TEN HOT TOPICS & ONE REMINDER:

DEVELOPMENTS IN GOVERNANCE AND DISCLOSURE

WINTER 2017

1 MODERNIZATION AND SIMPLIFICATION OF DISCLOSURE: UPDATE FOR THE BOARD.

On October 11, 2017, the SEC **proposed amendments** to modernize and simplify certain Regulation S-K requirements and related forms. The press release regarding the SEC's proposed amendments is available **here**. Comments on the proposed amendments must be received by January 2, 2018. The Commission's proposed amendments are primarily based on the Staff's recommendations in the **Report to Congress on Modernization and Simplification of Regulation S-K** as part of the SEC's **Disclosure Effectiveness Initiative** and related **Concept Release**. The proposed amendments are intended to reduce costs and burdens on companies, improve readability and navigability of disclosure, and discourage repetition and disclosure of immaterial information.

The most significant of the proposed amendments are to the corporate exhibits requirements (Item 601). First, the proposed amendments would permit the omission of confidential information from material contracts where such information is both not material and competitively harmful if publicly disclosed, even if the company has not filed a confidential treatment request. Instead, companies would be required to mark the exhibit index to indicate that portions of an exhibit or exhibits have been omitted and include a prominent statement on the first page of each redacted exhibit that information in the marked sections of the exhibit had been omitted from the filed version. Companies would also be required to indicate with brackets where the information has been omitted from the filed version of the exhibit. Although companies would not be required to file a confidential treatment request in connection with the redacted exhibit, companies would still be required to determine whether all material information has been disclosed. In addition, a company may be required to provide additional information following the Commission's review and upon the Commission's request.

Other proposed amendments to the corporate exhibits requirements (Item 601) include (a) restricting the requirement to file material contracts entered into within the last two years to newly reporting companies, (b) permitting the omission of personally identifiable information from exhibits without the need for a confidential treatment request, (c) permitting the omission of schedules and similar attachments from exhibits unless they contain material information and that information is not otherwise disclosed, and (d) requiring companies to provide the Item 202 description of their registered securities as an exhibit to their Forms 10-K, rather than keeping such disclosure limited to registration statements and updates in voluntary Form 8-K filings. CONTINUED ▸

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MODERNIZATION AND SIMPLIFICATION OF DISCLOSURE (continued)

The SEC's other proposed amendments include changes to Item 102 and Item 303(a) of Regulation S-K. Item 102 requires disclosure of the location and general character of the principal plants, mines and other materially important physical properties of the company and its subsidiaries. The Commission's proposed amendments to Item 102 would revise the provision to emphasize materiality, requiring disclosure only to the extent physical properties are material to the company's business; disclosure also may be provided on a collective basis, if appropriate. Item 303(a) requires companies to discuss their financial condition, changes in financial condition, and results of operations. The proposed amendments to Item 303(a) would eliminate the discussion of the earliest year in some situations — for example, when financial statements included in the filing cover three years, discussion about the earliest year would not be required if (a) that discussion is not material to an understanding of the company's financial condition, changes in its financial condition or results of operations, and (b) the company has filed a Form 10-K for the prior year containing MD&A of the earliest of the three years included in the financial statements in the current filing. The proposed amendments would also make other minor revisions to Item 303, and similar changes would be made to Item 5 of Form 20-F for foreign private issuers.

The proposed amendments also would provide companies with greater flexibility in incorporating by reference and would eliminate various inconsistent and duplicative requirements. The proposed amendments would also require hyperlinks to information that is incorporated by reference if that information is available on EDGAR. This requirement is consistent with the SEC's recently adopted rules requiring hyperlinks to most exhibits filed pursuant to Item 601 (and Forms F-10 and F-20 for foreign private issuers). Under the proposed amendments, the new requirement to file documents in HTML format would be expanded to include filings subject to the proposed hyperlinking requirements regarding incorporation by reference.

The SEC also is proposing clarifying amendments or minor simplifications to Item 401 (which requires disclosure of identifying and background information about a company's directors, executive officers and significant employees), Item 405 (which requires officers, directors and specified types of security holders to report their beneficial ownership of company securities using Forms 3, 4 and 5), Item 407 (which requires various disclosures related to corporate governance), Item 501(b) (which requires various disclosures regarding the company and the offering of its securities), Item 503(c) (which requires disclosure of the most significant factors that make securities speculative or risky), Item 508 (which requires disclosure about the plan of distribution for securities in an offering, including information about underwriters), and Item 512 (which provides undertakings that a company must include in Part II of a registration statement, depending on the type of offering).

