Morgan Lewis

GLOBAL PUBLIC COMPANY ACADEMY
2020 ANNUAL MEETING HOT TOPICS AND WHAT THEY MEAN FOR 2021

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Overview

I. Executive Compensation Landscape and Preview for 2021

- Changes Resulting from COVID-19
- Compensation Committee Considerations
- Drafting Considerations for 2021 Proxies

II. 2021 Proxy Statement Preview

- Disclosure Trends for 2021
- ESG Considerations
- Overview of Shareholder Proposal Landscape

III. Virtual Shareholder Meeting 2020 Recap

EXECUTIVE COMPENSATION – CHANGES RESULTING FROM COVID-19

Compensation Committee Considerations

LEVERS TO ADDRESS EFFECT OF COVID-19

- Base Salary
- Bonus Compensation
- Equity
- Severance

Base Salary

Reductions

Temporary reduction of base salary

Deferrals

Deferral of a portion of base salary to a later tax year

Annual Bonus

- Many companies have been addressing adjustment of annual bonus performance goals
  - Review plan document and employee communications
  - Shareholder outreach
  - Midyear adjustment vs. end of year exercise of discretion
  - ISS position:
    - ISS expects that many boards will materially change the performance metrics, goals, or targets used in short-term compensation plans in response to the current market situation.
    - ISS encourages companies to provide clearly articulated, contemporaneous disclosure of the rationale for adjusting bonuses and performance metrics, as such disclosures will provide shareholders with greater context for the board’s rationale and the circumstances in which the changes were made.

Annual Bonus

- Glass Lewis position: Approval of bonus payouts will depend on the company's prospects and current situations. Glass Lewis sets out four scenarios with respect to how compensation arrangements may be affected based on the company's financial situation:
  - Company "on life support": Glass Lewis expects no bonus (or nominal) in this situation. Forward-looking retention arrangements may be approved.
  - Negatively affected performance: Limit annual bonus payments. Reconsider the vesting terms based on nonfinancial metrics that could result in sizable payouts.
  - Outperformed peers, but objectively negative results: Any upward adjustments to pay for relative outperformance will be scrutinized.
  - Strong performance both absolutely and relatively: An incentive structure set up to pay counter-cyclically may be approved. For those companies that gained unexpected windfalls due to COVID-19, better to pull back bonus from stretch or maximum levels.

Equity/Long-Term Incentives

- Adjustment of performance goals in long-term incentives
  - Consider necessity in long-term grants
  - Review plan document and grant agreements
  - 162(m) grandfathered grants
  - Financial accounting consequences
- Consider granting retention equity awards in situations where the performance goals of existing equity awards are unlikely to be met.
- Shareholder outreach

Equity/Long-Term Incentives

- Adjustment of performance goals in long term incentives
  - ISS position:
    - ISS does not support changes to long-term compensation plans in the middle of a performance period. ISS will review any such changes on a case-by-case basis. If the compensation committees decide to alter the structures of long-term plans in light of the new economic environment due to COVID-19, ISS will assess such structural changes under its existing policy frameworks.
    - ISS’s expected scrutiny means that it is even more important to maintain proper documentation and disclosure.

Equity/Long-Term Incentives

- Glass Lewis position:
  - What is reasonable will vary by company-specific circumstances.
  - Glass Lewis will take a pragmatic approach to voting recommendations.
  - Glass Lewis would be receptive to modifying the performance range between threshold and stretch or reducing the variability of pay (if proper justification is provided).

Equity/Long-Term Incentives

With the drop in the stock market as a result of the COVID-19 pandemic, consideration should be given to the amount of equity to be granted as a result of low share prices.

Alternative
Delay 2020 annual equity awards until later in the calendar year, when stock prices may have stabilized and realistic performance goals may be set.

Alternative
Use a stock price based on a trailing average for purposes of setting the number of shares or the exercise price of options (subject to compliance with Section 409A with respect to options).

Employment/Severance Arrangements

Change to Employment Terms	Any reductions in compensation (base salary, bonus, equity) may conflict with terms of existing agreements with employees
Severance Arrangements	The impact on changes in compensation will need to be taken into account in connection with any terminations while change is in effect

Severance Considerations

Reduction in Base Salary or Target Bonus	• Trigger "Good Reason"? • Executive should consent to reduction and confirm it does not trigger "Good Reason"
Severance Payout	• How will benefits be calculated if termination occurs following a reduction in compensation? • Does the Section 409A six-month delay limit changing the form of severance from lump sum to installments?
Equity	• Modifications to existing equity

Additional Considerations

- How long will the current pandemic last and should timing of any changes be delayed?
- What is the impact on retention and recruitment of employees?
- How will changes be viewed in connection with a change in control?
- What are the tax implications to the employees?
- What are the accounting implications associated with changes in performance goals?

Option Repricings

01

- Shareholder Approval
- ISS Considerations

02

- Timing of Repricing
- Terms of Repricing

03

- Equity Plan Requirements

Equity Plans: What Happened in 2020?

- The vast majority of companies that put up equity plans for shareholder approval have seen success so far in 2020.
- However, unanticipated, rapid decreases in stock prices have adversely impacted equity plan share reserve for many companies.
  - "As we realign the Company with our new strategic priorities, our stock price has been negatively impacted in the short term, and this decline was exacerbated by market-wide impacts due to the COVID-19 pandemic. The decrease in our share price, combined with equity share issuances in connection with new hires, has impacted the pool of shares we have available under the Incentive Plan and contributed to a sooner-than-expected need for additional shares."

  - DXC Technology, Definitive Proxy Statement filed July 2, 2020

Equity Plans: Refresher on the ISS Equity Scorecard

- ISS considers the following three main categories in assessing omnibus equity plans:
  - Plan cost (i.e., dilution and overhang)
  - Plan features (e.g., minimum vesting periods, extent to which vesting can be accelerated on a discretionary basis, liberal share recycling, change-in-control provisions, dividends paid on unvested awards)
  - Grant practices (i.e., burn rate relative to peer companies)
- Strategies when faced with a negative ISS recommendation:
  - Shareholder engagement, focusing on largest institutional holders
  - Well-drafted supplemental proxy material can be effective to rebut ISS's position (particularly if Glass Lewis has expressed support for the plan)

Equity Plans: What's Next?

- Companies that have continued to make equity grants based on a fixed cash value of equity awards have likely had to make grants for a larger number of shares than originally anticipated due to falling stock prices.
  - Results in increased burn rate (e.g., the number of shares issued under the equity plan in relation to the total number of outstanding shares)
  - May create a windfall and deliver more value than intended to employees if stock prices rebound in a short period, resulting in potential criticism of the compensation committee from institutional investors and proxy advisory firms
- Plan cost is the most heavily weighted pillar; for most companies, this pillar is worth 45 points of the 100 possible points. Possible negative recommendation from ISS and Glass Lewis if the share price has been depressed for months leading up to the proxy filing, and the value of the shares requested under the equity plan results in a high plan cost and dilution above the designated cap.
- Companies may need to include more restrictive plan features to gain more points for that pillar.

EXECUTIVE COMPENSATION DRAFTING CONSIDERATIONS - 2021 PROXIES

COVID-19–Related Disclosures: Executive Compensation

- Disclosure of decisions to reduce board and executive compensation
- Changes to performance metrics and incentive programs for 2020
- Changes to compensation program for 2021
- Shifting grant dates
- Inability to set performance goals
- Use of non-GAAP metrics
- Noncalendar year-end filers also have addressed:
  - Lack of long- and short-term incentive plan payouts
  - Decision to eliminate company match in 401(k) plans

What Proxies Tell You About 2021

- Many companies have decided not to increase base salary for NEOs or target levels of annual or long-term incentive opportunities for fiscal year 2021.
- Performance-based equity awards: Companies are modifying how fiscal year 2021 performance will be measured.
  - Example 1: Have a 2021 annual incentive program based on the second half of 2021 only, while considering nonfinancial results from the first half of 2021 as a potential modifier.
  - Example 2: Instead of maintaining a three-year performance cycle, adopt a staged approach in measuring long-term performance, e.g., use one-year financial target for fiscal year 2021 and later separately determine a two-year target for fiscal year 2022-2023.
  - Example 3: Decide to set performance targets at a later date given the limited visibility into the future business conditions.

