficient rationale for not having any female board members. Such rationale may include, but is not limited to, a disclosed timetable for addressing the lack of diversity on the board and any notable restrictions in place regarding the board's composition, such as director nomination agreements with significant investors.

In September 2018, California Governor Jerry Brown signed into law Senate Bill 826, which requires all companies headquartered in the state to have one woman on their board by the end of 2019. In addition, by the end of 2021, companies must have at least two women on boards of five members and at least three women on boards with six or more directors. Accordingly, during the 2019 proxy season, if a company headquartered in California does not have at least one woman on its board, we will generally recommend voting against the chair of the nominating committee unless the company has disclosed a clear plan for how they intend to address this issue prior to the end of 2019.

44 http://www.glasslewis.com/wp-content/uploads/2017/03/2017-In-Depth-Report-Gender-Diversity.pdf.

PROXY ACCESS

In lieu of running their own contested election, proxy access would not only allow certain shareholders to nominate directors to company boards but the shareholder nominees would be included on the company's ballot, significantly enhancing the ability of shareholders to play a meaningful role in selecting their representatives. Glass Lewis generally supports affording shareholders the right to nominate director candidates to management's proxy as a means to ensure that significant, long-term shareholders have an ability to nominate candidates to the board.

Companies generally seek shareholder approval to amend company bylaws to adopt proxy access in response to shareholder engagement or pressure, usually in the form of a shareholder proposal requesting proxy access, although some companies may adopt some elements of proxy access without prompting. Glass Lewis considers several factors when evaluating whether to support proposals for companies to adopt proxy access including the specified minimum ownership and holding requirement for shareholders to nominate one or more directors, as well as company size, performance and responsiveness to shareholders.

For a discussion of recent regulatory events in this area, along with a detailed overview of the Glass Lewis approach to Shareholder Proposals regarding Proxy Access, refer to Glass Lewis' *Proxy Paper Guidelines for Shareholder Initiatives*, available at www.glasslewis.com.

MAJORITY VOTE FOR THE ELECTION OF DIRECTORS

Majority voting for the election of directors is fast becoming the de facto standard in corporate board elections. In our view, the majority voting proposals are an effort to make the case for shareholder impact on director elections on a company-specific basis.

While this proposal would not give shareholders the opportunity to nominate directors or lead to elections where shareholders have a choice among director candidates, if implemented, the proposal would allow shareholders to have a voice in determining whether the nominees proposed by the board should actually serve as the overseer-representatives of shareholders in the boardroom. We believe this would be a favorable outcome for shareholders.

The number of shareholder proposals requesting that companies adopt a majority voting standard has declined significantly during the past decade, largely as a result of widespread adoption of majority voting or director resignation policies at U.S. companies. In 2017, 89% of the S&P 500 Index had implemented a resignation policy for directors failing to receive majority shareholder support, compared to 76% in 2011.[45]

THE PLURALITY VOTE STANDARD

Today, most US companies still elect directors by a plurality vote standard. Under that standard, if one shareholder holding only one share votes in favor of a nominee (including that director, if the director is a shareholder), that nominee "wins" the election and assumes a seat on the board. The common concern among companies with a plurality voting standard is the possibility that one or more directors would not receive a majority of votes, resulting in "failed elections."

ADVANTAGES OF A MAJORITY VOTE STANDARD

If a majority vote standard were implemented, a nominee would have to receive the support of a majority of the shares voted in order to be elected. Thus, shareholders could collectively vote to reject a director they believe will not pursue their best interests. Given that so few directors (less than 100 a year) do not receive majority support from shareholders, we think that a majority vote standard is reasonable since it will neither result in many failed director elections nor reduce the willingness of qualified, shareholder-focused directors to serve in the future. Further, most directors who fail to receive a majority shareholder vote in favor of their election do not step down, underscoring the need for true majority voting.

45 Spencer Stuart Board Index, 2017, p. 16.

We believe that a majority vote standard will likely lead to more attentive directors. Although shareholders only rarely fail to support directors, the occasional majority vote against a director's election will likely deter the election of directors with a record of ignoring shareholder interests. Glass Lewis will therefore generally support proposals calling for the election of directors by a majority vote, excepting contested director elections.

In response to the high level of support majority voting has garnered, many companies have voluntarily taken steps to implement majority voting or modified approaches to majority voting. These steps range from a modified approach requiring directors that receive a majority of withheld votes to resign (i.e., a resignation policy) to actually requiring a majority vote of outstanding shares to elect directors.

We feel that the modified approach does not go far enough because requiring a director to resign is not the same as requiring a majority vote to elect a director and does not allow shareholders a definitive voice in the election process. Further, under the modified approach, the corporate governance committee could reject a resignation and, even if it accepts the resignation, the corporate governance committee decides on the director's replacement. And since the modified approach is usually adopted as a policy by the board or a board committee, it could be altered by the same board or committee at any time.

CONFLICTING AND EXCLUDED PROPOSALS

SEC Rule 14a-8(i)(9) allows companies to exclude shareholder proposals "if the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." On October 22, 2015, the SEC issued Staff Legal Bulletin No. 14H ("SLB 14H") clarifying its rule concerning the exclusion of certain shareholder proposals when similar items are also on the ballot. SLB 14H increased the burden on companies to prove to SEC staff that a conflict exists; therefore, many companies still chose to place management proposals alongside similar shareholder proposals in many cases.

During the 2018 proxy season, a new trend in the SEC's interpretation of this rule emerged. Upon submission of shareholder proposals requesting that companies adopt a lower special meeting threshold, several companies petitioned the SEC for no-action relief under the premise that the shareholder proposals conflicted with management's own special meeting proposals, even though the management proposals set a higher threshold than those requested by the proponent. No-action relief was granted to these companies; however, the SEC stipulated that the companies must state in the rationale for the management proposals that a vote in favor of management's proposal was tantamount to a vote against the adoption of a lower special meeting threshold. In certain instances, shareholder proposals to lower an existing special meeting right threshold were excluded on the basis that they conflicted with management proposals seeking to ratify the existing special meeting rights. We find the exclusion of these shareholder proposals to be especially problematic as, in these instances, shareholders are not offered any enhanced shareholder right, nor would the approval (or rejection) of the ratification proposal initiate any type of meaningful change to shareholders' rights.

In instances where companies have excluded shareholder proposals, such as those instances where special meeting shareholder proposals are excluded as a result of "conflicting" management proposals, Glass Lewis will take a case-by-case approach, taking into account the following issues:

- The threshold proposed by the shareholder resolution;
- The threshold proposed or established by management and the attendant rationale for the threshold;
- Whether management's proposal is seeking to ratify an existing special meeting right or adopt a bylaw that would establish a special meeting right; and
- The company's overall governance profile, including its overall responsiveness to and engagement with shareholders.

Glass Lewis generally favors a 10-15% special meeting right. Accordingly, Glass Lewis will generally recommend voting for management or shareholder proposals that fall within this range. When faced with conflicting proposals, Glass Lewis will generally recommend in favor of the lower special meeting right and will recommend voting against the proposal with the higher threshold. However, in instances where there are conflicting management and shareholder proposals and a company has not established a special meeting right, Glass Lewis may recommend that shareholders vote in favor of the shareholder proposal and that they abstain from a management-proposed bylaw amendment seeking to establish a special meeting right. We believe that an abstention is appropriate in this instance in order to ensure that shareholders are sending a clear signal regarding their preference for the appropriate threshold for a special meeting right, while not directly opposing the establishment of such a right.

In cases where the company excludes a shareholder proposal seeking a reduced special meeting right by means of ratifying a management proposal that is materially different from the shareholder proposal, we will generally recommend voting against the chair or members of the governance committee.

In other instances of conflicting management and shareholder proposals, Glass Lewis will consider the following:

- The nature of the underlying issue;
- The benefit to shareholders of implementing the proposal;
- The materiality of the differences between the terms of the shareholder proposal and management proposal;
- The context of a company's shareholder base, corporate structure and other relevant circumstances; and
- A company's overall governance profile and, specifically, its responsiveness to shareholders as evidenced by a company's response to previous shareholder proposals and its adoption of progressive shareholder rights provisions.

In recent years, we have seen the dynamic nature of the considerations given by the SEC when determining whether companies may exclude certain shareholder proposals. We understand that not all shareholder proposals serve the long-term interests of shareholders, and value and respect the limitations placed on shareholder proponents, as certain shareholder proposals can unduly burden companies. However, Glass Lewis believes that shareholders should be able to vote on issues of material importance.

We view the shareholder proposal process as an important part of advancing shareholder rights and encouraging responsible and financially sustainable business practices. While recognizing that certain proposals cross the line between the purview of shareholders and that of the board, we generally believe that companies should not limit investors' ability to vote on shareholder proposals that advance certain rights or promote beneficial disclosure. Accordingly, Glass Lewis will make note of instances where a company has successfully petitioned the SEC to exclude shareholder proposals. If after review we believe that the exclusion of a shareholder proposal is detrimental to shareholders, we may, in certain very limited circumstances, recommend against members of the governance committee.

Transparency and Integrity in Financial Reporting

AUDITOR RATIFICATION

The auditor's role as gatekeeper is crucial in ensuring the integrity and transparency of the financial information necessary for protecting shareholder value. Shareholders rely on the auditor to ask tough questions and to do a thorough analysis of a company's books to ensure that the information provided to shareholders is complete, accurate, fair, and that it is a reasonable representation of a company's financial position. The only way shareholders can make rational investment decisions is if the market is equipped with accurate information about a company's fiscal health. As stated in the October 6, 2008 Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury:

> *"The auditor is expected to offer critical and objective judgment on the financial matters under consideration, and actual and perceived absence of conflicts is critical to that expectation. The Committee believes that auditors, investors, public companies, and other market participants must understand the independence requirements and their objectives, and that auditors must adopt a mindset of skepticism when facing situations that may compromise their independence."*

As such, shareholders should demand an objective, competent and diligent auditor who performs at or above professional standards at every company in which the investors hold an interest. Like directors, auditors should be free from conflicts of interest and should avoid situations requiring a choice between the auditor's interests and the public's interests. Almost without exception, shareholders should be able to annually review an auditor's performance and to annually ratify a board's auditor selection. Moreover, in October 2008, the Advisory Committee on the Auditing Profession went even further, and recommended that "to further enhance audit committee oversight and auditor accountability … disclosure in the company proxy statement regarding shareholder ratification [should] include the name(s) of the senior auditing partner(s) staffed on the engagement."[46]

On August 16, 2011, the PCAOB issued a Concept Release seeking public comment on ways that auditor independence, objectivity and professional skepticism could be enhanced, with a specific emphasis on mandatory audit firm rotation. The PCAOB convened several public roundtable meetings during 2012 to further discuss such matters. Glass Lewis believes auditor rotation can ensure both the independence of the auditor and the integrity of the audit; we will typically recommend supporting proposals to require auditor rotation when the proposal uses a reasonable period of time (usually not less than 5-7 years), particularly at companies with a history of accounting problems.

On June 1, 2017, the PCAOB adopted new standards to enhance auditor reports by providing additional important information to investors. For companies with fiscal year end dates on or after December 15, 2017, reports were required to include the year in which the auditor began serving consecutively as the company's auditor. For large accelerated filers with fiscal year ends of June 30, 2019 or later, and for all other companies with fiscal year ends of December 15, 2020 or later, communication of critical audit matters ("CAMs") will also be required. CAMs are matters that have been communicated to the audit committee, are related to accounts or disclosures that are material to the financial statements, and involve especially challenging, subjective, or complex auditor judgment.

Glass Lewis believes the additional reporting requirements are beneficial for investors. The additional disclosures can provide investors with information that is critical to making an informed judgment about an auditor's

46 "Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury." p. VIII:20, October 6, 2008.

independence and performance. Furthermore, we believe the additional requirements are an important step toward enhancing the relevance and usefulness of auditor reports, which too often are seen as boilerplate compliance documents that lack the relevant details to provide meaningful insight into a particular audit.

VOTING RECOMMENDATIONS ON AUDITOR RATIFICATION

We generally support management's choice of auditor except when we believe the auditor's independence or audit integrity has been compromised. Where a board has not allowed shareholders to review and ratify an auditor, we typically recommend voting against the audit committee chair. When there have been material restatements of annual financial statements or material weaknesses in internal controls, we usually recommend voting against the entire audit committee.

Reasons why we may not recommend ratification of an auditor include:

1. When audit fees plus audit-related fees total less than the tax fees and/or other non-audit fees.

2. Recent material restatements of annual financial statements, including those resulting in the reporting of material weaknesses in internal controls and including late filings by the company where the auditor bears some responsibility for the restatement or late filing.[47]

3. When the auditor performs prohibited services such as tax-shelter work, tax services for the CEO or CFO, or contingent-fee work, such as a fee based on a percentage of economic benefit to the company.

4. When audit fees are excessively low, especially when compared with other companies in the same industry.

5. When the company has aggressive accounting policies.

6. When the company has poor disclosure or lack of transparency in its financial statements.

7. Where the auditor limited its liability through its contract with the company or the audit contract requires the corporation to use alternative dispute resolution procedures without adequate justification.

8. We also look for other relationships or concerns with the auditor that might suggest a conflict between the auditor's interests and shareholder interests.

9. In determining whether shareholders would benefit from rotating the company's auditor, where relevant we will consider factors that may call into question an auditor's effectiveness, including auditor tenure, a pattern of inaccurate audits, and any ongoing litigation or significant controversies.

PENSION ACCOUNTING ISSUES

A pension accounting question occasionally raised in proxy proposals is what effect, if any, projected returns on employee pension assets should have on a company's net income. This issue often arises in the executive-compensation context in a discussion of the extent to which pension accounting should be reflected in business performance for purposes of calculating payments to executives.

Glass Lewis believes that pension credits should not be included in measuring income that is used to award performance-based compensation. Because many of the assumptions used in accounting for retirement plans are subject to the company's discretion, management would have an obvious conflict of interest if pay were tied to pension income. In our view, projected income from pensions does not truly reflect a company's performance.

47 An auditor does not audit interim financial statements. Thus, we generally do not believe that an auditor should be opposed due to a restatement of interim financial statements unless the nature of the misstatement is clear from a reading of the incorrect financial statements.

The Link Between Compensation and Performance

Glass Lewis carefully reviews the compensation awarded to senior executives, as we believe that this is an important area in which the board's priorities are revealed. Glass Lewis strongly believes executive compensation should be linked directly with the performance of the business the executive is charged with managing. We believe the most effective compensation arrangements provide for an appropriate mix of performance-based short- and long-term incentives in addition to fixed pay elements while promoting a prudent and sustainable level of risk-taking.

Glass Lewis believes that comprehensive, timely and transparent disclosure of executive pay is critical to allowing shareholders to evaluate the extent to which pay is aligned with company performance. When reviewing proxy materials, Glass Lewis examines whether the company discloses the performance metrics used to determine executive compensation. We recognize performance metrics must necessarily vary depending on the company and industry, among other factors, and may include a wide variety of financial measures as well as industry-specific performance indicators. However, we believe companies should disclose why the specific performance metrics were selected and how the actions they are designed to incentivize will lead to better corporate performance.

Moreover, it is rarely in shareholders' interests to disclose competitive data about individual salaries below the senior executive level. Such disclosure could create internal personnel discord that would be counterproductive for the company and its shareholders. While we favor full disclosure for senior executives and we view pay disclosure at the aggregate level (e.g., the number of employees being paid over a certain amount or in certain categories) as potentially useful, we do not believe shareholders need or will benefit from detailed reports about individual management employees other than the most senior executives.

ADVISORY VOTE ON EXECUTIVE COMPENSATION ("SAY-ON-PAY")

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") required companies to hold an advisory vote on executive compensation at the first shareholder meeting that occurs six months after enactment of the bill (January 21, 2011).

This practice of allowing shareholders a non-binding vote on a company's compensation report is standard practice in many non-US countries, and has been a requirement for most companies in the United Kingdom since 2003 and in Australia since 2005. Although say-on-pay proposals are non-binding, a high level of "against" or "abstain" votes indicates substantial shareholder concern about a company's compensation policies and procedures.

Given the complexity of most companies' compensation programs, Glass Lewis applies a highly nuanced approach when analyzing advisory votes on executive compensation. We review each company's compensation on a case-by-case basis, recognizing that each company must be examined in the context of industry, size, maturity, performance, financial condition, its historic pay for performance practices, and any other relevant internal or external factors.

We believe that each company should design and apply specific compensation policies and practices that are appropriate to the circumstances of the company and, in particular, will attract and retain competent executives and other staff, while motivating them to grow the company's long-term shareholder value.

Where we find those specific policies and practices serve to reasonably align compensation with performance, and such practices are adequately disclosed, Glass Lewis will recommend supporting the company's approach. If, however, those specific policies and practices fail to demonstrably link compensation with performance, Glass Lewis will generally recommend voting against the say-on-pay proposal.

Glass Lewis reviews say-on-pay proposals on both a qualitative basis and a quantitative basis, with a focus on several main areas:

- The overall design and structure of the company's executive compensation programs including selection and challenging nature of performance metrics;
- The implementation and effectiveness of the company's executive compensation programs including pay mix and use of performance metrics in determining pay levels;
- The quality and content of the company's disclosure;
- The quantum paid to executives; and
- The link between compensation and performance as indicated by the company's current and past pay-for-performance grades.

We also review any significant changes or modifications, and the rationale for such changes, made to the company's compensation structure or award amounts, including base salaries.

SAY-ON-PAY VOTING RECOMMENDATIONS

In cases where we find deficiencies in a company's compensation program's design, implementation or management, we will recommend that shareholders vote against the say-on-pay proposal. Generally such instances include evidence of a pattern of poor pay-for-performance practices (i.e., deficient or failing pay-for-performance grades), unclear or questionable disclosure regarding the overall compensation structure (e.g., limited information regarding benchmarking processes, limited rationale for bonus performance metrics and targets, etc.), questionable adjustments to certain aspects of the overall compensation structure (e.g., limited rationale for significant changes to performance targets or metrics, the payout of guaranteed bonuses or sizable retention grants, etc.), and/or other egregious compensation practices.

Although not an exhaustive list, the following issues when weighed together may cause Glass Lewis to recommend voting against a say-on-pay vote:

- Inappropriate or outsized peer groups and/or benchmarking issues such as compensation targets set well above peers;
- Egregious or excessive bonuses, equity awards or severance payments, including golden handshakes and golden parachutes;
- Problematic contractual payments, such as guaranteed bonuses;
- Targeting overall levels of compensation at higher than median without adequate justification;
- Performance targets not sufficiently challenging, and/or providing for high potential payouts;
- Performance targets lowered without justification;
- Discretionary bonuses paid when short- or long-term incentive plan targets were not met;

- Executive pay high relative to peers not justified by outstanding company performance; and
- The terms of the long-term incentive plans are inappropriate (please see "Long-Term Incentives").

The aforementioned issues may also influence Glass Lewis' assessment of the structure of a company's compensation program. We evaluate structure on a "Good, Fair, Poor" rating scale whereby a "Good" rating represents a compensation program with little to no concerns, a "Fair" rating represents a compensation program with some concerns and a "Poor" rating represents a compensation program that deviates significantly from best practice or contains one or more egregious compensation practices.

We believe that it is important for companies to provide investors with clear and complete disclosure of all the significant terms of compensation arrangements. Similar to structure, we evaluate disclosure on a "Good, Fair, Poor" rating scale whereby a "Good" rating represents a thorough discussion of all elements of compensation, a "Fair" rating represents an adequate discussion of all or most elements of compensation and a "Poor" rating represents an incomplete or absent discussion of compensation. In instances where a company has simply failed to provide sufficient disclosure of its policies, we may recommend shareholders vote against this proposal solely on this basis, regardless of the appropriateness of compensation levels.

In general, most companies will fall within the "Fair" range for both structure and disclosure, and Glass Lewis largely uses the "Good" and "Poor" ratings to highlight outliers.

Where we identify egregious compensation practices, we may also recommend voting against the compensation committee based on the practices or actions of its members during the year. Such practices may include: approving large one-off payments, the inappropriate, unjustified use of discretion, or sustained poor pay for performance practices.

COMPANY RESPONSIVENESS

At companies that received a significant level of shareholder opposition (20% or greater) to their say-on-pay proposal at the previous annual meeting, we believe the board should demonstrate some level of engagement and responsiveness to the shareholder concerns behind the discontent, particularly in response to shareholder engagement. While we recognize that sweeping changes cannot be made to a compensation program without due consideration and that a majority of shareholders voted in favor of the proposal, given that the average approval rate for say-on-pay proposals is about 90% we believe the compensation committee should provide some level of response to a significant vote against, including engaging with large shareholders to identify their concerns. In the absence of any evidence that the board is actively engaging shareholders on these issues and responding accordingly, we may recommend holding compensation committee members accountable for failing to adequately respond to shareholder opposition, giving careful consideration to the level of shareholder protest and the severity and history of compensation problems.

PAY FOR PERFORMANCE

Glass Lewis believes an integral part of a well-structured compensation package is a successful link between pay and performance. Our proprietary pay-for-performance model was developed to better evaluate the link between pay and performance of the top five executives at U.S. companies. Our model benchmarks these executives' pay and company performance against peers across five performance metrics. The comparator companies are selected using Equilar's market-based peer groups. After a comparison of both pay and performance against the Equilar peer group, the pay-for-performance model generates two weighted-average percentile rankings for a company: (i) a weighted-average percentile rank in compensation, and (ii) a weighted-average percentile rank in performance.

By measuring the magnitude of the gap between these two weighted-average percentiles, we assign companies a letter grade of A, B, C, D or F. The grades guide our evaluation of compensation committee effectiveness, and we generally recommend voting against compensation committee members at companies with a pattern of failing our pay-for-performance analysis.

The grades derived from the Glass Lewis pay for performance analysis do not follow the traditional U.S. school letter grade system. Rather, the grades are generally interpreted as follows:

A. The company's percentile rank for pay is significantly less than its percentile rank for performance

B. The company's percentile rank for pay is moderately less than its percentile rank for performance

C. The company's percentile rank for pay is approximately aligned with its percentile rank for performance

D. The company's percentile rank for pay is higher than its percentile rank for performance

E. The company's percentile rank for pay is significantly higher than its percentile rank for performance

For the avoidance of confusion, the above grades encompass the relationship between a company's percentile rank for pay and its percentile rank in performance. Separately, a specific comparison between the company's executive pay and its peers' executive pay levels is discussed in the analysis for additional insight into the grade. Likewise, a specific comparison between the company's performance and its peers' performance is reflected in the analysis for further context.

We also use this analysis to inform our voting decisions on say-on-pay proposals. As such, if a company receives a "D" or "F" from our proprietary model, we are more likely to recommend that shareholders vote against the say-on-pay proposal. However, other qualitative factors such as an effective overall incentive structure, the relevance of selected performance metrics, significant forthcoming enhancements or reasonable long-term payout levels may give us cause to recommend in favor of a proposal even when we have identified a disconnect between pay and performance.

SHORT-TERM INCENTIVES

A short-term bonus or incentive ("STI") should be demonstrably tied to performance. Whenever possible, we believe a mix of corporate and individual performance measures is appropriate. We would normally expect performance measures for STIs to be based on company-wide or divisional financial measures as well as non-financial factors such as those related to safety, environmental issues, and customer satisfaction. While we recognize that companies operating in different sectors or markets may seek to utilize a wide range of metrics, we expect such measures to be appropriately tied to a company's business drivers.

Further, the target and potential maximum awards that can be achieved under STI awards should be disclosed. Shareholders should expect stretching performance targets for the maximum award to be achieved. Any increase in the potential target and maximum award should be clearly justified to shareholders.

Glass Lewis recognizes that disclosure of some measures may include commercially confidential information. Therefore, we believe it may be reasonable to exclude such information in some cases as long as the company provides sufficient justification for non-disclosure. However, where a short-term bonus has been paid, companies should disclose the extent to which performance has been achieved against relevant targets, including disclosure of the actual target achieved.

Where management has received significant STIs but short-term performance over the previous year prima facie appears to be poor or negative, we believe the company should provide a clear explanation of why these significant short-term payments were made. In addition, we believe that where companies use non-GAAP or bespoke metrics, clear reconciliations between these figures and GAAP figures in audited financial statement should be provided.

Given the pervasiveness of non-formulaic plans in this market, we do not generally recommend against a pay program on this basis alone. If a company has chosen to rely primarily on a subjective assessment or the board's discretion in determining short-term bonuses, we believe that the proxy statement should provide a meaningful discussion of the board's rationale in determining the bonuses paid as well as a rationale for the

use of a non-formulaic mechanism. Particularly where the aforementioned disclosures are substantial and satisfactory, such a structure will not provoke serious concern in our analysis on its own. However, in conjunction with other significant issues in a program's design or operation, such as a disconnect between pay and performance, the absence of a cap on payouts, or a lack of performance-based long-term awards, the use of on a non-formulaic bonus may help drive a negative recommendation.

LONG-TERM INCENTIVES

Glass Lewis recognizes the value of equity-based incentive programs, which are often the primary long-term incentive for executives. When used appropriately, they can provide a vehicle for linking an executive's pay to company performance, thereby aligning their interests with those of shareholders. In addition, equity-based compensation can be an effective way to attract, retain and motivate key employees.

There are certain elements that Glass Lewis believes are common to most well-structured long-term incentive ("LTI") plans. These include:

- No re-testing or lowering of performance conditions;
- Performance metrics that cannot be easily manipulated by management;
- Two or more performance metrics;
- At least one relative performance metric that compares the company's performance to a relevant peer group or index;
- Performance periods of at least three years;
- Stretching metrics that incentivize executives to strive for outstanding performance while not encouraging excessive risk-taking; and
- Individual limits expressed as a percentage of base salary.

Performance measures should be carefully selected and should relate to the specific business/industry in which the company operates and, especially, the key value drivers of the company's business. As with short-term incentive plans, the basis for any adjustments to metrics or results should be clearly explained.

While cognizant of the inherent complexity of certain performance metrics, Glass Lewis generally believes that measuring a company's performance with multiple metrics serves to provide a more complete picture of the company's performance than a single metric; further, reliance on just one metric may focus too much management attention on a single target and is therefore more susceptible to manipulation. When utilized for relative measurements, external benchmarks such as a sector index or peer group should be disclosed and transparent. The rationale behind the selection of a specific index or peer group should also be disclosed. Internal benchmarks should also be disclosed and transparent, unless a cogent case for confidentiality is made and fully explained. Similarly, actual performance and vesting levels for previous grants earned during the fiscal year should be disclosed.

We also believe shareholders should evaluate the relative success of a company's compensation programs, particularly with regard to existing equity-based incentive plans, in linking pay and performance when evaluating new LTI plans to determine the impact of additional stock awards. We will therefore review the company's pay-for-performance grade (see below for more information) and specifically the proportion of total compensation that is stock-based.

GRANTS OF FRONT-LOADED AWARDS

Many U.S. companies have chosen to provide large grants, usually in the form of equity awards, that are intended to serve as compensation for multiple years. This practice, often called front-loading, is taken up either in the regular course of business or as a response to specific business conditions and with a predetermined objective. We believe shareholders should generally be wary of this approach, and we accordingly weigh these grants with particular scrutiny.

While the use of front-loaded awards is intended to lock-in executive service and incentives, the same rigidity also raises the risk of effectively tying the hands of the compensation committee. As compared with a more responsive annual granting schedule program, front-loaded awards may preclude improvements or changes to reflect evolving business strategies. The considerable emphasis on a single grant can place intense pressures on every facet of its design, amplifying any potential perverse incentives and creating greater room for unintended consequences. In particular, provisions around changes of control or separations of service must ensure that executives do not receive excessive payouts that do not reflect shareholder experience or company performance.

We consider a company's rationale for granting awards under this structure and also expect any front-loaded awards to include a firm commitment not to grant additional awards for a defined period, as is commonly associated with this practice. Even when such a commitment is provided, unexpected circumstances may lead the board to make additional payments or awards for retention purposes, or to incentivize management towards more realistic goals or a revised strategy. If a company breaks its commitment not to grant further awards, we may recommend against the pay program unless a convincing rationale is provided.

The multiyear nature of these awards generally lends itself to significantly higher compensation figures in the year of grant than might otherwise be expected. In analyzing the grant of front-loaded awards to executives, Glass Lewis considers the quantum of the award on an annualized basis, rather than the lump sum, and may compare this result to prior practice and peer data, among other benchmarks.

ONE-TIME AWARDS

Glass Lewis believes shareholders should generally be wary of awards granted outside of the standard incentive schemes, as such awards have the potential to undermine the integrity of a company's regular incentive plans or the link between pay and performance, or both. We generally believe that if the existing incentive programs fail to provide adequate incentives to executives, companies should redesign their compensation programs rather than make additional grants.

However, we recognize that in certain circumstances, additional incentives may be appropriate. In these cases, companies should provide a thorough description of the awards, including a cogent and convincing explanation of their necessity and why existing awards do not provide sufficient motivation. Further, such awards should be tied to future service and performance whenever possible.

Additionally, we believe companies making supplemental or one-time awards should also describe if and how the regular compensation arrangements will be affected by these additional grants. In reviewing a company's use of supplemental awards, Glass Lewis will evaluate the terms and size of the grants in the context of the company's overall incentive strategy and granting practices, as well as the current operating environment.

CONTRACTUAL PAYMENTS AND ARRANGEMENTS

We acknowledge that there may be certain costs associated with transitions at the executive level. We believe that sign-on arrangements should be clearly disclosed and accompanied by a meaningful explanation of the payments and the process by which the amounts were reached. Further, the details of and basis for any "make-whole" payments (paid as compensation for awards forfeited from a previous employer) should be provided. Nonetheless, sign-on awards that are excessive may support or drive a negative recommendation. Lastly, some employment arrangements provide for a minimum payout level under a given incentive arrangement. These

guaranteed bonuses are not exceedingly problematic in the short term, but multiyear guarantees may drive against recommendations on their own.

With respect to severance, we believe companies should abide by the predetermined payouts in most circumstances. While in limited circumstances some deviations may not be inappropriate, we believe shareholders should be provided with a meaningful explanation of any additional or increased benefits agreed upon outside of the regular arrangements.

In the U.S. market, most companies maintain severance entitlements based on a multiple of salary and in many cases bonus. In almost all instances we see, the relevant multiple is three or less, even in the case of a change in control. We believe the basis and total value of severance should be reasonable and should not exceed the upper limit of general market practice. Particularly given the commonality of accelerated vesting and the proportional weight of long-term incentives as a component of total pay, we consider the inclusion of long-term incentives in the cash severance calculations to be inappropriate. Additional considerations, however, will be taken into account when reviewing atypically structured compensation approaches.

In evaluating the size of both severance and sign-on arrangements, we may consider the executive's regular target compensation level, or the sums paid to other executives (including the recipient's predecessor, where applicable) in evaluating the appropriateness of such an arrangement. We will consider severance sums actually paid to departing executives and, in special cases, their appropriateness given the circumstances of the executive's departure.

Beyond the quantum of contractual payments, Glass Lewis will also weigh the design of any entitlements. Executive employment terms including but not limited to key man clauses, board continuity conditions, excessively broad change in control triggers, and poor wording of employment agreements may help drive a negative recommendation. In general, we are wary of terms that are excessively restrictive in favor of the executive or could potentially incentivize behaviors that are not in a company's best interests.

Among other entitlements, Glass Lewis is strongly opposed to excise tax gross-ups related to IRC § 4999 and their expansion, especially where no consideration is given to the safe-harbor limit. We believe that under no normal circumstance is the inclusion of excise tax gross-up provisions in new agreements or the addition of such provisions to amended agreements acceptable. In light of the fact that minor increases in change-in-control payments can lead to disproportionately large excise taxes, the potential negative impact of tax gross-ups far outweighs any retentive benefit. Depending on the circumstances, the addition of new gross-ups around this excise tax in particular may lead to negative recommendations for a company's say-on-proposal, the chair of the compensation committee, or the entire committee, particularly in cases where a company had committed not to provide any such entitlements in future. With respect to gross-ups on other excise taxes or executive benefits, we review those issues on a case-by-case basis.

RECOUPMENT PROVISIONS ("CLAWBACKS")

Section 954 of the Dodd-Frank Act requires the SEC to create a rule requiring listed companies to adopt policies for recouping certain compensation during a three-year look-back period. The rule is more stringent than Section 304 of the Sarbanes-Oxley Act and applies to incentive-based compensation paid to current or former executives in the case of a financial restatement — specifically, the recoupment provision applies in cases where the company is required to prepare an accounting restatement due to erroneous data resulting from material non-compliance with any financial reporting requirements under the securities laws. Although the SEC has yet to finalize the relevant rules, we believe it is prudent for boards to adopt detailed bonus recoupment policies that go beyond Section 304 of the Sarbanes-Oxley Act to prevent executives from retaining performance-based awards that were not truly earned.

We are increasingly focusing attention on the specific terms of recoupment policies beyond whether a company maintains a clawback that simply satisfies the minimum legal requirements. We believe that clawbacks should be triggered, at a minimum, in the event of a restatement of financial results or similar revision of performance indicators upon which bonuses were based. Such policies allow the board to review all performance-

related bonuses and awards made to senior executives during a specified lookback period and, to the extent feasible, allow the company to recoup such bonuses where appropriate. Notwithstanding the foregoing, in cases where a company maintains only a bare-minimum clawback, the absence of more expansive recoupment tools may inform our overall view of the compensation program.

HEDGING OF STOCK

Glass Lewis believes that the hedging of shares by executives in the shares of the companies where they are employed severs the alignment of interests of the executive with shareholders. We believe companies should adopt strict policies to prohibit executives from hedging the economic risk associated with their share ownership in the company.

PLEDGING OF STOCK

Glass Lewis believes that shareholders should examine the facts and circumstances of each company rather than apply a one-size-fits-all policy regarding employee stock pledging. Glass Lewis believes that shareholders benefit when employees, particularly senior executives have "skin-in-the-game" and therefore recognizes the benefits of measures designed to encourage employees to both buy shares out of their own pocket and to retain shares they have been granted; blanket policies prohibiting stock pledging may discourage executives and employees from doing either.

However, we also recognize that the pledging of shares can present a risk that, depending on a host of factors, an executive with significant pledged shares and limited other assets may have an incentive to take steps to avoid a forced sale of shares in the face of a rapid stock price decline. Therefore, to avoid substantial losses from a forced sale to meet the terms of the loan, the executive may have an incentive to boost the stock price in the short term in a manner that is unsustainable, thus hurting shareholders in the long-term. We also recognize concerns regarding pledging may not apply to less senior employees, given the latter group's significantly more limited influence over a company's stock price. Therefore, we believe that the issue of pledging shares should be reviewed in that context, as should polices that distinguish between the two groups.

Glass Lewis believes that the benefits of stock ownership by executives and employees may outweigh the risks of stock pledging, depending on many factors. As such, Glass Lewis reviews all relevant factors in evaluating proposed policies, limitations and prohibitions on pledging stock, including:

- The number of shares pledged;
- The percentage executives' pledged shares are of outstanding shares;
- The percentage executives' pledged shares are of each executive's shares and total assets;
- Whether the pledged shares were purchased by the employee or granted by the company;
- Whether there are different policies for purchased and granted shares;
- Whether the granted shares were time-based or performance-based;
- The overall governance profile of the company;
- The volatility of the company's stock (in order to determine the likelihood of a sudden stock price drop);
- The nature and cyclicality, if applicable, of the company's industry;
- The participation and eligibility of executives and employees in pledging;

- The company's current policies regarding pledging and any waiver from these policies for employees and executives; and

- Disclosure of the extent of any pledging, particularly among senior executives.

COMPENSATION CONSULTANT INDEPENDENCE

As mandated by Section 952 of the Dodd-Frank Act, as of January 11, 2013, the SEC approved new listing requirements for both the NYSE and NASDAQ which require compensation committees to consider six factors (https://www.sec.gov/rules/final/2012/33-9330.pdf, p.31-32) in assessing compensation advisor independence. According to the SEC, "no one factor should be viewed as a determinative factor." Glass Lewis believes this six-factor assessment is an important process for every compensation committee to undertake but believes companies employing a consultant for board compensation, consulting and other corporate services should provide clear disclosure beyond just a reference to examining the six points, in order to allow shareholders to review the specific aspects of the various consultant relationships.

We believe compensation consultants are engaged to provide objective, disinterested, expert advice to the compensation committee. When the consultant or its affiliates receive substantial income from providing other services to the company, we believe the potential for a conflict of interest arises and the independence of the consultant may be jeopardized. Therefore, Glass Lewis will, when relevant, note the potential for a conflict of interest when the fees paid to the advisor or its affiliates for other services exceeds those paid for compensation consulting.

CEO PAY RATIO

As mandated by Section 953(b) of the Dodd-Frank Wall Street Consumer and Protection Act, beginning in 2018, issuers will be required to disclose the median annual total compensation of all employees except the CEO, the total annual compensation of the CEO or equivalent position, and the ratio between the two amounts. Glass Lewis will display the pay ratio as a data point in our Proxy Papers, as available. While we recognize that the pay ratio has the potential to provide additional insight when assessing a company's pay practices, at this time it will not be a determinative factor in our voting recommendations.

FREQUENCY OF SAY-ON-PAY

The Dodd-Frank Act also requires companies to allow shareholders a non-binding vote on the frequency of say-on-pay votes, i.e. every one, two or three years. Additionally, Dodd-Frank requires companies to hold such votes on the frequency of say-on-pay votes at least once every six years.

We believe companies should submit say-on-pay votes to shareholders every year. We believe that the time and financial burdens to a company with regard to an annual vote are relatively small and incremental and are outweighed by the benefits to shareholders through more frequent accountability. Implementing biannual or triennial votes on executive compensation limits shareholders' ability to hold the board accountable for its compensation practices through means other than voting against the compensation committee. Unless a company provides a compelling rationale or unique circumstances for say-on-pay votes less frequent than annually, we will generally recommend that shareholders support annual votes on compensation.

VOTE ON GOLDEN PARACHUTE ARRANGEMENTS

The Dodd-Frank Act also requires companies to provide shareholders with a separate non-binding vote on approval of golden parachute compensation arrangements in connection with certain change-in-control transactions. However, if the golden parachute arrangements have previously been subject to a say-on-pay vote which shareholders approved, then this required vote is waived.

Glass Lewis believes the narrative and tabular disclosure of golden parachute arrangements benefits all shareholders. Glass Lewis analyzes each golden parachute arrangement on a case-by-case basis, taking into ac-

count, among other items: the nature of the change-in-control transaction, the ultimate value of the payments particularly compared to the value of the transaction, any excise tax gross-up obligations, the tenure and position of the executives in question before and after the transaction, any new or amended employment agreements entered into in connection with the transaction, and the type of triggers involved (i.e., single vs. double).

EQUITY-BASED COMPENSATION PLAN PROPOSALS

We believe that equity compensation awards, when not abused, are useful for retaining employees and providing an incentive for them to act in a way that will improve company performance. Glass Lewis recognizes that equity-based compensation plans are critical components of a company's overall compensation program and we analyze such plans accordingly based on both quantitative and qualitative factors.

Our quantitative analysis assesses the plan's cost and the company's pace of granting utilizing a number of different analyses, comparing the program with absolute limits we believe are key to equity value creation and with a carefully chosen peer group. In general, our model seeks to determine whether the proposed plan is either absolutely excessive or is more than one standard deviation away from the average plan for the peer group on a range of criteria, including dilution to shareholders and the projected annual cost relative to the company's financial performance. Each of the analyses (and their constituent parts) is weighted and the plan is scored in accordance with that weight.

We compare the program's expected annual expense with the business's operating metrics to help determine whether the plan is excessive in light of company performance. We also compare the plan's expected annual cost to the enterprise value of the firm rather than to market capitalization because the employees, managers and directors of the firm contribute to the creation of enterprise value but not necessarily market capitalization (the biggest difference is seen where cash represents the vast majority of market capitalization). Finally, we do not rely exclusively on relative comparisons with averages because, in addition to creeping averages serving to inflate compensation, we believe that some absolute limits are warranted.

