Preparing for the 2018 Proxy Season

December 12, 2017

Speakers

Kimberley Anderson, Tim Hearn & Cam Hoang, Dorsey & Whitney LLP
Susan O’Donnell, Meridian Compensation Partners, LLC

Preparing for the 2018 Proxy Season

December 12, 2017

Speakers

Kimberley Anderson, Tim Hearn & Cam Hoang, Dorsey & Whitney LLP
Susan O'Donnell, Meridian Compensation Partners, LLC

Page No.

Materials

Resources Available on Dorsey.com

Corporate Governance & Compliance Blog at https://governancecomplianceinsider.com/

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

Sign up for Dorsey Newsletters on a Wide Range of Topics at https://sites-dorsey.vuture.net/6/6/landing-pages/subscription.asp

Do You Need a Risk Factor for Proposed U.S. Federal Income Tax Reform?, Kimberley Anderson (November 15, 2017)
https://governancecomplianceinsider.com/do-you-need-a-risk-factor-for-proposed-u-s-federal-income-tax-reform/

SEC Proposes Rules to Implement FAST Act Mandate to Modernize and Simplify Disclosure, Whitney Holmes (October 20, 2017)
https://www.dorsey.com/newsresources/publications/client-alerts/2017/10/sec-proposes-rules-to-implement-fast-act

Resources Available on Dorsey.com *(continued)*

SEC Provides Further Guidance on Pay Ratio Disclosure, Jason Brenkert (September 28, 2017)
https://www.dorsey.com/newsresources/publications/client-alerts/2017/09/sec-guidance-on-pay-ratio-disclosure

CEO Pay Ratio Rule Will Not Be Delayed, Cam Hoang (September 18, 2017)
https://governancecomplianceinsider.com/ceo-pay-ratio-rule-will-not-be-delayed/

Equifax Data Breach: Preliminary Lessons for the Adoption and Implementation of Insider Trading Policies, Gary Tygesson and Cam Hoang (September 14, 2017)
https://www.dorsey.com/newsresources/publications/client-alerts/2017/09/equifax-data-breach

The Era of Private Ordering for Corporate Governance, Gary Tygesson (August 28, 2017)
https://www.dorsey.com/newsresources/publications/client-alerts/2017/08/age-of-private-ordering-for-corporate-governance

*All Issuers Eligible to Confidentially Submit Draft IPO Registration Statement*s, Steven Khadavi (July 6, 2017)
https://www.dorsey.com/newsresources/publications/client-alerts/2017/07/all-issuers-eligible-to-submit-draft-ipo

SEC Adopts Use of Exhibit Hyperlinks in Filings, Steven Khadavi and David Mack (March 3, 2017)
https://www.dorsey.com/newsresources/publications/client-alerts/2017/03/sec-adopts-use-of-exhibit-hyperlinks-in-filings

DORSEY
always ahead

Preparing for the 2018 Proxy Season

Susan O'Donnell, Partner, Meridian Compensation Partners, LLC

Kimberley Anderson, Partner, Dorsey & Whitney LLP

Tim Hearn, Partner, Dorsey & Whitney LLP

Cam Hoang, Partner, Dorsey & Whitney LLP

AGENDA

- Proxy In Brief
  - Disclosure Trends
  - Tax Reform and Executive Compensation
  - Shareholder Proposals
  - Proxy Access
  - ISS 2018 Voting Policies
  - Glass Lewis 2018 Voting Policies
- 10-K In Brief
  - SEC Comment Trends and Enforcement Priorities
  - Expanded Auditor Reports
  - MD&A Disclosure Liability
  - Cybersecurity Disclosure
  - Revenue Recognition and Lease Accounting
  - Regulation S-K Streamlining
  - Reminder on Exhibit Hyperlinking
- Stock Exchange Update
- CEO Pay Ratio in Depth

Proxy in Brief

Disclosure Trends

Among S&P 100 companies over the past five years (2012-2016):

- Percentage of companies including proxy summaries increased from 38.8% to 79.0%
- Compensation program checklists rose from 5.1% to 66.0%
- In 2016, nearly 25% of companies disclosed a pay for performance graph, versus 13.3% in 2012
- Average CD&A grew in length by 5.0% from 8,900 words to 9,400 words
- Quantification of peer selection criteria increased from 37.8% to 55.0%
- Non-GAAP financial reporting increased from 61.2%to 75.0%

Equilar's Innovations in Proxy Design, February 2017

Tax Reform and Executive Compensation

Senate approved Tax Cuts and Jobs Act by 51-49 vote on December 1st. The House and Senate are expected to go to conference to reconcile their two versions of the bill, with the goal of having it signed into law by end of 2017.

- Reduces top individual rate from 39.6% to 38.5%
- Reduces corporate tax rate from 35% to 20%
- Standard deduction doubled; many itemized deductions (state and local income taxes) eliminated
- Personal exemptions repealed; estate tax exemption doubled
- AMT remains intact, with higher exemption
- Immediate expensing for business asset purchases for five years, then four-year phase out
- Further limits deductibility of interest and executive compensation expense

If signed into law, changes become effective in taxable years beginning after December 31, 2016, with transition relief in certain circumstances.

Tax Reform and Executive Compensation

Potential impact on executive compensation: Currently, both plans approved by the House and the Senate include proposals to:

- create a new Section 83(i) that will allow the deferral of income from certain qualified equity grants made by private corporations,
- significantly limit exceptions to $1m deductibility cap on executive compensation described in Section 162(m) (including an elimination of the exceptions for performance-based compensation and commissions), and expand "covered employees" and companies subject to cap, and
- create a new Section 4960 that subjects excess remuneration (over $1m and excess parachute payments) paid to certain employees of tax-exempt organizations to an additional 20% excise tax payable by the employer.

Also consider risk factor and MD&A disclosure. See sample risk factor in appendix.

Shareholder Proposals

Shareholder engagement and the proxy process are **not on the SEC's near-term agenda**, but it is time to take a hard look at voting, costs and burdens, and the impact on the ultimate beneficial owners of public companies, the majority of which are "silent" Main Street investors.

With respect to shareholder proposals, I am looking for ways to reconcile diverse and deeply held views. My guiding principle for the appropriate level of ownership for submitting proposals or the appropriate threshold for resubmissions is **whether the rules serve the long-term interests of Main Street investors**.

SEC Chairman Jay Clayton at the PLI Annual Conference on Securities Regulation

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).