DISCLOSURE TRENDS FOR 2021

A Recap of "The Usual Suspects"

- **Pay Ratio Disclosure**
  - ***Remember*** – may need to re-identify median employee for 2020 fiscal year
  - Overlap with human capital management and gender pay gaps
- **Say on Pay**
  - 2020 is showing a continued trend of a risk in the percentage of SoP with support rates below 80%
- **Hedging and Pledging**
  - Emerging growth companies and smaller reporting companies will need to first comply with the SEC's hedging rules in 2021
  - ISS will flag any lack of an anti-hedging policy
  - Glass Lewis supports anti-hedging policies in order to assure alignment between management and shareholders
- **Clawbacks**
  - Reg Flex Update

SEC Guidance on COVID-19-Related Perks

- In September, the SEC Staff issued a new CDI on how to analyze COVID-related benefits for purposes of determining whether such benefits should be treated as perquisites
- The two-step analysis articulated in Release 33-8732A continues to apply:
  - An item is not a perquisite or personal benefit if it is ***integrally and directly related*** to the performance of the executive's duties
  - Otherwise, an item that confers a direct or indirect benefit and that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, is a perquisite or personal benefit unless it is generally available on a non-discriminatory basis to all employees

SEC Guidance on COVID-19-Related Perks (cont.)

- The guidance indicates that an item that may have been considered a perquisite or personal benefit in the past may not be considered as such in the context of COVID-19
- The SEC Staff provided, as an example, that enhanced technology needed to make an executive officer's home his or her primary workplace upon imposition of local stay-at-home orders would generally not be a perquisite or personal benefit
- Conversely, things like "new health-related or personal transportation benefits" to the executive, if they are not integrally and directly related to the performance of the executive's duties, may be perquisites or personal benefits, unless they are generally available to all employees

Diversity on Boards

- In early 2019, the SEC's Division of Corporation Finance issued new guidance regarding diversity characteristics of directors and Board diversity policy disclosures
- The guidance specifies that:
  - if a board or nominating committee considered diversity characteristics of a candidate and the candidate consents to the disclosure of such self-identified diversity characteristics in the proxy statement, the SEC expects to see disclosure addressing such diversity characteristics and how they were considered; and
  - The SEC staff expects that any description of diversity policies include a discussion of how the company considers the diversity attributes of nominees and what qualifications the diversity policy takes into consideration

Regulation S-K Update: Human Capital Disclosure

- In August 2020, the SEC adopted a series of amendments to Regulation S-K, including a new requirement to discuss any human capital measures
- Regulation S-K Item 101(c)(2)(ii) requires a description of human capital resources
  - Retains the requirement to disclose the number of persons employed by the company
  - New disclosure relates to any human capital measures or objectives that the registrant focuses on in managing the business (such as, depending on the nature of the registrant’s business and workforce, measures or objectives that address the development, attraction and retention of personnel)

Regulation S-K Update: Human Capital Disclosure (cont.)

- Chairman Jay Clayton issued a related statement in which he addresses a need for both qualitative and quantitative disclosures under this new requirement:
  - "I do expect to see meaningful qualitative and quantitative disclosure, including, as appropriate, disclosure of metrics that companies actually use in managing their affairs"
- Chairman Clayton's comments also provide the following guiderails:
  - ***Use of metrics*** – "in crafting their human capital disclosure, companies must incorporate the key human capital metrics, if any, that they focus on in managing the business, again to the extent material to an understanding of the company's business as a whole"
  - ***Disclosures will be heavily industry-dependent*** – "I would expect that the material human capital information for a manufacturing company will be vastly different from that of a biotech startup, and again vastly different from that of a large healthcare provider"
  - ***Parallel to COVID-19-related disclosures*** – Principles-based disclosure regime allows for flexibility; HCM disclosure could, for example, address the health and safety of employees during the pendency of the pandemic

Human Capital Disclosure: How to Implement?

- Most companies are taking a “wait and see” approach to the new human capital disclosure requirements
- Things to consider now:
  - Board oversight of HCM
  - Interplay between COVID-19 and HCM
  - Internal rates of hiring and promotions; turnover rates
  - Data on employee training and continuing education opportunities
  - Workforce health and safety data
  - Progress a company has made on its human capital objectives

Human Capital – Emerging Frameworks for HCM Disclosures

- **Embankment Project for Inclusive Capital**
  - Formed by the Coalition for Inclusive Capitalism and EY; comprised of a standardized, comparable set of nonfinancial metrics for the measurement of company activities related to long-term value *(e.g.*, talent)
- **SASB Standards**
  - One of the SASB standards includes human capital in the areas of employee health and safety; employee diversity, inclusion, and engagement; and labor practices
- **Global Reporting Initiative**
  - GRI Standards cover human capital topics such as recruitment and retention, labor and management relations, health and safety, training and education, diversity and pay equity
- **International Standards Organization**
  - ISO has a set of guidelines and metrics for human capital reporting, including diversity, organizational cultural, health and safety, recruitment and turnover, skills and capabilities

OTHER ESG CONSIDERATIONS

Corporate Sustainability and Citizenship

- More and more companies are using the proxy to message (and tout) their approach to sustainability and "good corporate citizen" initiatives over the prior year, including:
  - Overall commitment to sustainability
  - Environmental matters
  - Community engagement/social impact
  - Diversity and inclusion
- Proxy disclosure may include a list of E&S highlights
  - Ex: recycling initiatives, participation in climate change information request surveys, initiatives to reduce carbon emissions, investment in local communities through charitable giving and volunteer efforts, continuing education opportunities for rank-and-file employees
- An important component of this is board or committee oversight, and how the company is reporting externally on its corporate sustainability and citizenship efforts

ESG Frameworks – An Alphabet Soup

	GRI ***Global Reporting Institute***	**TCFD** ***Task Force on Climate-Related Financial Disclosures***	**SASB** ***Sustainability Accounting Standards Board***	**CDP Global** ***Formerly known as Carbon Disclosure Project***	**UN SDG** ***UN Sustainable Development Goals (SDGs)***
Founded	1997	2015	2011	2000	2015
Format	Modular standards that contain requirements, recommendations, and guidance	Climate-related financial disclosures to be made in mainstream annual filings within existing disclosure framework	Quantitative; includes standards by sector; focuses on materiality from a financial reporting perspective	Questionnaires within four "programs": climate change, water, forests, and supply chain	Aspirational goals, targeting 2030 for achievement
Selected Prominent Backers	CDP; Glass Lewis; IFC; ISS; OECD; Sustainalytics; UNCTAD; UNEP	Bank of England; BlackRock; Bloomberg; CalPERS/CalSTRS; Deloitte; Glass Lewis; ISS; Moody's; S&P	BlackRock; Bloomberg; CalPERS/CalSTRs; Deloitte; Glass Lewis; ISS; KKR; Moody's; Morningstar; Nasdaq	World Bank; TCFD	The UN
Prominence	Most widely-used standard; used by over 90% of the world's 250 largest companies	Supported by more than 500 companies	Standards launched in November 2018; as of December 2019, 120 companies are using the standard in their ESG disclosures	In 2019, over 8,400 companies and 920 cities, states and regions disclosed through CDP	In 2018, a KPMG analysis showed that 40% of the world's 250 largest companies discuss SDGs in their reporting (few report on all)

ESG Considerations – GAO Report

- ESG frameworks and standards continue to evolve rapidly; lack of harmonization
  - The market relies on ESG rating agencies to review and assess ESG data; hundreds of agencies
  - Each agency has a different methodology for how they rate all the underlying ESG metrics
  - Vanguard has stated that voluntary disclosure regime and the "subjective nature" of ESG ratings can lead to "inconsistencies" and "material differences" in how companies are assessed on ESG
- In July 2020, the GAO issued a report acknowledging the lack of comparable ESG disclosures
- Sen. Warner: "It is time for the SEC to establish a task force to establish a robust set of quantifiable and comparable ESG metrics that all public companies can adhere to."