We then consider qualitative aspects of the plan such as plan administration, the method and terms of exercise, repricing history, express or implied rights to reprice, and the presence of evergreen provisions. We also closely review the choice and use of, and difficulty in meeting, the awards' performance metrics and targets, if any. We believe significant changes to the terms of a plan should be explained for shareholders and clearly indicated. Other factors such as a company's size and operating environment may also be relevant in assessing the severity of concerns or the benefits of certain changes. Finally, we may consider a company's executive compensation practices in certain situations, as applicable.

We evaluate equity plans based on certain overarching principles:

- Companies should seek more shares only when needed;
- Requested share amounts should be small enough that companies seek shareholder approval every three to four years (or more frequently);
- If a plan is relatively expensive, it should not grant options solely to senior executives and board members;
- Dilution of annual net share count or voting power, along with the "overhang" of incentive plans, should be limited;
- Annual cost of the plan (especially if not shown on the income statement) should be reasonable as a percentage of financial results and should be in line with the peer group;
- The expected annual cost of the plan should be proportional to the business's value;

- The intrinsic value that option grantees received in the past should be reasonable compared with the business's financial results;

- Plans should not permit re-pricing of stock options;

- Plans should not contain excessively liberal administrative or payment terms;

- Plans should not count shares in ways that understate the potential dilution, or cost, to common shareholders. This refers to "inverse" full-value award multipliers;

- Selected performance metrics should be challenging and appropriate, and should be subject to relative performance measurements; and

- Stock grants should be subject to minimum vesting and/or holding periods sufficient to ensure sustainable performance and promote retention.

OPTION EXCHANGES AND REPRICING

Glass Lewis is firmly opposed to the repricing of employee and director options regardless of how it is accomplished. Employees should have some downside risk in their equity-based compensation program and repricing eliminates any such risk. As shareholders have substantial risk in owning stock, we believe that the equity compensation of employees and directors should be similarly situated to align their interests with those of shareholders. We believe this will facilitate appropriate risk- and opportunity-taking for the company by employees.

We are concerned that option grantees who believe they will be "rescued" from underwater options will be more inclined to take unjustifiable risks. Moreover, a predictable pattern of repricing or exchanges substantially alters a stock option's value because options that will practically never expire deeply out of the money are worth far more than options that carry a risk of expiration.

In short, repricings and option exchange programs change the bargain between shareholders and employees after the bargain has been struck.

There is one circumstance in which a repricing or option exchange program may be acceptable: if macroeconomic or industry trends, rather than specific company issues, cause a stock's value to decline dramatically and the repricing is necessary to motivate and retain employees. In this circumstance, we think it fair to conclude that option grantees may be suffering from a risk that was not foreseeable when the original "bargain" was struck. In such a circumstance, we will recommend supporting a repricing if the following conditions are true:

- Officers and board members cannot participate in the program;

- The stock decline mirrors the market or industry price decline in terms of timing and approximates the decline in magnitude;

- The exchange is value-neutral or value-creative to shareholders using very conservative assumptions and with a recognition of the adverse selection problems inherent in voluntary programs;

- The vesting requirements on exchanged or repriced options are extended beyond one year;

- Shares reserved for options that are reacquired in an option exchange will permanently retire (i.e., will not be available for future grants) so as to prevent additional shareholder dilution in the future; and

- Management and the board make a cogent case for needing to motivate and retain existing employees, such as being in a competitive employment market.

OPTION BACKDATING, SPRING-LOADING AND BULLET-DODGING

Glass Lewis views option backdating, and the related practices of spring-loading and bullet-dodging, as egregious actions that warrant holding the appropriate management and board members responsible. These practices are similar to re-pricing options and eliminate much of the downside risk inherent in an option grant that is designed to induce recipients to maximize shareholder return.

Backdating an option is the act of changing an option's grant date from the actual grant date to an earlier date when the market price of the underlying stock was lower, resulting in a lower exercise price for the option. Since 2006, Glass Lewis has identified over 270 companies that have disclosed internal or government investigations into their past stock-option grants.

Spring-loading is granting stock options while in possession of material, positive information that has not been disclosed publicly. Bullet-dodging is delaying the grants of stock options until after the release of material, negative information. This can allow option grants to be made at a lower price either before the release of positive news or following the release of negative news, assuming the stock's price will move up or down in response to the information. This raises a concern similar to that of insider trading, or the trading on material non-public information.

The exercise price for an option is determined on the day of grant, providing the recipient with the same market risk as an investor who bought shares on that date. However, where options were backdated, the executive or the board (or the compensation committee) changed the grant date retroactively. The new date may be at or near the lowest price for the year or period. This would be like allowing an investor to look back and select the lowest price of the year at which to buy shares.

A 2006 study of option grants made between 1996 and 2005 at 8,000 companies found that option backdating can be an indication of poor internal controls. The study found that option backdating was more likely to occur at companies without a majority independent board and with a long-serving CEO; both factors, the study concluded, were associated with greater CEO influence on the company's compensation and governance practices.[48]

Where a company granted backdated options to an executive who is also a director, Glass Lewis will recommend voting against that executive/director, regardless of who decided to make the award. In addition, Glass Lewis will recommend voting against those directors who either approved or allowed the backdating. Glass Lewis feels that executives and directors who either benefited from backdated options or authorized the practice have breached their fiduciary responsibility to shareholders.

Given the severe tax and legal liabilities to the company from backdating, Glass Lewis will consider recommending voting against members of the audit committee who served when options were backdated, a restatement occurs, material weaknesses in internal controls exist and disclosures indicate there was a lack of documentation. These committee members failed in their responsibility to ensure the integrity of the company's financial reports.

When a company has engaged in spring-loading or bullet-dodging, Glass Lewis will consider recommending voting against the compensation committee members where there has been a pattern of granting options at or near historic lows. Glass Lewis will also recommend voting against executives serving on the board who benefited from the spring-loading or bullet-dodging.

48 Lucian Bebchuk, Yaniv Grinstein and Urs Peyer. "LUCKY CEOs." November, 2006.

DIRECTOR COMPENSATION PLANS

Glass Lewis believes that non-employee directors should receive reasonable and appropriate compensation for the time and effort they spend serving on the board and its committees. However, a balance is required. Fees should be competitive in order to retain and attract qualified individuals, but excessive fees represent a financial cost to the company and potentially compromise the objectivity and independence of non-employee directors. We will consider recommending support for compensation plans that include option grants or other equity-based awards that help to align the interests of outside directors with those of shareholders. However, to ensure directors are not incentivized in the same manner as executives but rather serve as a check on imprudent risk-taking in executive compensation plan design, equity grants to directors should not be performance-based. Where an equity plan exclusively or primarily covers non-employee directors as participants, we do not believe that the plan should provide for performance-based awards in any capacity.

When non-employee director equity grants are covered by the same equity plan that applies to a company's broader employee base, we will use our propriety model and analyst review of this model to guide our voting recommendations. If such a plan broadly allows for performance-based awards to directors or explicitly provides for such grants, we may recommend against the overall plan on this basis, particularly if the company has granted performance-based awards to directors in past.

EMPLOYEE STOCK PURCHASE PLANS

Glass Lewis believes that employee stock purchase plans ("ESPPs") can provide employees with a sense of ownership in their company and help strengthen the alignment between the interests of employees and shareholders. We evaluate ESPPs by assessing the expected discount, purchase period, expected purchase activity (if previous activity has been disclosed) and whether the plan has a "lookback" feature. Except for the most extreme cases, Glass Lewis will generally support these plans given the regulatory purchase limit of $25,000 per employee per year, which we believe is reasonable. We also look at the number of shares requested to see if a ESPP will significantly contribute to overall shareholder dilution or if shareholders will not have a chance to approve the program for an excessive period of time. As such, we will generally recommend against ESPPs that contain "evergreen" provisions that automatically increase the number of shares available under the ESPP each year.

EXECUTIVE COMPENSATION TAX DEDUCTIBILITY — AMENDMENT TO IRS 162(M)

The "Tax Cut and Jobs Act" had significant implications on Section 162(m) of the Internal Revenue Code, a provision that allowed companies to deduct compensation in excess of $1 million for the CEO and the next three most highly compensated executive officers, excluding the CFO, if the compensation is performance-based and is paid under shareholder-approved plans. Glass Lewis does not generally view amendments to equity plans and changes to compensation programs in response to the elimination of tax deductions under 162(m) as problematic. This specifically holds true if such modifications contribute to the maintenance of a sound performance-based compensation program.

As grandfathered contracts may continue to be eligible for tax deductions under the transition rule for Section 162(m), companies may therefore submit incentive plans for shareholder approval to take of advantage of the tax deductibility afforded under 162(m) for certain types of compensation.

We believe the best practice for companies is to provide robust disclosure to shareholders so that they can make fully-informed judgments about the reasonableness of the proposed compensation plan. To allow for meaningful shareholder review, we prefer that disclosure should include specific performance metrics, a maximum award pool, and a maximum award amount per employee. We also believe it is important to analyze the estimated grants to see if they are reasonable and in line with the company's peers.

We typically recommend voting against a 162(m) proposal where: (i) a company fails to provide at least a list of performance targets; (ii) a company fails to provide one of either a total maximum or an individual maximum; or (iii) the proposed plan or individual maximum award limit is excessive when compared with the plans of the company's peers.

The company's record of aligning pay with performance (as evaluated using our proprietary pay-for-performance model) also plays a role in our recommendation. Where a company has a record of setting reasonable pay relative to business performance, we generally recommend voting in favor of a plan even if the plan caps seem large relative to peers because we recognize the value in special pay arrangements for continued exceptional performance.

As with all other issues we review, our goal is to provide consistent but contextual advice given the specifics of the company and ongoing performance. Overall, we recognize that it is generally not in shareholders' best interests to vote against such a plan and forgo the potential tax benefit since shareholder rejection of such plans will not curtail the awards; it will only prevent the tax deduction associated with them.

Governance Structure and the Shareholder Franchise

ANTI-TAKEOVER MEASURES

POISON PILLS (SHAREHOLDER RIGHTS PLANS)

Glass Lewis believes that poison pill plans are not generally in shareholders' best interests. They can reduce management accountability by substantially limiting opportunities for corporate takeovers. Rights plans can thus prevent shareholders from receiving a buy-out premium for their stock. Typically we recommend that shareholders vote against these plans to protect their financial interests and ensure that they have an opportunity to consider any offer for their shares, especially those at a premium.

We believe boards should be given wide latitude in directing company activities and in charting the company's course. However, on an issue such as this, where the link between the shareholders' financial interests and their right to consider and accept buyout offers is substantial, we believe that shareholders should be allowed to vote on whether they support such a plan's implementation. This issue is different from other matters that are typically left to board discretion. Its potential impact on and relation to shareholders is direct and substantial. It is also an issue in which management interests may be different from those of shareholders; thus, ensuring that shareholders have a voice is the only way to safeguard their interests.

In certain circumstances, we will support a poison pill that is limited in scope to accomplish a particular objective, such as the closing of an important merger, or a pill that contains what we believe to be a reasonable qualifying offer clause. We will consider supporting a poison pill plan if the qualifying offer clause includes each of the following attributes:

- The form of offer is not required to be an all-cash transaction;
- The offer is not required to remain open for more than 90 business days;
- The offeror is permitted to amend the offer, reduce the offer, or otherwise change the terms;
- There is no fairness opinion requirement; and
- There is a low to no premium requirement.

Where these requirements are met, we typically feel comfortable that shareholders will have the opportunity to voice their opinion on any legitimate offer.

NOL POISON PILLS

Similarly, Glass Lewis may consider supporting a limited poison pill in the event that a company seeks shareholder approval of a rights plan for the express purpose of preserving Net Operating Losses (NOLs). While companies with NOLs can generally carry these losses forward to offset future taxable income, Section 382

of the Internal Revenue Code limits companies' ability to use NOLs in the event of a "change of ownership."[49] In this case, a company may adopt or amend a poison pill ("NOL pill") in order to prevent an inadvertent change of ownership by multiple investors purchasing small chunks of stock at the same time, and thereby preserve the ability to carry the NOLs forward. Often such NOL pills have trigger thresholds much lower than the common 15% or 20% thresholds, with some NOL pill triggers as low as 5%.

Glass Lewis evaluates NOL pills on a strictly case-by-case basis taking into consideration, among other factors, the value of the NOLs to the company, the likelihood of a change of ownership based on the size of the holding and the nature of the larger shareholders, the trigger threshold and whether the term of the plan is limited in duration (i.e., whether it contains a reasonable "sunset" provision) or is subject to periodic board review and/or shareholder ratification. In many cases, companies will propose the adoption of bylaw amendments specifically restricting certain share transfers, in addition to proposing the adoption of a NOL pill. In general, if we support the terms of a particular NOL pill, we will generally support the additional protective amendment in the absence of significant concerns with the specific terms of that proposal.

Furthermore, we believe that shareholders should be offered the opportunity to vote on any adoption or renewal of a NOL pill regardless of any potential tax benefit that it offers a company. As such, we will consider recommending voting against those members of the board who served at the time when an NOL pill was adopted without shareholder approval within the prior twelve months and where the NOL pill is not subject to shareholder ratification.

FAIR PRICE PROVISIONS

Fair price provisions, which are rare, require that certain minimum price and procedural requirements be observed by any party that acquires more than a specified percentage of a corporation's common stock. The provision is intended to protect minority shareholder value when an acquirer seeks to accomplish a merger or other transaction which would eliminate or change the interests of the minority shareholders. The provision is generally applied against the acquirer unless the takeover is approved by a majority of "continuing directors" and holders of a majority, in some cases a supermajority as high as 80%, of the combined voting power of all stock entitled to vote to alter, amend, or repeal the above provisions.

The effect of a fair price provision is to require approval of any merger or business combination with an "interested shareholder" by 51% of the voting stock of the company, excluding the shares held by the interested shareholder. An interested shareholder is generally considered to be a holder of 10% or more of the company's outstanding stock, but the trigger can vary.

Generally, provisions are put in place for the ostensible purpose of preventing a back-end merger where the interested shareholder would be able to pay a lower price for the remaining shares of the company than he or she paid to gain control. The effect of a fair price provision on shareholders, however, is to limit their ability to gain a premium for their shares through a partial tender offer or open market acquisition which typically raise the share price, often significantly. A fair price provision discourages such transactions because of the potential costs of seeking shareholder approval and because of the restrictions on purchase price for completing a merger or other transaction at a later time.

Glass Lewis believes that fair price provisions, while sometimes protecting shareholders from abuse in a takeover situation, more often act as an impediment to takeovers, potentially limiting gains to shareholders from a variety of transactions that could significantly increase share price. In some cases, even the independent directors of the board cannot make exceptions when such exceptions may be in the best interests of shareholders. Given the existence of state law protections for minority shareholders such as Section 203 of the Delaware Corporations Code, we believe it is in the best interests of shareholders to remove fair price provisions.

49 Section 382 of the Internal Revenue Code refers to a "change of ownership" of more than 50 percentage points by one or more 5% shareholders within a three-year period. The statute is intended to deter the "trafficking" of net operating losses.

QUORUM REQUIREMENTS

Glass Lewis believes that a company's quorum requirement should be set at a level high enough to ensure that a broad range of shareholders are represented in person or by proxy, but low enough that the company can transact necessary business. Companies in the U.S. are generally subject to quorum requirements under the laws of their specific state of incorporation. Additionally, those companies listed on the NASDAQ Stock Market are required to specify a quorum in their bylaws, provided however that such quorum may not be less than one-third of outstanding shares. Prior to 2013, the New York Stock Exchange required a quorum of 50% for listed companies, although this requirement was dropped in recognition of individual state requirements and potential confusion for issuers. Delaware, for example, required companies to provide for a quorum of no less than one-third of outstanding shares; otherwise such quorum shall default to a majority.

We generally believe a majority of outstanding shares entitled to vote is an appropriate quorum for the transaction of business at shareholder meetings. However, should a company seek shareholder approval of a lower quorum requirement we will generally support a reduced quorum of at least one-third of shares entitled to vote, either in person or by proxy. When evaluating such proposals, we also consider the specific facts and circumstances of the company, such as size and shareholder base.

DIRECTOR AND OFFICER INDEMNIFICATION

While Glass Lewis strongly believes that directors and officers should be held to the highest standard when carrying out their duties to shareholders, some protection from liability is reasonable to protect them against certain suits so that these officers feel comfortable taking measured risks that may benefit shareholders. As such, we find it appropriate for a company to provide indemnification and/or enroll in liability insurance to cover its directors and officers so long as the terms of such agreements are reasonable.

REINCORPORATION

In general, Glass Lewis believes that the board is in the best position to determine the appropriate jurisdiction of incorporation for the company. When examining a management proposal to reincorporate to a different state or country, we review the relevant financial benefits, generally related to improved corporate tax treatment, as well as changes in corporate governance provisions, especially those relating to shareholder rights, resulting from the change in domicile. Where the financial benefits are de minimis and there is a decrease in shareholder rights, we will recommend voting against the transaction.

However, costly, shareholder-initiated reincorporations are typically not the best route to achieve the furtherance of shareholder rights. We believe shareholders are generally better served by proposing specific shareholder resolutions addressing pertinent issues which may be implemented at a lower cost, and perhaps even with board approval. However, when shareholders propose a shift into a jurisdiction with enhanced shareholder rights, Glass Lewis examines the significant ways would the company benefit from shifting jurisdictions including the following:

- Is the board sufficiently independent?
- Does the company have anti-takeover protections such as a poison pill or classified board in place?
- Has the board been previously unresponsive to shareholders (such as failing to implement a shareholder proposal that received majority shareholder support)?
- Do shareholders have the right to call special meetings of shareholders?
- Are there other material governance issues of concern at the company?
- Has the company's performance matched or exceeded its peers in the past one and three years?

- How has the company ranked in Glass Lewis' pay-for-performance analysis during the last three years?

- Does the company have an independent chair?

We note, however, that we will only support shareholder proposals to change a company's place of incorporation in exceptional circumstances.

EXCLUSIVE FORUM AND FEE-SHIFTING BYLAW PROVISIONS

Glass Lewis recognizes that companies may be subject to frivolous and opportunistic lawsuits, particularly in conjunction with a merger or acquisition, that are expensive and distracting. In response, companies have sought ways to prevent or limit the risk of such suits by adopting bylaws regarding where the suits must be brought or shifting the burden of the legal expenses to the plaintiff, if unsuccessful at trial.

Glass Lewis believes that charter or bylaw provisions limiting a shareholder's choice of legal venue are not in the best interests of shareholders. Such clauses may effectively discourage the use of shareholder claims by increasing their associated costs and making them more difficult to pursue. As such, shareholders should

be wary about approving any limitation on their legal recourse including limiting themselves to a single jurisdiction (e.g., Delaware) without compelling evidence that it will benefit shareholders.

For this reason, we recommend that shareholders vote against any bylaw or charter amendment seeking to adopt an exclusive forum provision unless the company: (i) provides a compelling argument on why the provision would directly benefit shareholders; (ii) provides evidence of abuse of legal process in other, non-favored jurisdictions; (iii) narrowly tailors such provision to the risks involved; and (iv) maintains a strong record of good corporate governance practices.

Moreover, in the event a board seeks shareholder approval of a forum selection clause pursuant to a bundled bylaw amendment rather than as a separate proposal, we will weigh the importance of the other bundled provisions when determining the vote recommendation on the proposal. We will nonetheless recommend voting against the chair of the governance committee for bundling disparate proposals into a single proposal (refer to our discussion of nominating and governance committee performance in Section I of the guidelines).

Similarly, some companies have adopted bylaws requiring plaintiffs who sue the company and fail to receive a judgment in their favor pay the legal expenses of the company. These bylaws, also known as "fee-shifting" or "loser pays" bylaws, will likely have a chilling effect on even meritorious shareholder lawsuits as shareholders would face an strong financial disincentive not to sue a company. Glass Lewis therefore strongly opposes the adoption of such fee-shifting bylaws and, if adopted without shareholder approval, will recommend voting against the governance committee. While we note that in June of 2015 the State of Delaware banned the adoption of fee-shifting bylaws, such provisions could still be adopted by companies incorporated in other states.

AUTHORIZED SHARES

Glass Lewis believes that adequate capital stock is important to a company's operation. When analyzing a request for additional shares, we typically review four common reasons why a company might need additional capital stock:

1. **Stock Split** — We typically consider three metrics when evaluating whether we think a stock split is likely or necessary: The historical stock pre-split price, if any; the current price relative to the company's most common trading price over the past 52 weeks; and some absolute limits on stock price that, in our view, either always make a stock split appropriate if desired by management or would almost never be a reasonable price at which to split a stock.

2. **Shareholder Defenses** — Additional authorized shares could be used to bolster takeover defenses such as a poison pill. Proxy filings often discuss the usefulness of additional shares in defending against or discouraging a hostile takeover as a reason for a requested increase. Glass Lewis is typically against such defenses and will oppose actions intended to bolster such defenses.

3. **Financing for Acquisitions** — We look at whether the company has a history of using stock for acquisitions and attempt to determine what levels of stock have typically been required to accomplish such transactions. Likewise, we look to see whether this is discussed as a reason for additional shares in the proxy.

4. **Financing for Operations** — We review the company's cash position and its ability to secure financing through borrowing or other means. We look at the company's history of capitalization and whether the company has had to use stock in the recent past as a means of raising capital.

Issuing additional shares generally dilutes existing holders in most circumstances. Further, the availability of additional shares, where the board has discretion to implement a poison pill, can often serve as a deterrent to interested suitors. Accordingly, where we find that the company has not detailed a plan for use of the proposed shares, or where the number of shares far exceeds those needed to accomplish a detailed plan, we typically recommend against the authorization of additional shares. Similar concerns may also lead us to recommend against a proposal to conduct a reverse stock split if the board does not state that it will reduce the number of authorized common shares in a ratio proportionate to the split.

While we think that having adequate shares to allow management to make quick decisions and effectively operate the business is critical, we prefer that, for significant transactions, management come to shareholders to justify their use of additional shares rather than providing a blank check in the form of a large pool of unallocated shares available for any purpose.

ADVANCE NOTICE REQUIREMENTS

We typically recommend that shareholders vote against proposals that would require advance notice of shareholder proposals or of director nominees.

These proposals typically attempt to require a certain amount of notice before shareholders are allowed to place proposals on the ballot. Notice requirements typically range between three to six months prior to the annual meeting. Advance notice requirements typically make it impossible for a shareholder who misses the deadline to present a shareholder proposal or a director nominee that might be in the best interests of the company and its shareholders.

We believe shareholders should be able to review and vote on all proposals and director nominees. Shareholders can always vote against proposals that appear with little prior notice. Shareholders, as owners of a business, are capable of identifying issues on which they have sufficient information and ignoring issues on which they have insufficient information. Setting arbitrary notice restrictions limits the opportunity for shareholders to raise issues that may come up after the window closes.

VIRTUAL SHAREHOLDER MEETINGS

A relatively small but growing contingent of companies have elected to hold shareholder meetings by virtual means only. Glass Lewis believes that virtual meeting technology can be a useful complement to a traditional, in-person shareholder meeting by expanding participation of shareholders who are unable to attend a shareholder meeting in person (i.e. a "hybrid meeting"). However, we also believe that virtual-only meetings have the potential to curb the ability of a company's shareholders to meaningfully communicate with the company's management.

Prominent shareholder rights advocates, including the Council of Institutional Investors, have expressed concerns that such virtual-only meetings do not approximate an in-person experience and may serve to reduce

the board's accountability to shareholders. When analyzing the governance profile of companies that choose to hold virtual-only meetings, we look for robust disclosure in a company's proxy statement which assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

Examples of effective disclosure include: (i) addressing the ability of shareholders to ask questions during the meeting, including time guidelines for shareholder questions, rules around what types of questions are allowed, and rules for how questions and comments will be recognized and disclosed to meeting participants; (ii) procedures, if any, for posting appropriate questions received during the meeting and the company's answers, on the investor page of their website as soon as is practical after the meeting; (iii) addressing technical and logistical issues related to accessing the virtual meeting platform; and (iv) procedures for accessing technical support to assist in the event of any difficulties accessing the virtual meeting.

We will generally recommend voting against members of the governance committee where the board is planning to hold a virtual-only shareholder meeting and the company does not provide such disclosure.

VOTING STRUCTURE

DUAL-CLASS SHARE STRUCTURES

Glass Lewis believes dual-class voting structures are typically not in the best interests of common shareholders. Allowing one vote per share generally operates as a safeguard for common shareholders by ensuring that those who hold a significant minority of shares are able to weigh in on issues set forth by the board.

Furthermore, we believe that the economic stake of each shareholder should match their voting power and that no small group of shareholders, family or otherwise, should have voting rights different from those of other shareholders. On matters of governance and shareholder rights, we believe shareholders should have the power to speak and the opportunity to effect change. That power should not be concentrated in the hands of a few for reasons other than economic stake.

We generally consider a dual-class share structure to reflect negatively on a company's overall corporate governance. Because we believe that companies should have share capital structures that protect the interests of non-controlling shareholders as well as any controlling entity, we typically recommend that shareholders vote in favor of recapitalization proposals to eliminate dual-class share structures. Similarly, we will generally recommend against proposals to adopt a new class of common stock.

With regards to our evaluation of corporate governance following an IPO or spin-off within the past year, we will now include the presence of dual-class share structures as an additional factor in determining whether shareholder rights are being severely restricted indefinitely.

When analyzing voting results from meetings of shareholders at companies controlled through dual-class structures, we will carefully examine the level of approval or disapproval attributed to unaffiliated shareholders when determining whether board responsiveness is warranted. Where vote results indicate that a majority of unaffiliated shareholders supported a shareholder proposal or opposed a management proposal, we believe the board should demonstrate an appropriate level of responsiveness.

CUMULATIVE VOTING

Cumulative voting increases the ability of minority shareholders to elect a director by allowing shareholders to cast as many shares of the stock they own multiplied by the number of directors to be elected. As companies generally have multiple nominees up for election, cumulative voting allows shareholders to cast all of their votes for a single nominee, or a smaller number of nominees than up for election, thereby raising the likelihood of electing one or more of their preferred nominees to the board. It can be important when a board is controlled by insiders or affiliates and where the company's ownership structure includes one or more shareholders who control a majority-voting block of company stock.

Glass Lewis believes that cumulative voting generally acts as a safeguard for shareholders by ensuring that those who hold a significant minority of shares can elect a candidate of their choosing to the board. This allows the creation of boards that are responsive to the interests of all shareholders rather than just a small group of large holders.

We review cumulative voting proposals on a case-by-case basis, factoring in the independence of the board and the status of the company's governance structure. But we typically find these proposals on ballots at companies where independence is lacking and where the appropriate checks and balances favoring shareholders are not in place. In those instances we typically recommend in favor of cumulative voting.

Where a company has adopted a true majority vote standard (i.e., where a director must receive a majority of votes cast to be elected, as opposed to a modified policy indicated by a resignation policy only), Glass Lewis will recommend voting against cumulative voting proposals due to the incompatibility of the two election methods. For companies that have not adopted a true majority voting standard but have adopted some form of majority voting, Glass Lewis will also generally recommend voting against cumulative voting proposals if the company has not adopted anti-takeover protections and has been responsive to shareholders.

Where a company has not adopted a majority voting standard and is facing both a shareholder proposal to adopt majority voting and a shareholder proposal to adopt cumulative voting, Glass Lewis will support only the majority voting proposal. When a company has both majority voting and cumulative voting in place, there is a higher likelihood of one or more directors not being elected as a result of not receiving a majority vote. This is because shareholders exercising the right to cumulate their votes could unintentionally cause the failed election of one or more directors for whom shareholders do not cumulate votes.

SUPERMAJORITY VOTE REQUIREMENTS

Glass Lewis believes that supermajority vote requirements impede shareholder action on ballot items critical to shareholder interests. An example is in the takeover context, where supermajority vote requirements can strongly limit the voice of shareholders in making decisions on such crucial matters as selling the business. This in turn degrades share value and can limit the possibility of buyout premiums to shareholders. Moreover, we believe that a supermajority vote requirement can enable a small group of shareholders to overrule the will of the majority shareholders. We believe that a simple majority is appropriate to approve all matters presented to shareholders.

TRANSACTION OF OTHER BUSINESS

We typically recommend that shareholders not give their proxy to management to vote on any other business items that may properly come before an annual or special meeting. In our opinion, granting unfettered discretion is unwise.

ANTI-GREENMAIL PROPOSALS

Glass Lewis will support proposals to adopt a provision preventing the payment of greenmail, which would serve to prevent companies from buying back company stock at significant premiums from a certain shareholder. Since a large or majority shareholder could attempt to compel a board into purchasing its shares at a large premium, the anti-greenmail provision would generally require that a majority of shareholders other than the majority shareholder approve the buyback.

MUTUAL FUNDS: INVESTMENT POLICIES AND ADVISORY AGREEMENTS

Glass Lewis believes that decisions about a fund's structure and/or a fund's relationship with its investment advisor or sub-advisors are generally best left to management and the members of the board, absent a showing of egregious or illegal conduct that might threaten shareholder value. As such, we focus our analyses of such proposals on the following main areas:

- The terms of any amended advisory or sub-advisory agreement;
- Any changes in the fee structure paid to the investment advisor; and
- Any material changes to the fund's investment objective or strategy.

We generally support amendments to a fund's investment advisory agreement absent a material change that is not in the best interests of shareholders. A significant increase in the fees paid to an investment advisor would be reason for us to consider recommending voting against a proposed amendment to an investment advisory agreement or fund reorganization. However, in certain cases, we are more inclined to support an increase in advisory fees if such increases result from being performance-based rather than asset-based. Furthermore, we generally support sub-advisory agreements between a fund's advisor and sub-advisor, primarily because the fees received by the sub-advisor are paid by the advisor, and not by the fund.

In matters pertaining to a fund's investment objective or strategy, we believe shareholders are best served when a fund's objective or strategy closely resembles the investment discipline shareholders understood and selected when they initially bought into the fund. As such, we generally recommend voting against amendments to a fund's investment objective or strategy when the proposed changes would leave shareholders with stakes in a fund that is noticeably different than when originally purchased, and which could therefore potentially negatively impact some investors' diversification strategies.

REAL ESTATE INVESTMENT TRUSTS

The complex organizational, operational, tax and compliance requirements of Real Estate Investment Trusts ("REITs") provide for a unique shareholder evaluation. In simple terms, a REIT must have a minimum of 100 shareholders (the "100 Shareholder Test") and no more than 50% of the value of its shares can be held by five or fewer individuals (the "5/50 Test"). At least 75% of a REITs' assets must be in real estate, it must derive 75% of its gross income from rents or mortgage interest, and it must pay out 90% of its taxable earnings as dividends. In addition, as a publicly traded security listed on a stock exchange, a REIT must comply with the same general listing requirements as a publicly traded equity.

In order to comply with such requirements, REITs typically include percentage ownership limitations in their organizational documents, usually in the range of 5% to 10% of the REITs outstanding shares. Given the complexities of REITs as an asset class, Glass Lewis applies a highly nuanced approach in our evaluation of REIT proposals, especially regarding changes in authorized share capital, including preferred stock.

PREFERRED STOCK ISSUANCES AT REITS

Glass Lewis is generally against the authorization of preferred shares that allows the board to determine the preferences, limitations and rights of the preferred shares (known as "blank-check preferred stock"). We believe that granting such broad discretion should be of concern to common shareholders, since blank-check preferred stock could be used as an antitakeover device or in some other fashion that adversely affects the voting power or financial interests of common shareholders. However, given the requirement that a REIT must distribute 90% of its net income annually, it is inhibited from retaining capital to make investments in its business. As such, we recognize that equity financing likely plays a key role in a REIT's growth and creation of shareholder value. Moreover, shareholder concern regarding the use of preferred stock as an anti-takeover mechanism may be allayed by the fact that most REITs maintain ownership limitations in their certificates of incorporation. For these reasons, along with the fact that REITs typically do not engage in private placements of preferred stock (which result in the rights of common shareholders being adversely impacted), we may support requests to authorize shares of blank-check preferred stock at REITs.

BUSINESS DEVELOPMENT COMPANIES

Business Development Companies ("BDCs") were created by the U.S. Congress in 1980; they are regulated under the Investment Company Act of 1940 and are taxed as regulated investment companies ("RICs") under the Internal Revenue Code. BDCs typically operate as publicly traded private equity firms that invest in early stage to mature private companies as well as small public companies. BDCs realize operating income when their investments are sold off, and therefore maintain complex organizational, operational, tax and compliance requirements that are similar to those of REITs—the most evident of which is that BDCs must distribute at least 90% of their taxable earnings as dividends.

AUTHORIZATION TO SELL SHARES AT A PRICE BELOW NET ASSET VALUE

Considering that BDCs are required to distribute nearly all their earnings to shareholders, they sometimes need to offer additional shares of common stock in the public markets to finance operations and acquisitions. However, shareholder approval is required in order for a BDC to sell shares of common stock at a price below Net Asset Value ("NAV"). Glass Lewis evaluates these proposals using a case-by-case approach, but will recommend supporting such requests if the following conditions are met:

- The authorization to allow share issuances below NAV has an expiration date of one year or less from the date that shareholders approve the underlying proposal (i.e. the meeting date);
- The proposed discount below NAV is minimal (ideally no greater than 20%);
- The board specifies that the issuance will have a minimal or modest dilutive effect (ideally no greater than 25% of the company's then-outstanding common stock prior to the issuance); and
- A majority of the company's independent directors who do not have a financial interest in the issuance approve the sale.

In short, we believe BDCs should demonstrate a responsible approach to issuing shares below NAV, by proactively addressing shareholder concerns regarding the potential dilution of the requested share issuance, and explaining if and how the company's past below-NAV share issuances have benefitted the company.

AUDITOR RATIFICATION AND BELOW-NAV ISSUANCES

When a BDC submits a below-NAV issuance for shareholder approval, we will refrain from recommending against the audit committee chair for not including auditor ratification on the same ballot. Because of the unique way these proposals interact, votes may be tabulated in a manner that is not in shareholders' interests. In cases where these proposals appear on the same ballot, auditor ratification is generally the only "routine proposal," the presence of which triggers a scenario where broker non-votes may be counted toward shareholder quorum, with unintended consequences.

Under the 1940 Act, below-NAV issuance proposals require relatively high shareholder approval. Specifically, these proposals must be approved by the lesser of: (i) 67% of votes cast if a majority of shares are represented at the meeting; or (ii) a majority of outstanding shares. Meanwhile, any broker non-votes counted toward quorum will automatically be registered as "against" votes for purposes of this proposal. The unintended result can be a case where the issuance proposal is not approved, despite sufficient voting shares being cast in favor. Because broker non-votes result from a lack of voting instruction by the shareholder, we do not believe shareholders' ability to weigh in on the selection of auditor outweighs the consequences of failing to approve an issuance proposal due to such technicality.

Shareholder Initiatives

Glass Lewis generally believes decisions regarding day-to-day management and policy decisions, including those related to social, environmental or political issues, are best left to management and the board as they in almost all cases have more and better information about company strategy and risk. However, when there is a clear link between the subject of a shareholder proposal and value enhancement or risk mitigation, Glass Lewis will recommend in favor of a reasonable, well-crafted shareholder proposal where the company has failed to or inadequately addressed the issue.

We believe that shareholders should not attempt to micromanage a company, its businesses or its executives through the shareholder initiative process. Rather, we believe shareholders should use their influence to push for governance structures that protect shareholders and promote director accountability. Shareholders should then put in place a board they can trust to make informed decisions that are in the best interests of the business and its owners, and hold directors accountable for management and policy decisions through board elections. However, we recognize that support of appropriately crafted shareholder initiatives may at times serve to promote or protect shareholder value.

To this end, Glass Lewis evaluates shareholder proposals on a case-by-case basis. We generally recommend supporting shareholder proposals calling for the elimination of, as well as to require shareholder approval of, antitakeover devices such as poison pills and classified boards. We generally recommend supporting proposals likely to increase and/or protect shareholder value and also those that promote the furtherance of shareholder rights. In addition, we also generally recommend supporting proposals that promote director accountability and those that seek to improve compensation practices, especially those promoting a closer link between compensation and performance, as well as those that promote more and better disclosure of relevant risk factors where such disclosure is lacking or inadequate.

ENVIRONMENTAL, SOCIAL & GOVERNANCE INITIATIVES

For a detailed review of our policies concerning compensation, environmental, social and governance shareholder initiatives, please refer to our comprehensive *Proxy Paper Guidelines for Shareholder Initiatives*, available at www.glasslewis.com.

North America

UNITED STATES

Headquarters
255 California Street
Suite 1100
San Francisco, CA 94111
+1 415 678 4110
+1 888 800 7001

44 Wall Street
Suite 2001
New York, NY 10005
+1 212 797 3777

Europe

IRELAND

15 Henry Street
Limerick
+353 61 292 800

UNITED KINGDOM

80 Coleman Street
Suite 4.02
London, EC2R 5BJ
+44 207 653 8800

GERMANY

IVOX Glass Lewis
Kaiserallee 23a
76133 Karlsruhe
+49 721 3549622

Asia Pacific

AUSTRALIA

CGI Glass Lewis
Suite 5.03, Level 5
255 George St
Sydney NSW 2000
+61 2 9299 9266

www.glasslewis.com

@GlassLewis

@CGIGlassLewis

@MeetyIConnect

Glass, Lewis & Co.

2019 Americas Proxy Voting Guidelines Updates

Benchmark Policy Changes for U.S., Canada, and Latin America

Effective for Meetings on or after February 1, 2019

Published November 19, 2018

TABLE OF CONTENTS

UNITED STATES

Board of Directors – Voting on Director Nominees in Uncontested Elections

Board Composition – Diversity

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: **Diversity:** Highlight boards with no gender diversity. ~~However,~~ For 2019 meetings, no adverse vote recommendations will be made due to a~~ny~~ lack of gender diversity. For companies in the Russell 3000 or S&P 1500 indices, effective for meetings on or after Feb. 1, 2020, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies when there are no women on the company's board. Mitigating factors include: › A firm commitment, as stated in the proxy statement, to appoint at least one female to the board in the near term; › The presence of a female on the board at the preceding annual meeting; or › Other relevant factors as applicable.	**General Recommendation:** **Diversity:** Highlight boards with no gender diversity. For 2019 meetings, no adverse vote recommendations will be made due to a lack of gender diversity. For companies in the Russell 3000 or S&P 1500 indices, effective for meetings on or after Feb. 1, 2020, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies when there are no women on the company's board. Mitigating factors include: › A firm commitment, as stated in the proxy statement, to appoint at least one female to the board in the near term; › The presence of a female on the board at the preceding annual meeting; or › Other relevant factors as applicable.

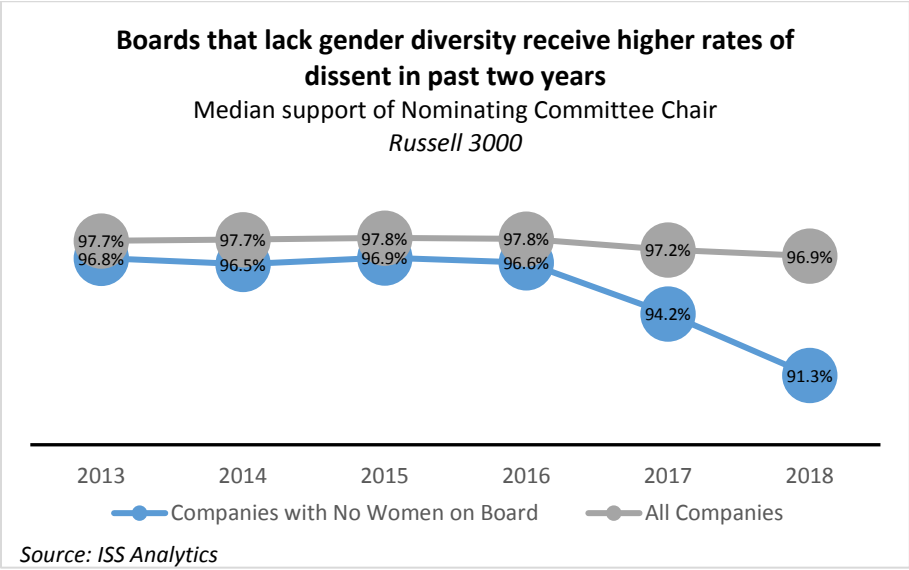
Rationale for Change:

1) Investors favor gender diverse boards.