Shareholder Proposals: Ordinary Business

Rule 14a-8(i)(7), the "ordinary business" exception, permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations."

SLB 14I Guidance:

- **The board is well situated to analyze, determine and explain whether a particular issue is sufficiently significant** because the matter transcends ordinary business and would be appropriate for a shareholder vote.
- Accordingly, going forward, the Staff would expect a company's no-action request to **include a discussion that reflects the board's analysis** of the particular policy issue raised and its significance.
- That explanation would be most helpful if it **detailed the specific processes employed by the board** to ensure that its conclusions are well-informed and well-reasoned.

Shareholder Proposals: Economic Relevance

Rule 14a-8(i)(5), the "economic relevance" exception, permits a company to exclude a proposal that:

- relates to operations which account for less than 5% of the company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and
- is not otherwise significantly related to the company's business

Exception had limited application, because historically, relevance was found where a company conducted any amount of business related to the issue in the proposal, and the issue had significant social impact.

Shareholder Proposals: Economic Relevance

SLB 14I Guidance:

- **Focus will be on second prong**, whether a proposal is "otherwise significantly related to the company's business."
- The significance analysis will be **dependent upon the particular circumstances** of the company.
- However, **substantive governance matters** will be viewed as significantly related to almost all companies.
- **Proponents bear the burden** of demonstrating that a proposal is "otherwise significantly related to the company's business."
- **The mere possibility of reputational or economic harm will not preclude no-action relief**. In evaluating significance, the Staff will consider the proposal in light of the "total mix" of information about the issuer.

Shareholder Proposals: Economic Relevance

- **As with the "ordinary business" exception:**
  - include a discussion that reflects the board's analysis of the proposal's significance to the company, and
  - detail the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.
- Separate significant analysis: Going forward, the analysis for the "ordinary business" exception will be evaluated independently from the analysis for the "economic relevance" exception, though the latter analysis has historically been informed by the former.

Shareholder Proposals: Soft Guidance

- **Traditional framework for ordinary business exception has not changed:**
  - First, does the proposal relate to ordinary business?
  - Second, if yes, does it relate to a significant policy issue?
  - Third, if yes, is there a significant connection between that issue and the company's business?

  If all three answers are affirmative, the Staff will require inclusion of the proposal.
- **Board analysis not always required**, e.g., when where there is a well-established line of no-action precedent to support application of the ordinary business exception.
- **Focus on the nexus between the issue raised in the proposal and the company's operations, not social impact**. In the past, when a significant policy issue was identified, it was difficult for the Staff to determine whether there was a sufficient nexus between that policy and the particular company's business. As a result, the Staff tended to err on the side of the proponent and typically denied no-action relief once it was satisfied that a broad social or public policy issue was implicated.

Shareholder Proposals: Board Analysis

- Staff will give greater weight to a **"more developed" analysis approved by the full board** versus a committee-only approved analysis
- **Describe the specific board processes** to ensure that its conclusions are well-informed and well-reasoned
  - Details may include board meetings and discussions with consultants
  - Board engagement with shareholders will be an important factor in determining the level of shareholder interest in a given policy, and whether shareholders care because the proposal relates to the company's business operations. Shareholder engagement will demonstrate that the board has an informed understanding
- **Board materials not expected to be included** with no-action request, which is part of the public record
- **Staff is not likely to give much weight to the outcome of a previous vote**.

Shareholder Proposals: Eligibility

- **Submission of proposals through a representative is consistent with Rule 14a-8.**
- **In light of concerns about eligibility to submit proposals, going forward, the Staff will look for documentation to:**
  - Identify the shareholder proponent and the person or entity selected as proxy;
  - Identify the company to which the proposal is directed;
  - Identify the annual or special meeting for which the proposal is submitted;
  - Identify the specific proposal to be submitted; and
  - Be signed and dated by the shareholder.
- **Not a "new foot fault:"** materials that allow a reasonable conclusion of eligibility are sufficient

Shareholder Proposals: Use of Images

- **Rule 14a-8(d)'s 500-word limit on shareholder proposals does not prohibit the inclusion of graphs and/or images in proposals outside of the 500-word limit.**
- **Nevertheless, Rule 14a-8(i)(3) permits exclusion of graphs and/or images where they:**
  - make the proposal materially false or misleading;
  - render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
  - directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
  - are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.
- **Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500.**

Proxy Access

Substantial decline in proposals to adopt proxy access bylaws from 216 in 2016 to 171 in 2017.

- Many companies had already adopted proxy access proposals prior to the 2017 proxy season.
- An additional 175 companies adopted proxy access bylaws during the 2017 proxy season, most with terms consistent with market practice (3/3/20/20).
- Terms continue to converge – for example, Fidelity now supports market practice, except it still supports a 5% ownership threshold for small cap companies.
- 28 resolutions came to a vote, with higher support level (58%) and pass rate (64%) than in 2016.

Proxy Access

Big increase in voted proxy access bylaw "fix-it" proposals from 8 in 2016 to 22 voted on in 2017

- Proposed one or more amendments to existing bylaws, including:
  - Changing aggregation limit from 20 to 40/50 shareholders
  - Increasing proxy access nominees from 20% to 25% of board
  - Removing renomination limits
- Certain proposals successfully excluded based on substantial implementation (if they simply asked that the aggregation limit be increased from 20 to 40/50 shareholders, and company demonstrated that their existing proxy access bylaws essentially allowed for similar rights for their current shareholder base)
- No proposals received majority support, averaging 28.1% of votes cast

ISS 2018 Voting Policies

ISS released its 2018 Proxy Voting Guidelines for meetings on or after February 1, 2018:

- Recommend against committees responsible for approving/setting **excessive non-employee employee director pay** when there is a recurring pattern (two or more consecutive years) of excessive pay without disclosing a compelling rationale or other mitigating factors (starting in 2019)
- Recommend against directors at companies with **long-term poison pills** not approved by shareholders (case-by-case for short-term pills of one year or less)
- Vote case-by-case on requests for reports on a company's pay data by gender, or a report on a company's policies and goals to reduce any **gender pay gap**
- Generally vote for resolutions requesting disclosure of financial, physical or regulatory risks faced by a company related to **climate change**

