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2020 ANNUAL MEETING POSTMORTEM

A RECAP OF TRENDS AND CORPORATE GOVERNANCE/ESG CONSIDERATIONS

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Overview

I. Proxy Season Recap – A Post-Mortem of 2020

II. Executive Compensation – Compensation Committee Considerations

III. Shareholder Proposals – What Happened in 2020, and What's to Come

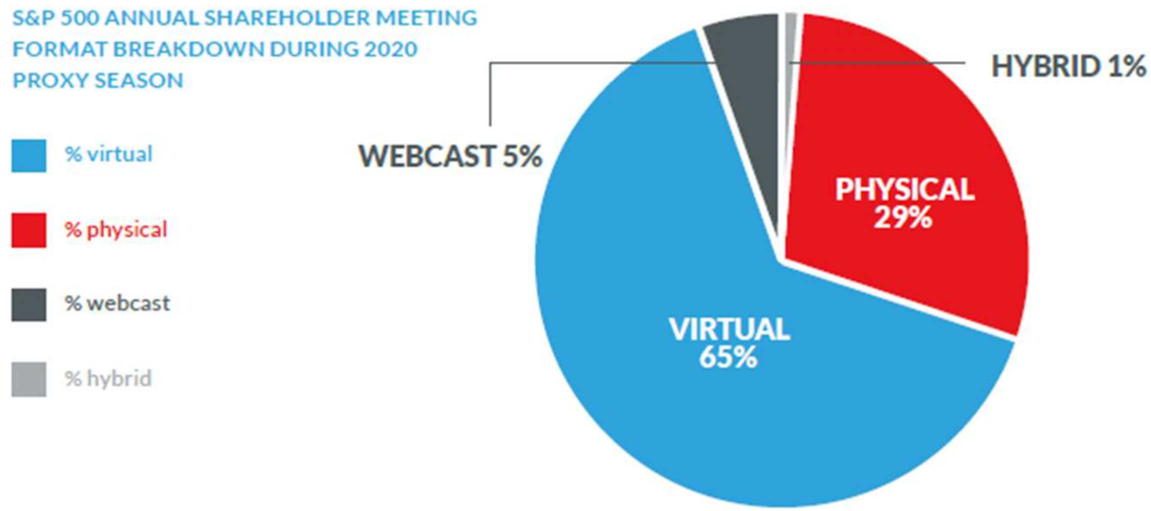
2020 PROXY SEASON RECAP – A POST-MORTEM OF 2020

Overview of 2020 Proxy Season

- The Move to the Virtual Annual Shareholder Meeting
- COVID-Related Proxy Statement Disclosures
- Quick Review of the Usual Suspects (Pay Ratio, SoP)
- Diversity and Inclusion Initiatives
- Human Capital Management and Corporate Responsibility
- Other ESG Considerations

COVID and the VSM

- In 2019, just 8% of Russell 3000 companies held virtual annual meetings
- Compare with 2020:



Source: Intelligize

COVID and the VSM – What It Looked Like This Year

The 2020 VSM

- Lack of transparency for Q&As
- Average attendance – 59 SHs and guests*
- Mostly audio-only
- Proxy plumbing issues
- Average length – 20 minutes*
- More than 2,200 VSMs held**
- Average questions asked – five*
- Hardly any online votes

*Source: Broadridge
**Source: ISS

COVID and the VSM: Legal and Governance Considerations

- In March 2020, Corp. Fin staff issued guidance providing relief with respect to certain requirements of the proxy rules for virtual and hybrid shareholder meetings due to COVID-19.
- Most states, including Delaware, permit virtual annual meetings
  - DGCL §211 provides that if the board of a Delaware corporation is authorized by its charter or bylaws to determine the place of a shareholders' meeting, the board may, in its sole discretion, determine that the meeting be held "solely by means of remote communication."
  - DGCL §211 also permits shareholders to participate in and be present and vote at a VSM if the company:
    - Takes certain reasonable measures, including verifying that each person deemed present and permitted to vote is either a shareholder or a valid proxy holder, and giving such shareholders and proxy holders the reasonable opportunity to participate in and vote at the meeting (i.e., the opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings), and
    - Maintains a record of votes and other actions taken at the meeting.