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2 ADOPTION OF AUDITOR'S REPORTING MODEL: UPDATE FOR THE AUDIT COMMITTEE.

On October 23, 2017, the **SEC approved** the PCAOB's proposal to adopt AS 3101 and related amendments to other auditing standards. The **PCAOB's new AS 3101 and related amendments**, filed with the Commission on July 19, 2017, require that the external auditor provide new information about the audit that is intended to make the auditor's report more informative and relevant to investors and other financial statement users. Specifically, under the new standard, the auditor is required to include a discussion of "critical audit matters" in its report.[1] "Critical audit matters" is defined as any matter arising from the audit of the financial statements that (a) was communicated or required to be communicated to the audit committee, (b) related to accounts or disclosures that are material to the financial statements, and (c) involved especially challenging, subjective, or complex auditor judgment. Critical audit matters are determined using a principles-based framework. In determining whether a matter involves "especially challenging, subjective, or complex auditor judgment" the new standard provides the following nonexclusive list of factors for the auditor to take into account, together with audit-specific factors:

1. The auditor's assessment of the risks of material misstatement, including significant risks;
2. The degree of auditor subjectivity in determining or applying audit procedures to address the matter or in evaluating the results of those procedures;
3. The nature and extent of audit effort required to address the matter, including the extent of specialized skill or knowledge needed or the nature of consultations outside the engagement team regarding the matter;
4. The degree of auditor judgment related to areas in the financial statements that involved the application of significant judgment or estimation by management, including estimates with significant measurement uncertainty;
5. The nature and timing of significant unusual transactions and the extent of audit effort and judgment related to these transactions; and
6. The nature of audit evidence obtained regarding the matter.

The new standard and related amendments also clarify certain statements regarding the nature and scope of the auditor's existing responsibilities, adding a new requirement that the auditor make a statement disclosing the year in which the auditor began serving consecutively as the company's auditor and a statement regarding the requirement that the auditor be independent, and make various formatting changes to the auditor's report. The auditor's report will be required to be addressed to the company's stockholders and board of directors or the equivalents. CONTINUED ▶

[1] The auditor reports for certain types of companies are not subject to the new critical audit matters disclosure requirements, including emerging growth companies (EGCs), mutual funds and other registered investment companies that are not business development companies and registered brokers and dealers.

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The required disclosure of critical audit matters becomes effective for audits of fiscal years ending on or after June 30, 2019, for large accelerated filers and on or after December 15, 2020, for other types of filers. The other changes to the auditor's report, including the changes with respect to statements regarding tenure and independence, become effective for all audits of fiscal years ending on or after December 15, 2017. On December 4, 2017, the PCAOB issued **new staff guidance** to the changes to the auditor's report, which includes an annotated example of the new auditor's report highlighting the key changes and followed by explanations.

3 EFFECT OF SLB 14I ON STOCKHOLDER PROPOSALS SUBMITTED UNDER RULE 14A-8: UPDATE FOR THE BOARD.

As described in **our article**, on November 1, 2017, the Staff of the SEC Division of Corporation Finance published new Staff Legal Bulletin No. 14I, addressing (a) the scope and application of Rule 14a-8(i)(7) (the "ordinary business" exception); (b) the scope and application of Rule 14a-8(i)(5) (the "economic relevance" exception); (c) proposals submitted on behalf of investors by representatives (or "proposals by proxy"); and (d) the use of graphs and images in stockholder proposals. According to SLB 14I, when reviewing companies' no action requests in the future, the Staff will consider a discussion of the board's analysis with respect to the "economic relevance" exception and the "ordinary business" exception arguments. This change may broaden the scope of permissible arguments used to omit Rule 14a-8 stockholder proposals, while also potentially requiring an unprecedented level of disclosure and board involvement in the process. SLB 14I also address "proposals by proxy" — specifically the Staff will now expect representatives submitting proposals on behalf of stockholders to provide certain delegation documentation, a move that may create new opportunities for companies to exclude proposals on procedural grounds. Finally, SLB 14I addresses the inclusion of images and graphs in Rule 14a-8 stockholder proposals, reiterating the Staff's existing position that exclusion of images and graphs requires an argument under Rule 14a-8(d) (limiting the total number of words in a proposal) or Rule 14a-8(i)(3) (permitting exclusion where a proposal is materially false or misleading, among related issues).