ISS 2018 Voting Policies

- Update **pay for performance methodology** to include rankings of CEO total pay and company financial performance within a peer group, each measured over a three-year period
- Provide additional disclosure guidance on shareholder engagement for companies whose **say-on-pay proposals received less than 70% of votes cast**
- **New director categorizations** as Executive Director, Non-Executive Non-Independent Director and Independent Director; controlling shareholders (>50% of voting power) are in the second category
- Highlight **boards with no gender diversity**, without any adverse recommendation
- New directors, who serve on the board for only part of the year, are exempt from **attendance policy**
- **Codification of policies** on pledging, special purpose acquisition companies, classified boards and say on pay frequency

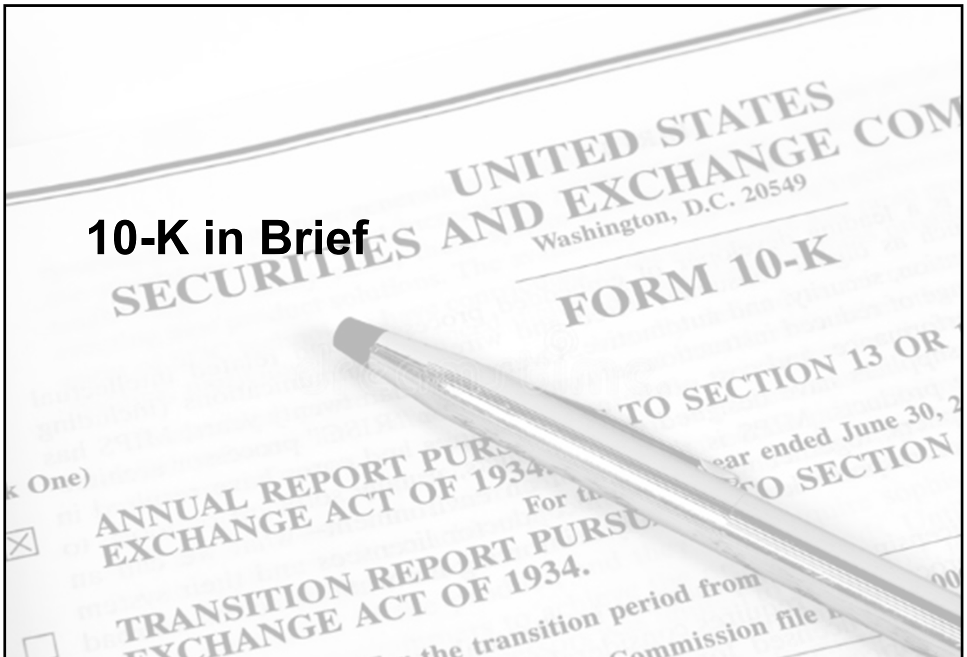
Glass Lewis 2018 Voting Policies

- Generally recommend a vote against the nominating committee chair of **a board that has no female members**; depending on other factors, recommend a vote against other nominating committee members (starting in 2019)
- Include the presence of **dual-class share structures** as an additional factor in determining whether shareholder rights are being severely restricted
- The board generally has an imperative to **respond to shareholder dissent** from a proposal at an annual meeting of more than 20% of votes cast — particularly in the case of a compensation or director election proposal.
- Generally recommend voting against members of the governance committee for a **virtual-only shareholder meeting** without robust disclosure the 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 (starting in 2019)

Glass Lewis 2018 Voting Policies

- When determining whether to apply a **limit of two total board memberships** for public executives (e.g., executive chair), evaluate the specific duties and responsibilities of the executive's role in addition to the company's disclosure regarding that director's time commitments
- Display the **CEO pay ratio** as a data point in proxy papers, as available; at this time, the ratio will not be a determinative factor in Glass Lewis' voting recommendations
- Clarify that unlike a school letter grade, **a "C" in the Glass Lewis grade system** identifies companies where the pay and performance percentile rankings relative to peers are generally aligned

10-K in Brief



SEC Comment Letter Trends

- SEC comment letters on periodic reports continued to decline, from 5,352 in 2013 to 2,761 in 2017.

Audit Analytics for twelve months ended 06.30.17

- 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.

SEC 2016 Annual Performance Report

SEC Comment Letter Trends

Top 10 Most Frequent Areas of SEC Comment

Comment area	Ranking 12 months ended 30 June 2017	2016	Comments as % of total registrants that received comment letters* 2016 and 2017
Non-GAAP financial measures	1	2	40%
Management's discussion and analysis**	2	1	43%
Fair value measurements***	3	3	20%
Segment reporting	4	5	16%
Revenue recognition	5	4	15%
Intangible assets and goodwill	6	7	14%
Income taxes	7	6	14%
State sponsors of terrorism	8	**	10%
Acquisitions and business combinations	9	8	9%
Executive compensation	10	**	8%

* Based on comment letter topics assigned by research firm Audit Analytics for SEC comment letters issued to registrants related to Forms 10-K from 1 July 2015 through 30 June 2017.

** This category includes comments on MD&A topics, in order of frequency: (1) results of operations (27%), (2) critical accounting policies and estimates (12%), (3) liquidity matters (10%), (4) business overview (8%) and (5) contractual obligations (3%). Many companies received MD&A comments in more than one category.

*** This category includes SEC staff comments on fair value measurements under ASC 820 as well as fair value estimates, such as those related to revenue recognition, stock compensation and goodwill impairment analyses. Individual SEC staff comments may be associated to multiple comment areas in this chart.

2017 Trends in SEC Comment Letters, EY

SEC Enforcement Priorities

The SEC's fiscal 2017 Enforcement Division Report highlights the Division's priorities for the coming year and enforcement statistics for the period ending September 30th:

- 754 enforcement actions, including 446 standalone actions
- Investment advisory issues, securities offerings, and issuer reporting/accounting and auditing, each comprised approximately 20% of the overall number of standalone actions.
- Market manipulation, insider trading, and broker-dealers, each comprised approximately 10% of the overall number of standalone actions, as well as other areas.

Five principles that will guide enforcement decision-making:

- Focus on the Main Street investor
- Focus on individual accountability
- Keep pace with technological change
- Impose sanctions that most effectively further enforcement goals
- Constantly assess the allocation of resources

The Division is moving away from a "broken windows" approach to enforcement.

Expanded Auditor Reports

June 1, 2017: The PCAOB adopted enhancements to the auditor's report, subject to SEC approval, in AS 3101.

- 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.
- The other changes to the auditor's report will take effect for audits for fiscal years ending on or after December 15, 2017.