Move to Standardized ESG Disclosure?

- In Summer 2020, the Carbon Disclosure Project, the Climate Disclosure Standards Board, the Global Reporting Initiative, the International Integrated Reporting Council, and the Sustainability Accounting Standards Board issued a joint statement of intent meant to address:
  - How the varying frameworks and standards can be applied in a complementary and additive way;
  - A joint perspective on how ESG metrics and reporting could how complement financial disclosures;
  - A commitment to work together and with other interested stakeholders

Move to Standardized ESG Disclosure? (cont.)

- In September 2020, the World Economic Forum (together with the Big Four accounting firms) issued a whitepaper advocating for standardized ESG reporting
- The proposed framework identifies a set of universal ESG metrics and recommended disclosures to be reflected in companies' annual reports, in a consistent matter across industry sectors
- The framework would ask companies to report under a set of 21 "core" and 34 "expanded" metrics under the following four pillars:
  - Principles of Governance;
  - Planet;
  - People; and
  - Prosperity

World Economic Forum – Four Pillars

Principles of Governance	Planet	People	Prosperity
The definition of governance is evolving as organizations are increasingly expected to define and embed their purpose at the centre of their business. But the principles of agency, accountability and stewardship continue to be vital for truly "good governance".	An ambition to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations.	An ambition to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment.	An ambition to ensure that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with nature.

Source: World Economic Forum and Big Four analysis; definitions for Planet, People and Prosperity taken from the UN's 2030 Agenda for Sustainable Development

What Is the Expectation?

- World Economic Forum
  - Encourages boards to consider the full suite of recommended metrics and disclosures
  - Recognizes that not all metrics and disclosures will be applicable
  - Concerns may relate to confidentiality, legal prohibitions, data availability, geographic idiosyncrasies or lack of materiality

2020 SHAREHOLDER PROPOSALS – WHAT HAPPENED IN 2020, AND WHAT'S TO COME

Rule 14a-8 Modernization

- On September 23, 2020, the SEC adopted amendments to modernize Rule 14a-8
- **New Eligibility Requirements**
  - Previously, a shareholder had to hold at least $2,000 or one percent of a company's securities for at least one year to be eligible to submit a proposal
  - New Rule 14a-8(b) eliminates the one percent threshold, replacing it instead with the following three levels (any of which will satisfy the ownership requirement to submit a proposal):
    - Continuous ownership of at least $2,000 of the company's securities for at least three years;
    - Continuous ownership of at least $15,000 of the company's securities for at least two years; or
    - Continuous ownership of at least $25,000 of the company's securities for at least one year

Rule 14a-8 Modernization (cont.)

- Additional Eligibility Requirements:
  - Requires certain documentation in connection with shareholder-proponent representatives
  - Requires each shareholder proponent to state that they are able to meet with the company, either in person or via teleconference, no less than 10 days, nor more than 30 days, after submission of the shareholder proposal
- One Proposal Limit
  - Under the new rule, a shareholder-proponent cannot submit a proposal while also serving as a representative with respect to a different proposal on another shareholder’s behalf for consideration at the same meeting (and vice versa)
- Resubmission Thresholds
  - A proposal will be excludable if it addresses substantially the same subject matter as the prior proposal and received the following votes:
    - Less than 5% of the votes cast if previously voted on once;
    - Less than 15% of the votes cast if previously voted on twice; or
    - Less than 25% of the votes cast if previously voted on three or more times

2020 Shareholder Proposal Trends

- There has been a decrease in the number of overall shareholder proposals in 2020 compared to 2019
  - Environmental proposals present a greater overall percentage of proposals
  - More E&S proposals have passed than any prior year
    - Anti-E&S proposals have fallen by half compared to last year
  - Governance concerns continue to drive large numbers of proposals and represent the majority of proposals passed, with overall numbers of governance proposals down slightly, but written consent and special meeting proposals up
- Majority of proposal recipients continue to be large- and mega-cap companies

Example Proposals Received

Proposal Subcategory	Sample Proposal Topics	Companies Receiving Such Proposals
Political	• Requests to disclose political spending • Report of lobbying	Abbott Laboratories, Pfizer, Citigroup
Environmental	• Reports on climate change • Cost of environmental activities • Board oversight of environmental matters	JP Morgan Chase, Amazon, UPS
Human Capital	• Reports on gender and racial pay gaps • Reports on workplace diversity and policies • Voluntary reporting regarding sexual harassment and policies regarding prevention	Alphabet, Wal-Mart, American Express, Marriott, Cigna
Governance	• Requests that the board chair be independent • Increase board diversity • Right to act by written consent • Board declassification • Proxy access	Comcast, Chevron, Amazon, Bank of America, Johnson & Johnson
Compensation	• Link executive compensation to social issues • Adoption of clawback policies	Apple, Eli Lilly & Co

Environmental Proposals in 2020

- The vast majority of proposals relating to environmental issues have been highly focused on climate change, as opposed to environmental topics such as pollution or packaging
- ISS released its Climate Voting Policy, and has indicated that it will vote for shareholder proposals for (i) information on risks faced by the issuer related to climate change or how risks are identified, (ii) information on emissions goals, (iii) requests for reductions in emissions, and (iv) information on responses to regulatory and public pressure on climate change/the research that informed issuer policy regarding climate change
- Shareholders are pushing for action and measurable carbon reduction goals rather than reports
  - Less climate-related resolutions have been withdrawn in 2020 than in 2019, indicating that proponents may have been less willing to compromise than in prior seasons

Diversity and Human Capital Management

- Human capital management has been a major focus in recent years, for investors, shareholders and the SEC
  - The SEC proposed amendments to Item 101 of Regulation S-K in August of last year to disclose human capital resources, and measures/objectives used by management if material
- In line with last year, about half of HCM proposals went to a vote, up from 22% in 2018
- Proposals at the intersection of diversity and human capital management passed with strong support at:
  - **Genuine Parts**, which saw 79% support for a proposal requesting a report on policies, performance and targets related to human capital and diversity
  - **Fastenal**, which saw 61% support for a similar proposal
  - **Fortinet**, which saw 70% support for a proposal for an annual report on diversity and inclusion efforts for protected classes of employees
- **O'Reilly Automotive** also saw a proposal regarding reporting on HCM in line with SASB standards receive 65% support

Political Expenditure and Lobbying Related Proposals

- Proposals for companies to disclose their politically-related or lobbying spending amounts or policies were quite common this year
  - There were less proposals in this space than last year (67 versus 99)
  - More political spending proposals went to a vote than last year (54 versus 63)
    - Support averaged in the mid-30% range, with strong ISS support
  - 5 received majority support
    - 8 almost received majority support

Other Social Proposals in 2020

- Proposal for a report on the governance of opioids-related risks at **Johnson & Johnson** received 57% support
  - Proposal at **Walmart** was withdrawn after it announced an opioid stewardship initiative
  - Proposal **Walgreens Boots Alliance** was withdrawn after it produced a report
- Proposals at **McDonald's**, **PepsiCo** and **Coca-Cola** for reports on sugar and public health did not receive much support
- Proposals at **Walmart**, **Costco** and **Wendy's** for reports on antibiotics in the meat supply chain received low support or were withdrawn
- Proposals at **Walmart** and **DuPont** regarding inclusion of hourly associates on the list of Board nominees and an advisory board seat for wage-roll employees, respectively, received low support
- Proposals regarding reports on human rights policies received support from the low 30% to mid 40% range, but none passed

Trends in Governance Proposals

- Successful governance-related shareholder proposals concerned, among other things:
  - Board declassification
  - Elimination of supermajority voting thresholds
  - Shareholder action by written consent
  - Shareholder rights to call special meetings
  - Independent chairs
- The most successful type of proposal was for the elimination of supermajority voting provisions, which was passed 9 times, only voted on 10 times and submitted 18 times
- Board declassification was also very successful, passing all 5 times that it was put to a vote

Trends in Governance Proposals (cont.)