Following the release of SLB 14I, the Commission Staff members have provided various clarifying statements regarding the Commission's perspective on the revised approaches and expectations for companies and stockholder proponents. In one such speech, Matt McNair, Senior Special Counsel in the Division of Corporation Finance, clarified that the Commission does not expect every argument based on Rule 14a-8(i)(7) or 14a-8(i)(5) to include a discussion of board analysis. McNair also noted that with respect to "proposal by proxy" matters, the Commission is going for a "reasonableness" test, and that where a company can reasonably conclude based on what a stockholder has provided to the company that a stockholder authorized the proposal's submission, the Commission will be unlikely to agree with exclusion even if all the delegation information mentioned in SLB 14I is not provided.

4 CYBERSECURITY DISCLOSURE MATTERS: UPDATE FOR THE BOARD.

On September 20, 2017, Chair Jay Clayton issued a **Statement on Cybersecurity** in which he discussed the challenges of cybersecurity, addressed the 2016 breach of the SEC's Edgar system that was discovered in August 2017, and provided details on the Commission's oversight of and perspective on effective cybersecurity-related disclosures and practices. On November 9, 2017, director of the SEC Division of Corporation Finance, William Hinman, indicated that the Commission will likely issue updated cybersecurity disclosure guidance that may include new requirements with respect to disclosure controls and escalation procedures after a cyberattack or breach. The SEC's pending guidance is likely in direct response to the Edgar breach and the July 2017 Equifax breach. Equifax has been widely criticized for failing to make the breach public until early September. Some marketplace participants have also raised an eyebrow at the fact that four senior executives at Equifax sold stock days after the discovery of the breach.

5 ISS/GLASS LEWIS POLICY UPDATES: UPDATE FOR THE BOARD.

On October 26, 2017, Institutional Shareholder Services (ISS) released **updates** to its benchmark proxy voting policies for the U.S., Canada and Brazil. These updates will be effective for meetings occurring on or after February 1, 2018. In summary, the changes for the U.S. cover the following issues:

a. With respect to voting on director nominees in uncontested elections, ISS is making changes to its fundamental principles as well as its policies concerning board accountability, responsiveness, composition and independence.

- With respect to board diversity, ISS is adding the following statement to its fundamental principles: *"Boards should be sufficiently diverse to ensure consideration of a wide range of perspectives."*
- With respect to board accountability and stockholder rights, ISS is adding a policy to recommend against the entire board where the company has opted into, or failed to opt out of, state laws requiring a classified board structure. ISS is also simplifying its position on poison pills to recommend votes against the entire board where the company has adopted a poison pill that was not approved by stockholders, and case-by-case if the initial term of the pill is one year or less, depending on the disclosed rationale. ISS is broadening its existing policy that disfavors undue restrictions on stockholders' ability to amend company bylaws; ISS has now clarified that it will disfavor such restrictions whether they appear in the bylaws or the charter—the previous policy focused on restrictions in the company's charter. ISS is creating additional detail in its policy on the pledging of company stock, enumerating particular CONTINUED ▸

ISS/GLASS LEWIS POLICY UPDATES (continued)

criteria for evaluating whether there should be concern with the level of pledged company stock by executives or directors. In addition, the advisory firm will now recommend voting against members of the board committee responsible for setting non-employee director compensation if there is a "pattern" of excessive compensation, and is adding a policy to recommend against the members of the compensation committee where the company fails to include either a say-on-pay or say-on-frequency proposal when required to do so.

- With respect to board responsiveness (and with respect to compensation committee communications and responsiveness), ISS will now, when assessing whether to recommend votes against compensation committee members and say-on-pay proposals when the prior say-on-pay proposal received less than 70% support, consider (i) the timing and frequency of company engagements with investors and whether independent directors participated, (ii) disclosure of the specific concerns voiced by dissenting stockholders that led to say-on-pay opposition, and (iii) disclosure of meaningful actions taken to address stockholder concerns.
- With respect to board composition, ISS will now highlight boards with no gender diversity; however, for U.S. companies at this time, no adverse vote recommendations will be made due to a lack of gender diversity.
- With respect to board independence, ISS is revising its criteria for determining whether a board or its committees lack sufficient or requisite independent director oversight; but these changes will not materially alter ISS's existing policy.