Expanded Auditor Reports

Other changes include:

- Disclosing the year in which the auditor began serving consecutively as the company's auditor,
- Addressing the auditor's report to the company's shareholders and the board of directors,
- Standardizing the form of the auditor's report,
- Disclosing that the auditor is required to be independent, and
- Adding the phrase "whether due to error or fraud," when describing the auditor's responsibilities under PCAOB standards to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Expanded Auditor Reports

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

Expanded Auditor Reports

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.

Expanded Auditor Reports

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.

Expanded Auditor Reports

SEC Chief Accountant Wes Bricker has advised auditors to begin preparing audit committees for the expanded auditor report:

- Auditors should update their methodologies, provide training, and, at the engagement team level, use the transition period to engage in dialogue with audit committees so that audit committees have time to understand the types of matters that may be communicated as critical audit matters in the audit reports.
- **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?

SEC Chair Jay Clayton will be disappointed if the new reporting model results in boilerplate disclosure.

December 4, 2017: PCAOB staff issued implementation guidance on format and content of the auditor report, including an annotated version. See appendix for a link.

The PCAOB is holding complimentary webinars on changes effective in the current year. See appendix for a link.

MD&A Disclosure Liability

Recent litigation and enforcement actions serve as a reminder of the risk of misleading errors and omissions in MD&A disclosure.

UTi Worldwide: On June 15, 2017, the SEC entered a case-and-desist order against the former CEO and CFO, who each agreed to pay a civil money penalty of $40,000 to settle the proceeding. They allegedly caused the company to violate Section 13(a) of the Securities Exchange Act of 1934 by failing to disclose "any known trends or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way."

- According to the SEC's order, UTi began experiencing serious risks to liquidity and capital resources no later than the third quarter of fiscal year 2013 due to the problematic rollout of a billing system, and UTi accumulated an unusually high amount of unbilled receivables. To manage its cash flow problem, UTi supposedly delayed payment of its obligations and obtained amendments to certain loan covenants from its lead lender.
- The order alleged that the CEO and CFO were aware of these liquidity and capital difficulties, but did not ensure adequate disclosure in the MD&A that would allow investors to meaningfully assess the company's financial condition and results of operations.

MD&A Disclosure Liability

Leidos, Inc. v. Indiana Public Retirement System, No. 16-581: Argument cancelled because of pending settlement. The U.S. Supreme Court had granted certiorari in the case, which presents the question of whether non-disclosure of "known trends or uncertainties" under Item 303 may give rise to private liability for securities fraud under Section 10(b) of the Exchange Act.

- Leidos failed to investigate claims that a manager directed staffing tasks to a single subcontractor in exchange for kickbacks.
- Investors, led by the Indiana Public Retirement System, claim Leidos should have disclosed its possible liability in its annual report filed in March 2011.

Cybersecurity Disclosure

"I am not comfortable that the American investing public understands the substantial risk that we face systemically from cyber issues and I would like to see better disclosure around that."

SEC Chairman Jay Clayton

Regulation S-K disclosure requirements apply to cybersecurity risks and incidents that could have a material effect on a registrant.

Consider risk factors and MD&A disclosure of direct and indirect effects of cyber incidents.

CF Disclosure Guidance Topic No. 2 – Cybersecurity (2011)

Cybersecurity Disclosure

Additional 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

Cybersecurity Disclosure

Regulators are increasing their oversight:

- **Data Security and Breach Notification Act** (recently introduced in Congress) would impose new criminal penalties on anyone convicted of "intentionally and willfully" concealing a data breach, including fines and up to five years imprisonment, or both.
- **EU General Data Protection Requirement (GDPR)**, which goes into effect in May 2018:The GDPR specifies in paragraph 85 that a controller of personal data that has been the subject of a breach must notify the supervisory authority of a breach with 72 hours of the discovery of the breach, unless the controller can demonstrate that the breach is unlikely to result in a risk to the rights and freedoms of natural persons. consequences could include heavy fines (up to 4% of annual global turnover or €20 Million).
- In 2002, **Minnesota** enacted a statute requiring internet service providers (ISPs) to take "reasonable steps to maintain the security and privacy of a consumer's personally identifiable information." Since then, 13 other states have required any entity that manages "personal information" to employ reasonable data security practices

DORSEY always ahead

Cybersecurity Disclosure

Regulators are increasing their oversight:

- **New York Department of Financial Services** now requires that companies notify the Superintendent of Financial Services within 72 hours of a "Cybersecurity Event."
- **FTC** has fined companies for "unfair or deceptive act or practice," including:
  - practicing "unreasonably poor cybersecurity" and
  - misleading consumers as to the level of security they can expect
- **SEC** established a new Cyber Unit within its Enforcement Division.
- SEC Chair Clayton has asked Congress for an additional $100MM to fund upgrades to its systems and to hire additional personnel for its new Cyber Unit.

DORSEY always ahead

Cybersecurity Disclosure

Threshold for MD&A disclosure:

Do cybersecurity incidents, or the risk of such incidents, present a material event, trend or uncertainty that has had or is reasonably likely to have a material effect on results of operations, liquidity or financial condition?

Financial Statement Implications:

Disclosure about costs incurred, insurance proceeds, and contingent liabilities resulting from claims

Other 10-K items potentially impacted:

Description of business, discussion of legal proceedings and effectiveness of internal controls and disclosure controls and procedures

Cybersecurity Disclosure

The SEC will likely issue updated cybersecurity disclosure guidance that may include a new emphasis on disclosure controls and escalation procedures after a cyberattack.

- Because it may be hard to determine the significance of attacks initially, the controls should require IT and business personnel, working together, to consider the business impact of the cyber attack on a prompt basis.
- In light of the Equifax breach and relatively concurrent insider trading activity, companies should review their policies on insider trading following a cyber breach.

Corp Fin Director Bill Hinman, PLI's Annual Securities Regulation Institute

See link to memo: "Equifax Data Breach: Preliminary Lessons for the Adoption and Implementation of Insider Trading Policies."

Revenue Recognition

ASC 606, effective for interim and annual reporting periods after December 15, 2017, requires that public companies recognize revenue as the contractual performance obligation is satisfied, and identifies a five-step process for revenue recognition:

- Determine whether there is a contract
- Identify the performance obligations
- Determine the transaction price
- Allocate the transaction price by performance obligation
- Recognize revenue when performance obligations are satisfied

Companies may adopt the standard using a modified retrospective or full retrospective approach.

Revenue Recognition

In 2017, citing SAB 74, the SEC staff expected disclosure of:

- the expected impact of ASC 606 adoption,
- more detail as implementation progressed, and
- alignment with information communicated to audit committees and investors.