- Of 37 proposals regarding shareholder rights to call special meetings that went to a vote, 5 received majority support
- Support of independent chair shareholder proposals has risen by approximately 5% from 2019
  - Despite fewer proposals in 2020, 2 proposals have produced majority votes so far, with **Baxter International** and **Boeing** voting to approve the proposals
    - Only 1 had passed in the past five years (**Rite Aid Corporation** in 2018)
  - Proposals at other companies have received significant support, ranging from mid-30% to mid-40%

Trends in Governance Proposals (cont.)

- Action by written consent proposals have been particularly widespread, representing the most common governance-related proposal, but only 2 received majority support
  - Average support was 35%, a decrease from 2019
- Shareholder proposed proxy access has not received majority support at any votes yet this year
  - First time there has not been a passing proxy access proposal since 2012
  - Reflective of year-over-year trend of this proposal decreasing in number of submissions, votes, and level of support, and broader adoption of proxy access by issuers

Compensation-Related Proposals

- Compensation-related proposals in 2020 addressed:
  - Integration of ESG metrics into compensation programs (most common for three years running)
  - Limiting accelerated vesting of equity awards upon changes in control
  - Share retention policies
  - Deferral of portions of executive bonuses with payout linked to continued performance
  - Disclosure of adjustments to compensation
  - Clawbacks
- Stock buybacks have continued to be a hot topic
  - Proposals have related to exclusion of impact of repurchases from metrics used to determine executive pay, and for shareholders to have advisory votes on buybacks
  - The prominence of this topic has been exacerbated by the COVID-19 pandemic and federal stimulus response, but proposals predate both
- Only 1 proposal, related to clawbacks at **Stericycle** passed
  - Compensation related-proposals saw average support of 23%

No-Action Relief in the 2020 Proxy Season

- In September 2019, the SEC's Division of Corporation Finance announced that it may respond to no-action requests orally, rather than with a formal letter, and that it may decline to state a view
  - Despite the revisions, it appears that the changes have had minimal impact on the percentage of proposals receiving no-action relief, or on SEC response time to a no-action request
  - Numbers have remained steady, representing approximately 70% of proposals for which no-action relief was requested
- In 2020, the Staff issued 79% of its responses to no-action requests orally
  - These responses are publicly disclosed in a spreadsheet on the SEC's website
- Of the proposals for which a decision on no-action relief has been rendered, the Staff has granted relief in 71% of cases and denied relief in 29% of cases

No-Action Relief in the 2020 Proxy Season (cont.)

- Over the last 12 months, the most common categories of shareholder proposals for which Rule 14a-8 no-action relief was sought have been:

Proposal Category	2020 Count	2019 Count	Change
Environmental / Climate Change	36	31	16%
Governance / Compensation	23	24	13%
Governance / Vote Requirements	26	27	(4%)
Social / Human Rights	26	21	24%
Social / Discrimination and Diversity	21	18	17%
Governance / Classified Boards	17	12	42%
Social / Political and Charitable Contributions	11	10	10%
Governance / Special Meetings	9	6	50%
Governance / Director Independence	8	1	700%
Social / Labor	8	2	300%

Source: Intelligize, as of July 19, 2020

Recent Developments in No-Action Requests

- In October 2019, the Staff released Staff Legal Bulletin (SLB) 14K
  - Built upon SLBs 14I and 14J regarding the “ordinary business” exception in Rule 14a-8(i)(7)
    - Purpose of exception is to keep ordinary business matters with management and the board
    - Analysis focuses on (i) (a) whether the proposal goes to matters fundamental to management’s ability to run the company day-to-day and (b) if so, whether those matters relate to significant policy issues that transcend that specific company’s daily operations, and (ii) whether the proposal “micromanages”
  - Burden of whether the proposal does not transcend ordinary business matters is on the company to prove
    - The Staff gives weight to well-developed board analysis, factors considered by the board, differences between the proposal and actions already taken by the company, and actions taken by the company if the proposal has previously been voted upon

Recent Developments in No-Action Relief (cont.)

  - Micromanagement focuses on how the proposal seeks to address subject matter of the proposal
    - Proposals with intricate details and provisions for specific acts or timelines militate for relief
- 107 no-action requests have asserted 14a-8(i)(7) as a basis for relief from the end of September 2019 to June 19, 2020
  - 37 were granted relief on that basis
    - 12 were granted relief specifically on the basis of ordinary business
    - 16 were granted relief specifically on the basis of micromanagement
  - The Staff did not concur with the bases asserted for 30 of the proposals, 20 were withdrawn, and 20 were either granted relief on a different basis or otherwise disposed of

Shareholder Proposal Trends for 2021

- Political Spending and Lobbying
  - Shareholder proposals relating to reports on and disclosures of political contribution policies and/or amount and recipients of payments made by the company to campaigns or lobbying efforts decreased in number, but have been voted upon and passed at high levels
  - Given the upcoming 2020 election, as well as a growing focus on corporate political expenditures, it is anticipated that shareholder interest in this area will continue into the next proxy season as well
    - As noted above, proposals asking for enhanced disclosure of political spending have garnered majority support in 5 votes. Support levels have tended to be in the 30-40% range
- Environmental and Sustainability Proposals
  - The quantity and success of environmentally-focused proposals will likely increase in light of ISS' new Climate Voting Policy, and the range of shareholder proposals for which it indicates support

Shareholder Proposal Trends for 2021 (continued)

- Compensation
  - In light of the low number of companies linking compensation to ESG goals and performance, and the continuing emphasis on this topic, high numbers of proposals pushing for such links will likely continue
- Increased numbers of proposals seeking to foster diversity and reports on corporate efforts to do so, and efforts to close the gender pay gap
  - This is likely to be driven by the success of the NYC Comptroller's initiative and ongoing shareholder focus on these issues
- COVID-19 Impact
  - As the majority of proposals being voted upon in the 2020 proxy session were submitted before the pandemic, the 2021 season may see more proposals related to employee health and safety, supply chain management, human rights and human capital management