b. With respect to special purpose acquisition corporations (SPACs), ISS is adding a policy to vote case-by-case on SPAC extension proposals taking into account (i) the length of the requested extension, (ii) the status of any pending transaction(s) or progression of the acquisition process, (iii) any added incentive for non-redeeming stockholders, and (iv) any prior extension requests.

c. With respect to advisory votes on executive compensation, as part of its pay-for-performance evaluation, ISS will now include in its analysis the rankings of CEO total pay and company financial performance within a peer group over a three-year period, in addition to its other considerations.

d. With respect to social and environmental issues, ISS is making changes to its policies with respect to stockholder proposals on climate change risk and gender pay gap.

- With respect to stockholder proposals on climate change, ISS will generally recommend for proposals that request disclosure on how a company identifies, measures and manages financial, physical or regulatory risks related to climate change.
- With respect to stockholder proposals on gender pay gap, ISS is adding a policy to recommend votes on a case-by-case basis, taking into account (i) the company's current policies and disclosure related to diversity and inclusion and its compensation philosophy and practices, (ii) whether the company has been subject to recent controversy, litigation, or regulatory actions related to gender pay gap issues, and (iii) whether the company's reporting regarding gender pay gap policies or initiatives is lagging its peers. CONTINUED ▶

ISS has added a Canadian policy to recommend votes against the chair of the nominating committee or similar committee if the company has not disclosed a formal written gender diversity policy and there are no female directors on the board. While ISS has yet to take this step in the U.S., the Canadian policy could be a harbinger of things to come.

On December 14, 2017, ISS also issued new FAQs on **U.S. Equity Compensation Plans** and **U.S. Compensation Policies**, and issued an updated version of **Pay-for-Performance Mechanics**, the document that provides details on ISS's quantitative and qualitative approach for assessing executive compensation.

On November 22, 2017, Glass Lewis released **updates** to its proxy voting policies for the U.S. and Canada. Beginning with 2018 meetings, Glass Lewis will consider board diversity when evaluating companies' oversight structures, and beginning with 2019 meetings, Glass Lewis will generally recommend voting against the chair of the nominating committee of a board that has no female members. Glass Lewis has added a discussion on dual-class share structures and will now include the presence of dual-class share structures as an additional factor in determining whether stockholder rights are being severely restricted. Glass Lewis has clarified that it expects the board to respond to stockholder dissent from a proposal at an annual meeting of more than 20% of votes cast. With respect to virtual-only stockholder meetings, beginning with 2018 meetings, Glass Lewis will look for robust disclosure in a company's proxy statement assuring stockholders that they will be afforded the same rights and opportunities to participate as they would be at an in-person meeting. Beginning with 2019 meetings, Glass Lewis will generally recommend voting against members of the governance committee of the board where the company does not provide such disclosure. Glass Lewis also provides clarifications on its director overboarding policy and pay-for-performance model, and has adopted a general policy regarding required CEO pay ratio disclosures.

6 OTHER RECENT SEC REMARKS ON THE COMMISSION'S AGENDA, THE PROXY PROCESS AND ENFORCEMENT TRENDS: UPDATE FOR THE BOARD AND NOMINATING & GOVERNANCE COMMITTEE.

On November 8, 2017, SEC Chair Jay Clayton **spoke** at the PLI 49th Annual Institute on Securities Regulation. His speech focused on governance and transparency with respect to the SEC's operations and the securities markets. In his speech, Chair Clayton noted that the next near-term agenda is shorter than the Commission's agenda in the recent past and that the Commission's new strategic plan, to be published in early 2018, will set forth fewer initiatives, goals and indicators than in the recent past. With respect to the SEC's long-term agenda, Chair Clayton highlighted stockholder CONTINUED ▸

OTHER RECENT SEC REMARKS (continued)

engagement and the proxy process, including retail stockholder participation and stockholder proposals. Of particular note is Chair Clayton's statement that he believes the Commission should consider reopening the comment file on the **2010 "Proxy Plumbing" concept release** to solicit updated feedback. Chair Clayton also discussed his concern that long-term retail investors may be underrepresented or selectively represented in corporate governance matters, and noted that the low rates of retail stockholder participation may be a signal that the proxy process is too cumbersome for retail investors and needs updating. With respect to stockholder proposals Chair Clayton noted the concerns expressed over the appropriate level of ownership that should be required to submit stockholder proposals, and stated that one of his guiding principles is the consideration of whether rules are serving the long-term interests of "Main Street investors." Chair Clayton also discussed the Commission's enforcement role, fee disclosure, penny stocks, transactions involving restricted securities, initial coin offerings, and investor education as areas of focus.