Going forward, consider critical accounting estimates and whether they sufficiently describe underlying assumptions in revenue recognition.

Lease Accounting

ASC 842, effective for public companies for interim and annual reporting periods beginning after December 15, 2018 (private companies have an additional year), requires that lessees reflect virtually all leases on their balance sheet:

- Financing/capital lease expense is recognized at the front end
- Operating lease expense is recognized on a straight-line basis

Lessor accounting is updated to align with certain changes in the lessee model and the new revenue recognition standard.

Companies must adopt the standard using a modified retrospective approach.

Regulation S-K Streamlining

Initiative mandated by JOBS and FAST Acts to update disclosure regime to promote timely, material disclosure by public companies and facilitate investor access

November 2016: SEC issues study on modernizing and simplifying Regulation S-K, pursuant to FAST Act requirements, to be followed by rulemaking within a year

October 2017: SEC proposes amendments to a wide range of disclosure rules and forms with the goals of updating, streamlining and otherwise improving disclosure (open to public comment for 60 days)

- **MD&A**: Eliminate year-to-year comparisons for prior fiscal years (eg, in 2018 MD&As, eliminate comparison of 2016 to 2017 performance results), provided that it would not be material to understanding a reporting company's financial condition and results of operations and that the fiscal year is covered in a prior MD&A

Regulation S-K Streamlining

- **Simplify Exhibits:**
  - Permit omission of entire schedules and similar attachments to material agreements and other exhibits, unless the omitted portions contain material information that is not otherwise disclosed (but provide a list briefly identifying the contents of any omitted schedules and provide, on a supplemental basis, the omitted schedules to SEC staff upon request)
  - Express authority to omit personally identifiable information without filing a confidential treatment request
  - Permit omission of confidential information from material contracts to the extent such information is not material and would be competitively harmful if disclosed, without a confidential treatment request (but indicate that the information has been omitted and provide supplemental materials to SEC staff upon request)
  - Eliminate two-year look back requirement to list material agreements (for companies with established reporting histories)
- **Simplify and harmonize incorporation by reference rules, including use of hyperlinks**
- **Simplify descriptions of property, undertakings and descriptions of securities and make technical amendments**

Reminder on Exhibit Hyperlinking

Effective September 1, 2017, SEC registrants were required to hyperlink exhibits filed pursuant to Item 601 of Reg S-K:

- If exhibits were appropriately filed in paper format, they do not need to be re-filed electronically and hyperlinked.
- If exhibits were filed in ASCII, hyperlink to the entire filing, and then specify which exhibit in the filing has been hyperlinked:

  3.1 Articles of Incorporation (see exhibit 3.1 to Form S-1 Registration Statement filed with the SEC on XX , XXX)
- Hyperlink in the exhibit list before the signature page (exhibit index may be deleted).

Smaller reporting companies and filers that are not accelerated, or large accelerated filers that submit filings in ASCII will not need to comply with the new rules until September 1, 2018.

NYSE Update

- December 4, 2017: SEC approves an amendment to NYSE rule 202.06 prohibiting listed companies from issuing material news after the official closing time for the trading session until the earlier of publication of the company's official closing price on NYSE or five minutes after the official closing time (typically 4pm Eastern).
- Exception: Companies may publicly disclose material information following a non-intentional disclosure in order to comply with Regulation FD.
- Intended to mitigate investor confusion as a result of possible discrepancy between the official closing price on NYSE and prices of executions in "away markets"

NYSE Update

- The SEC is soliciting comments on an NYSE proposal to eliminate the requirement that listed companies provide hard copies of EDGAR-filed proxy materials to the Exchange.
- Any listed company whose proxy materials are not included in their entirety (together with proxy card) in an EDGAR filing must still provide three hard copies of what's not available on EDGAR to the Exchange, no later than the date on which such material is sent or given to shareholders (Rule 14a-6(b)).
- Any listed company whose proxy materials are available on EDGAR, but not filed pursuant to Schedule 14A, must provide the Exchange with information sufficient to identify the filing by a specified means, no later than the date on which such material is sent or given to shareholders.

CEO Pay Ratio In Depth

See attached pay ratio checklist, with sample disclosure and links to SEC guidance

CEO Pay Ratio

- **The CEO pay ratio disclosure is effective for fiscal years beginning on or after January 1, 2017. As a result, the CEO pay ratio will be disclosed for most companies for the first time in 2018.**
- **Disclosure includes:**
  - The median of the annual total compensation of all employees, excluding the CEO;
  - The annual total compensation of the CEO; and
  - The ratio of these two totals.
  - See Item 402(u) of Regulation S-K.
- **A company may identify its median employee once every three years unless there has been a change in its employee population or employee compensation arrangements that it reasonably believes would result in a significant change to its pay ratio disclosure.**
- **All employees (U.S. and non-U.S., full-time, part-time, temporary and seasonal) employed by the company or any of its consolidated subsidiaries are included, subject to certain exceptions. Employees of unaffiliated third parties or independent contractors would not be included.**

CEO Pay Ratio

- **Key methodology decisions include:**
  - Choosing consistently applied compensation measure(s) (CACMs) to determine the median employee,
  - Choosing a determination date within the last three months of the last completed fiscal year on which to determine the employee population for purposes of identifying the median employee,
  - Choosing a measurement period for compensation to determine the median employee,
  - Deciding whether or not to use statistical sampling in order to determine the median employee,
  - Whether to exclude up to five percent of total employees who are non-U.S. employees, including any non-U.S. employees excluded using the data privacy exemption. If a company excludes any non-U.S. employee in a particular jurisdiction, it must exclude all non-U.S. employees in that jurisdiction.
  - Whether to make cost of living adjustments for non-US employees.
  - Whether to exclude employees from a business combination in the fiscal year.
- **Briefly describe the methodology used to identify the median employee, and any material assumptions, adjustments and estimates**

CEO Pay Ratio

The SEC issued C&DIs on the CEO pay ratio rule in October 2016, and then updated them and provided additional guidance in September 2017:

- A CACM must "reasonably reflect the annual compensation of employees." A company may use internal records that reasonably reflect annual compensation to identify the median employee, even if those records do not include every element of compensation, such as equity awards widely distributed to employees. (128C.01)
- Hourly or annual pay rates alone are not appropriate CACMs, without taking into account the number of hours actually worked. (128C.02)
- There is significant flexibility for the measurement period for identifying the median employee, including the use of partial year data, a rolling 12 month period or the prior fiscal year's compensation data. It does not need to include the date used to determine the employee population (128C.03)