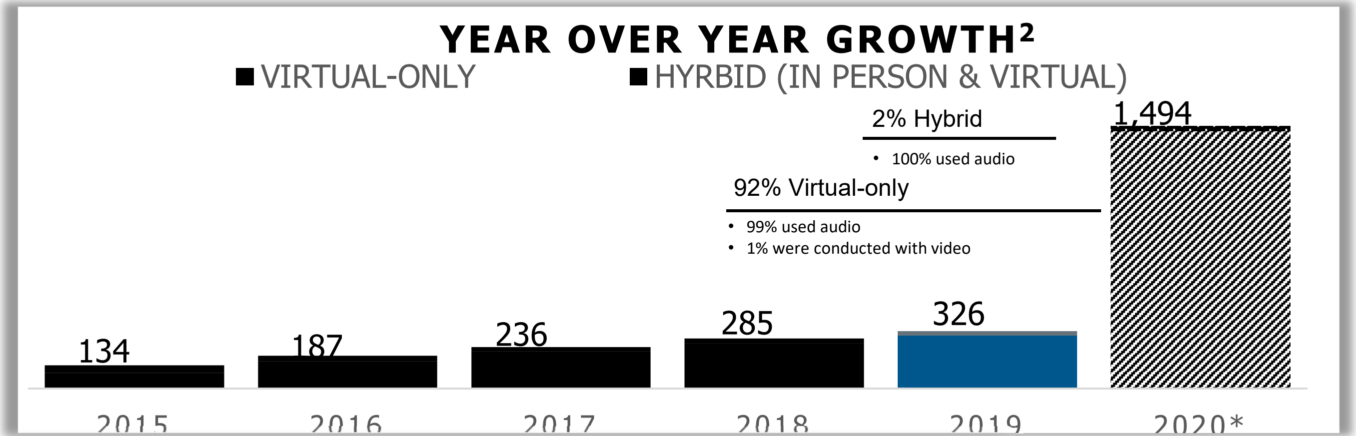
VIRTUAL SHAREHOLDER MEETING 2020 RECAP

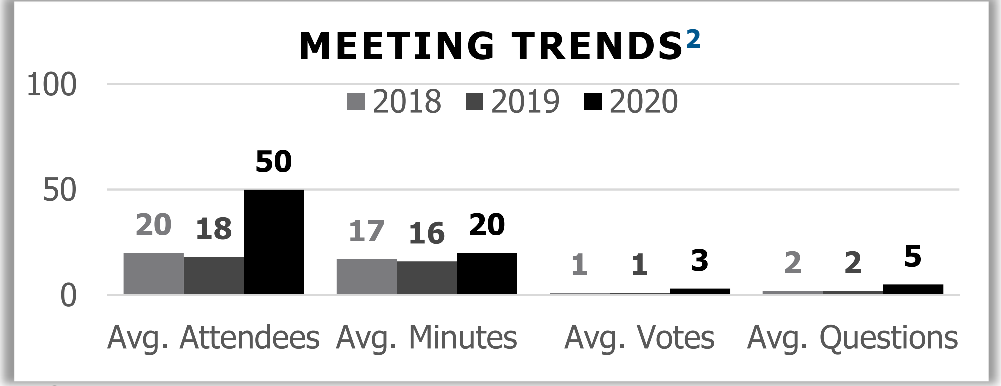
Virtual Shareholder Meetings – History

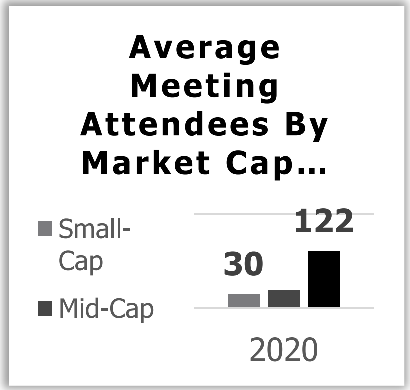
- Broadridge launched our Virtual Shareholder Meeting (VSM) platform in 2009;
  - Largest provider of VSM technology in the world having handled ~1,500 meetings for our clients
  - We expected ~400 companies to use a virtual meeting in 2020
- Most investors and other industry constituents accept a virtual meeting as an acceptable alternative to an in- person meeting
- More states allow virtual meetings than ever before, including New York, which in October, signed Assembly Bill A434 changing corporate law from prohibiting all virtual meeting formats to allowing the use of "Hybrid Virtual Meetings"
- Proxy advisors' views
  - ISS published an article in October 2019 detailing trends and acceptance of companies utilizing the VSM platform
  - For the 2020 season, Glass Lewis provided guidance that virtual meeting technology can be a useful complement to a traditional, in-person shareholder meeting by expanding participation of shareholders who are unable to attend a shareholder meeting in person (i.e. a "hybrid meeting") and as long as there is robust disclosure

2020 Virtual Shareholder Meetings Key Statistics[1]

January 1 – June 30, 2020





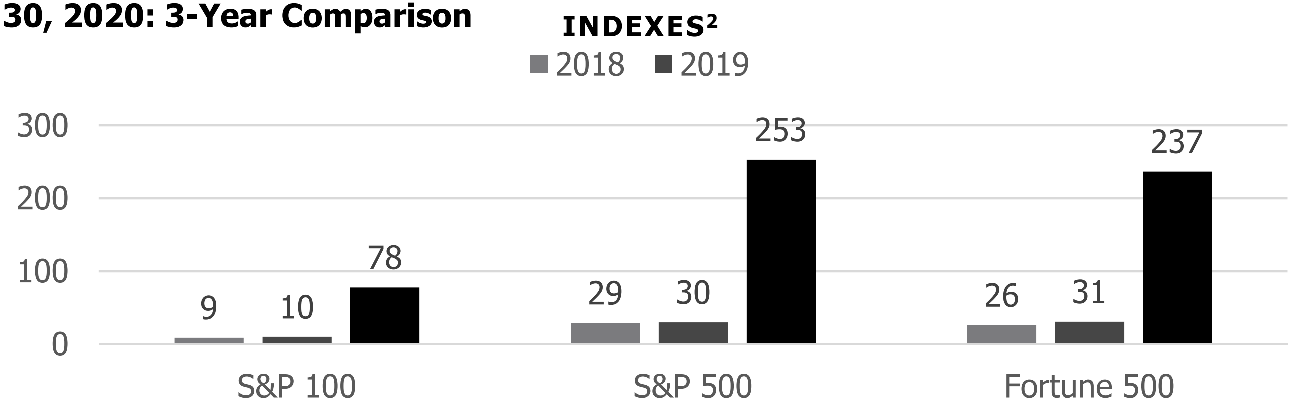


Morgan Lewis

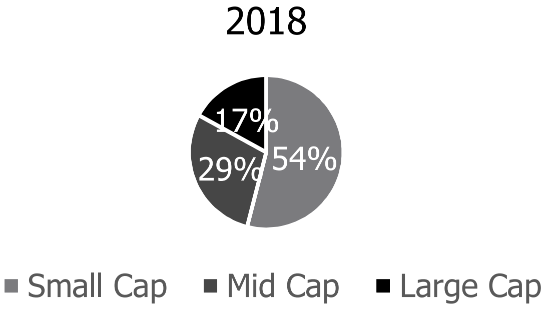
[1] Hosted on the Broadridge platform
[2] 2020 data based on meetings completed January 1 – June 30, 2020

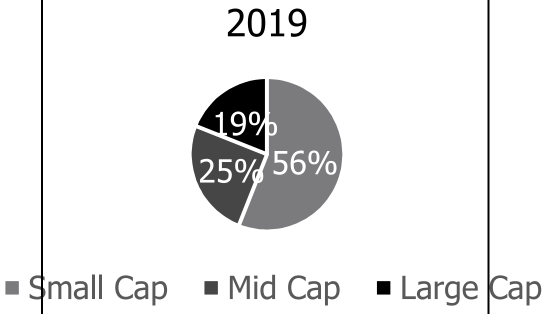
2020 Virtual Shareholder Meetings Key Statistics[1]

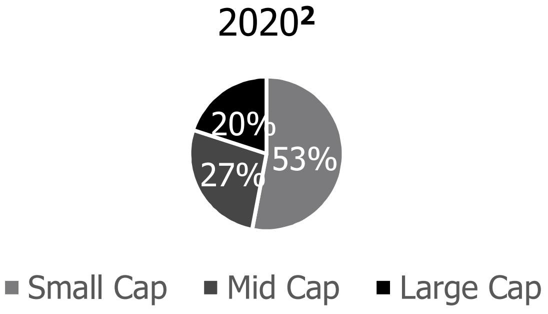
January 1 – June 30, 2020: 3-Year Comparison