During the 2017 and 2018 proxy seasons, investors increasingly targeted companies with little or no female representation on their boards, citing reasons of equality, good corporate governance, and enhanced long-term company performance.[1] Increased investor engagement on the topic appears to have prompted many boards to add one or more women directors to their ranks over the past two years. When boards fail to respond to such engagement, a number of large investors have cast votes against directors.

As noted in ISS' 2018 U.S. Proxy Season Review and as shown in the following figure, companies that lacked a gender diverse board were correlated with lower support levels for nominating committee chairs.[2]

[1] *See* Kosmas Papadopoulos, Robert Kalb, Angelica Valderrama and Thomas Balog, *U.S. Board Study: Board Diversity Review*, p. 11-12, Apr. 11, 2018.
[2] United States: Uncontested Director Elections & Governance Proposals: 2018 Proxy Season Review.



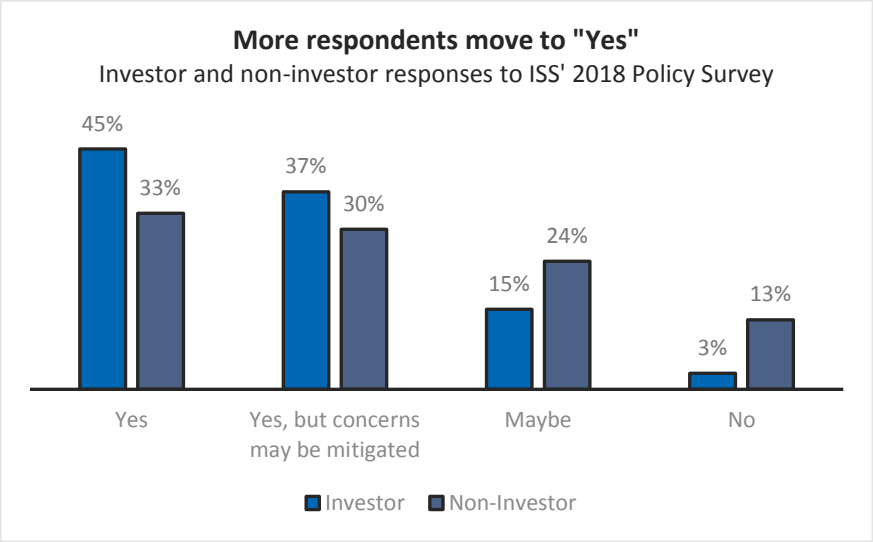
Source: ISS Analytics

ISS' 2018 policy survey results show a growing investor preference for boosting levels of boardroom gender diversity. According to the survey results, only three percent of investor respondents stated that they did not consider a lack of board gender diversity to be problematic, and over 80 percent of the investor respondents indicated an absence of gender diversity at the board level to be problematic.[3] Forty-five percent of investor respondents stated that the absence of at least one female director may indicate problems in the board recruitment process. Another 37 percent responded that the recruitment process may be problematic, but such concerns may be mitigated if there is a disclosed policy or approach that describes the steps taken by the board or the nominating committee to boost gender diversity on the board. Fifteen percent of investor respondents answered that lack of diversity could be problematic on a case-by-case basis.

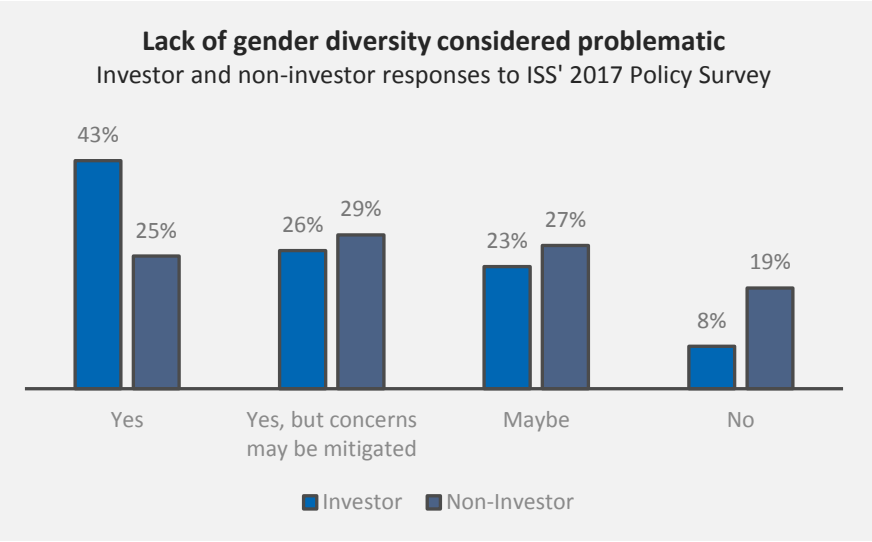
Non-investor respondents generally echoed investors' responses. A low number (13 percent) stated that a lack of gender diversity on the board is not problematic.

Based on these survey results, most investors and other corporate constituencies consider that the absence of gender diversity may be problematic and should (at a minimum) trigger a deeper examination of a board's nomination practices and policies. Although both investors and non-investors continue to list engaging with the board or management as their most favored response to a board's lack of female representation, a growing number of shareholders think that adverse recommendations could be warranted for one or more directors. Non-investors overwhelmingly prefer engagement, but also appear to growingly recognize escalation at the ballot box may be an appropriate action by shareholders in some circumstances.

[3] ISS, *2018 Governance Principles Survey: Summary of Results*, p. 7, 12-14, Sept. 18, 2018.



ISS 2018 Governance Principles Survey: Summary of Results



ISS 2018 Governance Principles Survey: Summary of Results

2) Board gender diversity has been positively correlated to better company performance in some studies.

Many investors view the existence of board gender diversity as good corporate governance in light of a series of studies that have found that board gender diversity is positively correlated to better company performance.[4]

Looking beyond returns, recent ISS and other studies have identified additional benefits to companies and their shareholders from boosting gender diversity in the boardroom. A recent ISS report[5] found that women directors are more likely to possess skillsets that are most sought after by boards. That study found that female nominees surpassed their male peers in the prevalence of skills related to audit, strategic planning, technology, sales, risk management, legal, government, CSR, and human resources.

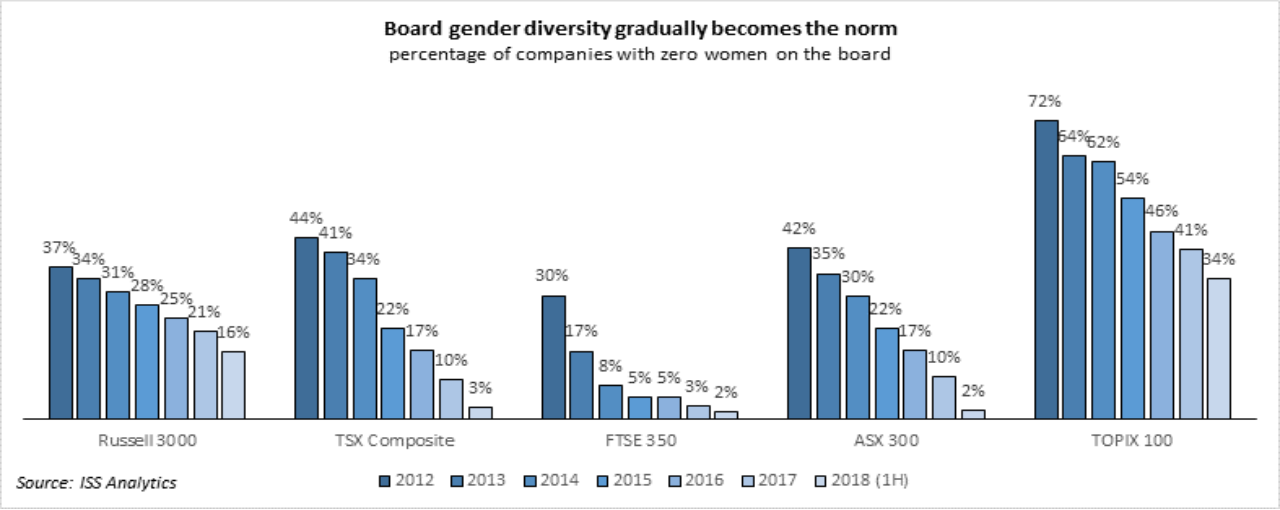
3) Gender diverse boards are the market norm.

According to the 2017 U.S. Board Study: Board Diversity Review, in 2017 and at the time of their annual meetings, 99 percent of the firms in the S&P 500, 90 percent of the S&P 400, and 77 percent of the S&P 600, and 87 percent of the companies in the S&P 1500 had at least one woman on the board. As of Sept. 25, 2018, and

[4] Conyon, Martin J. and He, Lerong, *Firm Performance and Boardroom Gender Diversity: A Quantile Regression Approach*, March 16, 2017; Deloitte, Global Center for Corporate Governance, Women in the boardroom: A global perspective, P. 3-4, Fifth Ed. (2017); PwC, Governance Insights Center, PwC's 2017 Annual Corporate Directors Survey, p. 11-12; Vivian Hunt, Dennis Layton and Sara Prince, McKinsey & Co., *Diversity Matters*, Feb. 2, 2015; Marcus Noland, Tyler Moran and Barbara Kotschwar, Peterson Institute for International Economics, *Is Gender Diversity Profitable?*, February 2016.

[5] Anthony Garcia, ISS Custom Research, *Director Skills: Diversity of Thought and Experience in the Boardroom*, Governance Insights, Sept. 14, 2018.

according to DataDesk data, only three companies in the S&P 500 had no female directors. Boards with female representation far outnumber all-male boards in the Russell 3000 Index too where, according to Data Desk data, 84 percent of the companies have at least one female on the board. Female representation at the board level has thus become the norm at companies traditionally associated with having better governance practices in the U.S., as well as in other markets, as shown in the figure below.



Board Composition – Attendance

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: **Attendance at Board and Committee Meetings:** Generally, vote against or withhold from directors (except new nominees, who should be considered case-by-case[6]) who attend less than 75 percent of the aggregate of their board and committee meetings for the period for which they served, unless an acceptable reason for absences is disclosed in the proxy or another SEC filing. Acceptable reasons for director absences are generally limited to the following: › Medical issues/illness; › Family emergencies; and › Missing only one meeting (when the total of all meetings is three or fewer). In cases of chronic poor attendance without reasonable justification, in addition to voting against the director(s) with poor attendance, generally vote against or withhold from appropriate members of the nominating/governance committees or the full board. If the proxy disclosure is unclear and insufficient to determine whether a director attended at least 75 percent of the aggregate of his/her board and committee meetings during his/her period of service, vote against or withhold from the director(s) in question.	**General Recommendation:** **Attendance at Board and Committee Meetings:** Generally, vote against or withhold from directors (except new nominees, who should be considered case-by-case[7]) who attend less than 75 percent of the aggregate of their board and committee meetings for the period for which they served, unless an acceptable reason for absences is disclosed in the proxy or another SEC filing. Acceptable reasons for director absences are generally limited to the following: › Medical issues/illness; › Family emergencies; and › Missing only one meeting (when the total of all meetings is three or fewer). In cases of chronic poor attendance without reasonable justification, in addition to voting against the director(s) with poor attendance, generally vote against or withhold from appropriate members of the nominating/governance committees or the full board. If the proxy disclosure is unclear and insufficient to determine whether a director attended at least 75 percent of the aggregate of his/her board and committee meetings during his/her period of service, vote against or withhold from the director(s) in question.

Rationale for Change:

ISS is codifying the case-by-case approach taken when faced with situations of possible chronic poor attendance by directors. ISS defines "chronic poor attendance" as three or more consecutive years of poor attendance without reasonable explanation. The policy approach may also be applied in cases where there is a long-term pattern of absenteeism, such as poor attendance the previous year and three out of the four prior years.

Currently, the policy is generally applied as follows:

› After three years of poor attendance by a director, recommend withhold from the chair of the nominating or governance committee;
› After four years, recommend withhold from the full nominating or governance committee; and
› After five years, recommend withhold from all nominees.

[6] New nominees who served for only part of the fiscal year are generally exempted from the attendance policy.

When the director with chronic poor attendance is on the ballot, the recommendations at the chair or committee level will be directed towards the nominating committee for the continued nomination of the director, in spite of the poor attendance. When the director is not on the ballot, as in the case of a classified board, the recommendations will be directed towards the governance committee for maintaining a governance structure where the director is not directly accountable to shareholders on an annual basis.

Board Accountability – Management Proposals to Ratify Existing Charter or Bylaw Provisions

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: [no current policy] Vote against/withhold from individual directors, members of the governance committee, or the full board, where boards ask shareholders to ratify existing charter or bylaw provisions considering the following factors: › The presence of a shareholder proposal addressing the same issue on the same ballot; › The board's rationale for seeking ratification; › Disclosure of actions to be taken by the board should the ratification proposal fail; › Disclosure of shareholder engagement regarding the board's ratification request; › The level of impairment to shareholders' rights caused by the existing provision; › The history of management and shareholder proposals on the provision at the company's past meetings; › Whether the current provision was adopted in response to the shareholder proposal; › The company's ownership structure; and › Previous use of ratification proposals to exclude shareholder proposals.	**General Recommendation:** Vote against/withhold from individual directors, members of the governance committee, or the full board, where boards ask shareholders to ratify existing charter or bylaw provisions considering the following factors: › The presence of a shareholder proposal addressing the same issue on the same ballot; › The board's rationale for seeking ratification; › Disclosure of actions to be taken by the board should the ratification proposal fail; › Disclosure of shareholder engagement regarding the board's ratification request; › The level of impairment to shareholders' rights caused by the existing provision; › The history of management and shareholder proposals on the provision at the company's past meetings; › Whether the current provision was adopted in response to the shareholder proposal; › The company's ownership structure; and › Previous use of ratification proposals to exclude shareholder proposals.

Rationale for Change:

The use of board sponsored proposals to ratify existing charter or bylaw provisions increased significantly during the 2018 proxy season in response to guidance from the SEC staff that granted some companies' requests to grant no-action relief if companies sought to exclude shareholder proposals from their ballots by including a "conflicting" management-sponsored proposal to ratify one or more of their existing governance provision citing 14a-8(i)(9). Seven companies in 2018, for example, obtained no-action relief to exclude shareholder proposals to adopt or amend the right of shareholders to call a special meeting by seeking ratification of their current provision. Notably, none of these ratification proposals made material changes to the provisions that enhanced shareholders' rights to call special meetings.

These "ratification" proposals appear to have been offered by boards to block shareholder proposals that requested more shareholder-friendly governance provisions from appearing on ballots. Notably, shareholders on numerous occasions on a wide range of issues have demonstrated their ability to thoughtfully vote when both management and shareholder proposals on the same issue appear on the ballot.

Please see the related policy updates regarding Board Responsiveness- Ratification Proposals and Shareholder Rights – Management Proposals to Ratify Existing Charter or Bylaw Provisions.

Board Accountability – Director Performance Evaluation

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: **Director Performance Evaluation:** The board lacks mechanisms to promote accountability and oversight, coupled with sustained poor performance relative to peers. Sustained poor performance is measured by one-, three-, and five-year ~~and three-year~~ total shareholder returns in the bottom half of a company's four-digit GICS industry group (Russell 3000 companies only). Take into consideration the company's ~~five-year total shareholder return and~~ operational metrics and other factors as warranted. Problematic provisions include but are not limited to: › A classified board structure; › A supermajority vote requirement; › Either a plurality vote standard in uncontested director elections, or a majority vote standard in contested elections; › The inability of shareholders to call special meetings; › The inability of shareholders to act by written consent; › A multi-class capital structure; and/or › A non-shareholder approved poison pill.	**General Recommendation:** **Director Performance Evaluation:** The board lacks mechanisms to promote accountability and oversight, coupled with sustained poor performance relative to peers. Sustained poor performance is measured by one-, three-, and five-year total shareholder returns in the bottom half of a company's four-digit GICS industry group (Russell 3000 companies only). Take into consideration the company's operational metrics and other factors as warranted. Problematic provisions include but are not limited to: › A classified board structure; › A supermajority vote requirement; › Either a plurality vote standard in uncontested director elections, or a majority vote standard in contested elections; › The inability of shareholders to call special meetings; › The inability of shareholders to act by written consent; › A multi-class capital structure; and/or › A non-shareholder approved poison pill.

Rationale for Change:

The Director Performance Evaluation policy is intended to identify companies that have a long-term underperformance and a significant number of board entrenchment features. Moving the five-year underperformance test to the initial screen, as opposed to as part of a secondary step in the evaluation, will reduce the number of companies that undergo scrutiny under this policy.

Board Responsiveness – Ratification proposals

Current ISS Policy, incorporating changes:	New ISS Policy:

General Recommendation: Vote case-by-case on individual directors, committee members, or the entire board of directors as appropriate if:
 	
› The board failed to act on a shareholder proposal that received the support of a majority of the shares cast in the previous year or failed to act on a management proposal seeking to ratify an existing charter/bylaw provision that received opposition of a majority of the shares cast in the previous year. Factors that will be considered are:
  › Disclosed outreach efforts by the board to shareholders in the wake of the vote;
  › Rationale provided in the proxy statement for the level of implementation;
  › The subject matter of the proposal;
  › The level of support for and opposition to the resolution in past meetings;
  › Actions taken by the board in response to the majority vote and its engagement with shareholders;
  › The continuation of the underlying issue as a voting item on the ballot (as either shareholder or management proposals); and
  › Other factors as appropriate.
 	
› The board failed to act on takeover offers where the majority of shares are tendered;
› At the previous board election, any director received more than 50 percent withhold/against votes of the shares cast and the company has failed to address the issue(s) that caused the high withhold/against vote.
	General Recommendation: Vote case-by-case on individual directors, committee members, or the entire board of directors as appropriate if:
	
	› The board failed to act on a shareholder proposal that received the support of a majority of the shares cast in the previous year or failed to act on a management proposal seeking to ratify an existing charter/bylaw provision that received opposition of a majority of the shares cast in the previous year. Factors that will be considered are:
	  › Disclosed outreach efforts by the board to shareholders in the wake of the vote;
	  › Rationale provided in the proxy statement for the level of implementation;
	  › The subject matter of the proposal;
	  › The level of support for and opposition to the resolution in past meetings;
	  › Actions taken by the board in response to the majority vote and its engagement with shareholders;
	  › The continuation of the underlying issue as a voting item on the ballot (as either shareholder or management proposals); and
	  › Other factors as appropriate.
	
	› The board failed to act on takeover offers where the majority of shares are tendered;
	› At the previous board election, any director received more than 50 percent withhold/against votes of the shares cast and the company has failed to address the issue(s) that caused the high withhold/against vote.

Rationale for Change:

This policy update is being made in conjunction with the new policy (see above) that codifies ISS' approach for analyzing management-submitted ratification proposals of exisiting charter/bylaw provisions. The exisiting responsiveness policy is updated to reflect that the failure of a management proposal to ratify existing charter/bylaw provisions to receive majority support will trigger a board responsiveness analysis at the following annual meeting.

Shareholder Rights & Defenses

Management Proposals to Ratify Existing Charter or Bylaw Provisions

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: [no current policy] Generally vote against management proposals to ratify provisions of the company's existing charter or bylaws, unless these governance provisions align with best practice. In addition, voting against/withhold from individual directors, members of the governance committee, or the full board may be warranted, considering: › The presence of a shareholder proposal addressing the same issue on the same ballot; › The board's rationale for seeking ratification; › Disclosure of actions to be taken by the board should the ratification proposal fail; › Disclosure of shareholder engagement regarding the board's ratification request; › The level of impairment to shareholders' rights caused by the existing provision; › The history of management and shareholder proposals on the provision at the company's past meetings; › Whether the current provision was adopted in response to the shareholder proposal; › The company's ownership structure; and › Previous use of ratification proposals to exclude shareholder proposals.	**General Recommendation:** Generally vote against management proposals to ratify provisions of the company's existing charter or bylaws, unless these governance provisions align with best practice. In addition, voting against/withhold from individual directors, members of the governance committee, or the full board may be warranted, considering: › The presence of a shareholder proposal addressing the same issue on the same ballot; › The board's rationale for seeking ratification; › Disclosure of actions to be taken by the board should the ratification proposal fail; › Disclosure of shareholder engagement regarding the board's ratification request; › The level of impairment to shareholders' rights caused by the existing provision; › The history of management and shareholder proposals on the provision at the company's past meetings; › Whether the current provision was adopted in response to the shareholder proposal; › The company's ownership structure; and › Previous use of ratification proposals to exclude shareholder proposals.

Rationale for Change:

See Board Accountability – Management Proposals to Ratify Existing Charter or Bylaw Provisions

Capital/Restructuring

Reverse Stock Splits

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: Vote for management proposals to implement a reverse stock split if: › ~~when~~The number of authorized shares will be proportionately reduced~~.~~; or › The effective increase in authorized shares is equal to or less than the allowable increase calculated in accordance with ISS' Common Stock Authorization policy. Vote ~~against~~ case-by-case on proposals ~~when there is not a proportionate reduction of authorized shares, unless~~ that do not meet either of the above conditions, taking into consideration the following factors: › ~~A S~~stock exchange ~~has provided notice~~ notification to the company of a potential delisting; ~~or~~ ~~› The effective increase in authorized shares is equal to or less than the allowable increase calculated in accordance with ISS' Common Stock Authorization policy.~~ › Disclosure of substantial doubt about the company's ability to continue as a going concern without additional financing; › The company's rationale; or › Other factors as applicable.	**General Recommendation:** Vote for management proposals to implement a reverse stock split if: › The number of authorized shares will be proportionately reduced; or › The effective increase in authorized shares is equal to or less than the allowable increase calculated in accordance with ISS' Common Stock Authorization policy. Vote case-by-case on proposals that do not meet either of the above conditions, taking into consideration the following factors: › Stock exchange notification to the company of a potential delisting; › Disclosure of substantial doubt about the company's ability to continue as a going concern without additional financing; › The company's rationale; or › Other factors as applicable.

Rationale for Change:

The policy on reverse stock splits is being updated to codify the approach currently taken for companies that are not listed on major stock markets/exchanges and are not proportionately reducing their authorized shares. Delisting notices are not applicable to companies that do not trade on a major market/exchange. The policy is being broadened to include consideration of other critical factors for all companies, exchange listed and non-exchange listed, where substantial risks exist - in particular, whether they will continue as going concerns.

U.S. AND CANADA

Social and Environmental Issues

Global Approach

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: Generally vote case-by-case, ~~taking into consideration~~ examining primarily whether implementation of the proposal is likely to enhance or protect shareholder value~~, and in addition~~. T~~t~~he following factors will ~~also~~ be considered: › If the issues presented in the proposal are more appropriately or effectively dealt with through legislation or government regulation; › If the company has already responded in an appropriate and sufficient manner to the issue(s) raised in the proposal; › Whether the proposal's request is unduly burdensome (scope or timeframe) or overly prescriptive; › The company's approach compared with any industry standard practices for addressing the issue(s) raised by the proposal; › Whether there are significant controversies, fines, penalties, or litigation associated with the company's environmental or social practices; › If the proposal requests increased disclosure or greater transparency, whether ~~or not~~ reasonable and sufficient information is currently available to shareholders from the company or from other publicly available sources; and › If the proposal requests increased disclosure or greater transparency, whether ~~or not~~ implementation would reveal proprietary or confidential information that could place the company at a competitive disadvantage.	**General Recommendation:** Generally vote case-by-case, examining primarily whether implementation of the proposal is likely to enhance or protect shareholder value. The following factors will be considered: › If the issues presented in the proposal are more appropriately or effectively dealt with through legislation or government regulation; › If the company has already responded in an appropriate and sufficient manner to the issue(s) raised in the proposal; › Whether the proposal's request is unduly burdensome (scope or timeframe) or overly prescriptive; › The company's approach compared with any industry standard practices for addressing the issue(s) raised by the proposal; › Whether there are significant controversies, fines, penalties, or litigation associated with the company's environmental or social practices; › If the proposal requests increased disclosure or greater transparency, whether reasonable and sufficient information is currently available to shareholders from the company or from other publicly available sources; and › If the proposal requests increased disclosure or greater transparency, whether implementation would reveal proprietary or confidential information that could place the company at a competitive disadvantage.

Rationale for Change:

The update is being made to codify the factors that are already taken into consideration in ISS' case-by-case analyses of environmental and social (E&S) shareholder proposals. The update makes it more explicit that significant controversies, fines, penalties, or litigation are considered when evaluating E&S shareholder proposals.

CANADA

Board of Directors – Voting on Director Nominees in Uncontested Elections

Gender Diversity Policy (TSX only)

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: For ~~S&P/TSX Composite Index~~ widely-held[7] companies, generally vote withhold for the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or Chair of the board of directors if no nominating committee has been identified or no chair of such committee has been identified, where: › The company has not disclosed a formal written gender diversity policy~~*~~[8]; and › There are zero female directors on the board of directors. ~~This policy will be applied to all TSX Companies starting in Feb 2019.~~ *~~*Per NI 58-101 and Form 58-101F1, the issuer should disclose whether it has adopted a written policy relating to the identification and nomination of women directors. The policy, if adopted, should provide a short summary of its objectives and key provisions; describe the measures taken to ensure that the policy has been effectively implemented; disclose annual and cumulative progress by the issuer in achieving the objectives of the policy, and whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.~~* The gender diversity policy should include a clear commitment to increase board gender diversity. Boilerplate or contradictory language may result in withhold recommendations for directors.	**General Recommendation:** For widely-held companies[8], generally vote withhold for the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or Chair of the board of directors if no nominating committee has been identified or no chair of such committee has been identified, where: › The company has not disclosed a formal written gender diversity policy[9]; and › There are zero female directors on the board of directors. The gender diversity policy should include a clear commitment to increase board gender diversity. Boilerplate or contradictory language may result in withhold recommendations for directors. The gender diversity policy should include measurable goals and/or targets denoting a firm commitment to increasing board gender diversity within a reasonable period of time. When determining a company's commitment to board gender diversity, consideration will also be given to the board's disclosed approach to considering gender diversity in executive officer positions and stated goals or targets or

[7] "Widely-held" refers to S&P/TSX Composite Index companies as well as other companies that ISS designates as such based on the number of ISS clients holding securities of the company.

[8] Per NI 58-101 and Form 58-101F1, the issuer should disclose whether it has adopted a written policy relating to the identification and nomination of women directors. The policy, if adopted, should provide a short summary of its objectives and key provisions; describe the measures taken to ensure that the policy has been effectively implemented; disclose annual and cumulative progress by the issuer in achieving the objectives of the policy, and whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.

The gender diversity policy should include measurable goals and/or targets denoting a firm commitment to increasing board gender diversity within a reasonable period of time. When determining a company's commitment to board gender diversity, consideration will also be given to the board's disclosed approach to considering gender diversity in executive officer positions and stated goals or targets or programs and processes for advancing women in executive officer roles, and how the success of such programs and processes is monitored. **Exemptions:** This policy will not apply to: › Newly publicly listed companies within the current or prior fiscal year; › Companies that have transitioned from the TSXV within the current or prior fiscal year; or › Companies with four or fewer directors. **Rationale:** Gender diversity has become a high profile corporate governance issue in the Canadian market. Effective Dec. 31, 2014, as per National Instrument 58-101 Disclosure of Corporate Governance Practices, TSX-listed issuers are required to provide proxy disclosures regarding whether, and if so how, the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. Also required is disclosure of policies or targets, if any, regarding the representation of women on the board. The disclosure requirement has been a catalyst for the addition of women on the boards of many ~~larger~~ widely-held TSX-listed reporting issuers~~, including Composite Index companies~~. ~~Composite Index~~ Widely-held TSX-listed company boards lacking a policy commitment and having zero female directors are now deemed to be outliers lagging market expectations in this regard. On Nov. 16, 2017 ISS announced an update to the Proxy Voting Guidelines for TSX-Listed Companies to establish a board gender diversity policy applicable to S&P/TSX Composite Index companies. The ISS gender diversity policy came into effect for meetings that were held on or after Feb. 1, 2018. Among non-Composite Index TSX-listed issuers, many have disclosed that they have not adopted a gender diversity policy, or goals or targets. Further,	programs and processes for advancing women in executive officer roles, and how the success of such programs and processes is monitored. **Exemptions:** This policy will not apply to: › Newly publicly listed companies within the current or prior fiscal year; › Companies that have transitioned from the TSXV within the current or prior fiscal year; or › Companies with four or fewer directors. **Rationale:** Gender diversity has become a high profile corporate governance issue in the Canadian market. Effective Dec. 31, 2014, as per National Instrument 58-101 Disclosure of Corporate Governance Practices, TSX-listed issuers are required to provide proxy disclosures regarding whether, and if so how, the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. Also required is disclosure of policies or targets, if any, regarding the representation of women on the board. The disclosure requirement has been a catalyst for the addition of women on the boards of many widely-held TSX-listed reporting issuers. Widely-held TSX-listed company boards lacking a policy commitment and having zero female directors are now deemed to be outliers lagging market expectations in this regard. On Nov. 16, 2017 ISS announced an update to the Proxy Voting Guidelines for TSX-Listed Companies to establish a board gender diversity policy applicable to S&P/TSX Composite Index companies. The ISS gender diversity policy came into effect for meetings that were held on or after Feb. 1, 2018. Among non-Composite Index TSX-listed issuers, many have disclosed that they have not adopted a gender diversity policy, or goals or targets. Further, approximately 45 percent in the ISS coverage universe do not have any women on the board of directors. Therefore, the policy has been revised to expand its scope beyond Composite Index companies to a broader universe of widely-held TSX reporting issuers (other than those exceptions indicated above) commencing 2019. Given that such a large number of smaller, more narrowly-held TSX-listed issuers do not have any female directors and given the potentially

approximately ~~50~~ 45 percent in the ISS coverage universe do not have any women on the board of directors. Therefore, the policy ~~will apply to Composite Index companies initially and is intended to apply to all~~ has been revised to expand its scope beyond Composite Index companies to a broader universe of widely-held TSX reporting issuers (other than those exceptions indicated above) commencing 2019. Given that such a large number of smaller, more narrowly-held TSX-listed issuers do not have any female directors and given the potentially disproportionate impact on voting recommendations upon policy implementation for such issuers, an expansion to the entire TSX universe is at this stage not contemplated.	disproportionate impact on voting recommendations upon policy implementation for such issuers, an expansion to the entire TSX universe is at this stage not contemplated.

Rationale for Change:

In 2017, ISS introduced the board gender diversity policy for the Canadian market. That policy was applicable to TSX Composite Index companies only (approximately 244 companies), and was implemented for meetings held by Composite Index companies on or after Feb. 1, 2018.

At the time ISS introduced the gender diversity policy, ISS also announced that the policy would be expanded to a broader universe of TSX-listed issuers for 2019.

The universe of widely-held TSX-listed companies was selected as the appropriate segment of companies listed on the Toronto Stock Exchange for the expanded application of ISS' Canadian Board Gender Diversity Policy because these companies are widely institutionally-held, and their corporate governance practices are the subject of heightened scrutiny by institutional investors.These companies are more likely to have a formal gender diversity policy disclosed and/or at least one female director. According to ISS Analytics data, approximately 12 percent of widely-held TSX-listed companies do not have either a policy or woman on the board.

Overboarding (TSX only)

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: ~~(in effect until January 31, 2019): Generally vote withhold for individual director nominees if:~~ › ~~Irrespective of whether the company has adopted a majority voting director resignation policy, the director is overboarded[9] AND the individual director has attended less than 75 percent of his/her respective board and committee meetings held within the past year without a valid reason for these absences.~~ ~~Cautionary language will be included in ISS reports where directors are overboarded regardless of attendance.~~ ~~**For meetings on or after February 1, 2019**~~, gGenerally vote withhold for individual director nominees who: › Are non-CEO directors and serve on more than five public company boards; or › Are CEOs of public companies who serve on the boards of more than two public companies besides their own – withhold only at their outside boards[11].	**General Recommendation:** Generally vote withhold for individual director nominees who: › Are non-CEO directors and serve on more than five public company boards; or › Are CEOs of public companies who serve on the boards of more than two public companies besides their own – withhold only at their outside boards[10].

Rationale for Change:

The removal of the attendance factor from the overboarding policy combined with the revised overboarding thresholds will further align Canadian ISS policy with recent and continuous feedback received from Canadian institutional investors during roundtable discussions and one-on-one policy outreach meetings. Additionally, the approach is intended to align with the policy approach of global institutional investors. Given the large number of Canadian issuers that are dual-listed in both Canada and the US, institutional investors have also supported the harmonization of ISS' Canadian and US overboarding thresholds. The updated thresholds are also aligned with those recommended by the Canadian Coalition for Good Governance (CCGG). Given the significant change in policy and the potential impact on companies, a one-year grace period was provided to allow TSX reporting issuers additional time to remediate overboarding instances. As such, the new policy will be in effect commencing February 2019.

[9] "~~Overboarded" is defined by ISS as: a CEO of a public company who sits on more than 1 outside public company board in addition to the company of which he/she is CEO, OR the director is not a CEO of a public company and sits on more than 4 public company boards in total~~.

[10] Although a CEO's subsidiary boards will be counted as separate boards, ISS will not recommend a withhold vote for the CEO of a parent company board or any of the controlled (>50 percent ownership) subsidiaries of that parent but may do so at subsidiaries that are less than 50 percent controlled and boards outside the parent/subsidiary relationship.

BRAZIL AND AMERICAS REGIONAL

Voting on Director Nominees under Uncontested Election- Brazil

Current ISS Policy, incorporating changes:	New ISS Policy:
In Brazil, the revised version of the code of best practice of corporate governance, from the Brazilian Institute of Corporate Governance (IBGC), as well as the country's newly-created Brazilian Code of Corporate Governance (2016) recommend that boards should have a "relevant number of independent directors" or be, at a minimum, one-third independent, respectively. These recommendations have become increasingly pertinent as the free float of Brazilian companies continues to grow. Majority-independent boards remain rare in Brazil.	In Brazil, the revised version of the code of best practice of corporate governance, from the Brazilian Institute of Corporate Governance (IBGC), as well as the country's newly-created Brazilian Code of Corporate Governance (2016) recommend that boards should have a "relevant number of independent directors" or be, at a minimum, one-third independent, respectively. These recommendations have become increasingly pertinent as the free float of Brazilian companies continues to grow. Majority independent boards remain rare in Brazil.
The revised version of the Sao Paulo Stock Exchange's (B3) Novo Mercado listing segment regulations, effective as of Jan. 2, 2018, states that member ~~C~~companies ~~that are part of the Novo Mercado and Nivel 2 listing segments of the Sao Paulo Stock Exchange (BM&FBovespa)~~ are required to maintain a minimum of 20-percent board independence~~.~~ or two independent members, whichever results in a higher independence level. The previous rule established only a minimum of 20-percent board independence, which could technically be met with one independent director. Companies listed under the Nivel 2 listing segment are required to maintain a minimum of 20-percent independent board, and ~~BM&FBovespa~~ B3 regulations also allow these companies (Nivel 2) to round down the required number of independent directors.	The revised version of the Sao Paulo Stock Exchange's (B3) Novo Mercado listing segment regulations, effective as of Jan. 2, 2018, states that member companies are required to maintain a minimum of 20-percent board independence or two independent members, whichever results in a higher independence level. The previous rule established only a minimum of 20-percent board independence, which could technically be met with one independent director. Companies listed under the Nivel 2 listing segment are required to maintain a minimum of 20-percent independent board, and B3 regulations also allow these companies (Nivel 2) to round down the required number of independent directors.
Companies that are part of the Nivel 1 ~~listing segment~~ and the non-differentiated ("~~t~~Traditional") listing segments ~~companies~~ are not subject to a minimum requirement. Institutional investors largely believe that the aforementioned board independence requirements are presently inadequate, in light of the current free float and average board independence of companies in the differentiated listing segments. ~~Moreover, the BM&FBovespa itself has sought to raise its minimum independence requirements, though issuers belonging to the voluntary listing segments voted down a proposal to do so in 2010.~~	Companies that are part of the Nivel 1 and the non-differentiated ("Traditional") listing segments are not subject to a minimum requirement. Institutional investors largely believe that the aforementioned board independence requirements are presently inadequate, in light of the current free float and average board independence of companies in the differentiated listing segments.
ISS' benchmark board independence policy specifies that the boards of issuers belonging to the Novo Mercado and Nivel 2, the country's highest levels of corporate governance, must be at least 30-percent independent, consistent with	ISS' benchmark board independence policy specifies that the boards of issuers belonging to the Novo Mercado and Nivel 2, the country's highest levels of corporate governance, must be at least 30-percent independent, consistent with proportional board representation best practices and the growing expectations of institutional investors.

proportional board representation best practices and the growing expectations of institutional investors. In addition, as of Feb. 1, 2017~~7~~8, ISS benchmark policy was updated to ~~will~~ also require a minimum of at least one ~~board~~ independen~~ce~~t director for companies listed under the Nivel 1 differentiated corporate governance segment and the Traditional segment. ~~Brazilian issuers trading under the Traditional listing segment of the Sao Paulo Stock Exchange will be granted an additional year to comply with the minimum independence benchmark policy, which will be effective for these issuers as of Feb. 1, 2018.~~ ~~Very few companies present unbundled director election proposals.~~ The most common market practice in Brazil remains slate elections. Nonetheless, in recent years, the market has experienced an increase in the number of individual board elections. While directors nominated by a controlling shareholder must be disclosed 15 days prior to the meeting date, minority shareholders may present the names of their nominees up to the time of the meeting. These rules were designed to minimize restrictions on minority shareholders, but ~~end up having a~~ may negatively impact ~~on~~ international investors, who must often submit voting instructions in the absence of complete nominee information. **General Recommendation:** Vote for the bundled election of management nominees, unless: › Adequate disclosure of management nominees has not been provided in a timely manner; › There are clear concerns over questionable finances or restatements; › There have been questionable transactions with conflicts of interest; › There are any records of abuses against minority shareholder interests; › The board fails to meet minimum corporate governance standards; or › Minority shareholders have presented timely disclosure of minority board nominees to be elected under separate elections, as allowed under Brazilian law (see Election of Minority Nominees – Separate Election below). **Minimum Independence Levels**	In addition, as of Feb. 1, 2018, ISS benchmark policy was updated to also require a minimum of at least one independent director for companies listed under the Nivel 1 differentiated corporate governance segment and the Traditional segment. The most common market practice in Brazil remains slate elections. Nonetheless, in recent years, the market has experienced an increase in the number of individual board elections. While directors nominated by a controlling shareholder must be disclosed 15 days prior to the meeting date, minority shareholders may present the names of their nominees up to the time of the meeting. These rules were designed to minimize restrictions on minority shareholders, but may negatively impact international investors, who must often submit voting instructions in the absence of complete nominee information. **General Recommendation:** Vote for the bundled election of management nominees, unless: › Adequate disclosure of management nominees has not been provided in a timely manner; › There are clear concerns over questionable finances or restatements; › There have been questionable transactions with conflicts of interest; › There are any records of abuses against minority shareholder interests; › The board fails to meet minimum corporate governance standards; or › Minority shareholders have presented timely disclosure of minority board nominees to be elected under separate elections, as allowed under Brazilian law (see Election of Minority Nominees – Separate Election below). **Minimum Independence Levels**

Vote against the bundled election of directors if the post-election board at Novo Mercado and Nivel 2 companies would ~~is~~ not be at least 30-percent independent. Vote against the bundled election of directors if the post-election board ~~at~~ of Nivel 1 and Traditional companies would ~~do~~ not have at least one independent member. ~~While the companies listed under the Nivel 1 differentiated segment will be affected by this change in ISS policy as of Feb. 1, 2017, companies in the Traditional group will have until Feb. 1, 2018, to adjust to this new policy.~~ ~~Vote for individual management nominees unless there are specific concerns about the individual, such as criminal wrongdoing, breach of fiduciary responsibilities, or lack of sufficient board independence.~~ **Unbundled Elections** **General Recommendation:** In an unbundled election, for boards that meet the minimum independence level recommended by ISS, support all director nominees if: › Minority shareholders have not timely disclosed board nominees to be elected under minority separate elections, as allowed by the Brazilian Corporate Law (see Election of Minority Nominees – Separate Election below); and › There are no concerns regarding the candidate(s) and/or the company. However, if the proposed board falls below the minimum independence level recommended under ISS policy: › Support the independent nominees presented individually under the majority election; and › Vote against the non-independent candidates in the majority election. In making the above vote recommendations, ISS generally will not recommend against the election of the chairman, due to the relevance of the board leadership position in the absence of other governance concerns.	Vote against the bundled election of directors if the post-election board at Novo Mercado and Nivel 2 companies would not be at least 30-percent independent. Vote against the bundled election of directors if the post-election board of Nivel 1 and Traditional companies would not have at least one independent member. **Unbundled Elections** **General Recommendation:** In an unbundled election, for boards that meet the minimum independence level recommended by ISS, support all director nominees if: › Minority shareholders have not timely disclosed board nominees to be elected under minority separate elections, as allowed by the Brazilian Corporate Law (see Election of Minority Nominees – Separate Election below); and › There are no concerns regarding the candidate(s) and/or the company. However, if the proposed board falls below the minimum independence level recommended under ISS policy: › Support the independent nominees presented individually under the majority election; and › Vote against the non-independent candidates in the majority election. In making the above vote recommendations, ISS generally will not recommend against the election of the chairman, due to the relevance of the board leadership position in the absence of other governance concerns.