COVID and the VSM: Legal and Governance Considerations (cont.)

- Consider bylaw amendments to the extent bylaws do not explicitly permit holding a VSM
- Nasdaq-listed companies should note that while Nasdaq permits the use of webcasts instead of, or in addition to, a physical meeting, Nasdaq underscores the importance of shareholders having the opportunity to ask management questions
  - No corresponding NYSE guidance

The VSM: ISS and Glass Lewis

- Both ISS and Glass Lewis issued temporary policy updates in early April and late March, respectively, addressing the extenuating circumstances posed by COVID-19
- **Glass Lewis**
  - For companies opting to hold a VSM due to COVID-19 between March 1, 2020 and June 30, 2020, Glass Lewis indicated that generally would refrain from recommending to vote against members of the governance committee on this basis, provided that the company discloses, at a minimum, its rationale for doing so, including citing COVID-19
- **ISS**
  - For U.S. companies, no policy to recommend votes against companies that hold VSMs
  - ISS encourages companies holding a VSM to disclose clearly the reason for their decision (i.e. that it is related to the COVID-19 pandemic) and to strive to provide shareholders with a meaningful opportunity (subject to local laws) to participate as fully as possible, including being able to ask questions of directors and senior management and to engage in dialogue if they wish
  - Boards are encouraged to commit to return to in-person or "hybrid" meetings (or to put that matter to shareholders to decide) as soon as practicable

The VSM: What About Next Year?

- Stakeholders have begun to make noise about companies reverting to in-person meetings next proxy season
- The Interfaith Center on Corporate Responsibility and the Shareholder Rights group recently sent a letter to companies to push for a return to in-person meetings and a list of the following “shoulds”
  - Revert to in-person or hybrid, if public health advisories permit
  - Allow shareholder proponents flexibility, including the ability to present proposals on a virtual basis
  - Ensure meaningful Q&A sessions and mechanisms for shareholders to follow up
  - Provide live audio and video feed
  - Clear and fulsome disclosure in the proxy statement
  - Real-time webcasting of annual meeting

The VSM: What About Next Year? (cont.)

- In its recent quarterly stewardship report, BlackRock indicated that it "supports companies holding virtual only shareholder meetings, but expects the board and executive management to ensure that the meeting is conducted in a manner that enables meaningful shareholder participation"
- State Street Global Advisor president and CEO Cyrus Taraporevala recently blogged:
  - "[w]hen conducting an annual meeting virtually, we expect companies to preserve all the rights and opportunities afforded to shareholders through a physical meeting
  - Most importantly, shareholders should be able to have active and robust interactions with management and the board at appropriate times"

The VSM: Best Practices for Next Year

- Prominent, "plain English" instructions in the proxy for how to attend, vote, and ask questions
- Provide option to ask questions in advance of the meeting
- Ease of accessibility and advance notice of any requisite separate control number, legal proxy, or other information a shareholder might need to enter the meeting
- Hold the meeting at a reasonable time of day across continental U.S. time zones
- Provide instructions for technical support on every page the shareholder has to go through to get into the meeting and on the main meeting page
- Post the annual report, proxy statement, rules of conduct, and agenda on the main meeting page
- Have a prominent link to the registered shareholder list
- Real-time video of board and management participants
- Real-time closed captioning
- Keep the polls open until the end of the Q&A
- Obtain contact information for shareholders asking questions
- Allow shareholder proponents to present their proposal remotely or send a pre-recorded message
- Grant shareholder proponents a minimum of three minutes "airtime"
- Give a preliminary voting report at the end of the meeting, and post the final report on the company's website
- Announce how many shareholders attended the meeting
- Allow shareholders to ask questions live on-air
- Answer all appropriate questions that are submitted
- Post all appropriate questions on the company's website