MARKET CAP BREAKDOWN







[1] Hosted on the Broadridge platform

[2] 2020 data based on meetings completed January 1 – June 30, 2020

Virtual Shareholder Meeting Season 2020 Recap

- **Key metrics for ALL VSMs held between January 1 and June 30, 2020:**
  - **Total number of meetings hosted by Broadridge**: 1,494
  - **Average duration of meetings**: 20 minutes; longest meeting 150 minutes; 6 meetings over 100 minutes
  - **Average attendance**: 50 shareholders and guests; highest over 3,000; 6 with over 1,000
  - **Total attendance at Broadridge meetings**: estimated 75,000
  - **Average number of shareholders voting 'live' at the meeting**: 3; highest 178
  - **Average number of questions from shareholders**: 5; highest 316

VSM Considerations

- Most companies start by considering these factors:
  - Do our bylaws allow us to hold a virtual meeting and, if not, what will it take to amend them?
  - Does our state of incorporation allow hybrid or virtual meetings?
    - Until March 2020, 30 states allowed virtual-only meetings and 12 states (plus the District of Columbia) allowed hybrid meetings
    - Restrictions or limitations were in place in Alabama, Alaska, Arkansas, Georgia, Idaho, New Mexico, South Carolina, and South Dakota
    - Due to the pandemic, most states temporarily lifted those restrictions
  - What will our shareholders think of our decision to go virtual?
- Do we have any contentious proposals that will come up at our meeting? If so, how might the virtual format affect how the board handles these proposals or how shareholders receive them?
- For special meetings, do you need the coordination of a physical venue or can the VSM meet all objectives?

VSM Considerations (cont.)

- **When a company decides to host a VSM they must decide on the format:**
  - Hybrid versus virtual only
  - Audio versus video

Resources

- PRINCIPLES AND BEST PRACTICES FOR VIRTUAL ANNUAL SHAREOWNER MEETINGS: Recommendations from the Best Practices Committee for Shareowner Participation in Virtual Annual Meetings.
  - https://www.broadridge.com/white-paper/principles-and-best-practices-for-virtual-annual-shareowner-meetings
- OVERVIEW OF VSM 2020 MID YEAR STATICS:
  - https://www.broadridge.com/article/virtual-shareholder-meetings-2020-mid-season-report
- OVERVIEW OF VSM 2019 FACT AND FIGURES
  - https://www.broadridge.com/_assets/pdf/broadridge-virtual-shareholder-meetings-2019-facts-and-figures.pdf
- VIRTUALSHAREHOLDERMEETING.COM: A list of upcoming meetings and replays:
  - https://virtualshareholdermeeting.com

ANNUAL PROXY: CONTENT AND DESIGN TRENDS

Trends in Proxy Statement Disclosures

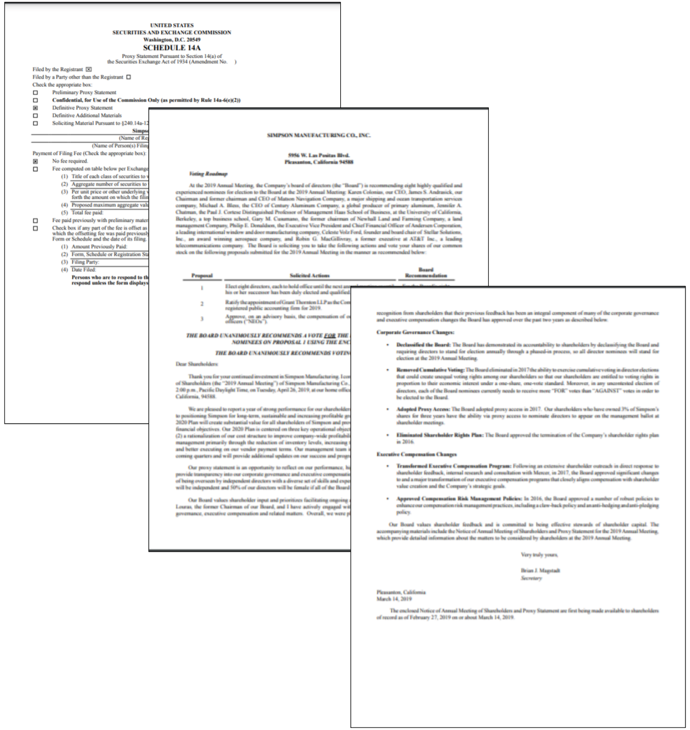
- **Many companies are addressing trending issues with additional proxy statement disclosures relating to:**
  - Covid-19
  - Environmental, Social and Corporate Governance (ESG)
  - Executive and Board Diversity
  - Gender Pay Equity
  - Lobbying Spending
- **We have undertaken surveys of industry verticals for recent proxy statement disclosures for these trending topics**
  - We are expanding our coverage of verticals, as well as a Fortune 500 "Greatest Hits"
  - Also covering 10-Ks for disclosure of the effects of Covid-19 in Risk Factors and MD&A
  - Rolling out over the next four weeks

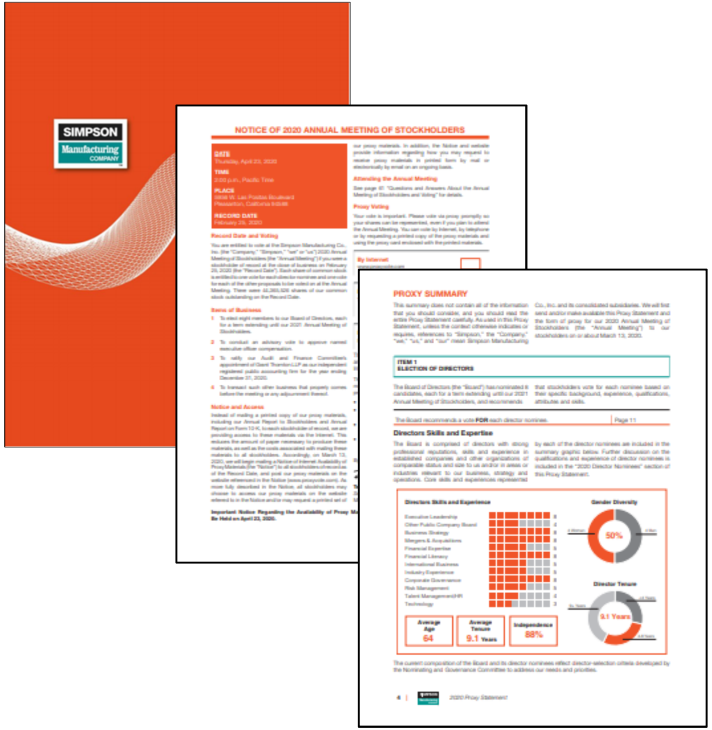
Hyperlinked Preview: Recent Proxy and 10-K Filings (non-calendar FYEs)