On October 26, 2017, Co-Director of the SEC Division of Enforcement, Steven Peikin, made statements on a panel at the Securities Enforcement Forum in Washington D.C. that indicated that the Commission's "broken windows" approach to securities enforcement advocated by former Commission Chair Mary Jo White may be coming to an end. As a reminder, the SEC's controversial post-financial crisis "broken windows" approach to enforcement was to pursue even the smallest securities law infractions, including against individual directors and officers. A shift in this approach could result in more targeted and focused enforcement actions, but the practical implications of Director Peikin's statements will not be known until 2018 or later. On November 15, 2017, the SEC Division of Enforcement released its **Report on Priorities and FY 2017 Results**, which indicates that during its fiscal year 2017, the Commission brought a diverse mix of 754 enforcement actions, including 446 standalone actions, returned a record $1.07 billion to investors, and obtained judgments and orders totaling more than $3.789 billion in disgorgement and penalties.

7 REVENUE RECOGNITION IMPLEMENTATION UPDATES: UPDATE FOR THE AUDIT COMMITTEE.

FASB's **Accounting Standards Update No. 2014-09, Revenue from Contracts with Customers** (Topic 606) is effective for all public entities for annual periods beginning after December 15, 2017. In summary, Topic 606 requires companies to adopt a single framework for how and when revenue is recognized. The core principle is that a vendor should recognize revenue when control over the goods or services is transferred to the customer. This framework requires that companies (a) identify their contracts and categorize those contracts, or portions of those contracts, (b) identify the separate performance obligations in those contracts, (c) determine the transaction price, (d) allocate the price across the performance obligations, and (e) recognize revenue as of or when each performance obligation is satisfied. A contract may be wholly within the scope of the new standard, partially within the scope of the new standard and partially within the scope of other accounting standards, or outside CONTINUED ▸

of the scope of the new standard and wholly within the scope of other accounting standards, depending on the type of contract. The new revenue standard also requires new disclosures, including qualitative and quantitative information about revenue recognized from contracts with customers and significant judgments and changes in judgments. Implementation of the new revenue standard may require a company to change its systems, contracts, and controls, or to develop new ones. If these changes are done imperfectly, they could increase the risk of a material misstatement. However, while many companies have been focused on the logistics of implementation, the new disclosures required by the new standard are likely to be particularly challenging, and companies should begin drafting early. Deloitte personnel recently identified performance obligations disclosures and disclosures regarding significant judgments and estimates as particularly challenging. The SEC's comments to companies to date have been focused on (a) asking early adopters to clarify considerations made for operationalizing different aspects of the standard, and (b) requesting more robust disclosures regarding the effects the accounting standard will have on a company's financial statements. On October 5, 2017, the PCAOB issued **Staff Audit Practice Alert No. 15**, which discusses significant matters relating to the implementation of the new standard.

TAX REFORM CONSIDERATIONS: UPDATE FOR THE BOARD.

On November 16, 2017, the U.S. House of Representatives passed H.R. 1, the **"Tax Cuts and Jobs Act"** and on December 2, 2017, the U.S. Senate passed its own version of the **Tax Cuts and Jobs Act**. The Republican tax legislation was passed by Congress on December 20, 2017 and is expected to signed into law by President Trump on January 3, 2018. The legislation (a) cuts the corporate tax rate from 35% to 21%; (b) repeals the corporate alternative minimum tax; (c) imposes new limits on business interest deductions; (d) introduces new deductions for income earned by certain pass-through entities to provide similar relief to those businesses as is being provided to corporations; (e) permits full expensing of certain tangible property acquired within a specified period of time; (f) eliminates the performance-based compensation exception to limitation on deductibility of compensation paid to specific executives in excess of $1 million under §162(m) of the Internal Revenue Code; (g) limits the deduction of net operating losses to 80% of taxable income; and (h) significantly affects the taxation of multinational corporations either based in the United States or with U.S. operations.