Source: Harvard Law School Forum on Corporate Governance

COVID-Related Proxy Disclosure: HCM and Corporate Citizenship

- **Human Capital Management**
  - "Human capital management" (HCM) includes (i) diversity and inclusion; (ii) corporate culture and values; (iii) employee development, wellbeing and engagement; and (iv) compensation and non-monetary benefits
  - Interplay with COVID:
    - Addressing personnel decisions
    - Employee engagement in the time of COVID
- **Corporate Citizenship**
  - Encompasses social impact, sustainability efforts, general corporate responsibility initiatives
  - Interplay with COVID –
    - How the company has supported its community during the pandemic
    - Letter from chair/CEO

COVID-Related Proxy Disclosures: Examples

Employee Engagement
Employee-led and company-sanctioned groups of those who share similar interests that also promote ESG goals including exercise groups and, in this year of COVID-19 and uncertainty, a victory garden contest (Mesa Laboratories, Inc.)

Board Oversight
During the outbreak of COVID-19…our Board has closely monitored [our] business and response, receiving frequent updates and briefings from management who, under the leadership of our Chief Executive Officer and executive leadership team, were able to maintain business continuity, proactively act in the best interests of our business and stockholders over the short and long term, and maintain the health and safety of our most valuable asset - our employees (Change Healthcare Inc.).

Board Oversight
Regarding the COVID-19 pandemic, our management is meeting frequently to address concerns of our employees and business, as well as updating and communicating with the Board regularly. In addition to the committees' review of COVID-19's impact in the scope of their respective authorities reflected above, the Board also has oversight and has been engaged concerning the monitoring and identification of risks to the Company, and actions we are taking to mitigate risks related to this pandemic (New Relic, Inc.)

COVID-Related Proxy Disclosures: Examples (cont.)

Community Support and Corporate Citizenship

We showed our support for the military community, front-line workers, and vulnerable populations through philanthropic donations to the COVID-19 Military Support Initiative, the CDC Foundation, and Feeding America, as part of an ongoing pandemic resilience program. (Booz Allen Hamilton)

Community Support and Corporate Citizenship

As part of the Data for Good program, we partner, on a pro-bono basis, with companies who leverage data for social good. For example, we've partnered with the Truth Initiative to help fight the opioid epidemic, and more recently, with a variety of telehealth platforms to help better serve individuals during the COVID-19 crisis. (LiveRamp Holdings, Inc.)

Community Support and Corporate Citizenship

In addition to helping our customers to deliver critical medical equipment to combat the COVID-19 virus, the Company and the Flex Foundation have donated over $1 million to date. For example, as members of the U.N. Global Compact ("UNGC"), we supported their COVID-19 crisis fund with the World Health Organization and have also made donations locally to the communities where we operate. The Company also donated over 250,000 masks to hospitals and first responders (Flex Ltd.)

Shareholder Outreach

Given our commitment to the health and safety of our employees and shareholders, we elected to cancel our in-person Investor and Analyst Day in March 2020. Instead, we hosted a webcast during which Flex's executive leadership team presented an in-depth discussion regarding the Company's response to the COVID-19 pandemic, our corporate strategy update, evolution around the Company's segments, and our financial framework (Flex Ltd.)

COVID-Related Disclosures: Executive Compensation

- Callouts for 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
- Non-calendar year-end filers also have addressed:
  - Lack of long- and short-term incentive plan payouts
  - Decision to eliminate company matches in 401(k) plans

Equity Plans – What Happened in 2020?