CEO Pay Ratio

- Clarifications on treatment of furloughed employees and independent contractors (C&DI 128C.04)
- Pay ratio disclosure may be disclosed as a reasonable estimate calculated in a manner consistent with Item 402(u). (C&DI 128C.06)

Division of Corporation Finance Guidance on Calculation of the Pay Ratio, September 21, 2017

- Companies may use a combination of reasonable estimates, statistical sampling and/or other reasonable methodologies.
- Provides examples of sampling methods, situations where companies may use reasonable estimates and reasonable methodologies

CEO Pay Ratio

- Are companies using the foreign data privacy exemption or the de minimis exemption?
- Where are companies placing the disclosure in their proxy statement?
- Should companies have a separate communication plan for their employees, and if so, what are the points to prioritize?
- Are companies volunteering supplemental information or supplemental ratios?
- What are considerations for pay ratio disclosure after the first year?

Thank You and Happy Holidays!

DORSEY
always ahead

PREPARING FOR THE 2018 PROXY SEASON

55

Appendix: Additional Resources

PCAOB Staff Guidance on Changes to the Auditor's Report (December 4, 2017):
https://pcaobus.org/Standards/Documents/2017-12-04-Auditors-Report-Staff-Guidance.pdf

PCAOB Webinar on the New Auditor's Report - Overview of Changes Effective in 2017:
https://pcaobus.org/News/Events/Pages/01102017-Audit-Report-Webinar.aspx

DORSEY
always ahead

PREPARING FOR THE 2018 PROXY SEASON

56

Appendix: Cybersecurity Risk Factor

Unauthorized disclosure of business information, as a result of a cyber attack or other causes, could have an adverse effect on our business, financial condition and results of operations.

An unauthorized disclosure of sensitive or confidential business information, including customer or employee information, could cause a loss of data, disrupt our business, damage our reputation, give rise to remediation or other expenses, expose us to liability under federal and state laws, and subject us and our officers and directors to litigation and investigations, which could have an adverse effect on our business, cash flows, financial condition and results of operations. [We are regularly the target of cybersecurity threats and must continuously monitor and upgrade our information systems to prevent, detect, address and mitigate the risk of unauthorized access, misuse, viruses and other events that could compromise sensitive or confidential information. Since these threats are constantly evolving, we cannot assure that they will not occur again, or that we will be able to successfully respond to such a threat.]

Appendix: Tax Reform Risk Factor

Proposed federal income tax reform could have an adverse effect on our financial condition and results of operations.

The Senate and the House of Representatives have approved the Tax Cuts and Jobs Act, which if signed into law, would significantly reform the Internal Revenue Code. Reforms would include, among other things, a restructuring of federal income tax rates, reduction of corporate tax rates, significant additional limitations on the deductibility of interest and executive compensation expense, allowing for the expensing of capital expenditures, the migration from a "worldwide" system of taxation to a territorial system, and the use of certain cross-border adjustments. There is substantial uncertainty regarding both the timing and the details of any such tax reform. The impact of any potential tax reform on our business and on holders of our common shares is uncertain and could be adverse. Prospective investors should consult their own tax advisors regarding the impact of potential changes in federal tax laws.

(This example was prepared for a foreign corporation with US operations.)

CEO PAY RATIO PREPARATION AND DISCLOSURE CHECKLIST

(as of February 23, 2018)

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.]

STAFF GUIDANCE

CHANGES TO THE AUDITOR'S REPORT

EFFECTIVE FOR AUDITS OF FISCAL YEARS ENDING

ON OR AFTER DECEMBER 15, 2017

DECEMBER 4, 2017

This guidance was prepared by PCAOB staff to help firms when implementing changes to the auditor's report effective for audits of fiscal years ending on or after December 15, 2017. This staff guidance document sets forth the staff's views on issues related to the implementation of the rules and standards of the PCAOB. It does not constitute rules of the Board, nor has it been approved by the Board. It supplements PCAOB Release No. 2017-001, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion and Related Amendments to PCAOB Standards* (June 1, 2017).

INTRODUCTION

On June 1, 2017, the PCAOB adopted a new auditing standard, AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*,[1] to enhance the relevance and usefulness of the auditor's report by providing additional and important information to investors and other financial statement users. This standard and related amendments were approved by the SEC on October 23, 2017.

The standard retains the pass/fail opinion of the existing auditor's report but makes significant changes to the report. All of the changes, except those relating to critical audit matters ("CAMs"), are effective for audits of fiscal years ending on or after December 15, 2017. These changes make a number of improvements that are primarily intended to clarify the auditor's role and responsibilities related to the audit of the financial statements, provide additional information about the auditor, and make the auditor's report easier to read. This guidance addresses these key elements of the revised auditor's report.

The other significant change, auditor communication of CAMs, is permissible on a voluntary basis but will not be required until audits of fiscal years ending on or after June 30, 2019 (for audits of "large accelerated filers") or December 15, 2020 (for audits of all other companies to which the requirements apply).[2]

The PCAOB will monitor the implementation of the new requirements and issue additional guidance, as needed.

The annotated example of the new auditor's report highlights the key changes (new language is <u>underlined</u>), followed by explanations.

[1] *See The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion and Related Amendments to PCAOB Standards*, PCAOB Release No. 2017-001 (June 1, 2017). Auditors should refer to AS 3105, *Departures from Unqualified Opinions and Other Reporting Circumstances*, for reporting requirements related to departures from unqualified opinions and other reporting circumstances. AS 3105 generally requires the same basic elements and, if applicable, CAMs as would be required under AS 3101.

[2] For more information about CAM requirements, *see* PCAOB Release No. 2017-001 and AS 3101.11-.17.

Report of Independent Registered Public Accounting Firm

To the shareholders and the board of directors of X Company

Addressee

Opinion on the Financial Statements

Opinion Section

We have audited the accompanying balance sheets of X Company (the "Company") as of December 31, 20X2 and 20X1, the related statements of [*titles of the financial statements, e.g., income, comprehensive income, stockholders' equity, and cash flows*], for each of the three years in the period ended December 31, 20X2, and the related notes [*and schedules*] (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company *as of* [*at*] December 31, 20X2 and 20X1, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 20X2, in conformity with [*the applicable financial reporting framework*].