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– *Chambers USA* 2017

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9 PAY RATIO IMPLEMENTATION: UPDATE FOR THE BOARD AND COMPENSATION COMMITTEE.

This updates our Fall 2017 “Ten Hot Topics and One Reminder” discussion on pay ratio implementation. As a reminder, the 2018 proxy season will be the first time many companies[2] are required to comply with the SEC’s pay ratio rule, which was adopted by the Commission in 2015 pursuant to the Dodd-Frank Act. The pay ratio rule requires companies to disclose (a) the annual total compensation of the median employee, (b) the annual total compensation of the CEO and (c) the ratio of those two amounts. The rule is draconian and highly detailed, and involves the interplay between the over 300 pages released by the Commission on the rule and the traditional Item 402 and Form 8-K rules. The SEC’s process toward final rules has been long and complicated: The SEC first proposed rules in September 2013, provided additional analysis in June 2015, finalized rules in August 2015, provided interpretive guidance (effectively changing certain fundamental matters) in October 2016, and provided further interpretive guidance (removing or reinterpreting prior guidance and providing additional guidance) in September 2017.

On September 21, 2017, the SEC issued **new interpretive guidance** addressing the pay ratio rule. The most recent guidance addresses the use of reasonable estimates, assumptions and methodologies and statistical sampling, acknowledging that pay ratio disclosures may involve a degree of imprecision. Pursuant to the guidance, the disclosure will not provide the basis for Commission enforcement action unless the disclosure was made or reaffirmed without a reasonable basis or was provided other than in good faith. The new guidance also provides clarity with respect to the use of internal records, stating that companies may use internal records, such as tax or payroll records, even if those records do not include every element of compensation, such as equity awards widely distributed to employees. Finally, the new guidance also provides that companies may use widely recognized tests to determine who is an “employee” for purposes of the rule and who is an “independent contractor” or “leased” worker, including guidance published by the Internal Revenue Service with respect to independent contractors.

[2] Applicable to all registrants required to provide disclosure under Item 402 of Regulation S-K; therefore, the only companies specifically carved out are smaller reporting companies, foreign private issuers and MJDS filers; in addition, emerging growth companies were specifically carved out by the JOBS Act. Transition periods are provided for companies that cease to be smaller reporting companies or emerging growth companies.

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10 ENVIRONMENTAL AND SUSTAINABILITY MATTERS UPDATES: UPDATE FOR THE BOARD.

In November 2017, RBC Global Asset Management released its **2017 Responsible Investing Survey**, which is a survey that solicits the views of institutional asset owners and investment consultants from the U.S., Europe and Canada on responsible investing and environmental, social and governance ("ESG") integration. In summary, the survey indicates that 67% of global respondents and 49% of U.S. respondents use ESG principles as part of their analysis. For institutional investors who employ ESG criteria, a majority across the regions surveyed are not satisfied with the disclosure of ESG metrics provided by companies. A significant majority of institutional investors in every region surveyed said gender diversity on corporate boards is important to them, including 71% in the U.S. In October 2017, KPMG released its **2017 Survey of Corporate Responsibility Reporting**. In summary, the KPMG report notes that a majority (78%) of the world's 250 largest companies are integrating financial and non-financial data in their annual financial reports, and a majority (67%) are also now disclosing targets to cut their carbon emissions.

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For more information, visit our Corporate Governance page at: **http://www.velaw.com/What-We-Do/Corporate-Governance/**.

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REMINDER:

Annual meeting and annual report season is upon us! Stockholder voting standards have been a topic of conversation for years, but last year we saw a number of companies that had inaccurately or incompletely described their voting standards (including with respect to whether discretionary voting was permitted) pay the price. Voting standards can be a recipe for confusion, so it is worth reviewing your standards with counsel, including standards applicable under state law, governing documents and exchange standards. For the holiday season, we will include two more reminders: **(1)** if your company held a say-on-frequency vote at its last stockholder meeting, and you have not already addressed the Form 8-K Item 5.07(d) requirement that companies disclose their decisions in light of a vote as to how frequently a company will include a stockholder say-on-pay vote, it may not be too late to do so; and **(2)** this annual meeting and annual report season promises to be particularly busy, if you have not already set your board calendar (including applicable deadlines), we recommend doing so as soon as possible. Extra time should be built in for the review of pay ratio disclosures and revenue recognition disclosures. Reach out to competent corporate governance counsel to discuss these matters. **Happy holidays!**

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