- Unanticipated and rapid decreases in stock prices adversely impacted equity plan share reserve
  - "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
- The vast majority of companies that put up equity plans for shareholder approval have seen success so far in 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 (i.e., 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 very effective to rebut ISS's position (particularly if Glass Lewis has expressed support for the plan)

The Usual Suspects, Part 1: Pay Ratio Disclosures

- **Remember** – will need to re-identify median employee for 2020 fiscal year
- Continue to see median pay ratio levels be highly dependent on industry
  - Consumer services and retailers generally have highest ratios
  - Energy and banking tend to have the lowest
- Who cares?
  - Among S&P 500 companies, none appear to have changed CEO compensation program and policies as a result of pay ratio (or concerns relating to the same)
  - Very few companies address CEO pay ratio within CD&A
- While shareholders and the proxy advisors continue to be agnostic toward pay ratio results, note:
  - Overlap with human capital management and gender pay gaps
  - Requests from unions and pension funds requesting more detail

The Usual Suspects, Part 2: Say-on-Pay

- As in 2019 and 2018, the vast majority of companies "passed" SoP
- Despite continued overall passage rates, Equilar Inc. recently noted that approval percentages have steadily declined in recent years
- 2020 is showing a continued trend of a risk in the percentage of SoP with support rates below 80%
  - 80% is significant, as this is the level at which shareholders and proxy advisors will scrutinize compensation committee members for their oversight of the compensation program and responsiveness to investor concern
  - Equilar attributes this to:
    - Steady increase in CEO pay
    - Increased social concern around income inequality

The Usual Suspects, Part 3: Hedging and Pledging Disclosure

- The SEC rules that were finalized in December 2018 regarding disclosure of hedging policies (or the lack thereof) were first effective for the 2020 proxy season
  - Emerging growth companies and smaller reporting companies (SRCs) do not have to comply until 2021
- Item 407(i) of Regulation S-K requires companies to disclose whether employees (including officers) or directors or their designees are permitted to purchase financial instruments or otherwise engage in transactions that hedge or offset, or that are designed to hedge or offset, any decrease in the market value of a company's equity securities granted to the employee or director as compensation or held directly or indirectly by the employee or director
- ISS and Glass Lewis positions:
  - 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

The Usual Suspects, Part 4: Clawbacks

- As mandated under §954 of the Dodd-Frank Act, the SEC previously proposed rules to direct national securities exchanges to prohibit the listing of securities of issuers that have not developed and implemented a policy providing for disclosure of the issuer's policy on incentive-based compensation and mandating the clawback of such compensation in certain circumstances
- On June 30, 2020, the Office of Information and Regulatory Affairs published the new Spring Regulatory Flexibility Act Agenda; the second item on the SEC's short-term agenda was finalization of the clawback requirements

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

Diversity and Inclusion – ISS and NYC Comptroller Updates

- ISS recently sent a letter to companies asking for disclosure of the race/ethnicity of each director and named executive officer, both on an aggregate and self-identified basis
  - Indicated that this outreach is an effort to ensure the accuracy of data in research and proxy reports
- Last fall, NYC Comptroller Scott Stringer asked companies to adopt a "Rooney Rule" diversity search policy requiring that qualified female and racially/ethnically diverse candidates be included in the pool of nominees from which directors and CEOs are selected
  - An April 2020 press released issued by the Comptroller reported that they withdrew shareholder proposals at 13 of the 17 targeted companies approved and disclosed new "Rooney Rule" based policies
  - Two targeted companies adopted diversity search policies that applied to the board, but not the CEO, so the group did not withdraw the proposal
  - One of those companies was granted SEC no-action relief to exclude the proposal
  - Three companies had the proposal go to a shareholder vote, including two companies that declined to engage with the Comptroller's office to discuss the proposal; the proposal passed at one of the three companies

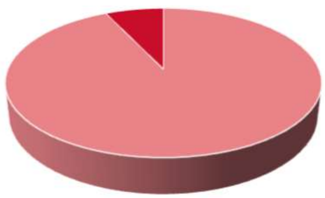
Diversity and Inclusion: Diversity Commitments

- "The real test is going to be when we come out of this pandemic and the recent crises on the racism"
  - Former PepsiCo CEO Indra Nooyi
- "Sometimes I think we convince ourselves, look, it's not really my responsibility as a CEO to opine on this or make a statement on this…oftentimes I think we might think, well, it's not going to matter, because who am I to be making comments on this? It does matter"
  - American Airlines CEO Doug Parker.
- John Streur, CEO of Calvert Research and Management, has indicated:
  - "Calvert will call on companies to provide the information required to accurately assess their racial diversity
  - Although companies are not required by law or regulation to disclose publicly the racial makeup of their board and management, they generally have this information to the extent employees have self-identified, and should make this public so investors and everyone knows where they stand on diversity
  - Additionally, Calvert will call on companies to provide pay equity disclosure across race and gender"