Basis for Opinion

Basis for Opinion Section

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

Auditor Independence

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. [The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.]

ICFR Explanatory Language, if applicable

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters [if applicable]

CAMs, when effective

[*Signature*]

We have served as the Company's auditor since [*year*].

Auditor Tenure

[*City and State or Country*]

[*Date*]

A. Key Changes Effective December 15, 2017

1. Form of the Auditor's Report

AS 3101.08-.09 require that the Opinion on the Financial Statements section be the first section, immediately followed by the Basis for Opinion section. In general, the order of the remaining sections of the auditor's report is not specified.[3] This approach allows for consistency in the location of the Opinion on the Financial Statements and Basis for Opinion sections, with flexibility for other elements of the auditor's report, such as auditor tenure and emphasis paragraphs.

Section titles have been added to the auditor's report to guide the reader. AS 3101.08-.09 require titles for the Opinion on the Financial Statements and Basis for Opinion sections, respectively. Other requirements for titles appear where the content of the relevant section is specified.[4]

2. Addressee

AS 3101.07 requires the auditor's report to be addressed to the shareholders and the board of directors, or equivalents for companies not organized as corporations. For example, for companies not organized as corporations, the auditor's report would generally be addressed to (1) the plan administrator and plan participants for benefit plans; (2) the directors (or equivalent) and equity owners for brokers or dealers; and (3) the trustees and unit holders or other investors for investment companies organized as trusts. The auditor's report may include additional addressees. Since inclusion of additional addressees is voluntary, auditors can assess, based on the individual circumstances, whether or not to include additional addressees in the auditor's report.

3. Auditor Independence

AS 3101.09.g requires a statement in the Basis for Opinion section that the auditor is a public accounting firm registered with the PCAOB (United States) and is required to be independent with respect to the company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the SEC and the PCAOB.

[3] PCAOB standards relating to required explanatory paragraphs specify the location of such paragraphs within the auditor's report. *See* A.6.a below.

[4] For example, the requirement to include a title with a going concern explanatory paragraph appears in AS 2415, *Consideration of an Entity's Ability to Continue as a Going Concern.*

4. Auditor Tenure

AS 3101.10.b requires a statement in the auditor's report containing the year the auditor began serving consecutively as the company's auditor. The disclosure of tenure should reflect the entire relationship between the company and the auditor, including the tenure of predecessor accounting firms and engagement by predecessors of the company under audit.

a. Determination of Tenure

In determining the year the auditor began serving consecutively as the company's auditor, the auditor would look to the year when the firm signs an initial engagement letter to audit a company's financial statements or when the firm begins performing audit procedures, whichever is earlier. The following examples illustrate this:

> If the auditor signs the engagement letter in January 2012 to audit a company's financial statements for the year ended December 31, 2012, and the auditor's report is dated February 28, 2013, the auditor would state 2012 as the year the auditor began serving consecutively as the company's auditor.
>
> If the auditor signs the engagement letter in December 2011 to audit a company's financial statements for the years ended December 31, 2010, 2011, and 2012, the auditor would state 2011 as the year the auditor began serving consecutively as the company's auditor.
>
> If the auditor signs the engagement letter in January 2013 to audit a company's financial statements for the years ended December 31, 2010, 2011, and 2012, the auditor would state 2013 as the year the auditor began serving consecutively as the company's auditor.

Auditor tenure is calculated taking into account firm or company mergers, acquisitions, or changes in ownership structure. When a company acquires another company, if the acquirer's[5] current auditor continues serving as the combined company's auditor, auditor tenure would continue. If the acquired company's auditor is selected to serve as the combined company's auditor, auditor tenure would begin at that time.

The auditor's relationship with the company is not affected by the company's status as a public company. If a company went public and maintained the same auditor, auditor tenure will include the years the auditor served as the company's

[5] For purposes of calculating auditor tenure, acquirer means the accounting acquirer.

auditor both before and after the company became subject to SEC reporting requirements.

b. Reporting of Tenure

AS 3101 does not specify a required location within the auditor's report for the statement on auditor tenure. The example auditor's report (on page 2) includes the statement on auditor tenure at the end of the report; however, auditors have discretion to present auditor tenure in the part of the auditor's report they consider appropriate.

If there is uncertainty as to the year the auditor began serving consecutively as the company's auditor, such as due to firm or company mergers, acquisitions, or changes in ownership structure, the Note to AS 3101.10.b says the auditor should state that the auditor is uncertain as to the year the auditor became the company's auditor and provide the earliest year of which the auditor has knowledge. The following is an example of such a statement that could be included in the auditor's report:

> *We are uncertain as to the year we [or our predecessor firms] began serving consecutively as the auditor of the Company's financial statements; however, we are aware that we [or our predecessor firms] have been Company X's auditor [or Company X's auditor subsequent to the Company's merger] consecutively since at least 19XX.*

Auditors have discretion to provide additional information in the auditor’s report about tenure, if the information would provide context or otherwise assist the reader’s understanding of the relationship between the auditor and the company. For example, when tenure is calculated taking into account the tenure of predecessor accounting firms and/or engagement by predecessors of the company under audit, the auditor may wish to provide information about these historical relationships.

c. Determination and Reporting of Tenure for Investment Companies

For an investment company that is part of a group of investment companies, AS 3101.10.b provides that the auditor's statement regarding tenure will contain the year the auditor began serving consecutively as the auditor of any investment company in the group of investment companies. The following example illustrates this:

If Firm A has been auditing investment companies in XYZ group of investment companies since 1980, the current auditor's report for XYZ fixed income fund, whose inception date was in 2010, will state that Firm A has served as the auditor of one or more XYZ investment companies since 1980.

5. Auditor Reporting Regarding Internal Control Over Financial Reporting ("ICFR")

a. Management Reports on ICFR with no Auditor Reporting

In some circumstances, management is required to report on the company's ICFR but such report is not required to be audited,[6] and the auditor is not engaged to perform an audit of management's assessment of the effectiveness of ICFR. In such cases, under AS 3105.59, the auditor is required to include explanatory language to that effect in the Basis for Opinion section. The example auditor's report (on page 2) illustrates this presentation.[7]

b. Management Reports on ICFR with Auditor Reporting

The requirements for auditor reporting on management reports on ICFR have been updated to conform to AS 3101.[8] AS 2201.87 presents an updated example of a combined report expressing an unqualified opinion on financial statements and an unqualified opinion on ICFR. Alternatively, if the auditor issues separate reports on ICFR and the financial statements, under AS 2201.88 the required paragraph referencing the separate report should appear in the Opinion on the Financial Statements section, immediately following the opinion paragraph.