Rationale for Change:

The number of companies that presented individual board elections increased significantly over the last three proxy seasons in Brazil, as illustrated below:

Bundled vs. unbundled full board elections

	Bundled	Unbundled	Total	Percentage unbundled elections
FY 2016	94	8	102	7.8%
FY 2017	95	22	117	18.8%
FY 2018	77	41	119	34.4%

The current ISS Brazil policy focuses mostly on bundled elections and the separate election of minority shareholder nominees. The updated policy provides a framework to analyze unbundled elections proposed by the company's management, when shareholders have a say on each nominee.

In unbundled elections that would result in a board independence level which falls below the minimum recommended by ISS policy, ISS generally recommends in favor of independent nominees, in the absence of other concerns, and against all non-independent candidates. The only exception is the chairman of the board, when clearly identified by the company, who receives a favorable vote recommendation regardless of his/her independence classification due to the relevance of the board leadership position in the absence of other governance concerns.

ISS Classification of Directors- Brazil and Americas Regional

Current Definition of Independence (incorporating changes):	New Definition of Independence:
Executive Director › Employee or executive of the company; › Any director who is classified as a non-executive, but receives salary, fees, bonus, and/or other benefits that are in line with the highest-paid executives of the company.	**Executive Director** › Employee or executive of the company; › Any director who is classified as a non-executive, but receives salary, fees, bonus, and/or other benefits that are in line with the highest-paid executives of the company.
Non-Independent Non-Executive Director (NED) › Any director who is attested by the board to be a non-independent NED; › Any director specifically designated as a representative of a significant shareholder of the company; › Any director who is also an employee or executive of a significant shareholder of the company; › Any director who is nominated by a dissenting significant shareholder, unless there is a clear lack of material[~~5~~4] connection with the dissident, either currently or historically; › Beneficial owner (direct or indirect) of at least 10 percent of the company's stock, either in economic terms or in voting rights (this may be aggregated if voting power is distributed among more than one member of a defined group, e.g., family members who beneficially own less than 10 percent individually, but collectively own more than 10 percent), unless market best practice dictates a lower ownership and/or disclosure threshold (and in other special market-specific circumstances); › Government representative; › Currently provides (or a relative[1] provides) professional services[2] to the company, to an affiliate of the company, or to an individual officer of the company or of one of its affiliates in excess of $10,000 per year; › Represents customer, supplier, creditor, banker, or other entity with which company maintains transactional/commercial relationship (unless company discloses information to apply a materiality test[3]); › Any director who has conflicting or cross-directorships with executive directors or the chairman of the company; › Relative[1] of a current employee of the company or its affiliates; › Relative[1] of a former executive of the company or its affiliates; › A new appointee elected other than by a formal process through the General Meeting (such as a contractual appointment by a substantial shareholder);	**Non-Independent Non-Executive Director (NED)** › Any director who is attested by the board to be a non-independent NED; › Any director specifically designated as a representative of a significant shareholder of the company; › Any director who is also an employee or executive of a significant shareholder of the company; › Any director who is nominated by a dissenting significant shareholder, unless there is a clear lack of material[4] connection with the dissident, either currently or historically; › Beneficial owner (direct or indirect) of at least 10 percent of the company's stock, either in economic terms or in voting rights (this may be aggregated if voting power is distributed among more than one member of a defined group, e.g., family members who beneficially own less than 10 percent individually, but collectively own more than 10 percent), unless market best practice dictates a lower ownership and/or disclosure threshold (and in other special market-specific circumstances); › Government representative; › Currently provides (or a relative[1] provides) professional services[2] to the company, to an affiliate of the company, or to an individual officer of the company or of one of its affiliates in excess of $10,000 per year; › Represents customer, supplier, creditor, banker, or other entity with which company maintains transactional/commercial relationship (unless company discloses information to apply a materiality test[3]); › Any director who has conflicting or cross-directorships with executive directors or the chairman of the company; › Relative[1] of a current employee of the company or its affiliates; › Relative[1] of a former executive of the company or its affiliates; › A new appointee elected other than by a formal process through the General Meeting (such as a contractual appointment by a substantial shareholder);

› Founder/co-founder/member of founding family but not currently an employee; › Former executive (five-year cooling off period); › Any director who has served for 12 or more years on the board will be deemed non-independent, unless local best practices recommend a lower tenure limit which will then be applied; › ~~Years of service is generally not a determining factor unless it is recommended best practice in a market and/or in extreme circumstances, in which case it may be considered.~~[4] › Any additional relationship or principle considered to compromise independence under local corporate governance best practice guidance.	› Founder/co-founder/member of founding family but not currently an employee; › Former executive (five-year cooling off period); › Any director who has served for 12 or more years on the board will be deemed non-independent, unless local best practices recommend a lower tenure limit which will then be applied; › Any additional relationship or principle considered to compromise independence under local corporate governance best practice guidance.
Independent NED › No material[~~5~~4] connection, either directly or indirectly, to the company (other than a board seat) or the dissenting significant shareholder.	**Independent NED** › No material[4] connection, either directly or indirectly, to the company (other than a board seat) or the dissenting significant shareholder.
Employee Representative › Represents employees or employee shareholders of the company (classified as "employee representative" but considered a non-independent NED).	**Employee Representative** › Represents employees or employee shareholders of the company (classified as "employee representative" but considered a non-independent NED).
Footnotes: [1] "Relative" follows the definition of "immediate family members" which covers spouses, parents, children, stepparents, step-children, siblings, in-laws, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company. [2] Professional services can be characterized as advisory in nature and generally include the following: investment banking/financial advisory services; commercial banking (beyond deposit services); investment services; insurance services; accounting/audit services; consulting services; marketing services; and legal services. The case of participation in a banking syndicate by a non-lead bank should be considered a transaction (and hence subject to the associated materiality test) rather than a professional relationship. [3] A business relationship may be material if the transaction value (of all outstanding transactions) entered into between the company and the company or organization with which the director is associated is equivalent to either 1 percent of the company's turnover or 1 percent of the turnover of the company or organization with which the director is associated. OR, A business relationship may be material if the transaction value (of all outstanding financing operations) entered into between the company and the company or organization with which the director is associated is more than 10 percent of the company's shareholder equity or the transaction value, (of all outstanding financing operations), compared to the company's total assets, is more than 5 percent.	**Footnotes:** [1] "Relative" follows the definition of "immediate family members" which covers spouses, parents, children, stepparents, step-children, siblings, in-laws, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company. [2] Professional services can be characterized as advisory in nature and generally include the following: investment banking/financial advisory services; commercial banking (beyond deposit services); investment services; insurance services; accounting/audit services; consulting services; marketing services; and legal services. The case of participation in a banking syndicate by a non-lead bank should be considered a transaction (and hence subject to the associated materiality test) rather than a professional relationship. [3] A business relationship may be material if the transaction value (of all outstanding transactions) entered into between the company and the company or organization with which the director is associated is equivalent to either 1 percent of the company's turnover or 1 percent of the turnover of the company or organization with which the director is associated. Or, a business relationship may be material if the transaction value (of all outstanding financing operations) entered into between the company and the company or organization with which the director is associated is more than 10 percent of the company's shareholder equity or the transaction value, (of all outstanding financing operations), compared to the company's total assets, is more than 5 percent.

~~[4] For example, in continental Europe, directors with a tenure exceeding 12 years will be considered non-independent. In the United Kingdom, Ireland, Hong Kong and Singapore, directors with a tenure exceeding nine years will be considered non-independent, unless the company provides sufficient and clear justification that the director is independent despite his long tenure.~~ [~~5~~4] For purposes of ISS' director independence classification, "material" will be defined as a standard of relationship (financial, personal or otherwise) that a reasonable person might conclude could potentially influence one's objectivity in the boardroom in a manner that would have a meaningful impact on an individual's ability to satisfy requisite fiduciary standards on behalf of shareholders.	[4] For purposes of ISS' director independence classification, "material" will be defined as a standard of relationship (financial, personal or otherwise) that a reasonable person might conclude could potentially influence one's objectivity in the boardroom in a manner that would have a meaningful impact on an individual's ability to satisfy requisite fiduciary standards on behalf of shareholders.

Rationale for Change:

The boards of many Latin American companies suffer from a lack of regular board refreshment among both independent and non-independent directors. Close to 25 percent of independent directors on boards in countries covered under the Americas Regional Policy (Argentina, Chile, Colombia, Mexico, Peru, and Venezuela) have tenures of at least 12 years. Such excessive tenure raises concerns regarding their board independence and is inconsistent with a growing number of global markets that have established excessive tenure as a factor in deeming a director to be non-independent.

In the absence of hard or soft laws in a number of Latin American markets, companies are often in compliance with best practices regarding board independence despite often having independent directors with tenures well in excess of 12 years. The addition of a tenure limit for directors to be deemed independent would bring the Brazil and the Americas Regional policies in line with a number of international ISS policie and provide incentives for companies in the region to consider tenure and board refreshment when evaluating boardroom composition.

While the majority of the countries covered in the region lack a legal framework regarding independent director tenure limits, Argentina, Brazil, and Peru have recently adopted hard and/or soft laws with references to tenure. Argentina has recently implemented a hard law, capping independent directors' tenures at 10 years; any director with a tenure greater than 10 years must be deemed non-independent[11]. Furthermore, the recently-established Brazilian corporate governance code (soft law) recommends that independent directors should not have completed an excessive number of terms as a member of a company's board of directors. Additionally, the tenures of all directors (Independent and non-independent) at state-owned enterprises (SOEs) in Brazil are now capped at a maximum of eight years[12]. Lastly, in 2017, the Peruvian regulator for Banks, Insurers, and Pension Fund Administrators (*SBS*) adopted a new regulation on corporate governance and risk management, which caps all independent directors at a 10-year continous tenure from their initial appointments.[13]

[11] Under CNV resolution 730, directors will be deemed non-independent if they have served as a director of the issuer or another company belonging to the same economic group for more than 10 years. The regulation also establishes a three-year cooling off period for directors to be deemed independent again. http://www.cnv.gob.ar/LeyesyReg/CNV/esp/RGCRGN730-18.htm

[12] The Responsibility Law of State-Controlled Companies mandates that directors be elected for a term of up to two years, and may be re-elected for maximum of three consecutive terms (Law 13,303 from June 30, 2016). https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/l13303.htm

[13] Under SBS resolution 272-2017, beginning on April 1, 2018, directors of companies regulated by the SBS (*Superintendencia de Bancos, Seguros y AFP*) will be deemed non-independent if they have served more than 10 consecutive years on the board. https://www2.deloitte.com/content/dam/Deloitte/pe/Documents/risk/272-2017%20R.pdf

Compensation – Brazil

Management Compensation

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: Generally vote for management compensation proposals that are presented in a timely manner and include all disclosure elements required by the Brazilian Securities Regulator (CVM). Vote against management compensation proposals when: › The company fails to present a detailed remuneration proposal or the proposal lacks clarity; › The company does not disclose the total remuneration of its highest-paid executive; or › The figure provided by the company for the total compensation of its highest-paid administrator is not inclusive of all elements of the executive's pay. Vote case-by-case on global remuneration cap (or company's total remuneration estimate, as applicable) proposals that represent a significant increase of the amount approved at the previous AGM (year-over-year increase). When further scrutinizing year-over-year significant remuneration increases, jointly consider some or all of the following factors, as relevant: › Whether there is a clearly stated and compelling rationale for the proposed increase; › Whether the remuneration increase is aligned with the company's long-term performance and/or operational performance targets disclosed by the company; › Whether the company has had positive TSR for the most recent one- and/or three-year periods; › Whether the relation between fixed and variable executive pay adequately aligns compensation with the company's future performance. Vote on a case-by-case basis when the company proposes to amend previously-approved compensation caps, paying particular attention as to whether the company has presented a compelling rationale for the request.	**General Recommendation:** Generally vote for management compensation proposals that are presented in a timely manner and include all disclosure elements required by the Brazilian Securities Regulator (CVM). Vote against management compensation proposals when: › The company fails to present a detailed remuneration proposal or the proposal lacks clarity; › The company does not disclose the total remuneration of its highest-paid executive; or › The figure provided by the company for the total compensation of its highest-paid administrator is not inclusive of all elements of the executive's pay. Vote case-by-case on global remuneration cap (or company's total remuneration estimate, as applicable) proposals that represent a significant increase of the amount approved at the previous AGM (year-over-year increase). When further scrutinizing year-over-year significant remuneration increases, jointly consider some or all of the following factors, as relevant: › Whether there is a clearly stated and compelling rationale for the proposed increase; › Whether the remuneration increase is aligned with the company's long-term performance and/or operational performance targets disclosed by the company; › Whether the company has had positive TSR for the most recent one- and/or three-year periods; › Whether the relation between fixed and variable executive pay adequately aligns compensation with the company's future performance. Vote on a case-by-case basis when the company proposes to amend previously-approved compensation caps, paying particular attention as to whether the company has presented a compelling rationale for the request.

Rationale for Change:

According to the Brazilian Corporate Law (Law 6,404/76), companies must seek shareholder approval of an annual global remuneration cap for their administrators to be presented at the annual shareholder meeting, to be held up to four months after the end of the fiscal year (in most cases, no later than April). The approved remuneration cap is a forward-looking binding resolution. Nonetheless, companies may call a special shareholder meeting to amend the original compensation cap later in the year.

Amend remuneration proposals are becoming fairly common in Brazil. During the 2018 proxy season, ISS analyzed 20 of such requests, representing 11 percent of the companies with say-on-pay proposals on ballots during the proxy season. The number of remuneration amendment proposals analyzed during the 2018 proxy season was almost the same as the total number of requests presented for the entire years of 2016 and of 2017, when ISS analyzed 21 and 20 of such proposals, respectively.

The current policy guidelines for Brazil, however, do not discuss remuneration amendment proposals, which have been analyzed on a case-by-cases basis. This policy update provides greater transparency on the analysis of such proposals, and reflect the policy framework already adopted by the research team in the market.

Compensation Plans

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: ISS will generally support reasonable equity pay plans that encourage long-term commitment and ownership by its recipients without posing significant risks to shareholder value. Practically all of the plans presented since the implementation of the 2009 CVM guidelines have included reasonable dilution limits and adequate vesting conditions. Performance criteria, meanwhile, are rarely disclosed. ISS' assessments of these plans have generally hinged on the presence of discounted exercise prices (which are common in Brazil), particularly in the absence of specific performance criteria. Vote against a stock option plan and/or restricted share plan, or an amendment to the plan, if: › The plan lacks a minimum vesting cycle of three years; › The plan permits options to be issued with an exercise price at a discount to the current market price, or permits restricted shares to be awarded (essentially shares with a 100 percent discount to market price), in the	**General Recommendation:** ISS will generally support reasonable equity pay plans that encourage long-term commitment and ownership by its recipients without posing significant risks to shareholder value. Practically all of the plans presented since the implementation of the 2009 CVM guidelines have included reasonable dilution limits and adequate vesting conditions. Performance criteria, meanwhile, are rarely disclosed. ISS' assessments of these plans have generally hinged on the presence of discounted exercise prices (which are common in Brazil), particularly in the absence of specific performance criteria. Vote against a stock option plan and/or restricted share plan, or an amendment to the plan, if: › The plan lacks a minimum vesting cycle of three years; › The plan permits options to be issued with an exercise price at a discount to the current market price, or permits restricted shares to be awarded (essentially shares with a 100 percent discount to market price), in the

absence of explicitly stated, challenging performance hurdles related to the company's historical financial performance or the industry benchmarks; › The maximum dilution exceeds ISS guidelines of 5 percent of issued capital for a mature company and 10 percent for a growth company. However, ISS will support plans at mature companies with dilution levels up to 10 percent if the plan includes other positive features such as challenging performance criteria and meaningful vesting periods, as these features partially offset dilution concerns by reducing the likelihood that options will become exercisable unless there is a clear improvement in shareholder value; or › Directors eligible to receive options or shares under the scheme are involved in the administration of the plan. Vote on a case-by-case basis if non-executive directors are among the plan's potential beneficiaries, paying special attention to: › Whether there are sufficient safeguards to ensure that beneficiaries do not participate in the plan's administration; and › The type of grant (if time-based, performance-based, or in lieu of cash), considering the long-term strategic role of boards of directors.	absence of explicitly stated, challenging performance hurdles related to the company's historical financial performance or the industry benchmarks; › The maximum dilution exceeds ISS guidelines of 5 percent of issued capital for a mature company and 10 percent for a growth company. However, ISS will support plans at mature companies with dilution levels up to 10 percent if the plan includes other positive features such as challenging performance criteria and meaningful vesting periods, as these features partially offset dilution concerns by reducing the likelihood that options will become exercisable unless there is a clear improvement in shareholder value; or › Directors eligible to receive options or shares under the scheme are involved in the administration of the plan. Vote on a case-by-case basis if non-executive directors are among the plan's potential beneficiaries, paying special attention to: › Whether there are sufficient safeguards to ensure that beneficiaries do not participate in the plan's administration; and › The type of grant (if time-based, performance-based, or in lieu of cash), considering the long-term strategic role of boards of directors.

Rationale for Change:

A variety of equity compensation proposals has been seen in Brazil in recent years. In 2018, there was an increase in the number of plans that include non-executive directors (NED) among their beneficiaries. This scenario raises specific concerns regarding potential conflicts of interest as boards are usually responsible for the plan's administration, as well as for setting performance metrics and company's goals. Nevertheless, current ISS policy guidelines for Brazil do not make any reference to non-executive directors as beneficiaries of equity compensation plans. The curent policy call for recommendations against plans when directors are eligible to receive grants and they are involved in the scheme's administration. This update adds flexibility allowing the analyst to consider the overall terms of the plan to determine whether the inclusion of NEDs among the participants is appropriate.

Between January and July 2018, ISS analyzed 33 equity compensation proposals for the Brazilian market. In 21.2 percent of them (seven in total), NEDs were among the potential beneficiaries, while during the entire year of 2017, 31 equity compensation plans were analyzed, with NEDs among the potential participants in six cases (or 19.3 percent of the proposals). In light of the potential increase in the number of equity compensation plans for non-executives directors, and the lack of a clear policy framework, an update is required to provide the analyst with appropriate tools for the analysis of such proposals, and to grant greater transparency to the market on how these requests will be analyzed by ISS.

Capital Structure – Americas Regional Policy

Share Issuance Requests

Current ISS Policy, incorporating changes:	New ISS Policy:
General Issuances **General Recommendation:** Vote for issuance requests with preemptive rights to a maximum of 100 percent over currently issued capital. Vote for issuance requests without preemptive rights to a maximum of 20 percent of currently issued capital. **Specific Issuances** **General Recommendation:** Vote on a case-by-case basis on all requests, with or without preemptive rights. **Shelf Registration Program** **General Recommendation:** Vote on a case-by-case basis on all requests, with or without preemptive rights. Approval of a multi-year authority for the issuance of securities under Shelf Registration Programs will be considered on a case-by-case basis, taking into consideration, but not limited to, the following: › Whether the company has provided adequate and timely disclosure including detailed information regarding the rationale for the proposed program; › Whether the proposed amount to be approved under such authority, the use of the resources, the length of the authorization, the nature of the securities to be issued under such authority, including any potential risk of dilution to shareholders is disclosed; and › Whether there are concerns regarding questionable finances, the use of the proceeds, or other governance concerns.	**General Issuances** **General Recommendation:** Vote for issuance requests with preemptive rights to a maximum of 100 percent over currently issued capital. Vote for issuance requests without preemptive rights to a maximum of 20 percent of currently issued capital. **Specific Issuances** **General Recommendation:** Vote on a case-by-case basis on all requests, with or without preemptive rights. **Shelf Registration Program** **General Recommendation:** Vote on a case-by-case basis on all requests, with or without preemptive rights. Approval of a multi-year authority for the issuance of securities under Shelf Registration Programs will be considered on a case-by-case basis, taking into consideration, but not limited to, the following: › Whether the company has provided adequate and timely disclosure including detailed information regarding the rationale for the proposed program; › Whether the proposed amount to be approved under such authority, the use of the resources, the length of the authorization, the nature of the securities to be issued under such authority, including any potential risk of dilution to shareholders is disclosed; and › Whether there are concerns regarding questionable finances, the use of the proceeds, or other governance concerns.

Rationale for Change:

This policy update establishes a case-by-case analytical framework to address shelf registration programs at Latin American companies (Argentina, Colombia, Chile, Mexico and Peru) under the Americas Regional policy document, as applicable.

Shelf registration programs are seen exclusively in the Mexican market so far resulting from recent regulatory changes. Under such programs, companies can request shareholder approval of an umbrella authorization for the issuance of debt or equity for a period of time, usually five years. Upon the shareholder approval of the umbrella authorization, the board will be able to approve the issuance of securities (debt or equity) at its own discretion for the duration of the authority.

The Americas Regional policy currently does not have an analytical framework to address such capitalization proposals, and this update addresses this policy vacuum.

Other Items – Americas Regional Policy

Charitable Donations

Current ISS Policy, incorporating changes:	New ISS Policy:
General Recommendation: Vote proposals seeking the approval of donations on a case-by-case basis, considering factors including, but not limited to, the following: › Size of the proposed donation request; › The destination of the proposed allocation of funds; and › The company's historical donations practices, including allocations approved at prior shareholder meetings.	**General Recommendation:** Vote proposals seeking the approval of donations on a case-by-case basis, considering factors including, but not limited to, the following: › Size of the proposed donation request; › The destination of the proposed allocation of funds; and › The company's historical donations practices, including allocations approved at prior shareholder meetings.

Rationale for Change:

The approval of corporate donations is seen annually on the agenda of some Colombian companies. Currently, the Americas Regional policy does not provide a framework for the analysis and vote recommendation on such proposals. The inclusion of the proposed language would make the current regional policy approach more transparent. While the policy will largely affect Colombia, this update will apply to the Americas Regional policy, which covers all markets in the Latin American region, with exception of Brazil. The inclusion of such framework under a Regional policy will provide greater alignment in the event such proposals are seen in other countries as well.

The Global Leader In Corporate Governance

www.issgovernance.com

Conformed to Federal Register version

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Release Nos. 33-10459; 34-82746]

Commission Statement and Guidance on Public Company Cybersecurity Disclosures

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing interpretive guidance to assist public companies in preparing disclosures about cybersecurity risks and incidents.

DATES: Applicable: February 26, 2018

FOR FURTHER INFORMATION CONTACT: Questions about specific filings should be directed to staff members responsible for reviewing the documents the company files with the Commission. For general questions about this release, contact the Office of the Chief Counsel at (202) 551-3500 in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Cybersecurity

Cybersecurity risks pose grave threats to investors, our capital markets, and our country.[1]

[1] The U.S. Computer Emergency Readiness Team defines cybersecurity as "[t]he activity or process, ability or capability, or state whereby information and communications systems and the information contained therein are protected from and/or defended against damage, unauthorized use or modification, or exploitation." U.S. Computer Emergency Readiness Team website, available at https://niccs.us-cert.gov/glossary#C (Adapted from: CNSSI 4009, NIST SP 800-53 Rev 4, NIPP, DHS National Preparedness Goal; White House Cyberspace Policy Review, May

Whether it is the companies in which investors invest, their accounts with financial services firms, the markets through which they trade, or the infrastructure they count on daily, the investing public and the U.S. economy depend on the security and reliability of information and communications technology, systems, and networks. Companies today rely on digital technology to conduct their business operations and engage with their customers, business partners, and other constituencies. In a digitally connected world, cybersecurity presents ongoing risks and threats to our capital markets and to companies operating in all industries, including public companies regulated by the Commission.

As companies' exposure to and reliance on networked systems and the Internet have increased, the attendant risks and frequency of cybersecurity incidents also have increased.[2] Today, the importance of data management and technology to business is analogous to the importance of electricity and other forms of power in the past century. Cybersecurity incidents[3] can result from unintentional events or deliberate attacks by insiders or third parties, including cybercriminals, competitors, nation-states, and "hacktivists."[4] Companies face an evolving

2009).

[2] See World Economic Forum, Global Risks Report 2017, 12th Ed. (Jan. 2017), available at https://www.weforum.org/reports/the-global-risks-report-2017 (concluding that "greater interdependence among different infrastructure networks is increasing the scope for systemic failures – whether from cyber-attacks, software glitches, natural disasters or other causes – to cascade across networks and affect society in unanticipated ways."). See also PwC, "Turnaround and Transformation in Cybersecurity: Key Findings from the Global State of Information Security Survey 2016" (Oct. 2015), available at https://www.pwccn.com/en/retail-and-consumer/rcs-info-security-2016.pdf. (finding that in 2015 there was a reported 38% increase in detected information security incidents from 2014).

[3] A "cybersecurity incident" is "[a]n occurrence that actually or potentially results in adverse consequences to … an information system or the information that the system processes, stores, or transmits and that may require a response action to mitigate the consequences." U.S. Computer Emergency Readiness Team website, available at https://niccs.us-cert.gov/glossary#I.

[4] One study using a sample of 419 companies in 13 countries and regions noted that 47 percent of data breach incidents in 2016 involved a malicious or criminal attack, 25 percent were due to negligent employees or contractors (human factor) and 28 percent involved system glitches, including both IT and business process failures. See

landscape of cybersecurity threats in which hackers use a complex array of means to perpetrate cyber-attacks, including the use of stolen access credentials, malware, ransomware, phishing, structured query language injection attacks, and distributed denial-of-service attacks, among other means. The objectives of cyber-attacks vary widely and may include the theft or destruction of financial assets, intellectual property, or other sensitive information belonging to companies, their customers, or their business partners. Cyber-attacks may also be directed at disrupting the operations of public companies or their business partners. This includes targeting companies that operate in industries responsible for critical infrastructure.

Companies that fall victim to successful cyber-attacks or experience other cybersecurity incidents may incur substantial costs[5] and suffer other negative consequences, which may include:

- remediation costs, such as liability for stolen assets or information, repairs of system damage, and incentives to customers or business partners in an effort to maintain relationships after an attack;[6]
- increased cybersecurity protection costs, which may include the costs of making organizational changes, deploying additional personnel and protection technologies, training employees, and engaging third party experts and consultants;

Ponemon Institute and IBM Security, 2017 Cost of Data Breach Study: Global Overview (Jun. 2017), available at https://www.ponemon.org/library/2017-cost-of-data-breach-study-united-states.

[5] The average organizational cost of a data breach in the United States in 2016 was $7.35 million based on the sample in the study. Id. However, the total costs a company may incur in connection with a particular cyber-attack or incident could be much higher.

[6] A company's costs may also include payments to perpetrators of ransomware attacks in order to attempt to restore operations or protect customer data or other proprietary information. But see Federal Bureau of Investigation, "How To Protect your Network from Ransomware," Ransomware Prevention and Response for CISOs, available at https://www.justice.gov/criminal-ccips/file/872771/download.

- lost revenues resulting from the unauthorized use of proprietary information or the failure to retain or attract customers following an attack;
- litigation and legal risks, including regulatory actions by state and federal governmental authorities and non-U.S. authorities;[7]
- increased insurance premiums;
- reputational damage that adversely affects customer or investor confidence; and
- damage to the company's competitiveness, stock price, and long-term shareholder value.

Given the frequency, magnitude and cost of cybersecurity incidents, the Commission believes that it is critical that public companies take all required actions to inform investors about material cybersecurity risks and incidents in a timely fashion, including those companies that are subject to material cybersecurity risks but may not yet have been the target of a cyber-attack. Crucial to a public company's ability to make any required disclosure of cybersecurity risks and incidents in the appropriate timeframe are disclosure controls and procedures that provide an appropriate method of discerning the impact that such matters may have on the company and its business, financial condition, and results of operations, as well as a protocol to determine the potential materiality of such risks and incidents.[8] In addition, the Commission believes that the development of effective disclosure controls and procedures is best achieved when a company's directors, officers, and other persons responsible for developing and overseeing such controls and procedures are informed about the cybersecurity risks and incidents that the company has

[7] See, e.g., New York State Department of Financial Services, 23 NYCRR 500, Cybersecurity Requirements for Financial Services Companies; European Union General Data Protection Regulation, Council Regulation 2016/679, 2016 O.J. (L 119) 1.

[8] See Section II.B.1 below for further discussion of disclosure controls and procedures.

faced or is likely to face.

Additionally, directors, officers, and other corporate insiders must not trade a public company's securities while in possession of material nonpublic information, which may include knowledge regarding a significant cybersecurity incident experienced by the company. Public companies should have policies and procedures in place to (1) guard against directors, officers, and other corporate insiders taking advantage of the period between the company's discovery of a cybersecurity incident and public disclosure of the incident to trade on material nonpublic information about the incident, and (2) help ensure that the company makes timely disclosure of any related material nonpublic information.[9] In addition, we believe that companies are well served by considering the ramifications of directors, officers, and other corporate insiders trading in advance of disclosures regarding cyber incidents that prove to be material. We recognize that many companies have adopted preventative measures to address the appearance of improper trading and we encourage companies to consider such preventative measures in the context of a cyber event.

B. CF Disclosure Guidance: Topic No. 2

In October 2011, the Division of Corporation Finance (the "Division") issued guidance that provided the Division's views regarding disclosure obligations relating to cybersecurity risks and incidents.[10] The guidance explains that, although no existing disclosure requirement explicitly refers to cybersecurity risks and cyber incidents, companies nonetheless may be

[9] See Section II.B.2 below for further discussion of insider trading.

[10] See CF Disclosure Guidance: Topic No. 2 – Cybersecurity (Oct. 13, 2011), available at https://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm.

obligated to disclose such risks and incidents.[11] After the issuance of the guidance, many companies included additional cybersecurity disclosure, typically in the form of risk factors.[12]

C. Purpose of Release

In light of the increasing significance of cybersecurity incidents, the Commission believes it is necessary to provide further Commission guidance. This interpretive release outlines the Commission's views with respect to cybersecurity disclosure requirements under the federal securities laws as they apply to public operating companies.[13] While the Commission continues to consider other means of promoting appropriate disclosure of cyber incidents, we are reinforcing and expanding upon the staff's 2011 guidance. In addition, we address two topics not developed in the staff's 2011 guidance, namely the importance of cybersecurity policies and procedures and the application of insider trading prohibitions in the cybersecurity context.

First, this release stresses the importance of maintaining comprehensive policies and procedures related to cybersecurity risks and incidents. Companies are required to establish and maintain appropriate and effective disclosure controls and procedures that enable them to make

[11] Id.

[12] For example, Willis North America released a 2013 report that found that approximately 88% of the public Fortune 500 companies and about 78% of the Fortune 501-1000 companies included risk factor disclosure regarding cybersecurity in their annual reports filed in 2012. See Willis Fortune 1000 Cyber Disclosure Report (Aug. 2013), available at http://blog.willis.com/wp-content/uploads/2013/08/Willis-Fortune-1000-Cyber-Report_09-13.pdf. In 2015, over 88% of Russell 3000 companies disclosed cybersecurity as a risk. See Audit Analytics, "Cybersecurity Disclosure in Risk Factors," (Jan. 14, 2016), available at http://www.auditanalytics.com/blog/cybersecurity-disclosures-in-risk-factors/.

[13] This release does not address the specific implications of cybersecurity to other regulated entities under the federal securities laws, such as registered investment companies, investment advisers, brokers, dealers, exchanges, and self-regulatory organizations. For example, in 2014 the Commission adopted Regulation Systems Compliance and Integrity, applicable to certain self-regulatory organizations, to strengthen the technology infrastructure of the U.S. securities markets. Final Rule: Regulation Systems Compliance and Integrity, Release No. 34-73639 (Nov. 19, 2014) [79 FR. 72252 (Dec. 5, 2014)], available at https://www.sec.gov/rules/final/2014/34-73639.pdf. For additional cybersecurity regulations and resources, see the Commission's website page devoted to cybersecurity issues, available at https://www.sec.gov/spotlight/cybersecurity; see also Cybersecurity Guidance; IM Guidance Update (April 2015), available at https://www.sec.gov/investment/im-guidance-2015-02.pdf (staff guidance on cybersecurity measures for registered investment companies and investment advisers).

accurate and timely disclosures of material events, including those related to cybersecurity. Such robust disclosure controls and procedures assist companies in satisfying their disclosure obligations under the federal securities laws.

Second, we also remind companies and their directors, officers, and other corporate insiders of the applicable insider trading prohibitions under the general antifraud provisions of the federal securities laws and also of their obligation to refrain from making selective disclosures of material nonpublic information about cybersecurity risks or incidents.[14]

The Commission, and the staff through its filing review process, continues to monitor cybersecurity disclosures carefully.

II. Commission Guidance

A. Overview of Rules Requiring Disclosure of Cybersecurity Issues

1. Disclosure Obligations Generally; Materiality

Companies should consider the materiality of cybersecurity risks and incidents when preparing the disclosure that is required in registration statements under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"), and periodic and current reports under the Exchange Act.[15] When a company is required to file a disclosure

[14] See Final Rule: Selective Disclosure and Insider Trading, Release No. 33-7881 (Aug. 15, 2000) [65 FR 51715 (Aug. 24, 2000)], available at https://www.sec.gov/rules/final/33-7881.htm.

[15] Listed companies also should consider any obligations that may be imposed by exchange listing requirements. For example, the NYSE requires listed companies to "release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities." See NYSE Listed Company Manual Rule 202.05 – Timely Disclosure of Material News Developments. In addition, in 2015, the NYSE, in partnership with Palo Alto Networks, published a summary of information about legal and regulatory aspects of cybersecurity governance for directors and officers of public companies. See Navigating the Digital Age: The Definitive Cybersecurity Guide for Directors and Officers. Chicago: Caxton Business & Legal, Inc., 2015, available at https://www.securityroundtable.org/wp-content/uploads/2015/09/Cybersecurity-9780996498203-no_marks.pdf. Similarly, Nasdaq requires listed companies to "make prompt disclosure to the public of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions." See Nasdaq Listing Rule 5250(b)(1).

document with the Commission, the requisite form generally refers to the disclosure requirements of Regulation S-K[16] and Regulation S-X.[17] Although these disclosure requirements do not specifically refer to cybersecurity risks and incidents, a number of the requirements impose an obligation to disclose such risks and incidents depending on a company's particular circumstances. For example:

- Periodic Reports: Companies are required to file periodic reports[18] to disclose specified information on a regular and ongoing basis.[19] These periodic reports include annual reports on Form 10-K,[20] which require companies to make disclosure regarding their business and operations, risk factors, legal proceedings, management's discussion and analysis of financial condition and results of operations ("MD&A"), financial statements, disclosure controls and procedures, and corporate governance.[21] Periodic reports also include quarterly reports on Form 10-Q,[22] which require companies to make disclosure regarding their

[16] 17 CFR part 229.

[17] 17 CFR part 210.

[18] An issuer with a class of securities registered under Section 12 or subject to Section 15(d) of the Exchange Act is subject to the periodic and current reporting requirements of Section 13 and 15(d), respectively, of the Exchange Act.

[19] "Congress recognized that the ongoing dissemination of accurate information by companies about themselves and their securities is essential to effective operation of the trading markets. The Exchange Act rules require public companies to make periodic disclosures at annual and quarterly intervals, with other important information reported on a more current basis. The Exchange Act specifically provides for current disclosure to maintain the currency and adequacy of information disclosed by companies." Proposed Rule: Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Release No. 33-8106, 3-4 (Jun. 17, 2002) [67 FR 42914 (Jun. 25, 2002)].

[20] 17 CFR 249.310.

[21] See Part I, Items 1, 1A and 3 of Form 10-K; Part II, Items 7, 8 and 9A of Form 10-K; and Part III, Item 10 of Form 10-K [17 CFR 249.310].

[22] 17 CFR 249.308a.

financial statements, MD&A, and updated risk factors.[23] Likewise, foreign private issuers are required to make many of these same disclosures in their periodic reports on Form 20-F.[24] Companies must provide timely and ongoing information in these periodic reports regarding material cybersecurity risks and incidents that trigger disclosure obligations.

- Securities Act and Exchange Act Obligations: Securities Act and Exchange Act registration statements must disclose all material facts required to be stated therein or necessary to make the statements therein not misleading. Companies should consider the adequacy of their cybersecurity-related disclosure, among other things, in the context of Sections 11, 12, and 17 of the Securities Act, as well as Section 10(b) and Rule 10b-5 of the Exchange Act.[25]
- Current Reports: In order to maintain the accuracy and completeness of effective shelf registration statements with respect to the costs and other consequences of material cybersecurity incidents,[26] companies can provide current reports on Form 8-K[27] or Form 6-K.[28] Companies also frequently provide current reports on Form 8-K or Form 6-K to report the occurrence and consequences of cybersecurity

[23] See Part I, Items 1 and 2 of Form 10-Q; Part II, Item 1A of Form 10-Q [17 CFR 249.308a].

[24] See Part I, Items 3.D, 4, 5 and 8 of Form 20-F; Part II, Items 15 and 16G of Form 20-F; Part III, Items 17 and 18 of Form 20-F [17 CFR 249.220f].

[25] 15 U.S.C. 77k; 15 U.S.C. 77l; 15 U.S.C. 77q; 15 U.S.C 78j(b); 17 CFR 240.10b-5.

[26] See Item 11(a) of Form S-3 [17 CFR 239.13] and Item 5(a) of Form F-3 [17 CFR 239.33].

[27] 17 CFR 249.308.

[28] 17 CFR 249.306.

incidents. [29] The Commission encourages companies to continue to use Form 8-K or Form 6-K to disclose material information promptly, including disclosure pertaining to cybersecurity matters. This practice reduces the risk of selective disclosure, as well as the risk that trading in their securities on the basis of material non-public information may occur.[30]

In addition to the information expressly required by Commission regulation, a company is required to disclose "such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."[31] The Commission considers omitted information to be material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision or that disclosure of the omitted information would have been viewed by the reasonable investor as having significantly altered the total mix of information available.[32]

In determining their disclosure obligations regarding cybersecurity risks and incidents, companies generally weigh, among other things, the potential materiality of any identified risk and, in the case of incidents, the importance of any compromised information and of the impact

[29] "The registrant may, at its option, disclose under this Item 8.01 [of Form 8-K] any events, with respect to which information is not otherwise called for by this form, that the registrant deems of importance to security holders." 17 CFR 308.