Diversity and Inclusion – Gender Diversity Trends

- The percentage of boards without women continues to decline, but the presence of women on boards largely depends on market cap:

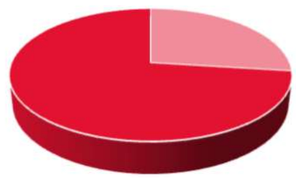
Russell 3000 Companies



- Boards with female directors
- Boards without female directors

Source: Equilar

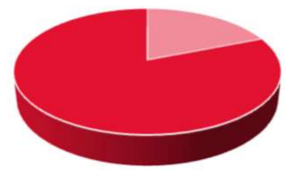
S&P 500 Companies



- Female representation on Board
- Male representation on Board

Source: Institutional Shareholder Services

Mid- and Small-Cap Companies



- Female representation on Boards
- Male representation on Boards

Source: Institutional Shareholder Services

Diversity and Inclusion – Race and Gender

7%

Women CEOs in Fortune 500 Companies*

Five

Black CEOs in Fortune 500 Companies**

4%

Black Directors among Russell 3000 Boards*

**Source: Institutional Shareholder Services*
***Source: Fortune*

Other ESG Considerations: Human Capital

- Interest in human capital management continues to be prolific due to:
  - Black Lives Matter
  - #MeToo movement
  - Heightened interest in gender pay gap & pay equity disclosure
  - Influencers like BlackRock have called out human capital management as an investment issue and are encouraging more transparent disclosure
- Two related concepts when we talk about HCM:
  - Implementing and managing policies designed to create a healthy, inclusive and respectful workplace; and
  - Providing disclosure of these initiatives

Human Capital and COVID

- Recent trend of "economic fairness" is likely to see greater traction in light of the pandemic and concerns regarding income inequity
- Business Roundtable statement:
  - "Americans deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity"
  - Asked for a commitment for corporations to invest in employees
  - "This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect"

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

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

Other 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."

Takeaways for 2020

- VSM
  - Conduct an internal post-mortem to see what worked well and what didn't
  - Consider stakeholder views and shareholder feedback; may want to incorporate additional best practices
- Diversity
  - Tone and the top is essential
  - Ensure that the annual corporate governance review includes a review of any diversity language that is included in corporate governance guidelines and/or director candidate qualifications
  - Consider whether the parallel proxy disclosure tracks policy and practice appropriately
  - Evaluate level of detail in proxy re: diversity as to board composition (e.g., gender, race, ethnicity)
  - Majority of Fortune 100 companies are using a director skills matrix to demonstrate the diversity of director qualifications

Takeaways for 2020 (cont.)

- Other Takeaways
  - Human capital management and corporate culture
  - Commitment to corporate sustainability initiatives/ESG considerations
  - Update pay ratio disclosure for 2020
  - Board evaluation process
  - Board and gender diversity (and how this translates to the recruitment process)
  - Evaluate continued appropriateness of compensation programs in light of COVID

EXECUTIVE COMPENSATION – COMPENSATION COMMITTEE CONSIDERATIONS

Compensation Committee Considerations

- 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/Long-Term Incentive Bonus