Company	FYE	Proxy	Date	CD&A	Covid-19	ESG	ESG 2	HCM	Gender Pay	Lobbying	VSM	10-K	Risk factors	MD&A
Performance Food	27-Jun	**	9-Oct	**	@35	@31	~	~	~	~	Y	**	**	**
SYSCO	27-Jun	**	7-Oct	**	@40	~	~	~	~	~	Y	**	**	**
CLOROX	30-Jun	**	6-Oct	**	@B-1	@30	@2	~	~	~	Y	**	**	**
DONALDSON CO	31-Jul	**	6-Oct	**	@27	~	~	~	~	~	Y	**	**	**
WESTERN DIGITAL	3-Jul	**	5-Oct	**	@32	@29	@15	~	~	~	Y	**	**	**
NEWS CORP	30-Jun	**	5-Oct	**	~	~	~	~	~	~	Y	**	**	**
AVNET	27-Jun	**	2-Oct	**	@22	@20	~	~	~	~	Y	**	**	**
CAMPBELL SOUP	2-Aug	**	2-Oct	**	~	@27	@6	@28	~	~	Y	**	**	**
CACI INTERNATIONAL	30-Jun	**	1-Oct	**	@26	@5	~	~	~	~	Y	**	**	**
PARKER HANNIFIN	30-Jun	**	28-Sep	**	@2	@5	~	~	~	~	Y	**	**	**
TAPESTRY	27-Jun	**	25-Sep	**	@5	~	~	~	~	~	Y	**	**	**
Fox Corp	30-Jun	**	23-Sep	**	@31	~	~	@17	~	~	Y	**	**	**
CARDINAL HEALTH	30-Jun	**	23-Sep	**	@4	~	~	~	~	@22	Y	**	**	**
ORACLE CORP	31-May	**	18-Sep	**	~	@29	~	~	@72	~	Y	**	**	**
CINTAS CORP	31-May	**	15-Sep	**	~	~	~	~	~	~	Y	**	**	**
Medtronic plc	30-Apr	**	14-Aug	**	@5	@7	~	~	~	~	N	**	**	**
CONAGRA BRANDS	31-May	**	13-Aug	**	@2	@5	~	@27	~	~	Y	**	**	**
FEDEX	31-May	**	10-Aug	**	@26	@24	@26	~	~	@85	Y	**	**	**
DARDEN RESTAURANTS	30-May	**	10-Aug	**	@1	~	~	~	~	~	Y	**	**	**
GENERAL MILLS	31-May	**	10-Aug	**	@1	@21	~	@17	~	~	Y	**	**	**
H&R BLOCK	30-Apr	**	31-Jul	**	@1	@1	@2	~	~	~	Y	**	@7	@24
NIKE	31-May	**	24-Jul	**	~	~	~	~	~	~	Y	**	**	**

We're tracking recent annual proxy statements and 10-K filings for select companies, expanding on what we did last season. Proxy statements typically now discuss the effects of Covid-19 in detail, including in the CD&A. Companies typically discuss effects of Covid-19 in detail in their 10-K Risk Factors and MD&A sections.

Standard vs. Enhanced Proxy





Enhanced Proxy Design

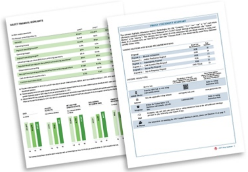
Optimize your shareholder communications with design

Make a bold statement

Easily create attention-getting covers that put your brand values front and center. Incorporate eye-catching photos that represent your business or customers. Select an existing template, or supply your own custom artwork.

Highlight key messages

Visual depictions provide a crisp and compelling way to state your case. Let shareholders see in a glance what's new and what's important. Use photos to introduce board candidates.

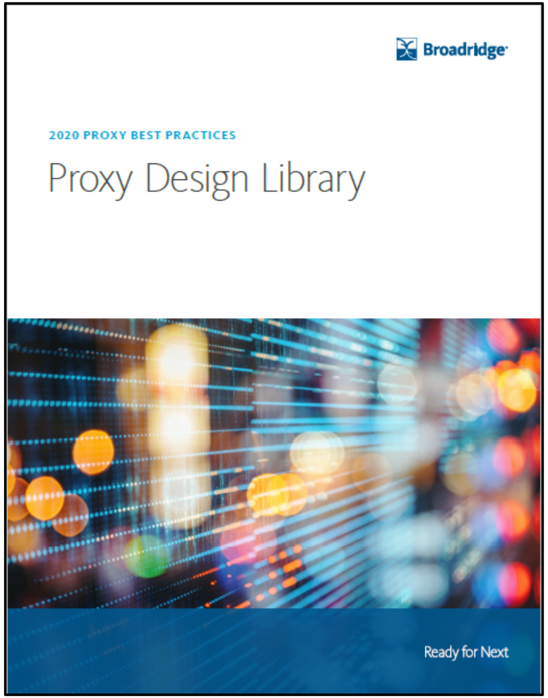


Simplify complex information

Charts and graphs make complicated data and evolving trends easy to understand. The solution offers a wide variety of formats that you can tailor to create a custom look that reflects your brand.

Proxy Design Library

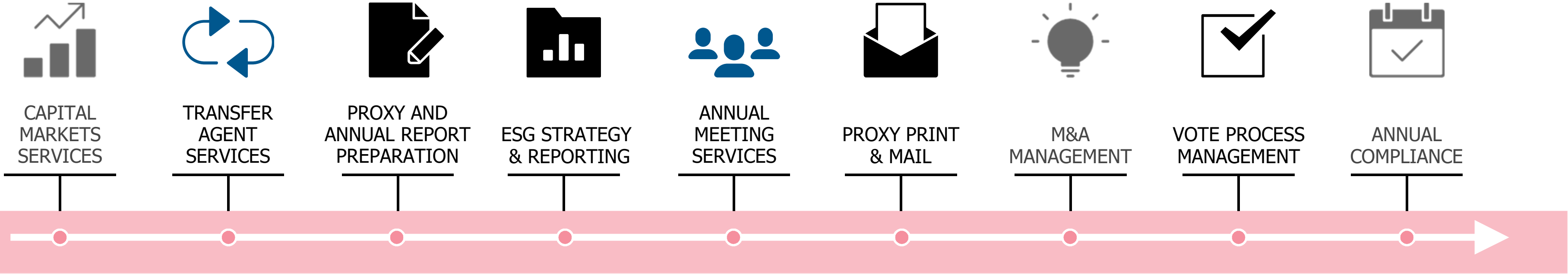
- Document Covers
- VSM Notices
- Board/CEO Letters
- Table of Contents
- Proxy Summary
- What We Do & Don’t Do
- Director Nominees
- Board Committee Skill Grids
- Diversity, Gender, Age & Tenure
- Director Evaluation Criteria
- Risk Oversight / Corporate Governance
- ESG Disclosure
- Compensation Tables