[30] See Sections II.B.2 and II.B.3 below for further discussion of insider trading and Regulation FD.

[31] Rule 408 of the Securities Act [17 CFR 230.408]; Rule 12b-20 of the Exchange Act [17 CFR 240.12b-20]; and Rule 14a-9 of the Exchange Act [17 CFR 240.14a-9].

[32] This approach is consistent with the standard of materiality articulated by the U.S. Supreme Court in TSC Industries v. Northway, 426 U.S. 438, 449 (1976) (a fact is material "if there is a substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision or if it "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available" to the shareholder).

of the incident on the company's operations. The materiality of cybersecurity risks or incidents depends upon their nature, extent, and potential magnitude, particularly as they relate to any compromised information or the business and scope of company operations.[33] The materiality of cybersecurity risks and incidents also depends on the range of harm that such incidents could cause.[34] This includes harm to a company's reputation, financial performance, and customer and vendor relationships, as well as the possibility of litigation or regulatory investigations or actions, including regulatory actions by state and federal governmental authorities and non-U.S. authorities.

This guidance is not intended to suggest that a company should make detailed disclosures that could compromise its cybersecurity efforts – for example, by providing a "roadmap" for those who seek to penetrate a company's security protections. We do not expect companies to publicly disclose specific, technical information about their cybersecurity systems, the related networks and devices, or potential system vulnerabilities in such detail as would make such systems, networks, and devices more susceptible to a cybersecurity incident. Nevertheless, we expect companies to disclose cybersecurity risks and incidents that are material to investors, including the concomitant financial, legal, or reputational consequences. Where a company has become aware of a cybersecurity incident or risk that would be material to its investors, we would expect it to make appropriate disclosure timely and sufficiently prior to the offer and sale

[33] For example, the compromised information might include personally identifiable information, trade secrets or other confidential business information, the materiality of which may depend on the nature of the company's business, as well as the scope of the compromised information.

[34] As part of a materiality analysis, a company should consider the indicated probability that an event will occur and the anticipated magnitude of the event in light of the totality of company activity. Basic v. Levinson, 485 U.S. 224, 238 (1988) (citing SEC v. Texas Gulf Sulphur Co., 401 F. 2d 833, 849 (2d Cir. 1968)). Moreover, no "single fact or occurrence" is determinative as to materiality, which requires an inherently fact-specific inquiry. Basic, 485 U.S. at 236.

of securities and to take steps to prevent directors and officers (and other corporate insiders who were aware of these matters) from trading its securities until investors have been appropriately informed about the incident or risk.[35]

Understanding that some material facts may be not available at the time of the initial disclosure, we recognize that a company may require time to discern the implications of a cybersecurity incident. We also recognize that it may be necessary to cooperate with law enforcement and that ongoing investigation of a cybersecurity incident may affect the scope of disclosure regarding the incident. However, an ongoing internal or external investigation – which often can be lengthy – would not on its own provide a basis for avoiding disclosures of a material cybersecurity incident.

We remind companies that they may have a duty to correct prior disclosure that the company determines was untrue (or omitted a material fact necessary to make the disclosure not misleading) at the time it was made[36] (for example, if the company subsequently discovers contradictory information that existed at the time of the initial disclosure), or a duty to update disclosure that becomes materially inaccurate after it is made[37] (for example, when the original statement is still being relied on by reasonable investors). Companies should consider whether they need to revisit or refresh previous disclosure, including during the process of investigating a cybersecurity incident.

[35] See Sections 7 and 10 of the Securities Act; Sections 10(b), 13(a) and 15(d) of the Exchange Act; and Rule 10b-5 under the Exchange Act [15 U.S.C 78j(b); 15 U.S.C. 78m(a); 15. U.S.C. 78o(d); 17 CFR 240.10b-5].

[36] See Backman v. Polaroid Corp., 910 F.2d 10, 16-17 (1st Cir. 1990) (en banc) (finding that the duty to correct applies "if a disclosure is in fact misleading when made, and the speaker thereafter learns of this.").

[37] See id. at 17 (describing the duty to update as potentially applying "if a prior disclosure 'becomes materially misleading in light of subsequent events'" (quoting Greenfield v. Heublein, Inc., 742 F.2d 751, 758 (3d Cir. 1984))). But see Higginbotham v. Baxter Intern., Inc., 495 F.3d 753, 760 (7th Cir. 2007) (rejecting duty to update before next quarterly report); Gallagher v. Abbott Laboratories, 269 F.3d 806, 808-11 (7th Cir. 2001) (explaining that securities laws do not require continuous disclosure).

We expect companies to provide disclosure that is tailored to their particular cybersecurity risks and incidents. As the Commission has previously stated, we "emphasize a company-by-company approach [to disclosure] that allows relevant and material information to be disseminated to investors without boilerplate language or static requirements while preserving completeness and comparability of information across companies."[38] Companies should avoid generic cybersecurity-related disclosure and provide specific information that is useful to investors.

2. Risk Factors

Item 503(c) of Regulation S-K and Item 3.D of Form 20-F require companies to disclose the most significant factors that make investments in the company's securities speculative or risky.[39] Companies should disclose the risks associated with cybersecurity and cybersecurity incidents if these risks are among such factors, including risks that arise in connection with acquisitions.[40]

It would be helpful for companies to consider the following issues, among others, in evaluating cybersecurity risk factor disclosure:

- the occurrence of prior cybersecurity incidents, including their severity and frequency;
- the probability of the occurrence and potential magnitude of cybersecurity incidents;

[38] See Business and Financial Disclosure Required by Regulation S-K, Release No. 33-10064 (Apr. 13, 2016) [81 FR 23915 (Apr. 22, 2016)]. See also Plain English Disclosure, Release No. 33-7497 (Jan. 28, 1998) [63 FR 6370 (Feb. 6, 1998)]; and Updated Staff Legal Bulletin No. 7: Plain English Disclosure (Jun. 7, 1999) available at https://www.sec.gov/interps/legal/cfslb7a.htm.

[39] 17 CFR 229.503(c); 17 CFR 249.220f.

[40] See Final Rule: Business Combination Transactions, Release No. 33-6578 (Apr. 23, 1985) [50 FR 18990 (May 6, 1985)].

- the adequacy of preventative actions taken to reduce cybersecurity risks and the associated costs, including, if appropriate, discussing the limits of the company's ability to prevent or mitigate certain cybersecurity risks;
- the aspects of the company's business and operations that give rise to material cybersecurity risks and the potential costs and consequences of such risks, including industry-specific risks and third party supplier and service provider risks;
- the costs associated with maintaining cybersecurity protections, including, if applicable, insurance coverage relating to cybersecurity incidents or payments to service providers;
- the potential for reputational harm;
- existing or pending laws and regulations that may affect the requirements to which companies are subject relating to cybersecurity and the associated costs to companies; and
- litigation, regulatory investigation, and remediation costs associated with cybersecurity incidents.

In meeting their disclosure obligations, companies may need to disclose previous or ongoing cybersecurity incidents or other past events in order to place discussions of these risks in the appropriate context. For example, if a company previously experienced a material cybersecurity incident involving denial-of-service, it likely would not be sufficient for the company to disclose that there is a risk that a denial-of-service incident may occur. Instead, the company may need to discuss the occurrence of that cybersecurity incident and its consequences as part of a broader discussion of the types of potential cybersecurity incidents that pose

particular risks to the company's business and operations. Past incidents involving suppliers, customers, competitors, and others may be relevant when crafting risk factor disclosure. In certain circumstances, this type of contextual disclosure may be necessary to effectively communicate cybersecurity risks to investors.

3. MD&A of Financial Condition and Results of Operations

Item 303 of Regulation S-K and Item 5 of Form 20-F require a company to discuss its financial condition, changes in financial condition, and results of operations. These items require a discussion of events, trends, or uncertainties that are reasonably likely to have a material effect on its results of operations, liquidity, or financial condition, or that would cause reported financial information not to be necessarily indicative of future operating results or financial condition and such other information that the company believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations.[41] In this context, the cost of ongoing cybersecurity efforts (including enhancements to existing efforts), the costs and other consequences of cybersecurity incidents, and the risks of potential cybersecurity incidents, among other matters, could inform a company's analysis. In addition, companies may consider the array of costs associated with cybersecurity issues, including, but not limited to, loss of intellectual property, the immediate costs of the incident, as well as the costs associated with implementing preventative measures, maintaining insurance, responding to litigation and regulatory investigations, preparing for and complying with proposed or current legislation, engaging in remediation efforts, addressing harm to reputation,

[41] 17 CFR 229.303; 17 CFR 249.220f.

and the loss of competitive advantage that may result.[42] Finally, the Commission expects companies to consider the impact of such incidents on each of their reportable segments.[43]

4. Description of Business

Item 101 of Regulation S-K and Item 4.B of Form 20-F require companies to discuss their products, services, relationships with customers and suppliers, and competitive conditions.[44] If cybersecurity incidents or risks materially affect a company's products, services, relationships with customers or suppliers, or competitive conditions, the company must provide appropriate disclosure.

5. Legal Proceedings

Item 103 of Regulation S-K requires companies to disclose information relating to material pending legal proceedings to which they or their subsidiaries are a party.[45] Companies should note that this requirement includes any such proceedings that relate to cybersecurity issues. For example, if a company experiences a cybersecurity incident involving the theft of customer information and the incident results in material litigation by customers against the company, the company should describe the litigation, including the name of the court in which the proceedings are pending, the date the proceedings are instituted, the principal parties thereto, a description of the factual basis alleged to underlie the litigation, and the relief sought.

[42] A number of past Commission releases provide general interpretive guidance on these disclosure requirements. See, e.g., Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33-8350 (Dec. 19, 2003) [68 FR 75056 (Dec. 29, 2003)]; Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33-8056 (Jan. 22, 2002) [67 FR 3746 (Jan. 25, 2002)]; Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Release No. 33-6835 (May 18, 1989) [54 FR 22427 (May 24, 1989)].

[43] 17 CFR 229.303(a).

[44] 17 CFR 229.101; 17 CFR 249.220f.

[45] 17 CFR 229.103.

6. Financial Statement Disclosures

Cybersecurity incidents and the risks that result therefrom may affect a company's financial statements. For example, cybersecurity incidents may result in:

- expenses related to investigation, breach notification, remediation and litigation, including the costs of legal and other professional services;
- loss of revenue, providing customers with incentives or a loss of customer relationship assets value;
- claims related to warranties, breach of contract, product recall/replacement, indemnification of counterparties, and insurance premium increases; and
- diminished future cash flows, impairment of intellectual, intangible or other assets; recognition of liabilities; or increased financing costs.

The Commission expects that a company's financial reporting and control systems would be designed to provide reasonable assurance that information about the range and magnitude of the financial impacts of a cybersecurity incident would be incorporated into its financial statements on a timely basis as the information becomes available.[46]

7. Board Risk Oversight

Item 407(h) of Regulation S-K and Item 7 of Schedule 14A require a company to disclose the extent of its board of directors' role in the risk oversight of the company, such as how the board administers its oversight function and the effect this has on the board's leadership structure.[47] The Commission has previously said that "disclosure about the board's involvement in the oversight of the risk management process should provide important information to

[46] See Section 13(b)(2)(B) of the Exchange Act [15 U.S.C.78m(b)(2)(B)].

[47] 17 CFR 229.407(h); 17 CFR 240.14a-101 – Schedule 14A.

investors about how a company perceives the role of its board and the relationship between the board and senior management in managing the material risks facing the company."[48] A company must include a description of how the board administers its risk oversight function.[49] To the extent cybersecurity risks are material to a company's business, we believe this discussion should include the nature of the board's role in overseeing the management of that risk.

In addition, we believe disclosures regarding a company's cybersecurity risk management program and how the board of directors engages with management on cybersecurity issues allow investors to assess how a board of directors is discharging its risk oversight responsibility in this increasingly important area.

B. Policies and Procedures

1. Disclosure Controls and Procedures

Cybersecurity risk management policies and procedures are key elements of enterprise-wide risk management, including as it relates to compliance with the federal securities laws. We encourage companies to adopt comprehensive policies and procedures related to cybersecurity and to assess their compliance regularly, including the sufficiency of their disclosure controls and procedures as they relate to cybersecurity disclosure. Companies should assess whether they have sufficient disclosure controls and procedures in place to ensure that relevant information about cybersecurity risks and incidents is processed and reported to the appropriate personnel, including up the corporate ladder, to enable senior management to make disclosure decisions and certifications and to facilitate policies and procedures designed to prohibit directors, officers, and

[48] Final Rule: Proxy Disclosure Enhancements, Release No. 33-9089 (Dec. 16, 2009) [74 FR 68334 (Dec. 23, 2009)], available at http://www.sec.gov/rules/final/2009/33-9089.pdf.

[49] See Item 407(h) of Regulation S-K [17 CFR 229.407(h)].

other corporate insiders from trading on the basis of material nonpublic information about cybersecurity risks and incidents.[50]

Pursuant to Exchange Act Rules 13a-15 and 15d-15, companies must maintain disclosure controls and procedures, and management must evaluate their effectiveness.[51] These rules define "disclosure controls and procedures" as those controls and other procedures designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the Exchange Act is (1) "recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms," and (2) "accumulated and communicated to the company's management … as appropriate to allow timely decisions regarding required disclosure."[52]

A company's disclosure controls and procedures should not be limited to disclosure specifically required, but should also ensure timely collection and evaluation of information potentially subject to required disclosure, or relevant to an assessment of the need to disclose developments and risks that pertain to the company's businesses.[53] Information also must be

[50] See Final Rule: Certification of Disclosure in Companies' Quarterly and Annual Reports, Release No. 33-8124 (Aug. 28, 2002) [67 FR 57276 (Sept. 9, 2002)], available at https://www.sec.gov/rules/final/33-8124.htm ("We believe that, to assist principal executive and financial officers in the discharge of their responsibilities in making the required certifications, as well as to discharge their responsibilities in providing accurate and complete information to security holders, it is necessary for companies to ensure that their internal communications and other procedures operate so that important information flows to the appropriate collection and disclosure points in a timely manner."); see also Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. 78j(b); 17 CFR 240.10b-5].

[51] 17 CFR 240.13a-15; 17 CFR 240.15d-15.

[52] Id.

[53] See Final Rule: Certification of Disclosure in Companies' Quarterly and Annual Reports, Release No. 33-8124 (Aug. 28, 2002) [67 FR 57276 (Sept. 9, 2002)], available at https://www.sec.gov/rules/final/33-8124.htm ("We believe that the new rules will help to ensure that an issuer's systems grow and evolve with its business and are capable of producing Exchange Act reports that are timely, accurate and reliable.").

evaluated in the context of the disclosure requirement of Exchange Act Rule 12b-20.[54] When designing and evaluating disclosure controls and procedures, companies should consider whether such controls and procedures will appropriately record, process, summarize, and report the information related to cybersecurity risks and incidents that is required to be disclosed in filings. Controls and procedures should enable companies to identify cybersecurity risks and incidents, assess and analyze their impact on a company's business, evaluate the significance associated with such risks and incidents, provide for open communications between technical experts and disclosure advisors, and make timely disclosures regarding such risks and incidents.

Exchange Act Rules 13a-14 and 15d-14[55] require a company's principal executive officer and principal financial officer to make certifications regarding the design and effectiveness of disclosure controls and procedures,[56] and Item 307 of Regulation S-K and Item 15(a) of Exchange Act Form 20-F require companies to disclose conclusions on the effectiveness of disclosure controls and procedures.[57] These certifications and disclosures should take into account the adequacy of controls and procedures for identifying cybersecurity risks and incidents and for assessing and analyzing their impact. In addition, to the extent cybersecurity risks or incidents pose a risk to a company's ability to record, process, summarize, and report information that is required to be disclosed in filings, management should consider whether there are deficiencies in disclosure controls and procedures that would render them ineffective.

[54] 17 CFR 240.12b-20.

[55] 17 CFR 240.13a-14; 17 CFR 240.15d-14.

[56] Section 302 of the Sarbanes-Oxley Act of 2002 required the Commission to adopt final rules under which the principal executive officer or officers and the principal financial officer or officers, or persons providing similar functions, of an issuer each must certify the information contained in the issuer's quarterly and annual reports. Pub. L. 107-204, 116 Stat. 745 (2002).

[57] 17 CFR 229.307; 17 CFR 249.220f.

2. Insider Trading

Companies and their directors, officers, and other corporate insiders should be mindful of complying with the laws related to insider trading in connection with information about cybersecurity risks and incidents, including vulnerabilities and breaches.[58] It is illegal to trade a security "on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information."[59] As noted above, information about a company's cybersecurity risks and incidents may be material nonpublic information, and directors, officers, and other corporate insiders would violate the antifraud provisions if they trade the company's securities in breach of their duty of trust or confidence while in possession of that material nonpublic information.[60]

Beyond the antifraud provisions of the federal securities laws, companies and their directors, officers, and other corporate insiders must comply with all other applicable insider trading related rules. Many exchanges require listed companies to adopt codes of conduct and policies that promote compliance with applicable laws, rules, and regulations, including those prohibiting insider trading.[61] We encourage companies to consider how their codes of ethics[62]

[58] In addition to promoting full and fair disclosure, the antifraud provisions of the federal securities laws prohibit insider trading, which harms not only individual investors but also the very foundations of our markets by undermining investor confidence in the integrity of those markets. 17 CFR 243.100. Final Rule: Selective Disclosure and Insider Trading, Release No. 34-43154 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)].

[59] Rule 10b5-1(a) of the Exchange Act [17 CFR 240.10b-5-1(a)].

[60] This would not preclude directors, officers, and other corporate insiders from relying on Exchange Act Rule 10b5-1 if all conditions of that rule are met.

[61] See e.g., NYSE Listed Company Manual Section 303A.10, which states in relevant part that every NYSE "listed company should proactively promote compliance with laws, rules and regulations, including insider trading laws.

and insider trading policies take into account and prevent trading on the basis of material nonpublic information related to cybersecurity risks and incidents. The Commission believes that it is important to have well designed policies and procedures to prevent trading on the basis of all types of material non-public information, including information relating to cybersecurity risks and incidents.

In addition, while companies are investigating and assessing significant cybersecurity incidents, and determining the underlying facts, ramifications and materiality of these incidents, they should consider whether and when it may be appropriate to implement restrictions on insider trading in their securities. Company insider trading policies and procedures that include prophylactic measures can protect against directors, officers, and other corporate insiders trading on the basis of material nonpublic information before public disclosure of the cybersecurity incident. As noted above, we believe that companies would be well served by considering how to avoid the appearance of improper trading during the period following an incident and prior to the dissemination of disclosure.

3. Regulation FD and Selective Disclosure

Companies also may have disclosure obligations under Regulation FD in connection with cybersecurity matters. Under Regulation FD, "when an issuer, or person acting on its behalf, discloses material nonpublic information to certain enumerated persons it must make public disclosure of that information."[63] The Commission adopted Regulation FD owing to concerns

Insider trading is both unethical and illegal, and should be dealt with decisively." See also NASDAQ Listing Rule 5610 and Section 406(c) of the Sarbanes-Oxley Act of 2002.

[62] Item 406 of Regulation S-K [17 CFR 229.406].

[63] 17 CFR 243.100. Final Rule: Selective Disclosure and Insider Trading, Release No. 34-43154 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)].

about companies making selective disclosure of material nonpublic information to certain persons before making full disclosure of that same information to the general public.[64]

In cases of selective disclosure of material nonpublic information related to cybersecurity, companies should ensure compliance with Regulation FD. Companies and persons acting on their behalf should not selectively disclose material, nonpublic information regarding cybersecurity risks and incidents to Regulation FD enumerated persons[65] before disclosing that same information to the public.[66] We expect companies to have policies and procedures to ensure that any disclosures of material nonpublic information related to

[64] Id.

[65] Regulation FD applies generally to selective disclosures made to persons outside the issuer who are (1) a broker or dealer or persons associated with a broker or dealer; (2) an investment advisor or persons associated with an investment advisor; (3) an investment company or persons affiliated with an investment company; or (4) a holder of the issuer's securities under circumstances in which it is reasonably foreseeable that the person will trade in the issuer's securities on the basis of the information. 17 CFR 243.100(b)(1).

[66] Final Rule: Selective Disclosure and Insider Trading, Release No. 34-43154 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)].

cybersecurity risks and incidents are not made selectively, and that any Regulation FD required public disclosure is made simultaneously (in the case of an intentional disclosure as defined in the rule) or promptly (in the case of a non-intentional disclosure) and is otherwise compliant with the requirements of that regulation.[67]

By the Commission.

Dated: February 21, 2018

Brent J. Fields
Secretary

[67] "Under the regulation, the required public disclosure may be made by filing or furnishing a Form 8-K, or by another method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public." Id. at 3.

Sustainable Responsible Growth

> Responsible Growth means we must grow, no excuses. We have to do it by focusing on delivering for clients within our risk parameters. And it must be sustainable. To be sustainable, we want to be the best place to work for our team, we focus on sharing success, and we drive operational excellence.
>
> *—Brian Moynihan*
> *Chairman and CEO*

Among the ways we share our success is through our Environmental, Social, and Governance (ESG) priorities. ESG is integrated across our eight lines of business. It informs how we manage our company, the responsible products and services we offer our customers, and the impact we make around the world in helping local economies thrive. ESG is firmly rooted in how we deliver sustainable growth and reflects our values, presents tremendous business opportunity, and allows us to create shared success with our clients and communities.

ESG facilitates business growth by capitalizing on customer and client interest in impact investing and capital markets opportunities that help address today's challenges while also presenting a good business opportunity. This can be seen in the more than $15 billion in assets under management with a clearly defined ESG approach.

ESG informs our customer-focused strategy, so we have the right set of responsible products and services to serve the full range of client needs—with a particular focus on low- and moderate-income communities.

ESG underscores how we grow within our risk framework, engaging external stakeholders and providing strong oversight of environmental and social risks that present themselves through our business activities.

Environmental Sustainability

We are in a unique position to help communities transition to a low-carbon, sustainable economy. We do this by providing financing for projects that reduce energy consumption, greenhouse gas emissions, and demands on natural resources like water and land, while lessening the impact of our own operations.

- Since 2013, we have delivered nearly **$66 billion** towards our goal of providing **$125 billion by 2025** for low-carbon and sustainable business through lending, investing, capital raising, advisory services, and developing financing solutions for clients around the world
- We have **quantified the economic impact of our U.S. environmental finance** efforts between 2013–2016 in partnership with an independent consulting firm and estimate that during this period, our current environmental business initiative supported an approximate annual average of 40,000 jobs, realized an approximate cumulative $30 billion in economic output, and contributed a cumulative $14.8 billion to the GDP of the United States
- We have been **the leading global underwriter of green bonds** in the industry since 2007 and the **leading provider of tax-equity investment** in solar and wind power since 2015

Advancing Economic and Social Progress

We help advance economic and social progress by responsibly extending capital to individuals and companies to create more opportunity and address important social issues. For example, in 2017 we:

- Provided over **$4 billion in loans, tax credit equity investments, and other real estate development solutions** to create housing for individuals, families, veterans, seniors, and previously homeless individuals across the United States
- Invested more than **$1.5 billion in over 260 community development financial institutions** to finance affordable housing, small businesses, and economic development
- Announced an **additional $20 million in funding** available through the Tory Burch Foundation Capital Program to connect women entrepreneurs to affordable loans. Since launching in January 2014, more than 1,700 women entrepreneurs have received capital to grow their businesses
- Continued to be one of the nation's top small business lenders, with **$34 billion in small business loan balances** (commercial loans under $1 million), according to the Federal Deposit Insurance Corporation
- Delivered **nearly $200 million in philanthropic investments**, including $44 million to connect individuals to jobs and skills that will build long-term financial security
- Continued investment in our Better Money Habits® financial education resource, including beginning to roll-out **Better Money Habits content in Spanish** to better serve Hispanic and Latino communities

We also advance the economic health and cultural vitality of local communities through a range of activities including:

- We and our employees **committed nearly $5 million to support communities impacted by disaster** in 2017, including Hurricanes Harvey, Irma, and Maria, the wildfires in California and the earthquakes and hurricane in Mexico
- Celebrated the **20th year of Museums on Us** with the largest roster of participating institutions since program inception—175 museums across 109 cities in 33 states
- Connected employees to meaningful volunteer opportunities through initiatives like **our 4th annual Habitat for Humanity Global Build,** which engaged more than 2,500 employee volunteers in 90 communities across six countries to build affordable housing and revitalize communities

Holding Ourselves Accountable

Our dedication to building and maintaining trust for our clients, employees, and stockholders is seen in our commitment to maintaining clear and effective governance practices. For example, we:

- Held **quarterly management ESG Committee meetings** to identify and discuss issues central to our company's ESG approach and in support of our focus on Responsible Growth, and provided regular updates on progress to our Board
- Provided **regional ESG oversight** through ESG committees in Asia Pacific, Europe, Middle East and Asia, and Latin America that are chaired by in-region leaders and focus on region-specific issues
- Conducted an extensive external stakeholder review of our **Environmental and Social Risk Policy Framework** (ESRPF), which provides a comprehensive view of how our company manages the environmental and social risks that are most relevant to our business. The framework outlines our approach to topics spanning from arctic drilling to human rights to payday lending, including how we identify, measure, monitor, and control these risks. Stakeholder feedback will be incorporated into an updated version of the ESRPF
- ESG leadership worked with line of business leadership to **provide guidance on issues related to environmental and social risk** by participating in line of business risk routines in the Global Banking, Global Markets, and Consumer lines of business
- Convened the **National Community Advisory Council**, a group of 30 representatives of leading civil rights, environmental policy, consumer advocacy, and community development organizations in the U.S., twice in 2017 to allow senior leaders from across the company to engage in meaningful conversations and receive input regarding business practices, products, and environmental and social risk issues

See also Appendix A.

Being a Great Place to Work

Central to sustainable Responsible Growth are the actions we take to be the best place to work for our team. Our culture reflects how we run our company every day. We put the customer first, emphasize integrity and responsibility, and actively encourage all employees to bring their whole selves to work. When we create a workplace where our colleagues are engaged, empowered, and committed for the long term, we are better positioned to help our clients improve their financial lives.

Growing our Diverse & Inclusive Workforce

- Our **Global Diversity & Inclusion Council**, chaired by our CEO, is responsible for setting and upholding diversity and inclusion goals and practices
- We are a **diverse and inclusive company.** Currently, our global workforce is more than **50% female**; and **more than 40% of the U.S.-based workforce is racially or ethnically diverse**. Our **senior leadership is also diverse**; six of our CEO's 12 direct reports and seven of our 15 Board members are women and/or persons of color
- Our most recent campus recruiting class in the U.S. was **more than 50% diverse**, as we focus on building the next generation of leaders
- Our **Courageous Conversations program** provides space for difficult but vital dialogues. These group discussions, which encourage employees to have open dialogue on topics that are important to them, promote inclusion, understanding, and positive action by creating awareness of employees' experiences and perspectives related to differences in background, experience or viewpoints (e.g. class, age, gender, gender identification and expression, sexual orientation, ethnicity, and disabilities)
- Our company is recognized by *Fortune Magazine* on its **100 Best Workplaces for Diversity List**

Empowering Professional Growth & Development

- We have launched multiple **internal job search/career planning tools** to better facilitate career growth at our company. For example, in our Consumer Banking organization, we created the Consumer Academy to increase focus on skill development and career pathing, and we launched a new Career Path Tool to facilitate internal movement. We have had high employee adoption using the tool and participating in the academy, which together have helped support more than 7,600 employees moving to new roles within our Consumer Banking team in 2017
- We support the **professional growth and development of our managers** through programs like Manager Excellence, which helps managers develop their skills with practical tips on professional topics. Last year, **more than 86% of eligible managers** participated in some form of manager development program
- We have a range of programs to connect employees, executives, and thought leaders across our company, including **11 Employee Networks with more than 240 chapters made up of over 100,000 memberships worldwide**
- Our tuition reimbursement program **provides thousands of employees up to $5,250 per year for courses** related to current or future roles at our company

Rewarding Performance That Balances Risk & Reward

- All of our compensation plans are **reviewed and certified annually** by our risk management function
- We have an **enhanced performance review process** for senior leaders and employees who have the ability to expose our company to material risk. Since 2010, the number of senior leaders and employees who have been identified as "covered" employees has doubled
- We have paid our hourly, non-commissioned U.S. employees **at or above the federal and state minimum wage requirements** for several years. We have made regular increases during that period, with efforts in progress to continue to increase our minimum wage, which reached $15 per hour at the start of 2017
- Since 2010, average **annual compensation increases for our U.S. employees have out-paced** average U.S. national wage growth. Compensation for all but the highest-paid 10% has grown at least twice the rate of the U.S. national average
- To **share our success,** at the end of 2017, U.S. employees making $150,000 or less per year in total compensation—about **145,000 employees—received a one-time bonus of $1,000**. In early 2018, we also extended a cash bonus to non-U.S. employees and a special, long-term restricted stock award to employees with total compensation greater than $150,000 to $250,000. Together, **over 90% of employees received special awards**
- Our company is committed to **fairly and equitably compensating all of our employees** and maintains robust policies and practices to reinforce our commitment. We recently announced the results of our most recent review on gender and minority pay equity (see next page)
- We announced a **new U.S. practice restricting how we solicit compensation information when hiring**, so we determine compensation levels for new hires based on individual qualifications, roles and performance, rather than how they may have been compensated in the past

Investing in Health, Emotional & Financial Wellness

- We are focused on offering innovative and affordable benefits and programs that meet the diverse needs of our employees and their families, including **up to 16 weeks of paid parental leave**, **flexible work arrangements**, **competitive 401(k) benefits**, and **backup child and adult care**
- We are focused on supporting our employees' physical, financial, and emotional well-being. We continue to **offer health insurance benefits to U.S.-based employees who regularly work 20 or more hours per week** with multiple medical coverage options
- We **aligned the cost of health coverage with compensation** through progressive premiums to provide affordable coverage. We reduced premiums by 50% for employees making less than $50,000 in 2011 and have kept their premiums flat for the past six years
- Our approach is built on the **things we can do together with our employees to address health risks and manage health care costs**, including focusing on wellness, providing education and support, and partnering with efficient and accountable health care providers; **68,000 employees** participated in the Get Active! health improvement challenge in 2017, walking **26 billion steps**
- In October 2017, we adopted an **extended bereavement policy** to provide up to 20 days paid time for the loss of a spouse/partner or child
- Our **U.S. Life Event Services** (LES) team, which assisted almost 25,000 employees in 2017, is dedicated to supporting employees during major life events, such as retirement, leaves of absence, facing a terminal illness, having a family member pass away, being impacted by a natural disaster or house fire, undergoing a gender transition, or being impacted by domestic violence. LES also supports our employees affected by man-made and natural disasters by contacting employees to confirm their safety and connecting them to available resources, including confidential counseling through our Employee Assistance Program

Valuing our People—Focus on Equal Pay for Equal Work

We strive to be the best place to work for our employees. This includes being a diverse and inclusive company, providing competitive compensation and benefits with particular focus on our lower paid employees, and pay practices designed to deliver equal pay for equal work.

To be a great place to work, we focus on providing an inclusive and rewarding experience for all, with fair and equitable pay. Our pay-for-performance philosophy and approach to compensation begins with setting clear expectations with managers at all levels of the company. The compensation process includes thorough analyses and reviews, with oversight from the most senior leaders in our company including me, the management team, CEO Brian Moynihan, and the Directors who serve on our Compensation and Benefits Committee. Additionally, as part of our regular work to support our gender and race neutral pay-for-performance philosophy, we have retained outside experts that use rigorous process and analysis to examine how we pay employees before year-end compensation decisions are finalized. Through this detailed work, we also identify individual differences in employee compensation and consider factors such as role in organization, experience, work location, and the most recent year's performance. When appropriate, we take action to bring individual employee pay in line with comparable peer positions. This process, which has been in place for over a decade, reinforces our culture and commitment to paying our employees equitably.

As we shared with all employees earlier this year, in our most recent review of total compensation for U.S. and U.K. employees (approximately 80% of our global workforce), results showed that across the company, compensation received by women is equal to on average 99% of that received by men. Results also showed that compensation received by minority teammates is equal to on average 99% of non-minority teammates.

These results will continue to inform both our pay-for-performance practices, including how we continue to bridge gaps that exist or may exist in the future, as well as our overall efforts to continue to attract, develop, and advance women and racially or ethnically diverse employees. In March 2018, we will take another step, with a new practice that restricts how we solicit compensation information from candidates during the hiring process. While this is already in place in certain markets with local requirements, we will implement it across the U.S. so that we determine compensation decisions for new hires based on individual qualifications, roles, and performance, rather than how they may have been compensated in the past.

Efforts like this one will help us continue to attract diverse talent, building on the progress and momentum we have achieved thus far. Today, more than 50% of our global workforce is female, more than 40% of our U.S.-based workforce is racially or ethnically diverse, and more than 45% of our Board of Directors is female or racially or ethnically diverse. We are one of five companies in the S&P 100 that have five women directors. This diversity makes us stronger and better able to deliver for our customers, clients, and the communities we serve.

Our commitment to fairly and equitably compensate all of our employees continues to build on our culture of inclusion, transparency, respect and fairness, and delivery of a great place to work for us all.

—Sheri Bronstein
Global Human Resources Executive

See also Appendix A. More information on our commitment to ESG, including our human capital management practices, is available on our website at *http://bankofamerica.com/responsiblegrowth*.

CEO and Senior Management Succession Planning

Our Board oversees CEO and senior management succession planning, which is formally reviewed at least annually; two such planning sessions were held in 2017. Our CEO and our Global Human Resources Executive provide our Board with recommendations and evaluations of potential CEO successors, and review their development plans. Our Board reviews potential internal senior management candidates with our CEO and our Global Human Resources Executive, including the qualifications, experience, and development priorities for these individuals. Directors engage with potential CEO and senior management successors at Board and committee meetings and in less formal settings to allow directors to personally assess candidates. Further, our Board periodically reviews the overall composition of our senior management's qualifications, tenure, and experience.

Our Board also establishes steps to address emergency CEO and senior management succession planning in extraordinary circumstances. Our emergency CEO succession planning is intended to enable our company to respond to unexpected position vacancies, including those resulting from a major catastrophe, by continuing our company's safe and sound operation and minimizing potential disruption or loss of continuity to our company's business and operations.

Responsible by Nature

We see our success today and in the future not simply as a measure of profit but equally as our broader impact on the public good. The safe, clean, reliable and affordable energy we provide enables our local economies and individuals to thrive and communities across our territory to grow, develop and achieve their goals.

Priority	Plans and Progress
Environmental Responsibility *We are working to provide cleaner energy in a way that is affordable for our customers.*	• **Plan to grow renewables from 27% of our generation portfolio today to more than 45% in 2022** • **Plan to retire over 40% of owned coal-fueled capacity by the end of 2026, as compared to 2005 levels** • **Offer more than 150 energy efficiency and conservation programs** • **Reduced water consumption by more than 40%, sulfur dioxide emissions by 72%, and nitrogen oxide emissions by 76% since 2005**
Community Responsibility *We are committed to help strengthen the communities in which we live and work.*	• **Employees and our Foundation donated more than $8 million in 2017 in support of STEM education, economic stability, environmental stewardship, and access to the arts and culture** • **Provided 71% of our normal goods and services spend—more than $2.5 billion—to local businesses in 2017** • **Contributed funds back into our communities as a significant property taxpayer in the states where we live and work** • **Provided nearly $60 million in energy assistance for low-income, elderly and other at-risk customers in 2017**
Long-Term View *Our investors look to us to help them create a secure future for their clients, and we effectively manage risk to retain that trust. We are preparing for the long term: our business will look different in an increasingly digitized world, requiring different skills and investments.*	• **Transitioning our generation portfolio to more renewable sources, adding 3,680 megawatts of wind by the end of 2021** • **Operating our nuclear fleet to provide reliable, affordable, carbon-free energy for customers through license life** • **Investing over $1 billion in grid intelligence and security in the next decade to enable more renewable and distributed generation** • **Piloting and planning for more batteries and electric vehicles as generation, storage and vehicle advancements occur** • **Investing in our workforce by offering competitive wages and benefits, and nurturing our talent pipeline through interns, diverse and veteran hiring, and supporting youth STEM education**

Learn more about Xcel Energy's environmental, social and economic contributions in our annual Corporate Responsibility Report, published in June at xcelenergy.com/CorporateResponsibility

the independent directors can effectively oversee performance and hold senior leaders accountable. In recognition of the large, complex and global nature of our business, the board believes that a combined Chairman and Chief Executive Officer provides clear leadership and accountability throughout the organization and best ensures alignment between the board and management on issues of strategy, priorities and accountability. Mr. Harmening has more than 20 years of leadership experience with General Mills and possesses a deep understanding of the company's businesses and markets. As Chairman and Chief Executive Officer, Mr. Harmening is in the best position to apply his experience and expertise in assessing industry dynamics and guiding the board's discussions of strategy and business performance.

Independent Lead Director

At any time when the board determines that the same individual should hold the positions of Chairman and Chief Executive Officer, or at any time when the Chairman is not independent, the independent directors elect an Independent Lead Director. The board recognizes the importance of appointing an Independent Lead Director to maintain a strong independent board leadership structure that functions collaboratively with management, while maintaining independent oversight. Therefore, the position of Independent Lead Director comes with a clear mandate and significant authority and responsibilities. The primary responsibilities of the Independent Lead Director are set forth below:

- Reviews and approves board agendas with the Chairman;
- Presides at all board meetings at which the Chairman is not present, including executive sessions of the independent directors (held at each board meeting), and informs the Chairman of issues considered and decisions reached during those sessions;
- Facilitates effective and candid board discussions and communications to optimize board performance;
- Meets regularly with the Chairman, serves as a liaison between the Chairman and the independent directors, and helps facilitate communications between the board and senior management;
- Leads the board in setting forth and enforcing its expectations of ethical standards at the board and senior leadership levels;
- Oversees board evaluations, and leads the board's process for selecting his or her successor;
- Advises the Chairman of the board's informational needs and reviews and approves the types of information sent to the board;
- Calls meetings of the independent directors, as needed, and sets agendas for executive sessions;
- Monitors and coordinates with the Chairman and chair of the corporate governance committee on governance issues; and
- Serves as a board representative for consultation and direct communication with major shareholders.

Our Independent Lead Director is elected to serve for a three-year term, with the appointment ratified annually. R. Kerry Clark has served as the Independent Lead Director since December 2015. Mr. Clark draws on his leadership, strategic planning and governance expertise to foster active discussion and collaboration among the independent directors on the board and to serve as an effective liaison with management. Mr. Clark has played a critical role during our Chairman and Chief Executive Officer transition process, including providing advice and consultation to Mr. Harmening as he transitioned into his role as Chief Executive Officer and then Chairman and Chief Executive Officer. To provide additional continuity of board leadership during the transition to a new Chairman, the board extended Mr. Clark's term as Independent Lead Director by an additional year.