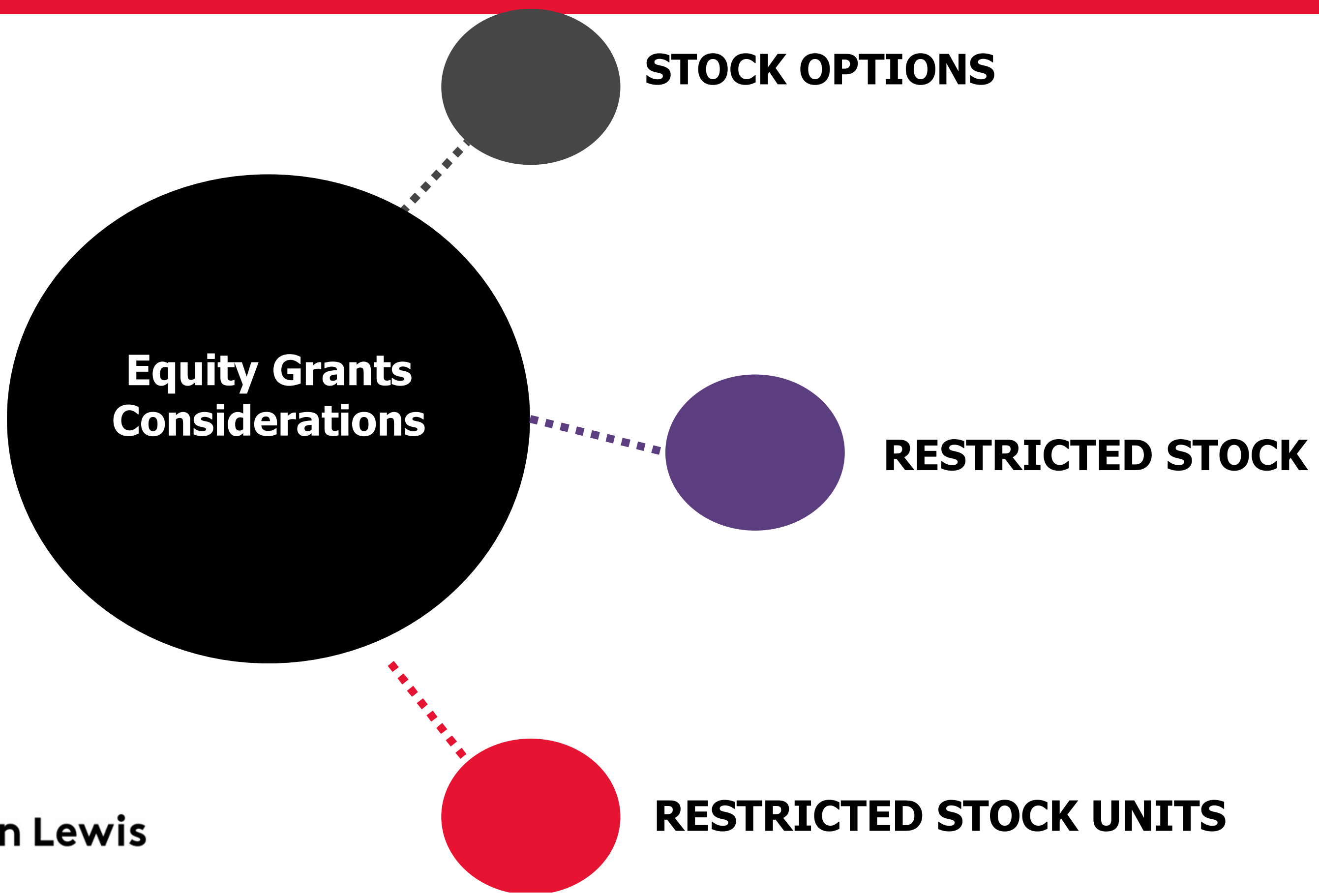
Setting performance goals

If performance goals have not been set, can typical performance goals be adjusted to take into account the pandemic's impact on the business?

Adjusting existing performance goals

Can existing performance goals be adjusted in light of the pandemic, with adjustments to performance metrics or changes to applicable goals?

Equity


STOCK OPTIONS
Equity Grants Considerations
RESTRICTED STOCK
RESTRICTED STOCK UNITS

Equity Awards Alternatives

Alternative 1:
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 2:
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).

Alternative 3:
Grant retention equity awards in situations where the performance goals of existing equity awards are unlikely to be met.