Access PDF

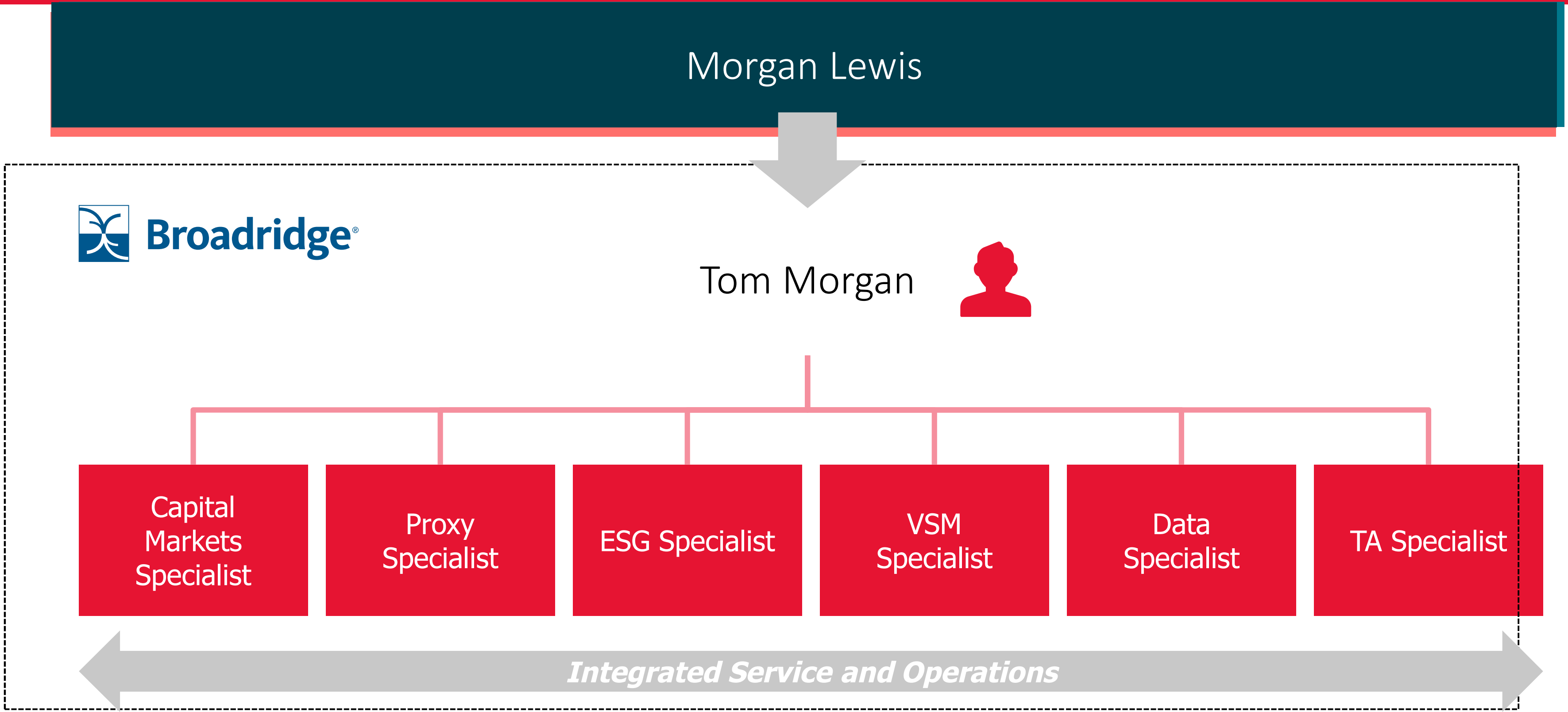
End-to-End Platform for IPO, M&A, Annual Meeting & Special Meeting

Single Source, End-to-End Solution



All deliverables managed in a single environment optimizing control of the project

Experience Backed By Expertise



Broadridge at the center of a unique network

Issuers of Securities

5,000+
CORPORATE ISSUERS

24,000+
MUTUAL FUNDS

Broadridge

1,100+
BANKS and BROKER-DEALERS

Shareholders

150,000+
INSTITUTIONAL SHAREHOLDERS

140M+
RETAIL SHAREHOLDER ACCOUNTS

<-----REGULATORY BODIES----->

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Biography

Erin Randolph-Williams is part of a team that helps clients find solutions to their employee benefits–related problems. She counsels clients on employee benefits matters, including design, implementation, and administration of cash or deferred compensation arrangements, nonqualified deferred compensation plans, and executive and equity compensation arrangements. Erin negotiates employment agreements and severance arrangements for senior executives, and advises clients on all employee benefits and compensation-related aspects of mergers, acquisitions, sales and spin-offs.

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Biography

Patrick Rehfield focuses on matters related to executive compensation, payroll tax, and employee fringe benefits. He advises private and public companies on designing and implementing nonqualified retirement plans, equity compensation plans, and executive compensation arrangements. He also counsels publicly traded companies on reporting and compliance matters involving the SEC, with a focus on proxy and disclosure issues, executive compensation, and corporate governance. He advises public and private companies on employee benefit issues in mergers and acquisitions, including executive compensation matters for senior management.

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Biography

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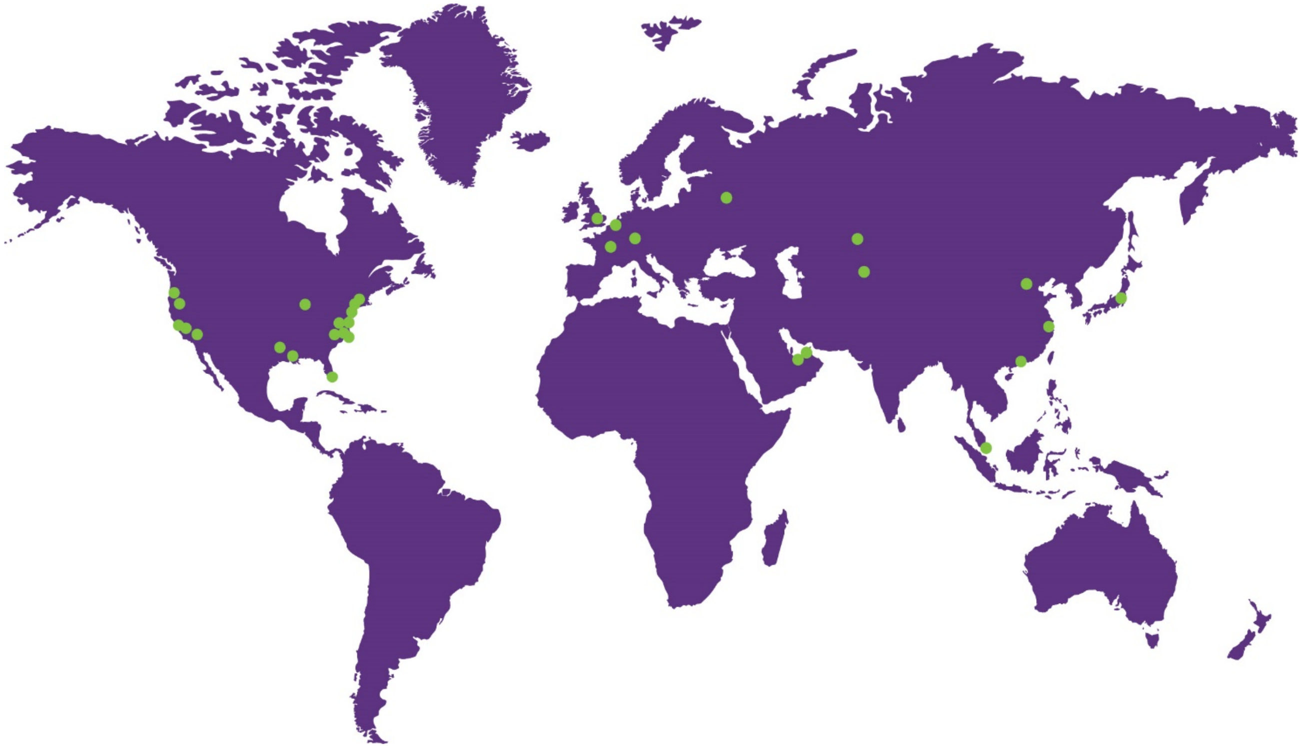
Celia A. Soehner focuses her practice on counseling public companies and their boards with respect to corporate governance, federal securities, stock exchange, shareholder engagement, and executive compensation matters. Drawing on her previous tenure as an attorney-advisor with the US Securities and Exchange Commission (SEC) in the Division of Corporation Finance, Celia has experience with securities disclosure issues that impact public companies' ongoing reporting obligations and proxy-related matters that impact public companies and their officers and directors. She also advises companies in connection with public capital raising transactions, including through IPOs, secondary offerings, and debt offerings. Celia currently serves as the deputy leader of the firm's capital markets and public companies practice.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Abu Dhabi
Almaty
Beijing*
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong*
Houston
London
Los Angeles
Miami
Moscow
New York
Nur-Sultan
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Shanghai*
Silicon Valley
Singapore*
Tokyo
Washington, DC
Wilmington



Morgan Lewis

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THANK YOU