[6] This may be the case for companies that are subject to Section 404(a) of the Sarbanes-Oxley Act of 2002, as amended, which mandates management ICFR reporting, but not Section 404(b), which mandates auditor ICFR reporting. Section 404(a) generally applies to companies that are subject to the reporting requirements of the Securities Exchange Act of 1934, other than registered investment companies. Certain categories of companies that are subject to Section 404(a), such as nonaccelerated filers and emerging growth companies, are not subject to Section 404(b). *See* Item 308 of Regulation S-K.

[7] A similar paragraph may voluntarily be included in the auditor's report in situations in which management is not required to report on ICFR and neither is the auditor.

[8] *See* paragraphs .85-.87 of AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements.*

6. Explanatory and Emphasis Paragraphs

a. Explanatory Paragraphs

The auditor is required to add explanatory language to the auditor's report under circumstances listed in AS 3101.18. The key change to the list of circumstances is the new explanatory language for when an audit of ICFR is not performed as described in Section 5 above.

The list of circumstances in AS 3101.18 includes references to other PCAOB standards in which these circumstances and related reporting requirements are described. These other PCAOB standards specify the location of required explanatory paragraphs within the auditor's report and may also have a requirement for an appropriate section title.

b. Emphasis Paragraphs

The auditor may add a paragraph to the auditor's report to emphasize a matter regarding the financial statements ("emphasis paragraph"). Emphasis paragraphs are not required, but may be used by auditors to draw the reader's attention to matters such as significant transactions with related parties and unusually important subsequent events. AS 3101.19 provides examples of circumstances that may warrant an emphasis paragraph.

When an emphasis paragraph is included in the auditor's report, it is not appropriate for the auditor to use phrases such as "with the foregoing [following] explanation" in the opinion paragraph.

If the auditor includes an emphasis paragraph in the auditor's report, the auditor is required to use an appropriate section title.

7. Information about Certain Audit Participants

AS 3101.20 permits the auditor to include in the auditor’s report information regarding the engagement partner and/or other accounting firms participating in the audit that is required to be reported on PCAOB Form AP, *Auditor Reporting of Certain Audit Participants*.[9] If the auditor decides to provide information about certain audit participants in the auditor’s report, the auditor should use an appropriate section title.

[9] For additional information on voluntary disclosure in the audit report, see *Improving the Transparency of Audits: Rules to Require Disclosure of Certain Audit Participants on a New PCAOB Form and Related Amendments to Auditing Standards,* PCAOB Release No. 2015-008 (Dec. 15, 2015) and related staff guidance.

B. Critical Audit Matters

Provisions related to CAMs will take effect for audits of financial statements for fiscal years ending on or after June 30, 2019, for large accelerated filers; and for audits of financial statements for fiscal years ending on or after December 15, 2020, for all audits of other companies to which the requirements apply.

When the relevant requirements take effect, auditors of certain issuers will be required to include in the auditor's report a communication regarding CAMs. CAMs are defined under AS 3101 as matters arising from the audit of the financial statements that have been communicated or were required to be communicated to the audit committee and that (1) relate to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex auditor judgment.[10]

The communication of CAMs is not required for audits of emerging growth companies; brokers and dealers; investment companies other than business development companies; and employee stock purchase, savings, and similar plans.

CAMs may be included voluntarily before the effective date or for entities for which the requirements do not apply. In advance of implementation, auditors may want to discuss the new CAM requirements with management and audit committees.

C. Contact Information

Questions pertaining to AS 3101 and related amendments may be directed to the staff in the PCAOB's Office of the Chief Auditor via the standards' help line at (202) 591-4395 or may be submitted through a web form.[11]

[10] For more information about the CAM requirements, see AS 3101.11-.17. and additional discussion in the relevant PCAOB releases.

[11] The web form is available at https://pcaobus.org/About/Pages/ContactUsWebForm.aspx?Contact=Standard-related%20Inquiries.

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.

Preparing for the 2018 Proxy Season

Speaker Biographies

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

Kimberley Anderson is a Partner in Dorsey's Corporate Governance & Compliance Group. She 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 serves in a leadership role at Dorsey, serving on the firm's Management Committee. She is also a frequent speaker at key seminars on corporate compliance, SEC disclosure and other securities law topics.

Timothy S. Hearn
Partner
Dorsey & Whitney LLP
Minneapolis, Minnesota
hearn.tim@dorsey.com
(612) 340-7802

Tim Hearn is a Partner in Dorsey's Corporate Governance & Compliance Group. He has over 30 years of experience in securities and general corporate law, particularly as they relate to micro and small cap public companies, providing advice to boards of directors and management on mergers and acquisitions, corporate governance and fiduciary duty issues, and public and private offerings of debt and equity. In his career, Tim has also represented underwriters, placement agents, investment partnerships, real estate investment trusts and venture capital investors in various transactions. Tim has also served in several leadership roles at Dorsey and is currently the firm's General Counsel and Secretary to the firm's Policy Committee. Tim is a frequent speaker at seminars and client events on corporate compliance, SEC disclosure and other corporate and securities law topics.

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

Cam Hoang is a Partner in Dorsey's Corporate Governance & Compliance Group. She 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/.

Susan O'Donnell
Partner
Meridian Compensation Partners, LLC
Newton, Massachusetts

Susan O'Donnell has over 25 years' experience advising boards and management on all aspects of executive and board compensation and governance. She focuses on serving the banking/financial services industry where she advises clients on the many continued compensation regulations and practices impacting the industry. Susan helps develop total compensation programs that support each client's business strategy and desired philosophy while balancing market, shareholder, and regulatory perspectives. Specific areas of focus today include annual and long-term incentive plan design with appropriate risk mitigating strategies, pay-for-performance alignment, performance metric selection, executive reward and retention strategies, board compensation, committee governance, succession planning, and shareholder/proxy disclosure. Susan is an experienced speaker and writer on the topics of executive, director, and corporate governance; pay for performance; and succession planning. Susan has been a Certified Compensation Professional (CCP) with WorldatWork for over 25 years. Prior to joining Meridian, Susan spent 11 years as a Managing Director at Pearl Meyer & Partners, where she built and managed its National Banking Practice. Prior to that she worked for several major consulting firms, including Towers Perrin, Watson Wyatt, Mercer, Hay and Hewitt.