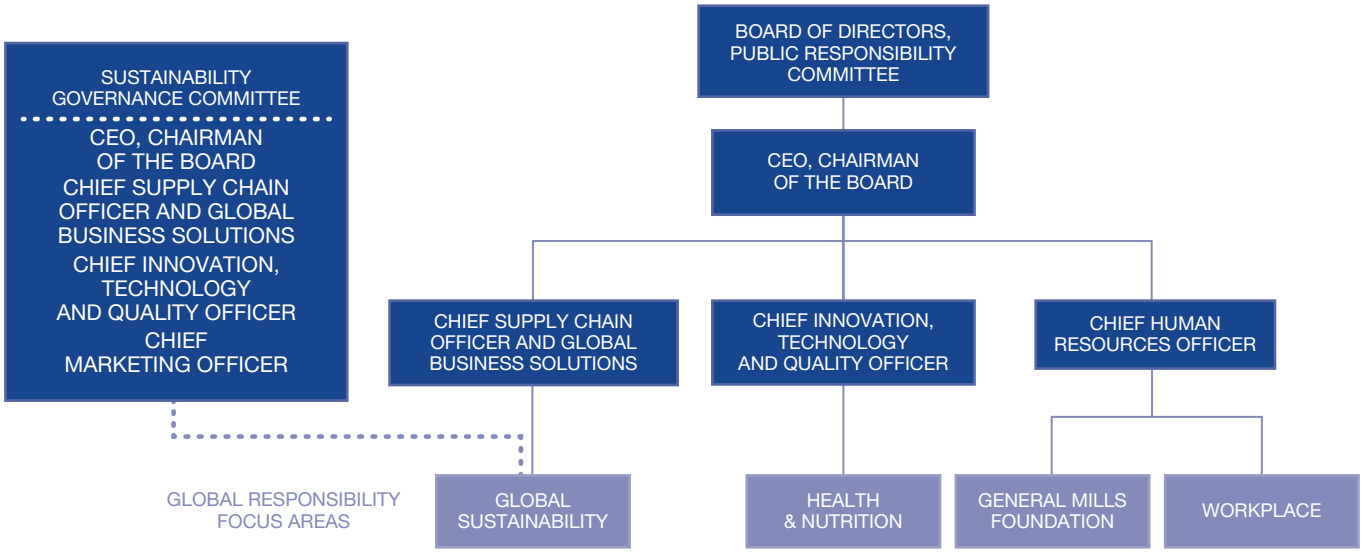
Sustainability and Corporate Social Responsibility

For over 150 years, General Mills has been making food people love while creating long term value for society and our shareholders. Feeding a growing global population and the success of our business depends on a healthy planet. We have taken bold actions to advance sustainability, and we embrace our responsibility to help achieve a stable climate, clean water, healthy soil, strong ecosystems and thriving farming communities. An overview of the company's initiatives may be found in our Global Responsibility Report (available on our website at *www.generalmills.com* under the Responsibility section).

Sustainability Leadership Structure

The board has made it a priority to ensure sustainability is taken seriously at all levels of the company. The company has worked to create a robust sustainability culture and has built the oversight parameters set forth below to ensure it remains a priority.

- **Public Responsibility Committee:** The Board of Directors' public responsibility committee provides oversight and receives regular updates from the operating teams. The committee reviews and monitors strategy, policy and key investments related to sustainability and other social responsibility initiatives. This year the committee appointed a new chair, Alicia Boler Davis, and adopted a new charter designed to provide a more detailed description of the roles and responsibilities of the committee.
- **Leadership Team:** The General Mills leadership team has ultimate accountability for the company's global responsibility and sustainability programs. The Chairman and Chief Executive Officer convenes the Sustainability Governance Committee, which consists of officers of the company, at least three times per year. Sustainability is included in our Chairman and Chief Executive Officer's annual performance objectives.
- **Chief Sustainability Officer:** The company's Chief Sustainability Officer stewards the company's sustainability work, reporting to the Chief Supply Chain Officer, and working closely with the Vice President of Sourcing and other key business leaders to develop, coordinate and execute programs to achieve companywide sustainability targets.
- **Enterprise Risk Management:** Given the significant impact sustainability issues can have on the company, certain sustainability issues are also covered by the company's enterprise risk management processes.



Our Key Sustainability Priorities

While the company is focused on sustainability efforts across our full value chain, our current key priorities are focused on climate change, sustainable sourcing, water stewardship and improving ecosystems, which are all key to the long term success of our business. As discussed below, the company has set ambitious goals in these areas, but remains on track to achieve them.

Climate Change: We set a goal to reduce absolute greenhouse gas (GHG) emissions across our full value chain by 28% by 2025 from 2010 levels and to achieve sustainable emission levels in-line with scientific consensus by 2050. As of 2017, our GHG emissions footprint had decreased 11% compared to 2010, while net sales rose 6%.

Sustainable Sourcing: We remain committed to sustainably sourcing 100% of our 10 priority ingredients by 2020, which represents 40% of our annual raw material purchases globally. In 2017, 76% of these raw materials were sustainably sourced.

Water Stewardship: We are working to champion the development of water stewardship plans for the company's most important and at-risk watersheds in our global value chain by 2025. We focus on 8 priority watersheds across our worldwide operations.

Improving Ecosystems: We are committed to improving the health of ecosystems in our supply chain through a number of different efforts, with a focus on pollinator and soil health. To advance biodiversity, we are collaborating to establish pollinator habitats and support bee research. We are partnering with the U.S. Department of Agriculture and The Xerces Society on projects to establish and protect more than 100,000 acres of pollinator habitat in the U.S. by the end of 2021. To make progress toward healthier soil and more sustainable agriculture, we are working with farmers, NGOs and industry partners, and we have invested more than $3.25 million in soil health initiatives.

Sustainability Highlights

Our sustainability efforts cover the full range of our supply chain – from sourcing ingredients to providing millions of meals through food donations. Our sustainability and corporate social responsibility achievements, some of which are highlighted below, help us strengthen our business, brands and the communities we serve.

Upstream	General Mills	Downstream
Protecting human and natural resources in our agriculture supply chain	*Promoting food quality, workplace safety and diversity and environmental responsibility*	*Improving nutrition, expanding variety and increasing sustainability*

76%
Of our 10 priority ingredients were sustainability sourced

225%
Increase in acreage from which we source organic ingredients since 2009

$3.25M+
Investments in soil health initiatives through 2017

100%
Facilities worldwide audited and/or certified for food safety by independent 3rd parties

47%
U.S. management positions held by women

20%
Percentage of U.S. workforce that is ethnically diverse

80%
U.S. retail sales volume nutritionally improved since 2005

2nd Largest
U.S. organic food producer

30 million
Meals enabled through food donations around the world

Significant Recognitions				
ISS Accolades Highest Environmental and Social Quality Scores	**A-** CDP Climate rating	**B** CDP Water rating	**#11** Corporate Responsibility magazine's 100 Best Corporate citizens	**FTSE4Good** Index member

DORSEY & WHITNEY
FORM OF EXCHANGE ACT
DIRECTORS' AND OFFICERS' QUESTIONNAIRE
(NASDAQ LISTED ISSUERS)

Instruction Sheet

Steps for use of this form:

1. Insert the following information into the form in each place where the applicable bracketed letter appears:

   [A] Name of Registrant.

   [B] Year in which the Annual Meeting of Shareholders with respect to which Proxy Statement is being prepared will be held.

   [C] Last day of fiscal year with respect to which the Form 10-K is being prepared.

   [D] Name of person to whom questionnaire should be returned.

   [E] Name of person to whom questions about the questionnaire should be directed.

   [F] Phone number of [E].

   [G] "Latest practicable date" for purposes of beneficial ownership information in Proxy Statement.

   [H] Last day of fiscal year preceding the fiscal year with respect to which the Form 10-K is being prepared.

   [I] Last day of fiscal year immediately preceding Registrant's last three fiscal years.

   [J] Five percent of Registrant's consolidated gross revenues for the fiscal year immediately preceding its last two fiscal years.

   [K] Last day of fiscal year immediately preceding Registrant's last two fiscal years.

   [L] Five percent of Registrant's consolidated gross revenues for the fiscal year immediately preceding the fiscal year with respect to which the Form 10-K is being prepared.

   [M] Five percent of Registrant's consolidated gross revenues for the fiscal year with respect to which the Form 10-K is being prepared.

   [N] Last day of Registrant's current fiscal year.

[O] Name or names of any accounting firm engaged as an internal or external auditor for Registrant or any parent or subsidiary of the Registrant at any time after the last day of the fiscal year immediately preceding the Registrant's last three fiscal years.

[P] Name of person to whom changes in the answers to the questionnaire should be directed.

[Q] Phone number of [P].

[R] 45th day after the Registrant's fiscal year end.

[S] Name of the Registrant's independent accountant; also include any predecessor independent accountants that audited the Registrant's financial statements at any time after the last day of the fiscal year immediately preceding the Registrant's last three fiscal years.

[T] Name(s) of the Registrant's compensation consultant(s).

[U] Name of the person or entity employing the Registrant's compensation consultant(s).

2. If applicable, attach the personal biographies of the recipients as called for in Question 3.

3. Review Questions 31 and 32 to determine whether to include; review Question 26 to determine whether to delete the footnote to the question before distributing the questionnaire; and choose whether to include the dollar amounts represented by [J], [L] and [M] above, as applicable, in Question 29 and delete the appropriate parentheticals in Question 29 if such amounts are not to be included. Delete brackets or questions as appropriate. Renumber if appropriate.

4. If applicable, attach a Form 5 Report prepared by the Registrant called for in Question 31.

5. Proposed language relating to FASB ASC 850, Related Party Disclosures is included beginning with Question 44. We recommend that you discuss this language with your auditor as some auditors prefer their own language.

[A]

DIRECTORS' AND OFFICERS' QUESTIONNAIRE

Full Name: _____
(Please Print)

This questionnaire is being sent to each director and executive officer of **[A]** (the "*Company*"), each person who was a director or executive officer of the Company during the last fiscal year, and each person who has been nominated or chosen to become a director or executive officer of the Company. The purpose of this questionnaire is to obtain or verify certain information which the Company is required to disclose in connection with the preparation of its **[B]** proxy statement and its Annual Report on Form 10-K for the fiscal year ended **[C]**, both of which will soon be filed with the Securities and Exchange Commission (the "*Commission*"), and to obtain certain information to fulfill the requirements of Auditing Standard 18. This questionnaire is also intended to elicit certain information regarding the independence of the Company's outside directors and certain related matters.

PLEASE ANSWER EVERY QUESTION. If you are in doubt as to whether a particular question requires an affirmative response from you, please assume that it does and furnish full particulars so that the persons responsible for preparing the Company's proxy statement and Annual Report and for monitoring the Company's compliance with applicable corporate governance guidelines and auditing standards can determine whether any disclosure or other action is required. Your furnishing of such information does not necessarily mean that such information will be disclosed. If you need additional space for any answer, please attach separate sheets.

Upon completion, please date and sign the questionnaire and return it to **[D]** at the Company. If you have questions concerning any part of the questionnaire, please call **[E]** at **[F]**.

DEFINITIONS

Your answers to this questionnaire should be based on the following definitions. Please refer back to these definitions whenever an asterisk appears next to a term used in the questionnaire.

The term "RELATED ENTITY" means (a) any corporation or organization (other than the Company or its subsidiaries) of which you are an officer or partner or are, directly or indirectly, the "beneficial owner" of 10% or more of any class of equity securities; and (b) any trust or other estate in which you have a substantial beneficial interest or as to which you serve as trustee or in a similar capacity.

The term "ASSOCIATE" means (a) any "related entity" (as defined above) and (b) your spouse or any relative of yours or your spouse who (1) shares your home or (2) is a director or officer of the Company or any of its parents or subsidiaries.

The term "BENEFICIAL OWNER" of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares (a) *voting power*, which includes the power to vote, or direct the voting of, such security, or (b) *investment power*, which includes the power to dispose or direct the disposition of such security. A person may be regarded as having voting power of a security which is owned (1) by that person's spouse or minor children or by any of that person's relatives or spouse's relatives who share the same home with that person; (2) a partnership of which that person is a partner; or (3) a corporation of which that person is a substantial shareholder. A person is also deemed to be the" beneficial owner" of shares which that person has the right to acquire within 60 days, including but not limited to any right to acquire through the exercise of an option, warrant or other right, through conversion of a security, pursuant to the power to revoke a trust or pursuant to the automatic termination of a trust.

The term "MATERIAL" when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which the average prudent investor should reasonably be informed before buying or selling the securities of the Company. If you are in doubt as to the materiality of certain information, you should provide sufficient facts to enable the Company to reach a conclusion as to its materiality.

The term "IMMEDIATE FAMILY" refers to a person's spouse, children, stepchildren, parents, stepparents, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law and anyone (other than a tenant or domestic employee) who shares a person's home.

The term "REPORTING COMPANY" generally refers to a company that is subject to the informational reporting requirements of the Securities Exchange Act of 1934, as amended, and so is required to file Forms 10-K, 10-Q, NSAR or similar forms with the Commission. More specifically, this term refers to a company that has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, or which is subject to the requirements of

Section 15(d) of that Act, or which is registered as an investment company under the Investment Company Act of 1940.

GENERAL INFORMATION

Question 1 (Source: Sched. 14A Item 7(b), Reg. S-K Items 401(a) and (b))

Please state your age and birth date.

Age: _____ Birth Date: _____

Question 2 (Source: Sched. 14A Item 7(b), Reg. S-K Items 401(a) and (b))

Are you aware of any understandings or arrangements with any persons, other than the directors and officers of the Company acting solely in that capacity, pursuant to which you were selected as a director or officer?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please describe such understandings or arrangements below and name such other persons.

_____

_____

_____

Question 3 (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(e)(1))

Please describe briefly your business experience during the past five years, including your principal occupations and employment during that period, the name and principal business of any corporation or other organization in which such occupations and employment were carried on, whether such corporation or other organization is a parent, subsidiary or affiliate of the Company, and the dates of commencement and termination of such employment. If you are an officer of the Company or a subsidiary and have been employed by the Company or a subsidiary for less than five years, include a brief explanation of the nature of your responsibilities in the prior position(s) you describe, including such specific information as the size of any operation you supervised. If you are an officer of the Company or a subsidiary and have been employed by the Company or a subsidiary for more than five years and your position with the Company or a subsidiary has been your principal occupation during the past five years, please so state without further detail.

If the Company has previously prepared a personal biography for you, a copy of the most recent version is attached to this questionnaire. If the attached biography provides a complete and current response to this item, please so indicate below. If the attached biography requires an update or no biography is attached, please provide the necessary information below.

Answer: **[ ] Attached biography is complete and current.**
[ ] Necessary information provided below.

Question 4 (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(e)(1))

If you are a director or nominee for director of the Company, please briefly describe your experience, qualifications, attributes and skills which you believe are particularly relevant to your service as a director of the Company, to the extent not already discussed in your biography (e.g., areas of expertise, certifications, education, etc.). Please include information going back further than five years if relevant.

Question 5 (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(e)(1) and (2))

If you are a director or nominee for director of the Company, are you currently a director of any other "reporting company"*, or have you been a director of any other "reporting company"* within the last five years?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please name each such company below and indicate your approximate dates of service as a director of each such company.

* See "Definitions" on page 2.

Question 6 (Source: Sched. 14A Item 6(d), Reg. S-K Item 403(b))

Please provide below information regarding the equity securities of the Company, its parents or its subsidiaries of which you are the "beneficial owner"* as of **[G]**. Under the column "Nature of Ownership," please indicate amounts of securities for which you have (a) sole voting power, (b) shared voting power, (c) sole investment power, or (d) shared investment power. Under the column "Shares Subject to Pledge" indicate if the shares have been pledged as security or collateral. If your response covers any securities included because you have the right to acquire them within 60 days from **[G]**, please separately indicate the amount of such securities, except that the Company will supply information as to any equity securities you have a right to acquire from it under currently exercisable options.

Number of Shares	Nature of Ownership	Shares Subject to Pledge	Title of Securities (Common or Preferred)

The rules of the Commission allow you to disclaim beneficial ownership of some or all of the shares listed above. Such a disclaimer would mean that you do not intend the above statement to be construed as an admission of beneficial ownership for all purposes, such as the Commission's short-swing profit rules and rules governing reports by holders of five percent or more of the equity securities of a public company. Do you wish to disclaim beneficial ownership of any of the shares listed above?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please identify the shares to which the disclaimer applies and briefly describe the basis for the disclaimer.

_____

_____

_____

Question 7 (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(f))

Have you at any time during the past ten years:

(a) Filed or had filed against you a petition under the federal bankruptcy laws or any state insolvency law, or had a receiver, fiscal agent or similar officer appointed by

a court for the business or property of (1) you, (2) any partnership in which you were a general partner at or within two years before the time of such filing, or (3) any corporation or business association of which you were an executive officer at or within two years before the time of such filing?

Answer: **[ ] Yes [ ] No**

(b) Been convicted in a criminal proceeding or been the named subject of a criminal proceeding which is presently pending (excluding traffic violations and other minor offenses)?

Answer: **[ ] Yes [ ] No**

(c) Been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining you or otherwise limiting you from doing the following:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission, or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any type of business activity; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of federal or state securities laws or federal commodities laws?

Answer: **[ ] Yes [ ] No**

(d) Been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, suspending or otherwise limiting for more than 60 days your right to engage in any activity described in subparagraph (c)(1) above, or to be associated with persons engaged in such activity?

Answer: **[ ] Yes [ ] No**

(e) Been found by a court of competent jurisdiction in a civil action or by the Commission to have violated any federal or state securities law, and the judgment

in such civil action or finding by the Commission has not been subsequently reversed, suspended or vacated?

Answer: **[ ] Yes [ ] No**

(f) Been found by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding by the Commodity Futures Trading Commission has not been subsequently reversed, suspended or vacated?

Answer: **[ ] Yes [ ] No**

(g) Been the subject of, or a party to, any federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of:

(1) Any federal or state securities or commodities law or regulation; or

(2) Any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(3) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity?

Answer: **[ ] Yes [ ] No**

(h) Been the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member?

Answer: **[ ] Yes [ ] No**

If you answered "yes" to any portion of this question, please provide details below.

_____

_____

_____

COMPENSATION

Question 8 (Source: Sched. 14A Item 8, Reg. S-K Item 402(a)(2), Exchange Act Rule 10C-1(b)(1)(ii)(A))

Has any compensation for your services to the Company or its subsidiaries during the fiscal year ended **[C]** (whether in the form of cash, options, securities or other property) been paid to you since **[H]**, by anyone other than the Company or its subsidiaries, or set aside or accrued for your benefit?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please state below the names of the persons paying such compensation, the capacities in which the services were rendered, the date of payment and the amount of such compensation on an accrual basis. (The Company and its subsidiaries will furnish information directly with respect to salaries, bonuses, fees or other compensation paid to you as an employee or director of the Company or of its subsidiaries. Such information, therefore, should not be included in response to this question.)

_____

_____

_____

Question 9 (Source: Release 34-13872, Sched. 14A Item 8, Reg. S-K Item 402(c)(2)(ix))

Have you or any member of your "immediate family"* received any personal benefits, either directly or indirectly, from the Company or any of its subsidiaries since **[H]**, other than salaries, fees and bonuses and any incidental personal benefits integrally and directly related to the performance of your job, such as parking places, meals at Company facilities and office space and furnishings at Company maintained facilities? Examples of personal benefits not directly related to job performance include, but are not limited to, the following:

- home repairs and improvements;
- housing and other living expenses (including domestic service) provided at your principal or vacation residence;
- the personal use of Company property such as automobiles, planes, yachts, apartments, hunting lodges or vacation houses;

* See "Definitions" on page 2.

- personal travel expenses;
- commuting expenses (whether or not for the Company's convenience or benefit);
- security provided at a personal residence or during personal travel;
- personal entertainment and related expenses;
- legal, accounting or tax advice and other professional fees for matters unrelated to the business of the Company;
- benefits from third parties, such as favorable bank loans and benefits from suppliers, because the Company compensates, directly or indirectly, the bank or supplier for providing the loan or services to management;
- discounts on the Company's products or services not generally available to employees on a non-discriminatory basis;
- the use of the corporate staff for personal purposes; and
- memberships in country clubs, luncheon clubs or other social or recreational clubs not used exclusively for business entertainment purposes.

Answer: **[ ] Yes [ ] No**

If you answered "yes," please provide details below.

_____

_____

_____

Question 10 (Source: Sched. 14A Item 8, Reg. S-K Item 402(b) and (j))

Are any compensation payments or other payments (other than (a) pension, profit-sharing or retirement plan benefits, (b) dividends, or (c) group life, accident, health or hospitalization insurance benefits) proposed to be made in the future to you by the Company or any other entity pursuant to any existing employment agreement, deferred compensation contract or other agreement, plan or arrangement, whether written or unwritten, including any such agreement, contract, plan or arrangement that will become operative as a result of (1) your resignation, retirement or other termination of employment with the Company or its subsidiaries or (2) a change in control of the Company or in your responsibilities following a change in control of the Company?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please briefly describe such payments and identify any such agreement, contract, plan or arrangement.

CERTAIN RELATIONSHIPS AND TRANSACTIONS

Question 11 (Source: Sched. 14A Items 7(b) and (e), Reg. S-K Item 401(d))

Are you aware of any family relationships (*i.e.*, relationships by blood, marriage or adoption not more remote than first cousin) between you and (a) any executive officer or director of the Company or any of its subsidiaries, parents or other affiliates or (b) any person nominated or chosen to become an executive officer or director of the Company or any of its subsidiaries, parents or other affiliates?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please provide details below.

_____

_____

_____

Question 12 (Source: Sched. 14A Item 7(b), Reg. S-K Item 404(a)(5))

Have you, any member of your "immediate family"* or any "related entity"* of yours been indebted to the Company or its subsidiaries at any time since **[H]**, in an amount exceeding $120,000?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please set forth below (a) the name of such person; (b) the nature of such person's relationship to you; (c) the largest aggregate amount of indebtedness outstanding at any time during such period; (d) the nature of the indebtedness and of the transaction in which it was incurred; (e) the amount thereof outstanding as of the date you complete this questionnaire; and (f) the rate of interest paid or charged thereon. You can exclude amounts due for purchases on usual trade terms, for ordinary travel and expense advances, and for other transactions in the ordinary course of business.

_____

_____

_____

Question 13 (Source: Sched. 14A Item 7(b), Reg. S-K Item 404(a))

Are you aware of any transaction, arrangement or relationship, or series of similar transactions, arrangements or relationships, since **[H]**, or any proposed transaction, or

* See "Definitions" on page 2.

series of similar transactions, to which the Company or any of its subsidiaries was, or is to be, a participant, in which the amount involved exceeds or will exceed $120,000 (including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments), and in which you or a member of your "immediate family"* had, or will have, any "material"* interest, either directly or indirectly through an entity that is a "related entity"*?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please identify such person and his or her relationship to you, briefly describe the transactions, the nature and amount of such interest and the amount of the transactions. You should include compensation or other amounts paid to a partnership of which you are a partner. If any transaction involved, or is to involve, the purchase or sale of assets by or to the Company or its subsidiaries, state the sale price. If you or a member of your "immediate family"* were, or are to be, the seller, and you or a member of your "immediate family"* acquired the assets to be sold within two years prior to the sale, state the cost of the assets to you or the member of your "immediate family."*

Question 14 (Source: Sched. l4A Item 8, Reg. S-K Item 407(e)(4))

If you are an executive officer of the Company did you, at any time during the Company's fiscal year ended **[C]**, serve as a director of any publicly or privately held company one of the executive officers of which served as a director of the Company during that same year?

Answer: **[ ] Yes [ ] No [ ] I am not an executive officer of the Company.**

* See "Definitions" on page 2.

If you answered "yes," please identify the other company, its executive officer and all committees of its Board of Directors that existed during the Company's fiscal year ended **[C]**, indicating in each case whether or not you served as a member of that committee during the Company's fiscal year ended **[C]**.

Question 15 (Source: Exchange Act Section 13(k))

Has the Company, directly or indirectly (including through any subsidiary), extended credit, or arranged for the extension of credit, to you in the form of a personal loan?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

Question 16 (Source: Sched. 14A Item 7(a), Reg. S-K Item 103)

Are you aware of any interest adverse to the Company or its subsidiaries which you or any "associate"* of yours has in any pending legal or governmental proceeding or any such proceeding known by you to be contemplated by governmental authorities?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

* See "Definitions" on page 2.

Question 17 (Source: Sched. 14A Item 6(d), Reg. S-K Item 403(c))

Are you aware of any arrangements, including any pledge of securities by you, the operation of which may at a subsequent date result in a change of control of the Company?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

_____

_____

_____

Question 18 (Source: Sched. 14A Item 5(a))

Do you or any "associate"* of yours have any substantial interest, direct or indirect, by security holdings or otherwise, in any matter to be acted upon at the Company's **[B]** Annual Meeting of Shareholders other than any interest in elections to office or any interest arising solely from the ownership of any security of the Company where you receive no extra or special benefit not shared on a pro rata basis by all other holders of the same class?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

_____

_____

_____

Question 19 (Source: Sched. l4A Item 7, Reg. S-K Item 407(e)(3)(iv))

If you are a member of the Company's Compensation Committee, have you had any business or personal relationships with **[T]** of **[U]**, the Compensation Committee's compensation consultant, at any time since **[I]** other than through your role as a member of the Company's Compensation Committee?

Answer: **[ ] Yes [ ] No [ ] I am not a member of the Company's Compensation Committee.**

* See "Definitions" on page 2.

If you answered "yes," please give details below.

_____

_____

_____

Question 20 (Source: Sched. l4A Item 7, Reg. S-K Item 407(e)(3)(iv))

If you are an executive officer of the Company, have you had any business or personal relationships with **[T]** of **[U]**, the Compensation Committee's compensation consultant, or with **[U]** (other than in connection with [his or her] or their engagement by the Compensation Committee), at any time since **[I]**?

Answer: **[ ] Yes [ ] No [ ] I am not an executive officer of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

DIRECTOR INDEPENDENCE AND OTHER MATTERS

Question 21 (Source: NASDAQ Rules 5605(a)(2) and 5605(c)2))

If you are a director or nominee for director of the Company, at any time since **[I]** have there been any relationships between you and the Company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the Company or any parent or subsidiary of the Company), other than your relationship with the Company as a director or nominee for director? Please include relationships of all types (*e.g.,* commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships).

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 22 (Source: NASDAQ Rule 5605(a)(2))

If you are a director or nominee for director of the Company, are you currently, or have you been at any time since **[I],** employed by the Company or any parent or subsidiary of the Company?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 23 (Source: NASDAQ Rule 5605(a)(2))

If you are a director or nominee for director of the Company, is any member of your "immediate family"* currently employed by the Company or by any parent or subsidiary

* See "Definitions" on page 2.

of the Company as an executive officer, or has any member of your "immediate family"* been so employed at any time since **[I]**?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 24 (Source: NASDAQ Rule 5605(a)(2))

If you are a director or nominee for director of the Company, are you or is any member of your "immediate family"* a current partner of **[S]**; or have you or any member of your "immediate family"* worked on the Company's audit as a partner or employee of **[S]** at any time since **[I]**?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 25 (Source: NASDAQ Rule 5605(a)(2))

If you are a director or a nominee for director of the Company, since **[I]**, have you or any member of your "immediate family"* been employed as an executive officer by another company, which company has had an executive officer of the Company serving on such other company's compensation committee?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

* See "Definitions" on page 2.

If you answered "yes," please give details below.

_____

_____

_____

Question 26 (Source: Exchange Act Rules 10A-3 and 10C-1, NASDAQ Rules 5605(a)(2) and 5605(c)(2))[1]

If you are a director or nominee for director of the Company, at any time since **[I]** have you or any members of your "immediate family"* accepted any payments from the Company or any parent or subsidiary of the Company, other than directors' fees (which directors' fees include Company stock or options or other in-kind consideration available to the Company's directors, as well as all of the other regular benefits that directors receive), or from any other person or entity the payment of which might appear to affect your judgment? In determining whether any such payments have been received, you should include any consulting, advisory or other compensatory fees paid to you, directly or indirectly, by the Company or any parent or subsidiary of the Company or by any other person or entity (including fees for legal or financial advisory services).

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 27 (Source: Exchange Act Rules 10A-3 and 10C-1)

If you are a director or nominee for director of the Company, are you (other than in your capacity as a director or a member of the audit committee or any other board committee) affiliated with the Company, any subsidiary of the Company or any affiliate of any subsidiary of the Company?

---

1 NASDAQ Rule 5605(a)(2) provides that a director is not independent if that director or any member of that director's family accepts any payments in excess of $120,000 during any 12-month period from the Company. For purposes of this independence determination, board and committee fees, payments arising solely from investments in the Company's securities, compensation paid to family members who are nonexecutive employees of the Company or its parents or subsidiaries, benefits under tax-qualified retirement plans or non-discretionary compensation or permitted loans under Section 13(k) of the Securities Exchange Act of 1934 need not be considered.

* See "Definitions" on page 2.

For purposes of this question, (i) you are "affiliated" with the Company, any subsidiary of the Company or any affiliate of any subsidiary of the Company if you directly, or indirectly through one or more intermediaries, control the Company, such subsidiary or such affiliate through stock ownership or other means, and (ii) the following are deemed to be affiliates: (A) an executive officer of an affiliate, (B) a director who also is an employee of an affiliate, (C) a general partner of an affiliate, and (D) a managing member of an affiliate.

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 28 (Source: NASDAQ Rule 5605(c)(2))

If you are a director or nominee for director of the Company, have you participated in the preparation of the financial statements of the Company or any subsidiary of the Company at any time since **[I]**?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes", please give details below.

_____

_____

_____

Question 29 (Source: NASDAQ Rule 5605(a)(2))

If you are a director or nominee for director of the Company, at any time since **[I]**, have you or any member of your "immediate family"* been a partner in, or a controlling shareholder or executive officer of, another organization (including charitable entities):

(a) To which the Company made payments for property or services in the current or any of the past three fiscal years that exceed the greater of 5% of such other organization's consolidated gross revenue or $200,000?

* See "Definitions" on page 2.

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

(b) From which the Company received payments for property or services in the current or any of the past three fiscal years that exceeded the greater of 5% of the Company's consolidated gross revenues for such fiscal year or $200,000?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes" to either portion of this question, please give details below.

_____

_____

_____

Question 30 (Source: NASDAQ Rule 5250(b)(3))

If you are a director or nominee for director of the Company, at any time during the past year has there been any agreement or arrangement between you and any person or entity other than the Company (a "Third Party") relating to compensation or other payment in connection with your candidacy or service as a director of the Company, other than an agreement or arrangement that relates only to reimbursement of expenses in connection with your candidacy as a director? In determining whether there has been any such agreement or arrangement, the terms "compensation" and "other payment" should be construed broadly and would apply to agreements and arrangements that provide for non-cash compensation and other payment obligations, such as health insurance premiums or indemnification, made in connection with your candidacy or service as a director.

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below, including whether such agreement or arrangement, and/or your relationship with the applicable Third Party, has previously been publicly disclosed and the method of such public disclosure.

Additional Question relating to Section 16 Compliance[2]:

Question 31 (Source: Schedule 14A Item 7(b), Reg. S-K Item 405(b)(2))

Under the short-swing profit provisions of the Securities Exchange Act of 1934, you are required to file a Form 5 report on or before **[R]** if there have been any changes in your beneficial ownership of equity securities of the Company during the fiscal year ended **[C]** that were not reflected on a Form 3 and/or Form 4 report previously filed by you. In connection with the Company's disclosure obligations with respect to the proxy statement and Annual Report on Form 10-K, the Company is requesting a representation from you as to whether a Form 5 is required to be filed by you. Enclosed are copies of any Forms 3, 4 and 5 filed by you during the last fiscal year. Please compare your records of your holdings as of **[C]** and your transactions since **[H]** with the holdings and transactions reported on the enclosed Forms and then check the appropriate box below.

Answer: ☐ All of my transactions and holdings of equity securities of the Company beneficially owned by me have been reported and I hereby represent to the Company that no Form 5 is required to be filed by me or on my behalf.

☐ Described below are any transactions, holdings or changes in holdings of equity securities of the Company beneficially owned by me that are not reflected on the enclosed Forms 3, 4 and/or 5.

[2] Some clients and attorneys wish to include this question in the D&O Questionnaire. Consider deleting or including, as appropriate.

Additional Question relating to Foreign Corrupt Practices Act[3]:

Question 32 (Source: Exchange Act Section 30A)

Do you know or have any reason to believe that any of the activities or types of conduct enumerated below have been or may have been engaged in, directly or indirectly, within or outside the United States, at any time during the past five years?

NOTE: Each question is to be read as relating to the activities or conduct of the Company, yourself and any affiliate of the Company, as well as to the conduct of any person who has acted or is acting on behalf of or for the benefit of any of them. For purposes of this question an "affiliate" is defined as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with you.

The terms "payments" and "contributions" include not only the giving of cash or hard goods but also the giving of anything else of value – for example, services or the use of property. Your answers should consider not only matters of which you have direct personal knowledge, but also those matters which you have reason to believe may have existed or occurred.

(a) Any bribes or kickbacks to government officials or other payments to such persons, or their relatives, or any other payments to such persons, whether or not legal, to obtain or retain business or to receive favorable treatment with regard to business.

Answer: **[ ] Yes [ ] No**

(b) Any contributions, whether or not legal, made to any foreign political party, foreign political candidate or holder of foreign governmental office.

Answer: **[ ] Yes [ ] No**

(c) Any bank accounts, funds or pools of funds created or maintained without being reflected on the corporate books of account, or as to which the receipts and disbursements therefrom have not been reflected on such books.

Answer: **[ ] Yes [ ] No**

(d) Any receipts or disbursements, the actual nature of which has been "disguised" or intentionally misrecorded on the corporate books of account.

---

[3] Some clients and attorneys have requested that the D&O Questionnaire include this type of compliance-oriented question. Consider deleting or including, as appropriate.

Answer: **[ ] Yes [ ] No**

(e) Any fees paid to consultants or commercial agents which exceeded the reasonable value of the services purported to have been rendered.

Answer: **[ ] Yes [ ] No**

(f) Any payments or reimbursements made to personnel of the Company for purposes of enabling them to expend time or to make contributions or payments of the kind or for the purposes referred to in subparts a-e above.

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing is "Yes," please give details in the space below.

_____

_____

_____

Additional Question relating to Iran Threat Reduction and Syria Human Rights Act of 2012:

Question 33 (Source: Exchange Act Section 13(r))

Do you know or have any reason to believe that any of the activities or types of conduct enumerated below have been or may have been engaged in at any time during the past fiscal year?

NOTE: Each question is to be read as relating to the activities or conduct of the Company, any affiliate of the Company, yourself and any entity you control, as well as to the conduct of any person who has acted or is acting on behalf of or for the benefit of any of them. For purposes of this question an "affiliate" is defined as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with a person.

(a) Activities or transactions relating to Iran's ability to develop petroleum resources, maintain or expand Iran's domestic production of refined petroleum products, or import refined petroleum products.

Answer: **[ ] Yes [ ] No**

(b) Activities or transactions contributing to Iran's ability to acquire or develop weapons of mass destruction or participating in a joint venture with the

Government of Iran and certain other persons to mine, produce or transport uranium.

Answer: **[ ] Yes [ ] No**

(c) Activities or transactions by foreign financial institutions (i) facilitating the ability of Iran and related persons to acquire or develop weapons of mass destruction or support terrorism, (ii) facilitating activities of persons subject to financial sanctions under certain United Nations Security Council Resolutions, or (iii) participate in money laundering or facilitate efforts by Iranian financial institutions to carry out activities described in (i) or (ii).

Answer: **[ ] Yes [ ] No**

(d) Activities or transactions by foreign financial institutions or persons owned or controlled by a domestic financial institution, facilitating or providing financial services for certain persons, including Iran's Revolutionary Guard Corps, whose property is blocked under the International Emergency Economic Powers Act.

Answer: **[ ] Yes [ ] No**

(e) Activities or transactions supporting Iran's acquisition or use of goods or technologies that are likely to be used to commit human rights abuses against the Iranian people or to restrict, disrupt or monitor the free flow of information.

Answer: **[ ] Yes [ ] No**

(f) Activities or transactions with (i) persons who commit or support terrorism or who are or who support weapons of mass destruction proliferators, or (ii) the Government of Iran, any entity owned or controlled directly or indirectly by the Government of Iran, or any person acting or purporting to act on behalf of either of the foregoing, without the specific authorization of a U.S. Government agency.

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing is "Yes," please give details in the space below.

Additional Questions relating to the ability of the Company to offer and sell securities in private placements pursuant to Rule 506 of Regulation D:[4]

Question 34 (Source: 17 C.F.R. 230.506(d)(1)(i))

Within the last ten years, have you or any person you control been convicted in the United States of any felony or misdemeanor:

In connection with the purchase or sale of any security?

Answer: **[ ] Yes [ ] No**

Involving the making of any false filing with the SEC?

Answer: **[ ] Yes [ ] No**

Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities?

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 35(Source: 17 C.F.R. 230.506(d)(1)(ii))

Are you or any person you control *currently* subject to any court order, judgment or decree of a U.S.-based court or regulator, issued within the last five years, restraining or enjoining you or such person from engaging or continuing to engage in any conduct or practice:

In connection with the purchase or sale of any security?

Answer: **[ ] Yes [ ] No**

Involving the making of any false filing with the SEC?

[4]Some clients and attorneys wish to include Questions 34 through 44 in the D&O Questionnaire if the company periodically issues securities in private placements pursuant to Regulation D. Consider deleting or including, as appropriate.

Answer: **[ ] Yes [ ] No**

Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities?

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 36 (Source: 17 C.F.R. 230.506(d)(1)(iii))

Are you or any person you control *currently* subject to a final order of any of the following entities:

- A U.S. state securities commission;
- A U.S. state authority that supervises or examines banks, savings associations or credit unions;
- A U.S. state insurance commission;
- A U.S. federal banking agency;
- The U.S. Commodity Futures Trading Commission; OR
- The National Credit Union Administration,

That:

Bars you or such person from:

- Association with an entity regulated by such commission, authority, agency, or officer;
- Engaging in the business of securities, insurance, or banking; OR
- Engaging in savings association or credit union activities?

Answer: **[ ] Yes [ ] No**

Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within the last ten years?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing is "Yes," please give details in the space below.

_____

_____

_____

Question 37 (Source: 17 C.F.R. 230.506(d)(1)(iv))

Are you or any person you control *currently* subject to an order of the SEC that:

Suspends or revokes your or such person's registration as a broker, dealer, municipal securities dealer or investment adviser?

Answer: **[ ] Yes** **[ ] No**

Places limitations on your or such person's activities, functions, or operations as a broker, dealer, municipal securities dealer or investment adviser?

Answer: **[ ] Yes** **[ ] No**

Bars you or such person from being associated with any entity or from participating in the offering of any penny stock?

Answer: **[ ] Yes** **[ ] No**

If your answer to any of the foregoing is "Yes," please give details in the space below.

_____

_____

_____

Question 38 (Source: 17 C.F.R. 230.506(d)(1)(v))

Are you or any person you control *currently* subject to an order from the SEC, entered within the last five years, ordering you or such person to cease and desist from committing or causing a violation or future violation of:

Any scienter-based anti-fraud provision of the federal securities laws, including, without limitation:

- Section 17(a)(1) of the Securities Act of 1933;
- Section 10(b) of the Securities Exchange Act of 1934;
- Section 15(c)(1) of the Securities Exchange Act of 1934;
- Section 206(1) of the Investment Advisers Act of 1940;

Or any other rule or regulation thereunder?

Answer: **[ ] Yes [ ] No**

Section 5 of the Securities Act of 1933?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 39 (Source: 17 C.F.R. 230.506(d)(1)(vi))

Are you or any person you control *currently* suspended or expelled from membership in, or suspended or barred from association with a member of:

- a registered U.S. national securities exchange, OR
- a registered U.S. national or affiliated securities association,

For any act you or such person committed, or for a failure to act?

Answer: **[ ] Yes [ ] No**

If "Yes," please give details in the space below.

_____

_____

_____

Question 40 (Source: 17 C.F.R. 230.506(d)(1)(vii))

Have you or any person you control filed or been named as an underwriter in a registration statement or Regulation A offering statement filed with the SEC that:

Within the last five years, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption?

Answer: **[ ] Yes [ ] No**

Is *currently* the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 41 (Source: 17 C.F.R. 230.506(d)(1)(viii))

Are you or any person you control *currently* subject to either of the following:

A United States Postal Service false representation order, issued within the last five years?

Answer: **[ ] Yes [ ] No**

A temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 42 (Source: 17 C.F.R. 230.506(d)(2)(i))

If you answered "Yes" to any of the foregoing Questions 34 through 41, was the conviction, order, judgment, decree, suspension, expulsion, or bar—the reason for which you answered "Yes" to any of the Questions 43 through 41—issued on or before September 22, 2013?

Answer: **[ ] Yes [ ] No**

If "Yes," please give details in the space below.

Question 43 (Source: 17 C.F.R. 230.506(d)(2)(ii))

If you answered "Yes" to any of the foregoing Questions 34 through 41, has the SEC made a determination that, despite these matters, it is not necessary under the circumstances that **[A]** be denied the Rule 506 private offering exemption?

Answer: **[ ] Yes [ ] No [ ] Do Not Know**

If "Yes," please give details in the space below.

Question 44 (Source: 17 C.F.R. 230.506(d)(2)(iii))

If you answered "Yes" to any of the foregoing Questions 34 through 41, has the court or regulatory authority that entered any order, judgment, or decree—the order, judgment, or decree for which you answered "Yes" to any of the foregoing Questions 34 through 41—declared anywhere in writing that disqualification from making a private offering under Rule 506 is an inappropriate consequence of such order, judgment, or decree?

Answer: **[ ] Yes [ ] No [ ] Do Not Know**

If "Yes," please give details in the space below.

ADDITIONAL RELATED PARTY DISCLOSURES FOR AUDITING PURPOSES

[Note: The following set of questions are intended to gather information for an audit of related party transactions pursuant to Auditing Standard 18. Please consult with your independent auditor on processes that are appropriate for your company.]

For purposes of this section, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity through ownership, by contract, or otherwise.

Question 45 (Source: FASB ASC 850, Related Party Disclosures)

Do you directly or indirectly have control over any entities? Please note that if you control an entity, which in turn controls another entity, both entities would be considered controlled by you and therefore should be listed below.

Answer: **[ ] Yes [ ] No**

If you answered "yes," please state the full legal names of the entities below, whether or not there are currently any transactions between the entity and the Company.

_____

_____

_____

Question 46 (Source: FASB ASC 850, *Related Party Disclosures*)

Can you exert significant influence, either directly or indirectly, over any entities, to the extent that the entity may be prevented from fully pursuing its own separate interests with regard to any transactions with the Company and its affiliates? If so, and if that entity can in turn exert significant influence over another entity, both entities should be listed below.

Answer: **[ ] Yes [ ] No**

If you answered "yes," please state the full legal names of the entities below, whether or not there are currently any transactions between the entity and the Company.

Question 47 (Source: FASB ASC 850, *Related Party Disclosures*)

Please list your immediate family members and include, where applicable, their affiliations with entities that they control or over which they can exert significant influence, to the extent that the entity might be prevented from fully pursuing its own separate interests.

For purposes of this question, "immediate family members" means a family member who might control or influence you, or who might be controlled or influenced by you, because of your family relationship. In most cases, we would expect this definition to include your spouse, children and other family members living in the same household as you. Further, it may include a parent, stepparent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law or other relatives, if, in your judgment, any of those individuals are in a position to have control or influence over you, or to be controlled or influenced by you (for example, a parent for whom you provide significant monetary support).

Answer: **[ ] No such immediate family members**
[ ] Necessary information provided below

Name	Affiliation

Question 48

With respect to the persons or entities identified in Questions 45-47 of this section, and except as otherwise disclosed in answer to Questions 12 or 13 of the Questionnaire, are you aware of any transactions or arrangements since [H] to which the Company or any of its subsidiaries was, or is to be, a participant that should be considered for disclosure in the Company's financial statements?

Answer: **[ ] Yes [ ] No [ ] Do Not Know**

If "Yes," please give details in the space below.

SIGNATURE

The answers to the foregoing questions are true and correct to the best of my knowledge, information and belief. I will notify **[P]** at **[Q]** of any changes in the answers to this questionnaire that should be made as a result of any material development occurring subsequent to the date hereof but prior to the Company's **[B]** Annual Meeting of Shareholders.

Dated: _____

_____
Signature

DORSEY & WHITNEY
FORM OF EXCHANGE ACT
DIRECTORS' AND OFFICERS' QUESTIONNAIRE
(NYSE LISTED ISSUERS)

Instruction Sheet

Steps for use of this form:

1. Insert the following information into the form in each place where the applicable bracketed letter appears:

   [A] Name of Registrant.

   [B] Year in which the Annual Meeting of Shareholders with respect to which Proxy Statement is being prepared will be held.

   [C] Last day of fiscal year with respect to which the Form 10-K is being prepared.

   [D] Name of person to whom questionnaire should be returned.

   [E] Name of person to whom questions about the questionnaire should be directed.

   [F] Phone number of [E].

   [G] "Latest practicable date" for purposes of beneficial ownership information in Proxy Statement.

   [H] Last day of fiscal year preceding the fiscal year with respect to which the Form 10-K is being prepared.

   [I] Last day of fiscal year immediately preceding Registrant's last three fiscal years.

   [J] Five percent of Registrant's consolidated gross revenues for the fiscal year immediately preceding its last two fiscal years.

   [K] Last day of fiscal year immediately preceding Registrant's last two fiscal years.

   [L] Five percent of Registrant's consolidated gross revenues for the fiscal year immediately preceding the fiscal year with respect to which the Form 10-K is being prepared.

   [M] Five percent of Registrant's consolidated gross revenues for the fiscal year with respect to which the Form 10-K is being prepared.

   [N] Last day of Registrant's current fiscal year.

[O] Name or names of any accounting firm engaged as an internal or external auditor for Registrant or any parent or subsidiary of the Registrant at any time after the last day of the fiscal year immediately preceding the Registrant's last three fiscal years.

[P] Name of person to whom changes in the answers to the questionnaire should be directed.

[Q] Phone number of [P].

[R] 45th day after the Registrant's fiscal year end.

[S] Name of the Registrant's independent accountant; also include any predecessor independent accountants that audited the Registrant's financial statements at any time after the last day of the fiscal year immediately preceding the Registrant's last three fiscal years.

[T] Name(s) of the Registrant's compensation consultant(s).

[U] Name of the person or entity employing the Registrant's compensation consultant(s).

2. If applicable, attach the personal biographies of the recipients as called for in Question 3.

Review Questions 30 and 31 to determine whether to include and review Question 27 to determine whether to delete the footnote to the question before distributing the questionnaire.

If applicable, attach a Form 5 Report prepared by the Registrant called for in Question 30

Proposed language relating to FASB ASC 850, Related Party Disclosures is included beginning with Question 44. We recommend that you discuss this language with your auditor as some auditors prefer their own language.

[A]

DIRECTORS' AND OFFICERS' QUESTIONNAIRE

Full Name: _____
(Please Print)

This questionnaire is being sent to each director and executive officer of **[A]** (the "*Company*"), each person who was a director or executive officer of the Company during the last fiscal year, and each person who has been nominated or chosen to become a director or executive officer of the Company. The purpose of this questionnaire is to obtain or verify certain information which the Company is required to disclose in connection with the preparation of its **[B]** proxy statement and its Annual Report on Form 10-K for the fiscal year ended **[C]**, both of which will soon be filed with the Securities and Exchange Commission (the "*Commission*"), and to obtain certain information to fulfill the requirements of Auditing Standard 18. This questionnaire is also intended to elicit certain information regarding the independence of the Company's outside directors and certain related matters.

PLEASE ANSWER EVERY QUESTION. If you are in doubt as to whether a particular question requires an affirmative response from you, please assume that it does and furnish full particulars so that the persons responsible for preparing the Company's proxy statement and Annual Report and for monitoring the Company's compliance with applicable corporate governance guidelines and auditing standards can determine whether any disclosure or other action is required. Your furnishing of such information does not necessarily mean that such information will be disclosed. If you need additional space for any answer, please attach separate sheets.

Upon completion, please date and sign the questionnaire and return it to **[D]** at the Company. If you have questions concerning any part of the questionnaire, please call **[E]** at **[F]**.

DEFINITIONS

Your answers to this questionnaire should be based on the following definitions. Please refer back to these definitions whenever an asterisk appears next to a term used in the questionnaire.

The term "RELATED ENTITY" means (a) any corporation or organization (other than the Company or its subsidiaries) of which you are an officer or partner or are, directly or indirectly, the "beneficial owner" of 10% or more of any class of equity securities; and (b) any trust or other estate in which you have a substantial beneficial interest or as to which you serve as trustee or in a similar capacity.

The term "ASSOCIATE" means (a) any "related entity" (as defined above) and (b) your spouse or any relative of yours or your spouse who (1) shares your home or (2) is a director or officer of the Company or any of its parents or subsidiaries.

The term "BENEFICIAL OWNER" of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares (a) *voting power*, which includes the power to vote, or direct the voting of, such security, or (b) *investment power*, which includes the power to dispose or direct the disposition of such security. A person may be regarded as having voting power of a security which is owned (1) by that person's spouse or minor children or by any of that person's relatives or spouse's relatives who share the same home with that person; (2) a partnership of which that person is a partner; or (3) a corporation of which that person is a substantial shareholder. A person is also deemed to be the" beneficial owner" of shares which that person has the right to acquire within 60 days, including but not limited to any right to acquire through the exercise of an option, warrant or other right, through conversion of a security, pursuant to the power to revoke a trust or pursuant to the automatic termination of a trust.

The term "MATERIAL" when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which the average prudent investor should reasonably be informed before buying or selling the securities of the Company. If you are in doubt as to the materiality of certain information, you should provide sufficient facts to enable the Company to reach a conclusion as to its materiality.

The term "IMMEDIATE FAMILY" refers to a person's spouse, children, stepchildren, parents, stepparents, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law and anyone (other than a tenant or domestic employee) who shares a person's home.

The term "REPORTING COMPANY" generally refers to a company that is subject to the informational reporting requirements of the Securities Exchange Act of 1934, as amended, and so is required to file Forms 10-K, 10-Q, NSAR or similar forms with the Commission. More specifically, this term refers to a company that has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, or which is subject to the requirements of Section 15(d) of that Act, or which is registered as an investment company under the Investment Company Act of 1940.

GENERAL INFORMATION

Question 1. (Source: Sched. 14A Item 7(b), Reg. S-K Items 401(a) and (b))

Please state your age and birth date.

Age: _____ Birth Date: _____

Question 2. (Source: Sched. 14A Item 7(b), Reg. S-K Items 401(a) and (b))

Are you aware of any understandings or arrangements with any persons, other than the directors and officers of the Company acting solely in that capacity, pursuant to which you were selected as a director or officer?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please describe such understandings or arrangements below and name such other persons.

_____

_____

_____

Question 3. (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(e)(1))

Please describe briefly your business experience during the past five years, including your principal occupations and employment during that period, the name and principal business of any corporation or other organization in which such occupations and employment were carried on, whether such corporation or other organization is a parent, subsidiary or affiliate of the Company, and the dates of commencement and termination of such employment. If you are an officer of the Company or a subsidiary and have been employed by the Company or a subsidiary for less than five years, include a brief explanation of the nature of your responsibilities in the prior position(s) you describe, including such specific information as the size of any operation you supervised. If you are an officer of the Company or a subsidiary and have been employed by the Company or a subsidiary for more than five years and your position with the Company or a subsidiary has been your principal occupation during the past five years, please so state without further detail.

If the Company has previously prepared a personal biography for you, a copy of the most recent version is attached to this questionnaire. If the attached biography provides a complete and current response to this item, please so indicate below. If the attached biography requires an update or no biography is attached, please provide the necessary information below.

Answer: **[ ] Attached biography is complete and current.**
[ ] Necessary information provided below.

_____

_____

_____

Question 4. (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(e)(1))

If you are a director or nominee for director of the Company, please briefly describe your experience, qualifications, attributes and skills which you believe are particularly relevant to your service as a director of the Company, to the extent not already discussed in your biography (e.g., areas of expertise, certifications, education, etc.). Please include information going back further than five years if relevant.

_____

_____

_____

_____

_____

_____

Question 5. (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(e)(1) and (2))

If you are a director or nominee for director of the Company, are you currently a director of any other "reporting company"*, or have you been a director of any other "reporting company"* within the last five years?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please name each such company below and indicate your approximate dates of service as a director of each such company.

_____

_____

_____

Question 6. (Source: Sched. 14A Item 6(d), Reg. S-K Item 403(b))

Please provide below information regarding the equity securities of the Company, its parents or its subsidiaries of which you are the "beneficial owner"* as of **[G]**. Under the

* See "Definitions" on page 2.

column "Nature of Ownership," please indicate amounts of securities for which you have (a) sole voting power, (b) shared voting power, (c) sole investment power, or (d) shared investment power. Under the column "Shares Subject to Pledge" indicate if the shares have been pledged as security or collateral. If your response covers any securities included because you have the right to acquire them within 60 days from **[G]**, please separately indicate the amount of such securities, except that the Company will supply information as to any equity securities you have a right to acquire from it under currently exercisable options.

Number of Shares	**Nature of Ownership**	**Shares Subject to Pledge**	**Title of Securities (Common or Preferred)**

The rules of the Commission allow you to disclaim beneficial ownership of some or all of the shares listed above. Such a disclaimer would mean that you do not intend the above statement to be construed as an admission of beneficial ownership for all purposes, such as the Commission's short-swing profit rules and rules governing reports by holders of five percent or more of the equity securities of a public company. Do you wish to disclaim beneficial ownership of any of the shares listed above?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please identify the shares to which the disclaimer applies and briefly describe the basis for the disclaimer.

_____

_____

_____

Question 7. (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(f))

Have you at any time during the past ten years:

(a) Filed or had filed against you a petition under the federal bankruptcy laws or any state insolvency law, or had a receiver, fiscal agent or similar officer appointed by a court for the business or property of (1) you, (2) any partnership in which you were a general partner at or within two years before the time of such filing, or (3) any corporation or business association of which you were an executive officer at or within two years before the time of such filing?

Answer: **[ ] Yes [ ] No**

(b) Been convicted in a criminal proceeding or been the named subject of a criminal proceeding which is presently pending (excluding traffic violations and other minor offenses)?

Answer: **[ ] Yes [ ] No**

(c) Been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining you or otherwise limiting you from doing the following:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission, or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any type of business activity; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of federal or state securities laws or federal commodities laws?

Answer: **[ ] Yes [ ] No**

(d) Been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, suspending or otherwise limiting for more than 60 days your right to engage in any activity described in subparagraph (c)(1) above, or to be associated with persons engaged in such activity?

Answer: **[ ] Yes [ ] No**

(e) Been found by a court of competent jurisdiction in a civil action or by the Commission to have violated any federal or state securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended or vacated?

Answer: **[ ] Yes [ ] No**

(f) Been found by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding by the Commodity Futures Trading Commission has not been subsequently reversed, suspended or vacated?

Answer: **[ ] Yes [ ] No**

(g) Been the subject of, or a party to, any federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of:

(1) Any federal or state securities or commodities law or regulation; or

(2) Any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(3) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity?

Answer: **[ ] Yes [ ] No**

(h) Been the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member?

Answer: **[ ] Yes [ ] No**

If you answered "yes" to any portion of this question, please provide details below.

_____

_____

_____

COMPENSATION

Question 8. (Source: Sched. 14A Item 8, Reg. S-K Item 402(a)(2), Exchange Act Rule 10C-1(b)(1)(ii)(A))

Has any compensation for your services to the Company or its subsidiaries during the fiscal year ended **[C]** (whether in the form of cash, options, securities or other property) been paid to you since **[H]**, by anyone other than the Company or its subsidiaries, or set aside or accrued for your benefit?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please state below the names of the persons paying such compensation, the capacities in which the services were rendered, the date of payment and the amount of such compensation on an accrual basis. (The Company and its subsidiaries will furnish information directly with respect to salaries, bonuses, fees or other compensation paid to you as an employee or director of the Company or of its subsidiaries. Such information, therefore, should not be included in response to this question.)

_____

_____

_____

Question 9. (Source: Release 34-13872, Sched. 14A Item 8, Reg. S-K Item 402(c)(2)(ix))

Have you or any member of your "immediate family"* received any personal benefits, either directly or indirectly, from the Company or any of its subsidiaries since **[H]**, other than salaries, fees and bonuses and any incidental personal benefits integrally and directly related to the performance of your job, such as parking places, meals at Company facilities and office space and furnishings at Company maintained facilities? Examples of personal benefits not directly related to job performance include, but are not limited to, the following:

- home repairs and improvements;
- housing and other living expenses (including domestic service) provided at your principal or vacation residence;
- the personal use of Company property such as automobiles, planes, yachts, apartments, hunting lodges or vacation houses;

* See "Definitions" on page 2.

- personal travel expenses;
- commuting expenses (whether or not for the Company's convenience or benefit);
- security provided at a personal residence or during personal travel;
- personal entertainment and related expenses;
- legal, accounting or tax advice and other professional fees for matters unrelated to the business of the Company;
- benefits from third parties, such as favorable bank loans and benefits from suppliers, because the Company compensates, directly or indirectly, the bank or supplier for providing the loan or services to management;
- discounts on the Company's products or services not generally available to employees on a non-discriminatory basis;
- the use of the corporate staff for personal purposes; and
- memberships in country clubs, luncheon clubs or other social or recreational clubs not used exclusively for business entertainment purposes.

Answer: **[ ] Yes [ ] No**

If you answered "yes," please provide details below.

_____

_____

_____

Question 10. (Source: Sched. 14A Item 8, Reg. S-K Item 402(b) and (j))

Are any compensation payments or other payments (other than (a) pension, profit-sharing or retirement plan benefits, (b) dividends, or (c) group life, accident, health or hospitalization insurance benefits) proposed to be made in the future to you by the Company or any other entity pursuant to any existing employment agreement, deferred compensation contract or other agreement, plan or arrangement, whether written or unwritten, including any such agreement, contract, plan or arrangement that will become operative as a result of (1) your resignation, retirement or other termination of employment with the Company or its subsidiaries or (2) a change in control of the Company or in your responsibilities following a change in control of the Company?

Answer: **[ ] Yes [ ] No**

If you answered “yes,” please briefly describe such payments and identify any such agreement, contract, plan or arrangement.

CERTAIN RELATIONSHIPS AND TRANSACTIONS

Question 11. (Source: Sched. 14A Items 7(b) and (e), Reg. S-K Item 401(d))

Are you aware of any family relationships (*i.e.*, relationships by blood, marriage or adoption not more remote than first cousin) between you and (a) any executive officer or director of the Company or any of its subsidiaries, parents or other affiliates or (b) any person nominated or chosen to become an executive officer or director of the Company or any of its subsidiaries, parents or other affiliates?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please provide details below.

_____

_____

_____

Question 12. (Source: Sched. 14A Item 7(b), Reg. S-K Item 404(a)(5))

Have you, any member of your "immediate family"* or any "related entity"* of yours been indebted to the Company or its subsidiaries at any time since **[H]**, in an amount exceeding $120,000?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please set forth below (a) the name of such person; (b) the nature of such person's relationship to you; (c) the largest aggregate amount of indebtedness outstanding at any time during such period; (d) the nature of the indebtedness and of the transaction in which it was incurred; (e) the amount thereof outstanding as of the date you complete this questionnaire; and (f) the rate of interest paid or charged thereon. You can exclude amounts due for purchases on usual trade terms, for ordinary travel and expense advances, and for other transactions in the ordinary course of business.

_____

_____

_____

Question 13. (Source: Sched. 14A Item 7(b), Reg. S-K Item 404(a))

Are you aware of any transaction, arrangement or relationship, or series of similar transactions, arrangements or relationships, since **[H]**, or any proposed transaction, or

* See "Definitions" on page 2.

series of similar transactions, to which the Company or any of its subsidiaries was, or is to be, a participant, in which the amount involved exceeds or will exceed $120,000 (including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments), and in which you or a member of your "immediate family"* had, or will have, any "material"* interest, either directly or indirectly through an entity that is a "related entity"*?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please identify such person and his or her relationship to you, briefly describe the transactions, the nature and amount of such interest and the amount of the transactions. You should include compensation or other amounts paid to a partnership of which you are a partner. If any transaction involved, or is to involve, the purchase or sale of assets by or to the Company or its subsidiaries, state the sale price. If you or a member of your "immediate family"* were, or are to be, the seller, and you or a member of your "immediate family"* acquired the assets to be sold within two years prior to the sale, state the cost of the assets to you or the member of your "immediate family."*

Question 14. (Source: Sched. l4A Item 8, Reg. S-K Item 407(e)(4))

If you are an executive officer of the Company did you, at any time during the Company's fiscal year ended **[C]**, serve as a director of any publicly or privately held company one of the executive officers of which served as a director of the Company during that same year?

Answer: **[ ] Yes [ ] No [ ] I am not an executive officer of the Company.**

* See "Definitions" on page 2.

If you answered "yes," please identify the other company, its executive officer and all committees of its Board of Directors that existed during the Company's fiscal year ended **[C]**, indicating in each case whether or not you served as a member of that committee during the Company's fiscal year ended **[C]**.

Question 15. (Source: Exchange Act Section 13(k))

Has the Company, directly or indirectly (including through any subsidiary), extended credit, or arranged for the extension of credit, to you in the form of a personal loan?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

Question 16. (Source: Sched. 14A Item 7(a), Reg. S-K Item 103)

Are you aware of any interest adverse to the Company or its subsidiaries which you or any "associate"* of yours has in any pending legal or governmental proceeding or any such proceeding known by you to be contemplated by governmental authorities?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

Question 17. (Source: Sched. 14A Item 6(d), Reg. S-K Item 403(c))

* See "Definitions" on page 2.

Are you aware of any arrangements, including any pledge of securities by you, the operation of which may at a subsequent date result in a change of control of the Company?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

_____

_____

_____

Question 18. (Source: Sched. 14A Item 5(a))

Do you or any "associate"* of yours have any substantial interest, direct or indirect, by security holdings or otherwise, in any matter to be acted upon at the Company's **[B]** Annual Meeting of Shareholders other than any interest in elections to office or any interest arising solely from the ownership of any security of the Company where you receive no extra or special benefit not shared on a pro rata basis by all other holders of the same class?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

_____

_____

_____

Question 19. (Source: Sched. l4A Item 7, Reg. S-K Item 407(e)(3)(iv))

If you are a member of the Company's Compensation Committee, have you had any business or personal relationships with **[T]** of **[U]**, the Compensation Committee's compensation consultant, at any time since **[I]** other than through your role as a member of the Company's Compensation Committee?

Answer: **[ ] Yes [ ] No [ ] I am not a member of the Company's Compensation Committee.**

If you answered "yes," please give details below.

* See "Definitions" on page 2.

_____

_____

_____

Question 20. (Source: Sched. l4A Item 7, Reg. S-K Item 407(e)(3)(iv))

If you are an executive officer of the Company, have you had any business or personal relationships with **[T]** of **[U]**, the Compensation Committee's compensation consultant, or with **[U]** (other than in connection with [his or her] or their engagement by the Compensation Committee), at any time since **[I]**?

Answer: **[ ] Yes [ ] No [ ] I am not an executive officer of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

DIRECTOR INDEPENDENCE AND OTHER MATTERS

Question 21. (Source: NYSE Corp. Gov. Rules, Rule 303A)

If you are a director or nominee for director of the Company, at any time since **[I]** have there been any relationships between you and the Company, any parent or subsidiary of the Company or any affiliate of a subsidiary of the Company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the Company, any parent or subsidiary of the Company or any affiliate of any subsidiary of the Company), other than your relationship with the Company as a director or nominee for director? Please include relationships of all types (*e.g.*, commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships) and disclose any other relationship that might appear to affect your judgment.

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director.**

If you answered "yes," please give details below.

_____

_____

_____

Question 22. (Source: NYSE Corp. Gov. Rules, Rule 303A)

If you are a director or nominee for director of the Company, at any time since **[I]**:

(a) Have you been an employee of the Company or any parent or subsidiary of the Company?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director.**

(b) Has any member of your "immediate family"* been employed as an executive officer of the Company or any parent or subsidiary of the Company?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director.**

* See "Definitions" on page 2.

If you answered "yes" to either portion of this question, please give details below.

_____

_____

_____

Question 23. (Source: NYSE Corp. Gov. Rules, Rule 303A)

If you are a director or nominee for director of the Company:

(a) Are you currently an employee or partner of **[O]**?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

(b) Is any member of your "immediate family"* currently a partner of **[O]**?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

(c) Is any member of your "immediate family"* currently an employee of **[O]** who personally works on the audit of the Company or any parent or subsidiary of the Company?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

(d) At any time since **[I]**, have you or any member of your "immediate family"* been an employee or a partner of **[O]** and personally worked on the audit of the Company or any parent or subsidiary of the Company?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes" to any portion of this question, please give details below.

_____

_____

_____

Question 24. (Source: NYSE Corp. Gov. Rules, Rule 303A)

If you are a director or a nominee for director of the Company, since **[I]**, have you or any member of your "immediate family"* been employed as an executive officer by another

company, which company has had an executive officer of the Company or any parent or subsidiary of the Company serving on such other company's compensation committee?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 25. (Source: NYSE Corp. Gov. Rules, Rule 303A)

If you are a director or nominee for director of the Company, at any time since **[I]**, have you been employed by, or has any member of your "immediate family"* been an executive officer of, another entity which made payments to or received payments from the Company and its subsidiaries in excess of the greater of $1,000,000 or 2% of such other entity's consolidated gross revenues in any given fiscal year?[1]

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 26. (Source: NYSE Corp. Gov. Rules, Rule 303A)

If you are a director or nominee for director of the Company, at any time since **[I]** have you served as an executive officer of a tax exempt organization to which the Company or any of its parents or subsidiaries donates in excess of $1,000,000 or 2% of such organization's consolidated gross revenues for the given fiscal year?

---

* See "Definitions" on page 2.

1 Loans from financial institutions are not considered payments under this Question, but interest payments on such loans and other fees paid in association with such loans are considered payments, including commitment fees on credit facilities. This Question would apply both to payments made by the other company to the Company where the Company is the lender, and payments made by the Company to the other company where the Company is the debtor, although the 2% revenue test is always based on the consolidated gross revenues of the other company, and not the Company.

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 27. (Source: Exchange Act Rules 10A-3 and 10C-1, NYSE Corp. Gov. Rules, Rule 303A)[2]

If you are a director or nominee for director of the Company, at any time since **[I]** have you or members of your "immediate family"* received any compensation from the Company or any parent or subsidiary of the Company, other than directors' fees (which directors' fees include Company stock or options or other in-kind consideration available to the Company's directors, as well as all of the other regular benefits that directors receive), or from any other person or entity the payment of which might appear to affect your judgment? In determining whether any such compensation has been received, you should include any consulting, advisory or other compensatory fees paid to you, directly or indirectly, by the Company or any parent or subsidiary of the Company or by any other person or entity (including fees for legal or financial advisory services).

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

2 NYSE Corp. Gov. Rules, Rule 303A provides that a director is not independent if that director or any member of that director's family receives more than $120,000 during any 12-month period in direct compensation (including payments to a business entity solely owned by the director or family member) from the Company or any parent or subsidiary of the Company. For purposes of this independence determination, director committee fees or fees paid for former service as an interim chairman or CEO or other executive officer need not be considered. Compensation received by a member of the director's "immediate family" for services as an employee of the Company (other than an executive officer) need not be considered. Pension or other forms of deferred compensation for prior service need not be considered either, provided such compensation is not contingent on continued service.

* See "Definitions" on page 2.

Question 28. (Source: NYSE Corp. Gov. Rules, Rule 303A)

If you are a director or nominee for director of the Company, do you currently serve on the audit committee of any other entity?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 29. (Source: Exchange Act Rules 10A-3 and 10C-1)

If you are a director or nominee for director of the Company, are you (other than in your capacity as a director or a member of the audit committee or any other board committee) affiliated with the Company, any subsidiary of the Company or any affiliate of any subsidiary of the Company?

For purposes of this question, (i) you are "affiliated" with the Company, any subsidiary of the Company or any affiliate of any subsidiary of the Company if you directly, or indirectly through one or more intermediaries, control the Company, such subsidiary or such affiliate through stock ownership or other means, and (ii) the following are deemed to be affiliates: (A) an executive officer of an affiliate, (B) a director who also is an employee of an affiliate, (C) a general partner of an affiliate, and (D) a managing member of an affiliate.

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Additional Question relating to Section 16 Compliance3:

Question 30. (Source: Schedule 14A Item 7(b), Reg. S-K Item 405(b)(2))

Under the short-swing profit provisions of the Securities Exchange Act of 1934, you are required to file a Form 5 report on or before **[R]** if there have been any changes in your beneficial ownership of equity securities of the Company during the fiscal year ended **[C]** that were not reflected on a Form 3 and/or Form 4 report previously filed by you. In connection with the Company's disclosure obligations with respect to the proxy statement and Annual Report on Form 10-K, the Company is requesting a representation from you as to whether a Form 5 is required to be filed by you. Enclosed are copies of any Forms 3, 4 and 5 filed by you during the last fiscal year. Please compare your records of your holdings as of **[C]** and your transactions since **[H]** with the holdings and transactions reported on the enclosed Forms and then check the appropriate box below.

Answer: ☐ All of my transactions and holdings of equity securities of the Company beneficially owned by me have been reported and I hereby represent to the Company that no Form 5 is required to be filed by me or on my behalf.

☐ Described below are any transactions, holdings or changes in holdings of equity securities of the Company beneficially owned by me that are not reflected on the enclosed Forms 3, 4 and/or 5.

_____

_____

_____

[3] Some clients and attorneys wish to include this question in the D&O Questionnaire. Consider deleting or including, as appropriate.

Additional Question relating to Foreign Corrupt Practices Act[4]:

Question 31. (Source: Exchange Act Section 30A)

Do you know or have any reason to believe that any of the activities or types of conduct enumerated below have been or may have been engaged in, directly or indirectly, within or outside the United States, at any time during the past five years?

NOTE: Each question is to be read as relating to the activities or conduct of the Company, yourself and any affiliate of the Company, as well as to the conduct of any person who has acted or is acting on behalf of or for the benefit of any of them. For purposes of this question an "affiliate" is defined as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with you.

The terms "payments" and "contributions" include not only the giving of cash or hard goods but also the giving of anything else of value – for example, services or the use of property. Your answers should consider not only matters of which you have direct personal knowledge, but also those matters which you have reason to believe may have existed or occurred.

(a) Any bribes or kickbacks to government officials or other payments to such persons, or their relatives, or any other payments to such persons, whether or not legal, to obtain or retain business or to receive favorable treatment with regard to business.

Answer: **[ ] Yes [ ] No**

(b) Any contributions, whether or not legal, made to any foreign political party, foreign political candidate or holder of foreign governmental office.

Answer: **[ ] Yes [ ] No**

(c) Any bank accounts, funds or pools of funds created or maintained without being reflected on the corporate books of account, or as to which the receipts and disbursements therefrom have not been reflected on such books.

Answer: **[ ] Yes [ ] No**

(d) Any receipts or disbursements, the actual nature of which has been "disguised" or intentionally misrecorded on the corporate books of account.

Answer: **[ ] Yes [ ] No**

---

[4] Some clients and attorneys have requested that the D&O Questionnaire include this type of compliance-orientated question. Consider deleting or including, as appropriate.

(e) Any fees paid to consultants or commercial agents which exceeded the reasonable value of the services purported to have been rendered.

Answer: **[ ] Yes [ ] No**

(f) Any payments or reimbursements made to personnel of the Company for purposes of enabling them to expend time or to make contributions or payments of the kind or for the purposes referred to in subparts a-e above.

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing is "Yes," please give details in the space below.

_____

_____

_____

Additional Question relating to Iran Threat Reduction and Syria Human Rights Act of 2012:

Question 32. (Source: Exchange Act Section 13(r))

Do you know or have any reason to believe that any of the activities or types of conduct enumerated below have been or may have been engaged in at any time during the past fiscal year?

NOTE: Each question is to be read as relating to the activities or conduct of the Company, any affiliate of the Company, yourself and any entity you control, as well as to the conduct of any person who has acted or is acting on behalf of or for the benefit of any of them. For purposes of this question an "affiliate" is defined as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with a person.

(a) Activities or transactions relating to Iran's ability to develop petroleum resources, maintain or expand Iran's domestic production of refined petroleum products, or import refined petroleum products.

Answer: **[ ] Yes [ ] No**

(b) Activities or transactions contributing to Iran's ability to acquire or develop weapons of mass destruction or participating in a joint venture with the Government of Iran and certain other persons to mine, produce or transport uranium.

Answer: **[ ] Yes [ ] No**

(c) Activities or transactions by foreign financial institutions (i) facilitating the ability of Iran and related persons to acquire or develop weapons of mass destruction or support terrorism, (ii) facilitating activities of persons subject to financial sanctions under certain United Nations Security Council Resolutions, or (iii) participate in money laundering or facilitate efforts by Iranian financial institutions to carry out activities described in (i)(or (ii).

Answer: **[ ] Yes [ ] No**

(d) Activities or transactions by foreign financial institutions or persons owned or controlled by a domestic financial institution, facilitating or providing financial services for certain persons, including Iran's Revolutionary Guard Corps, whose property is blocked under the International Emergency Economic Powers Act.

Answer: **[ ] Yes [ ] No**

(e) Activities or transactions supporting Iran's acquisition or use of goods or technologies that are likely to be used to commit human rights abuses against the Iranian people or to restrict, disrupt or monitor the free flow of information.

Answer: **[ ] Yes [ ] No**

(f) Activities or transactions with (i) persons who commit or support terrorism or who are or who support weapons of mass destruction proliferators, or (ii) the Government of Iran, any entity owned or controlled directly or indirectly by the Government of Iran, or any person acting or purporting to act on behalf of either of the foregoing, without the specific authorization of a U.S. Government agency.

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing is "Yes," please give details in the space below.

Additional Questions relating to the ability of the Company to offer and sell securities in private placements pursuant to Rule 506 of Regulation D:[5]

Question 33. (Source: 17 C.F.R. 230.506(d)(1)(i))

Within the last ten years, have you or any person you control been convicted in the United States of any felony or misdemeanor:

In connection with the purchase or sale of any security?

Answer: **[ ] Yes [ ] No**

Involving the making of any false filing with the SEC?

Answer: **[ ] Yes [ ] No**

Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities?

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing was "Yes," please give details in the space below.

Question 34. (Source: 17 C.F.R. 230.506(d)(1)(ii))

Are you or any person you control *currently* subject to any court order, judgment or decree of a U.S.-based court or regulator, issued within the last five years, restraining or enjoining you or such person from engaging or continuing to engage in any conduct or practice:

[5] Some clients and attorneys wish to include Questions 33 through 43 in the D&O Questionnaire if the company periodically issues securities in private placements pursuant to Regulation D. Consider deleting or including, as appropriate.

In connection with the purchase or sale of any security?

Answer: **[ ] Yes [ ] No**

Involving the making of any false filing with the SEC?

Answer: **[ ] Yes [ ] No**

Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities?

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 35. (Source: 17 C.F.R. 230.506(d)(1)(iii))

Are you or any person you control *currently* subject to a final order of any of the following entities:

- A U.S. state securities commission;
- A U.S. state authority that supervises or examines banks, savings associations or credit unions;
- A U.S. state insurance commission;
- A U.S. federal banking agency;
- The U.S. Commodity Futures Trading Commission; OR
- The National Credit Union Administration,

That:

Bars you or such person from:

- Association with an entity regulated by such commission, authority, agency, or officer;
- Engaging in the business of securities, insurance, or banking; OR
- Engaging in savings association or credit union activities?

Answer: **[ ] Yes [ ] No**

Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within the last ten years?

Answer: **[ ] Yes** **[ ] No**

If your answer to either of the foregoing is "Yes," please give details in the space below.

_____

_____

_____

Question 36. (Source: 17 C.F.R. 230.506(d)(1)(iv))

Are you or any person you control *currently* subject to an order of the SEC that:

Suspends or revokes your or such person's registration as a broker, dealer, municipal securities dealer or investment adviser?

Answer: **[ ] Yes** **[ ] No**

Places limitations on your or such person's activities, functions, or operations as a broker, dealer, municipal securities dealer or investment adviser?

Answer: **[ ] Yes** **[ ] No**

Bars you or such person from being associated with any entity or from participating in the offering of any penny stock?

Answer: **[ ] Yes** **[ ] No**

If your answer to any of the foregoing is "Yes," please give details in the space below.

_____

_____

_____

Question 37. (Source: 17 C.F.R. 230.506(d)(1)(v))

Are you or any person you control *currently* subject to an order from the SEC, entered within the last five years, ordering you or such person to cease and desist from committing or causing a violation or future violation of:

Any scienter-based anti-fraud provision of the federal securities laws, including, without limitation:

- Section 17(a)(1) of the Securities Act of 1933;
- Section 10(b) of the Securities Exchange Act of 1934;
- Section 15(c)(1) of the Securities Exchange Act of 1934;
- Section 206(1) of the Investment Advisers Act of 1940;

Or any other rule or regulation thereunder?

Answer: **[ ] Yes [ ] No**

Section 5 of the Securities Act of 1933?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 38. (Source: 17 C.F.R. 230.506(d)(1)(vi))

Are you or any person you control *currently* suspended or expelled from membership in, or suspended or barred from association with a member of:

- a registered U.S. national securities exchange, OR
- a registered U.S. national or affiliated securities association,

For any act you or such person committed, or for a failure to act?

Answer: **[ ] Yes [ ] No**

If "Yes," please give details in the space below.

_____

_____

_____

Question 39. (Source: 17 C.F.R. 230.506(d)(1)(vii))

Have you or any person you control filed or been named as an underwriter in a registration statement or Regulation A offering statement filed with the SEC that:

Within the last five years, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption?

Answer: **[ ] Yes [ ] No**

Is *currently* the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 40. (Source: 17 C.F.R. 230.506(d)(1)(viii))

Are you or any person you control *currently* subject to either of the following:

A United States Postal Service false representation order, issued within the last five years?

Answer: **[ ] Yes [ ] No**

A temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 41. (Source: 17 C.F.R. 230.506(d)(2)(i))

If you answered "Yes" to any of the foregoing Questions 33 through 40, was the conviction, order, judgment, decree, suspension, expulsion, or bar—the reason for which you answered "Yes" to any of the Questions 33 through 40—issued on or before September 22, 2013?

Answer: **[ ] Yes** **[ ] No**

If "Yes," please give details in the space below.

_____

_____

_____

Question 42. (Source: 17 C.F.R. 230.506(d)(2)(ii))

If you answered "Yes" to any of the foregoing Questions 33 through 40, has the SEC made a determination that, despite these matters, it is not necessary under the circumstances that **[A]** be denied the Rule 506 private offering exemption?

Answer: **[ ] Yes** **[ ] No** **[ ] Do Not Know**

If "Yes," please give details in the space below.

_____

_____

_____

Question 43. (Source: 17 C.F.R. 230.506(d)(2)(iii))

If you answered "Yes" to any of the foregoing Questions 33 through 40, has the court or regulatory authority that entered any order, judgment, or decree—the order, judgment, or decree for which you answered "Yes" to any of the foregoing Questions 33 through 40—declared anywhere in writing that disqualification from making a private offering under Rule 506 is an inappropriate consequence of such order, judgment, or decree?

Answer: **[ ] Yes** **[ ] No** **[ ] Do Not Know**

If "Yes," please give details in the space below.

ADDITIONAL RELATED PARTY DISCLOSURES FOR AUDITING PURPOSES

[Note: The following set of questions are intended to gather information for an audit of related party transactions pursuant to Auditing Standard 18. Please consult with your independent auditor on processes that are appropriate for your company.]

For purposes of this section, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity through ownership, by contract, or otherwise.

Question 44. (Source: FASB ASC 850, *Related Party Disclosures*)

Do you directly or indirectly have control over any entities? Please note that if you control an entity, which in turn controls another entity, both entities would be considered controlled by you and therefore should be listed below.

Answer: **[ ] Yes [ ] No**

If you answered "yes," please state the full legal names of the entities below, whether or not there are currently any transactions between the entity and the Company.

_____

_____

_____

Question 45. (Source: FASB ASC 850, *Related Party Disclosures*)

Can you exert significant influence, either directly or indirectly, over any entities, to the extent that the entity may be prevented from fully pursuing its own separate interests with regard to any transactions with the Company and its affiliates? If so, and if that entity can in turn exert significant influence over another entity, both entities should be listed below.

Answer: **[ ] Yes [ ] No**

If you answered "yes," please state the full legal names of the entities below, whether or not there are currently any transactions between the entity and the Company.

Question 46. (Source: FASB ASC 850, *Related Party Disclosures*)

Please list your immediate family members and include, where applicable, their affiliations with entities that they control or over which they can exert significant influence, to the extent that the entity might be prevented from fully pursuing its own separate interests.

For purposes of this question, "immediate family members" means a family member who might control or influence you, or who might be controlled or influenced by you, because of your family relationship. In most cases, we would expect this definition to include your spouse, children and other family members living in the same household as you. Further, it may include a parent, stepparent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law or other relatives, if, in your judgment, any of those individuals are in a position to have control or influence over you, or to be controlled or influenced by you (for example, a parent for whom you provide significant monetary support).

Answer: **[ ] No such immediate family members**
[ ] Necessary information provided below

Name	Affiliation

Question 47.

With respect to the persons or entities identified in Questions 44-46 of this section, and except as otherwise disclosed in answer to Questions 12 or 13 of the Questionnaire, are you aware of any transactions or arrangements since **[H]** to which the Company or any of its subsidiaries was, or is to be, a participant that should be considered for disclosure in the Company's financial statements?

Answer: **[ ] Yes [ ] No [ ] Do Not Know**

If "Yes," please give details in the space below.

SIGNATURE

The answers to the foregoing questions are true and correct to the best of my knowledge, information and belief. I will notify **[P]** at **[Q]** of any changes in the answers to this questionnaire that should be made as a result of any material development occurring subsequent to the date hereof but prior to the Company's **[B]** Annual Meeting of Shareholders.

Dated: _____

_____
Signature

DORSEY & WHITNEY
FORM OF EXCHANGE ACT
DIRECTORS' AND OFFICERS' QUESTIONNAIRE
(NYSE MKT LISTED ISSUERS)

Instruction Sheet

Steps for use of this form:

1. Insert the following information into the form in each place where the applicable bracketed letter appears:

   [A] Name of Registrant.

   [B] Year in which the Annual Meeting of Shareholders with respect to which Proxy Statement is being prepared will be held.

   [C] Last day of fiscal year with respect to which the Form 10-K is being prepared.

   [D] Name of person to whom questionnaire should be returned.

   [E] Name of person to whom questions about the questionnaire should be directed.

   [F] Phone number of [E].

   [G] "Latest practicable date" for purposes of beneficial ownership information in Proxy Statement.

   [H] Last day of fiscal year preceding the fiscal year with respect to which the Form 10-K is being prepared.

   [I] Last day of fiscal year immediately preceding Registrant's last three fiscal years.

   [J] Five percent of Registrant's consolidated gross revenues for the fiscal year immediately preceding its last two fiscal years.

   [K] Last day of fiscal year immediately preceding Registrant's last two fiscal years.

   [L] Five percent of Registrant's consolidated gross revenues for the fiscal year immediately preceding the fiscal year with respect to which the Form 10-K is being prepared.

   [M] Five percent of Registrant's consolidated gross revenues for the fiscal year with respect to which the Form 10-K is being prepared.

   [N] Last day of Registrant's current fiscal year.

[O] Name or names of any accounting firm engaged as an internal or external auditor for Registrant or any parent or subsidiary of the Registrant at any time after the last day of the fiscal year immediately preceding the Registrant's last three fiscal years.

[P] Name of person to whom changes in the answers to the questionnaire should be directed.

[Q] Phone number of [P].

[R] 45th day after the Registrant's fiscal year end.

[S] Name of the Registrant's independent accountant; also include any predecessor independent accountants that audited the Registrant's financial statements at any time after the last day of the fiscal year immediately preceding the Registrant's last three fiscal years.

[T] Name(s) of the Registrant's compensation consultant(s).

[U] Name of the person or entity employing the Registrant's compensation consultant(s).

2. If applicable, attach the personal biographies of the recipients as called for in Question 3.

3. Review Questions 28 and 29 to determine whether to include and review Question 26 to determine whether to delete the footnote to the question before distributing the questionnaire.

   If applicable, attach a Form 5 Report prepared by the Registrant called for in Question 28

   Proposed language relating to FASB ASC 850, Related Party Disclosures is included beginning with Question 42. We recommend that you discuss this language with your auditor as some auditors prefer their own language.

[A]

DIRECTORS' AND OFFICERS' QUESTIONNAIRE

Full Name: _____
(Please Print)

This questionnaire is being sent to each director and executive officer of **[A]** (the "*Company*"), each person who was a director or executive officer of the Company during the last fiscal year, and each person who has been nominated or chosen to become a director or executive officer of the Company. The purpose of this questionnaire is to obtain or verify certain information which the Company is required to disclose in connection with the preparation of its **[B]** proxy statement and its Annual Report on Form 10-K for the fiscal year ended **[C]**, both of which will soon be filed with the Securities and Exchange Commission (the "*Commission*"), and to obtain certain information to fulfill the requirements of Auditing Standard 18. This questionnaire is also intended to elicit certain information regarding the independence of the Company's outside directors and certain related matters.

PLEASE ANSWER EVERY QUESTION. If you are in doubt as to whether a particular question requires an affirmative response from you, please assume that it does and furnish full particulars so that the persons responsible for preparing the Company's proxy statement and Annual Report and for monitoring the Company's compliance with applicable corporate governance guidelines and auditing standards can determine whether any disclosure or other action is required. Your furnishing of such information does not necessarily mean that such information will be disclosed. If you need additional space for any answer, please attach separate sheets.

Upon completion, please date and sign the questionnaire and return it to **[D]** at the Company. If you have questions concerning any part of the questionnaire, please call **[E]** at **[F]**.

DEFINITIONS

Your answers to this questionnaire should be based on the following definitions. Please refer back to these definitions whenever an asterisk appears next to a term used in the questionnaire.

The term "RELATED ENTITY" means (a) any corporation or organization (other than the Company or its subsidiaries) of which you are an officer or partner or are, directly or indirectly, the "beneficial owner" of 10% or more of any class of equity securities; and (b) any trust or other estate in which you have a substantial beneficial interest or as to which you serve as trustee or in a similar capacity.

The term "ASSOCIATE" means (a) any "related entity" (as defined above) and (b) your spouse or any relative of yours or your spouse who (1) shares your home or (2) is a director or officer of the Company or any of its parents or subsidiaries.

The term "BENEFICIAL OWNER" of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares (a) *voting power*, which includes the power to vote, or direct the voting of, such security, or (b) *investment power*, which includes the power to dispose or direct the disposition of such security. A person may be regarded as having voting power of a security which is owned (1) by that person's spouse or minor children or by any of that person's relatives or spouse's relatives who share the same home with that person; (2) a partnership of which that person is a partner; or (3) a corporation of which that person is a substantial shareholder. A person is also deemed to be the" beneficial owner" of shares which that person has the right to acquire within 60 days, including but not limited to any right to acquire through the exercise of an option, warrant or other right, through conversion of a security, pursuant to the power to revoke a trust or pursuant to the automatic termination of a trust.

The term "MATERIAL" when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which the average prudent investor should reasonably be informed before buying or selling the securities of the Company. If you are in doubt as to the materiality of certain information, you should provide sufficient facts to enable the Company to reach a conclusion as to its materiality.

The term "IMMEDIATE FAMILY" refers to a person's spouse, children, stepchildren, parents, stepparents, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law and anyone (other than a tenant or domestic employee) who shares a person's home.

The term "REPORTING COMPANY" generally refers to a company that is subject to the informational reporting requirements of the Securities Exchange Act of 1934, as amended, and so is required to file Forms 10-K, 10-Q, NSAR or similar forms with the Commission. More specifically, this term refers to a company that has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, or which is subject to the requirements of

Section 15(d) of that Act, or which is registered as an investment company under the Investment Company Act of 1940.

GENERAL INFORMATION

Question 1. (Source: Sched. 14A Item 7(b), Reg. S-K Items 401(a) and (b))

Please state your age and birth date.

Age: _____ Birth Date: _____

Question 2. (Source: Sched. 14A Item 7(b), Reg. S-K Items 401(a) and (b))

Are you aware of any understandings or arrangements with any persons, other than the directors and officers of the Company acting solely in that capacity, pursuant to which you were selected as a director or officer?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please describe such understandings or arrangements below and name such other persons.

_____

_____

_____

Question 3. (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(e)(1))

Please describe briefly your business experience during the past five years, including your principal occupations and employment during that period, the name and principal business of any corporation or other organization in which such occupations and employment were carried on, whether such corporation or other organization is a parent, subsidiary or affiliate of the Company, and the dates of commencement and termination of such employment. If you are an officer of the Company or a subsidiary and have been employed by the Company or a subsidiary for less than five years, include a brief explanation of the nature of your responsibilities in the prior position(s) you describe, including such specific information as the size of any operation you supervised. If you are an officer of the Company or a subsidiary and have been employed by the Company or a subsidiary for more than five years and your position with the Company or a subsidiary has been your principal occupation during the past five years, please so state without further detail.

If the Company has previously prepared a personal biography for you, a copy of the most recent version is attached to this questionnaire. If the attached biography provides a complete and current response to this item, please so indicate below. If the attached biography requires an update or no biography is attached, please provide the necessary information below.

Answer: **[ ] Attached biography is complete and current.**
[ ] Necessary information provided below.

Question 4. (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(e)(1))

If you are a director or nominee for director of the Company, please briefly describe your experience, qualifications, attributes and skills which you believe are particularly relevant to your service as a director of the Company, to the extent not already discussed in your biography (e.g., areas of expertise, certifications, education, etc.). Please include information going back further than five years if relevant.

Question 5. (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(e)(1) and (2))

If you are a director or nominee for director of the Company, are you currently a director of any other "reporting company"*, or have you been a director of any other "reporting company"* within the last five years?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please name each such company below and indicate your approximate dates of service as a director of each such company.

Question 6. (Source: Sched. 14A Item 6(d), Reg. S-K Item 403(b))

* See "Definitions" on page 2.

Please provide below information regarding the equity securities of the Company, its parents or its subsidiaries of which you are the "beneficial owner"* as of **[G]**. Under the column "Nature of Ownership," please indicate amounts of securities for which you have (a) sole voting power, (b) shared voting power, (c) sole investment power, or (d) shared investment power. Under the column "Shares Subject to Pledge" indicate if the shares have been pledged as security or collateral. If your response covers any securities included because you have the right to acquire them within 60 days from **[G]**, please separately indicate the amount of such securities, except that the Company will supply information as to any equity securities you have a right to acquire from it under currently exercisable options.

Number of Shares	Nature of Ownership	Shares Subject to Pledge	Title of Securities (Common or Preferred)

The rules of the Commission allow you to disclaim beneficial ownership of some or all of the shares listed above. Such a disclaimer would mean that you do not intend the above statement to be construed as an admission of beneficial ownership for all purposes, such as the Commission's short-swing profit rules and rules governing reports by holders of five percent or more of the equity securities of a public company. Do you wish to disclaim beneficial ownership of any of the shares listed above?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please identify the shares to which the disclaimer applies and briefly describe the basis for the disclaimer.

_____

_____

_____

Question 7. (Source: Sched. 14A Item 7(b), Reg. S-K Item 401(f))

Have you at any time during the past ten years:

(a) Filed or had filed against you a petition under the federal bankruptcy laws or any state insolvency law, or had a receiver, fiscal agent or similar officer appointed by a court for the business or property of (1) you, (2) any partnership in which you were a general partner at or within two years before the time of such filing, or

(3) any corporation or business association of which you were an executive officer at or within two years before the time of such filing?

Answer: **[ ] Yes [ ] No**

(b) Been convicted in a criminal proceeding or been the named subject of a criminal proceeding which is presently pending (excluding traffic violations and other minor offenses)?

Answer: **[ ] Yes [ ] No**

(c) Been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining you or otherwise limiting you from doing the following:

(1) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission, or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) Engaging in any type of business activity; or

(3) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of federal or state securities laws or federal commodities laws?

Answer: **[ ] Yes [ ] No**

(d) Been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, suspending or otherwise limiting for more than 60 days your right to engage in any activity described in subparagraph (c)(1) above, or to be associated with persons engaged in such activity?

Answer: **[ ] Yes [ ] No**

(e) Been found by a court of competent jurisdiction in a civil action or by the Commission to have violated any federal or state securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended or vacated?

Answer: **[ ] Yes [ ] No**

(f) Been found by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding by the Commodity Futures Trading Commission has not been subsequently reversed, suspended or vacated?

Answer: **[ ] Yes [ ] No**

(g) Been the subject of, or a party to, any federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of:

(1) Any federal or state securities or commodities law or regulation; or

(2) Any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(3) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity?

Answer: **[ ] Yes [ ] No**

(h) Been the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member?

Answer: **[ ] Yes [ ] No**

If you answered "yes" to any portion of this question, please provide details below.

_____

_____

_____

COMPENSATION

Question 8. (Source: Sched. 14A Item 8, Reg. S-K Item 402(a)(2), Exchange Act Rule 10C-1(b)(1)(ii)(A))

Has any compensation for your services to the Company or its subsidiaries during the fiscal year ended **[C]** (whether in the form of cash, options, securities or other property) been paid to you since **[H]**, by anyone other than the Company or its subsidiaries, or set aside or accrued for your benefit?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please state below the names of the persons paying such compensation, the capacities in which the services were rendered, the date of payment and the amount of such compensation on an accrual basis. (The Company and its subsidiaries will furnish information directly with respect to salaries, bonuses, fees or other compensation paid to you as an employee or director of the Company or of its subsidiaries. Such information, therefore, should not be included in response to this question.)

_____

_____

_____

Question 9. (Source: Release 34-13872, Sched. 14A Item 8, Reg. S-K Item 402(c)(2)(ix))

Have you or any member of your "immediate family"* received any personal benefits, either directly or indirectly, from the Company or any of its subsidiaries since **[H]**, other than salaries, fees and bonuses and any incidental personal benefits integrally and directly related to the performance of your job, such as parking places, meals at Company facilities and office space and furnishings at Company maintained facilities? Examples of personal benefits not directly related to job performance include, but are not limited to, the following:

- home repairs and improvements;
- housing and other living expenses (including domestic service) provided at your principal or vacation residence;
- the personal use of Company property such as automobiles, planes, yachts, apartments, hunting lodges or vacation houses;

* See "Definitions" on page 2.

- personal travel expenses;
- commuting expenses (whether or not for the Company's convenience or benefit);
- security provided at a personal residence or during personal travel;
- personal entertainment and related expenses;
- legal, accounting or tax advice and other professional fees for matters unrelated to the business of the Company;
- benefits from third parties, such as favorable bank loans and benefits from suppliers, because the Company compensates, directly or indirectly, the bank or supplier for providing the loan or services to management;
- discounts on the Company's products or services not generally available to employees on a non-discriminatory basis;
- the use of the corporate staff for personal purposes; and
- memberships in country clubs, luncheon clubs or other social or recreational clubs not used exclusively for business entertainment purposes.

Answer: **[ ] Yes [ ] No**

If you answered "yes," please provide details below.

_____

_____

_____

Question 10. (Source: Sched. 14A Item 8, Reg. S-K Item 402(b) and (j))

Are any compensation payments or other payments (other than (a) pension, profit-sharing or retirement plan benefits, (b) dividends, or (c) group life, accident, health or hospitalization insurance benefits) proposed to be made in the future to you by the Company or any other entity pursuant to any existing employment agreement, deferred compensation contract or other agreement, plan or arrangement, whether written or unwritten, including any such agreement, contract, plan or arrangement that will become operative as a result of (1) your resignation, retirement or other termination of employment with the Company or its subsidiaries or (2) a change in control of the Company or in your responsibilities following a change in control of the Company?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please briefly describe such payments and identify any such agreement, contract, plan or arrangement.

CERTAIN RELATIONSHIPS AND TRANSACTIONS

Question 11. (Source: Sched. 14A Items 7(b) and (e), Reg. S-K Item 401(d))

Are you aware of any family relationships (*i.e.*, relationships by blood, marriage or adoption not more remote than first cousin) between you and (a) any executive officer or director of the Company or any of its subsidiaries, parents or other affiliates or (b) any person nominated or chosen to become an executive officer or director of the Company or any of its subsidiaries, parents or other affiliates?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please provide details below.

_____

_____

_____

Question 12. (Source: Sched. 14A Item 7(b), Reg. S-K Item 404(a)(5))

Have you, any member of your "immediate family"* or any "related entity"* of yours been indebted to the Company or its subsidiaries at any time since **[H]**, in an amount exceeding $120,000?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please set forth below (a) the name of such person; (b) the nature of such person's relationship to you; (c) the largest aggregate amount of indebtedness outstanding at any time during such period; (d) the nature of the indebtedness and of the transaction in which it was incurred; (e) the amount thereof outstanding as of the date you complete this questionnaire; and (f) the rate of interest paid or charged thereon. You can exclude amounts due for purchases on usual trade terms, for ordinary travel and expense advances, and for other transactions in the ordinary course of business.

_____

_____

_____

Question 13. (Source: Sched. 14A Item 7(b), Reg. S-K Item 404(a))

* See "Definitions" on page 2.

Are you aware of any transaction, arrangement or relationship, or series of similar transactions, arrangements or relationships, since **[H]**, or any proposed transaction, or series of similar transactions, to which the Company or any of its subsidiaries was, or is to be, a participant, in which the amount involved exceeds or will exceed $120,000 (including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments), and in which you or a member of your "immediate family"* had, or will have, any "material"* interest, either directly or indirectly through an entity that is a "related entity"*?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please identify such person and his or her relationship to you, briefly describe the transactions, the nature and amount of such interest and the amount of the transactions. You should include compensation or other amounts paid to a partnership of which you are a partner. If any transaction involved, or is to involve, the purchase or sale of assets by or to the Company or its subsidiaries, state the sale price. If you or a member of your "immediate family"* were, or are to be, the seller, and you or a member of your "immediate family"* acquired the assets to be sold within two years prior to the sale, state the cost of the assets to you or the member of your "immediate family."*

Question 14. (Source: Sched. l4A Item 8, Reg. S-K Item 407(e)(4))

* See "Definitions" on page 2.

If you are an executive officer of the Company did you, at any time during the Company's fiscal year ended **[C]**, serve as a director of any publicly or privately held company one of the executive officers of which served as a director of the Company during that same year?

Answer: **[ ] Yes [ ] No [ ] I am not an executive officer of the Company.**

If you answered "yes," please identify the other company, its executive officer and all committees of its Board of Directors that existed during the Company's fiscal year ended **[C]**, indicating in each case whether or not you served as a member of that committee during the Company's fiscal year ended **[C]**.

_____

_____

_____

Question 15. (Source: Exchange Act Section 13(k))

Has the Company, directly or indirectly (including through any subsidiary), extended credit, or arranged for the extension of credit, to you in the form of a personal loan?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

_____

_____

_____

Question 16. (Source: Sched. 14A Item 7(a), Reg. S-K Item 103)

Are you aware of any interest adverse to the Company or its subsidiaries which you or any "associate"* of yours has in any pending legal or governmental proceeding or any such proceeding known by you to be contemplated by governmental authorities?

Answer: **[ ] Yes [ ] No**

* See "Definitions" on page 2.

If you answered "yes," please give details below.

_____

_____

_____

Question 17. (Source: Sched. 14A Item 6(d), Reg. S-K Item 403(c))

Are you aware of any arrangements, including any pledge of securities by you, the operation of which may at a subsequent date result in a change of control of the Company?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

_____

_____

_____

Question 18. (Source: Sched. 14A Item 5(a))

Do you or any "associate"* of yours have any substantial interest, direct or indirect, by security holdings or otherwise, in any matter to be acted upon at the Company's **[B]** Annual Meeting of Shareholders other than any interest in elections to office or any interest arising solely from the ownership of any security of the Company where you receive no extra or special benefit not shared on a pro rata basis by all other holders of the same class?

Answer: **[ ] Yes [ ] No**

If you answered "yes," please give details below.

_____

_____

_____

Question 19. (Source: Sched. l4A Item 7, Reg. S-K Item 407(e)(3)(iv))

* See "Definitions" on page 2.

If you are a member of the Company's Compensation Committee, have you had any business or personal relationships with **[T]** of **[U]**, the Compensation Committee's compensation consultant, at any time since **[I]** other than through your role as a member of the Company's Compensation Committee?

Answer: **[ ] Yes [ ] No [ ] I am not a member of the Company's Compensation Committee.**

If you answered "yes," please give details below.

_____

_____

_____

Question 20. (Source: Sched. l4A Item 7, Reg. S-K Item 407(e)(3)(iv))

If you are an executive officer of the Company, have you had any business or personal relationships with **[T]** of **[U]**, the Compensation Committee's compensation consultant, or with **[U]** (other than in connection with [his or her] or their engagement by the Compensation Committee), at any time since **[I]**?

Answer: **[ ] Yes [ ] No [ ] I am not an executive officer of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

DIRECTOR INDEPENDENCE AND OTHER MATTERS

Question 21. (Source: NYSE MKT Company Guide, Section 803A)

If you are a director or nominee for director of the Company, at any time since **[I]** have there been any relationships between you and the Company, any parent or subsidiary of the Company or any affiliate of a subsidiary of the Company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the Company, any parent or subsidiary of the Company or any affiliate of any subsidiary of the Company), other than your relationship with the Company as a director or nominee for director? Please include relationships of all types (*e.g.*, commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships) and disclose any other relationship that might appear to affect your judgment.

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director.**

If you answered "yes," please give details below.

_____

_____

_____

Question 22. (Source: NYSE MKT Company Guide, Section 803A)

If you are a director or nominee for director of the Company, at any time since **[I]**:

(a) Have you been an employee of the Company or any parent or subsidiary of the Company?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director.**

(b) Has any member of your "immediate family"* been employed as an executive officer of the Company or any parent or subsidiary of the Company?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director.**

* See "Definitions" on page 2.

If you answered "yes" to either portion of this question, please give details below.

_____

_____

_____

Question 23. (Source: NYSE MKT Company Guide, Section 803A)

If you are a director or nominee for director of the Company:

(c) Are you currently a partner of **[O]**?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

(d) Is any member of your "immediate family"* currently a partner of **[O]**?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

(e) Is any member of your "immediate family"* currently an employee of **[O]** who personally works on the audit of the Company or any parent or subsidiary of the Company?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

(f) At any time since **[I]**, have you or any member of your "immediate family"* been an employee or a partner of **[O]** and personally worked on the audit of the Company or any parent or subsidiary of the Company?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes" to any portion of this question, please give details below.

_____

_____

_____

Question 24. (Source: NYSE MKT Company Guide, Section 803A)

If you are a director or a nominee for director of the Company, since **[I]**, have you or any member of your "immediate family"* been employed as an executive officer by another

company, which company has had an executive officer of the Company or any parent or subsidiary of the Company serving on such other company's compensation committee?

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 25. (Source: NYSE MKT Company Guide, Section 803A)

If you are a director or nominee for director of the Company, at any time since **[I]**, have you been employed by, or has any member of your "immediate family"* been, a partner, a controlling shareholder or an executive officer of, another entity which made payments to or received payments from the Company and its subsidiaries in excess of the greater of $200,000 or 5% of such other entity's consolidated gross revenues in any given fiscal year?[1]

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

* See "Definitions" on page 2.

[1] For purposes of this Question, "payments" exclude those arising solely from investments in the Company's securities or payments under non-discretionary charitable contribution matching programs. Further, loans from financial institutions are not considered payments under this Question, but interest payments on such loans and other fees paid in association with such loans are considered payments, including commitment fees on credit facilities. This Question would apply both to payments made by the other company to the Company where the Company is the lender, and payments made by the Company to the other company where the Company is the debtor, although the 5% revenue test is always based on the consolidated gross revenues of the other company, and not the Company.

Question 26. (Source: Exchange Act Rules 10A-3 and 10C-1, NYSE MKT Company Guide, Section 803A)[2]

If you are a director or nominee for director of the Company, at any time since **[I]** have you or members of your "immediate family"* received any compensation from the Company or any parent or subsidiary of the Company, other than directors' fees (which directors' fees include Company stock or options or other in-kind consideration available to the Company's directors, as well as all of the other regular benefits that directors receive), or from any other person or entity the payment of which might appear to affect your judgment? In determining whether any such compensation has been received, you should include any consulting, advisory or other compensatory fees paid to you, directly or indirectly, by the Company or any parent or subsidiary of the Company or by any other person or entity (including fees for legal or financial advisory services).

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Question 27. (Source: Exchange Act Rules 10A-3 and 10C-1)

If you are a director or nominee for director of the Company, are you (other than in your capacity as a director or a member of the audit committee or any other board committee) affiliated with the Company, any subsidiary of the Company or any affiliate of any subsidiary of the Company?

For purposes of this question, (i) you are "affiliated" with the Company, any subsidiary of the Company or any affiliate of any subsidiary of the Company if you directly, or indirectly through one or more intermediaries, control the Company, such subsidiary or

---

2 NYSE MKT Company Guide, Section 803A provides that a director is not independent if that director or any member of that director's family receives more than $120,000 during any 12-month period in direct compensation (including payments to a business entity solely owned by the director or family member) from the Company or any parent or subsidiary of the Company. For purposes of this independence determination, director committee fees or fees paid for former service as an interim chairman or CEO or other executive officer need not be considered. Compensation received by a member of the director's "immediate family" for services as an employee of the Company (other than an executive officer) need not be considered. Pension or other forms of deferred compensation for prior service need not be considered either, provided such compensation is not contingent on continued service.

* See "Definitions" on page 2.

such affiliate through stock ownership or other means, and (ii) the following are deemed to be affiliates: (A) an executive officer of an affiliate, (B) a director who also is an employee of an affiliate, (C) a general partner of an affiliate, and (D) a managing member of an affiliate.

Answer: **[ ] Yes [ ] No [ ] I am not a director or nominee for director of the Company.**

If you answered "yes," please give details below.

_____

_____

_____

Additional Question relating to Section 16 Compliance[3]:

Question 28. (Source: Schedule 14A Item 7(b), Reg. S-K Item 405(b)(2))

Under the short-swing profit provisions of the Securities Exchange Act of 1934, you are required to file a Form 5 report on or before **[R]** if there have been any changes in your beneficial ownership of equity securities of the Company during the fiscal year ended **[C]** that were not reflected on a Form 3 and/or Form 4 report previously filed by you. In connection with the Company's disclosure obligations with respect to the proxy statement and Annual Report on Form 10-K, the Company is requesting a representation from you as to whether a Form 5 is required to be filed by you. Enclosed are copies of any Forms 3, 4 and 5 filed by you during the last fiscal year. Please compare your records of your holdings as of **[C]** and your transactions since **[H]** with the holdings and transactions reported on the enclosed Forms and then check the appropriate box below.

[3] Some clients and attorneys wish to include this question in the D&O Questionnaire. Consider deleting or including, as appropriate.

Answer: ☐ All of my transactions and holdings of equity securities of the Company beneficially owned by me have been reported and I hereby represent to the Company that no Form 5 is required to be filed by me or on my behalf.

☐ Described below are any transactions, holdings or changes in holdings of equity securities of the Company beneficially owned by me that are not reflected on the enclosed Forms 3, 4 and/or 5.

Additional Question relating to Foreign Corrupt Practices Act[4]:

Question 29. (Source: Exchange Act Section 30A)

Do you know or have any reason to believe that any of the activities or types of conduct enumerated below have been or may have been engaged in, directly or indirectly, within or outside the United States, at any time during the past five years?

NOTE: Each question is to be read as relating to the activities or conduct of the Company, yourself and any affiliate of the Company, as well as to the conduct of any person who has acted or is acting on behalf of or for the benefit of any of them. For purposes of this question an "affiliate" is defined as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with you.

The terms "payments" and "contributions" include not only the giving of cash or hard goods but also the giving of anything else of value – for example, services or the use of property. Your answers should consider not only matters of which you have direct personal knowledge, but also those matters which you have reason to believe may have existed or occurred.

(a) Any bribes or kickbacks to government officials or other payments to such persons, or their relatives, or any other payments to such persons, whether or not legal, to obtain or retain business or to receive favorable treatment with regard to business.

Answer: **[ ] Yes [ ] No**

(b) Any contributions, whether or not legal, made to any foreign political party, foreign political candidate or holder of foreign governmental office.

Answer: **[ ] Yes [ ] No**

(c) Any bank accounts, funds or pools of funds created or maintained without being reflected on the corporate books of account, or as to which the receipts and disbursements therefrom have not been reflected on such books.

Answer: **[ ] Yes [ ] No**

(d) Any receipts or disbursements, the actual nature of which has been "disguised" or intentionally misrecorded on the corporate books of account.

---

[4] Some clients and attorneys have requested that the D&O Questionnaire include this type of compliance-orientated question. Consider deleting or including, as appropriate.

Answer: **[ ] Yes [ ] No**

(e) Any fees paid to consultants or commercial agents which exceeded the reasonable value of the services purported to have been rendered.

Answer: **[ ] Yes [ ] No**

(f) Any payments or reimbursements made to personnel of the Company for purposes of enabling them to expend time or to make contributions or payments of the kind or for the purposes referred to in subparts a-e above.

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing is "Yes," please give details in the space below.

_____

_____

_____

Additional Question relating to Iran Threat Reduction and Syria Human Rights Act of 2012:

Question 30. (Source: Exchange Act Section 13(r))

Do you know or have any reason to believe that any of the activities or types of conduct enumerated below have been or may have been engaged in at any time during the past fiscal year?

NOTE: Each question is to be read as relating to the activities or conduct of the Company, any affiliate of the Company, yourself and any entity you control, as well as to the conduct of any person who has acted or is acting on behalf of or for the benefit of any of them. For purposes of this question an "affiliate" is defined as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with a person.

(a) Activities or transactions relating to Iran's ability to develop petroleum resources, maintain or expand Iran's domestic production of refined petroleum products, or import refined petroleum products.

Answer: **[ ] Yes [ ] No**

(b) Activities or transactions contributing to Iran's ability to acquire or develop weapons of mass destruction or participating in a joint venture with the

Government of Iran and certain other persons to mine, produce or transport uranium.

Answer: **[ ] Yes [ ] No**

(c) Activities or transactions by foreign financial institutions (i) facilitating the ability of Iran and related persons to acquire or develop weapons of mass destruction or support terrorism, (ii) facilitating activities of persons subject to financial sanctions under certain United Nations Security Council Resolutions, or (iii) participate in money laundering or facilitate efforts by Iranian financial institutions to carry out activities described in (i)(or (ii).

Answer: **[ ] Yes [ ] No**

(d) Activities or transactions by foreign financial institutions or persons owned or controlled by a domestic financial institution, facilitating or providing financial services for certain persons, including Iran's Revolutionary Guard Corps, whose property is blocked under the International Emergency Economic Powers Act.

Answer: **[ ] Yes [ ] No**

(e) Activities or transactions supporting Iran's acquisition or use of goods or technologies that are likely to be used to commit human rights abuses against the Iranian people or to restrict, disrupt or monitor the free flow of information.

Answer: **[ ] Yes [ ] No**

(f) Activities or transactions with (i) persons who commit or support terrorism or who are or who support weapons of mass destruction proliferators, or (ii) the Government of Iran, any entity owned or controlled directly or indirectly by the Government of Iran, or any person acting or purporting to act on behalf of either of the foregoing, without the specific authorization of a U.S. Government agency.

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing is "Yes," please give details in the space below.

Additional Questions relating to the ability of the Company to offer and sell securities in private placements pursuant to Rule 506 of Regulation D:[5]

Question 31. (Source: 17 C.F.R. 230.506(d)(1)(i))

Within the last ten years, have you or any person you control been convicted in the United States of any felony or misdemeanor:

In connection with the purchase or sale of any security?

Answer: **[ ] Yes [ ] No**

Involving the making of any false filing with the SEC?

Answer: **[ ] Yes [ ] No**

Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities?

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing was "Yes," please give details in the space below.

Question 32. (Source: 17 C.F.R. 230.506(d)(1)(ii))

Are you or any person you control *currently* subject to any court order, judgment or decree of a U.S.-based court or regulator, issued within the last five years, restraining or enjoining you or such person from engaging or continuing to engage in any conduct or practice:

[5]Some clients and attorneys wish to include Questions 33 through 43 in the D&O Questionnaire if the company periodically issues securities in private placements pursuant to Regulation D. Consider deleting or including, as appropriate.

In connection with the purchase or sale of any security?

Answer: **[ ] Yes [ ] No**

Involving the making of any false filing with the SEC?

Answer: **[ ] Yes [ ] No**

Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities?

Answer: **[ ] Yes [ ] No**

If your answer to any of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 33. (Source: 17 C.F.R. 230.506(d)(1)(iii))

Are you or any person you control *currently* subject to a final order of any of the following entities:

- A U.S. state securities commission;
- A U.S. state authority that supervises or examines banks, savings associations or credit unions;
- A U.S. state insurance commission;
- A U.S. federal banking agency;
- The U.S. Commodity Futures Trading Commission; OR
- The National Credit Union Administration,

That:

Bars you or such person from:

- Association with an entity regulated by such commission, authority, agency, or officer;
- Engaging in the business of securities, insurance, or banking; OR
- Engaging in savings association or credit union activities?

Answer: **[ ] Yes [ ] No**

Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within the last ten years?

Answer: **[ ] Yes** **[ ] No**

If your answer to either of the foregoing is "Yes," please give details in the space below.

_____

_____

_____

Question 34. (Source: 17 C.F.R. 230.506(d)(1)(iv))

Are you or any person you control *currently* subject to an order of the SEC that:

Suspends or revokes your or such person's registration as a broker, dealer, municipal securities dealer or investment adviser?

Answer: **[ ] Yes** **[ ] No**

Places limitations on your or such person's activities, functions, or operations as a broker, dealer, municipal securities dealer or investment adviser?

Answer: **[ ] Yes** **[ ] No**

Bars you or such person from being associated with any entity or from participating in the offering of any penny stock?

Answer: **[ ] Yes** **[ ] No**

If your answer to any of the foregoing is "Yes," please give details in the space below.

_____

_____

_____

Question 35. (Source: 17 C.F.R. 230.506(d)(1)(v))

Are you or any person you control *currently* subject to an order from the SEC, entered within the last five years, ordering you or such person to cease and desist from committing or causing a violation or future violation of:

Any scienter-based anti-fraud provision of the federal securities laws, including, without limitation:

- Section 17(a)(1) of the Securities Act of 1933;
- Section 10(b) of the Securities Exchange Act of 1934;
- Section 15(c)(1) of the Securities Exchange Act of 1934;
- Section 206(1) of the Investment Advisers Act of 1940;

Or any other rule or regulation thereunder?

Answer: **[ ] Yes [ ] No**

Section 5 of the Securities Act of 1933?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 36. (Source: 17 C.F.R. 230.506(d)(1)(vi))

Are you or any person you control *currently* suspended or expelled from membership in, or suspended or barred from association with a member of:

- a registered U.S. national securities exchange, OR
- a registered U.S. national or affiliated securities association,

For any act you or such person committed, or for a failure to act?

Answer: **[ ] Yes [ ] No**

If "Yes," please give details in the space below.

_____

_____

_____

Question 37. (Source: 17 C.F.R. 230.506(d)(1)(vii))

Have you or any person you control filed or been named as an underwriter in a registration statement or Regulation A offering statement filed with the SEC that:

Within the last five years, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption?

Answer: **[ ] Yes [ ] No**

Is *currently* the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 38. (Source: 17 C.F.R. 230.506(d)(1)(viii))

Are you or any person you control *currently* subject to either of the following:

A United States Postal Service false representation order, issued within the last five years?

Answer: **[ ] Yes [ ] No**

A temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations?

Answer: **[ ] Yes [ ] No**

If your answer to either of the foregoing was "Yes," please give details in the space below.

_____

_____

_____

Question 39. (Source: 17 C.F.R. 230.506(d)(2)(i))

If you answered "Yes" to any of the foregoing Questions 33 through 40, was the conviction, order, judgment, decree, suspension, expulsion, or bar—the reason for which you answered "Yes" to any of the Questions 33 through 40—issued on or before September 22, 2013?

Answer: **[ ] Yes [ ] No**

If "Yes," please give details in the space below.

_____

_____

_____

Question 40. (Source: 17 C.F.R. 230.506(d)(2)(ii))

If you answered "Yes" to any of the foregoing Questions 33 through 40, has the SEC made a determination that, despite these matters, it is not necessary under the circumstances that **[A]** be denied the Rule 506 private offering exemption?

Answer: **[ ] Yes [ ] No [ ] Do Not Know**

If "Yes," please give details in the space below.

_____

_____

_____

Question 41. (Source: 17 C.F.R. 230.506(d)(2)(iii))

If you answered "Yes" to any of the foregoing Questions 33 through 40, has the court or regulatory authority that entered any order, judgment, or decree—the order, judgment, or decree for which you answered "Yes" to any of the foregoing Questions 33 through 40—declared anywhere in writing that disqualification from making a private offering under Rule 506 is an inappropriate consequence of such order, judgment, or decree?

Answer: **[ ] Yes [ ] No [ ] Do Not Know**

If "Yes," please give details in the space below.

ADDITIONAL RELATED PARTY DISCLOSURES FOR AUDITING PURPOSES

[Note: The following set of questions are intended to gather information for an audit of related party transactions pursuant to Auditing Standard 18. Please consult with your independent auditor on processes that are appropriate for your company.]

For purposes of this section, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity through ownership, by contract, or otherwise.

Question 42. (Source: FASB ASC 850, *Related Party Disclosures*)

Do you directly or indirectly have control over any entities? Please note that if you control an entity, which in turn controls another entity, both entities would be considered controlled by you and therefore should be listed below.

Answer: **[ ] Yes [ ] No**

If you answered "yes," please state the full legal names of the entities below, whether or not there are currently any transactions between the entity and the Company.

_____

_____

_____

Question 43. (Source: FASB ASC 850, *Related Party Disclosures*)

Can you exert significant influence, either directly or indirectly, over any entities, to the extent that the entity may be prevented from fully pursuing its own separate interests with regard to any transactions with the Company and its affiliates? If so, and if that entity can in turn exert significant influence over another entity, both entities should be listed below.

Answer: **[ ] Yes [ ] No**

If you answered "yes," please state the full legal names of the entities below, whether or not there are currently any transactions between the entity and the Company.

_____

_____

_____

Question 44. (Source: FASB ASC 850, *Related Party Disclosures*)

Please list your immediate family members and include, where applicable, their affiliations with entities that they control or over which they can exert significant influence, to the extent that the entity might be prevented from fully pursuing its own separate interests.

For purposes of this question, "immediate family members" means a family member who might control or influence you, or who might be controlled or influenced by you, because of your family relationship. In most cases, we would expect this definition to include your spouse, children and other family members living in the same household as you. Further, it may include a parent, stepparent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law or other relatives, if, in your judgment, any of those individuals are in a position to have control or influence over you, or to be controlled or influenced by you (for example, a parent for whom you provide significant monetary support).

Answer: **[ ] No such immediate family members**
[ ] Necessary information provided below

Name	Affiliation

Question 45.

With respect to the persons or entities identified in Questions 42-44 of this section, and except as otherwise disclosed in answer to Questions 12 or 13 of the Questionnaire, are you aware of any transactions or arrangements since **[H]** to which the Company or any of its subsidiaries was, or is to be, a participant that should be considered for disclosure in the Company's financial statements?

Answer: **[ ] Yes [ ] No [ ] Do Not Know**

If "Yes," please give details in the space below.

SIGNATURE

The answers to the foregoing questions are true and correct to the best of my knowledge, information and belief. I will notify **[P]** at **[Q]** of any changes in the answers to this questionnaire that should be made as a result of any material development occurring subsequent to the date hereof but prior to the Company's **[B]** Annual Meeting of Shareholders.

Dated: _____

_____
Signature