Option Repricings

01

- Shareholder Approval
- ISS Considerations

02

- Timing of Repricing
- Terms of Repricing

03

- Equity Plan

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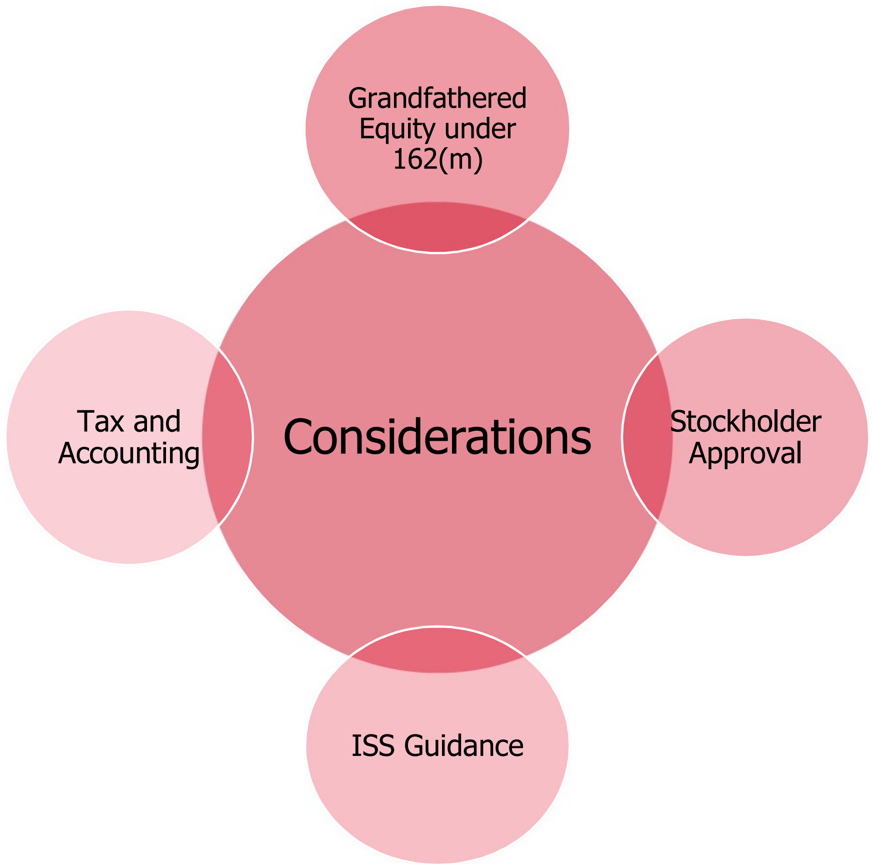
Additional Equity Considerations

- With the drop in the stock market as a result of the COVID-19 pandemic, careful consideration should be given to the amount of equity to be granted as a result of low share prices.
- Compensation committees may also consider granting additional awards to make up for the drop in share price.



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 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 bonus performance goals and equity?

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

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

YTD: Approved E&S Proposals – By the Numbers

- It has been a historic year for E&S proposals with 18 passed by mid-June, including:
  - 5 resolutions related to climate change and related risks or sustainability reports
    - Likely reflective of BlackRock and State Street support in their CEO letters published in January
    - None received majority votes in 2019
  - 5 resolutions related to human capital management
  - 5 resolutions related to political expenditures/lobbying
  - 2 resolutions related to diversity
  - 1 resolution related to public health
- Comparatively, there were a total of 12 E&S proposals passed in the entire calendar year of 2019

Source: Harvard Law School Forum on Corporate Governance: *An Early Look at the 2020 Proxy Season*

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

Environmental Proposals in 2020 (cont.)

- Proposal to report on climate change-related public health risks of petrochemical operations in climate change exposed areas passed at **Phillips 66** with 55% support, but received only 46% and 25% support at **Chevron** and **Exxon**, respectively
  - However, **Chevron** saw 54% support for a proposal for a report on how the company's lobbying activity aligns with Paris Agreement
- Proposal to report on climate change initiatives received 55% support at **J.B. Hunt**

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.)

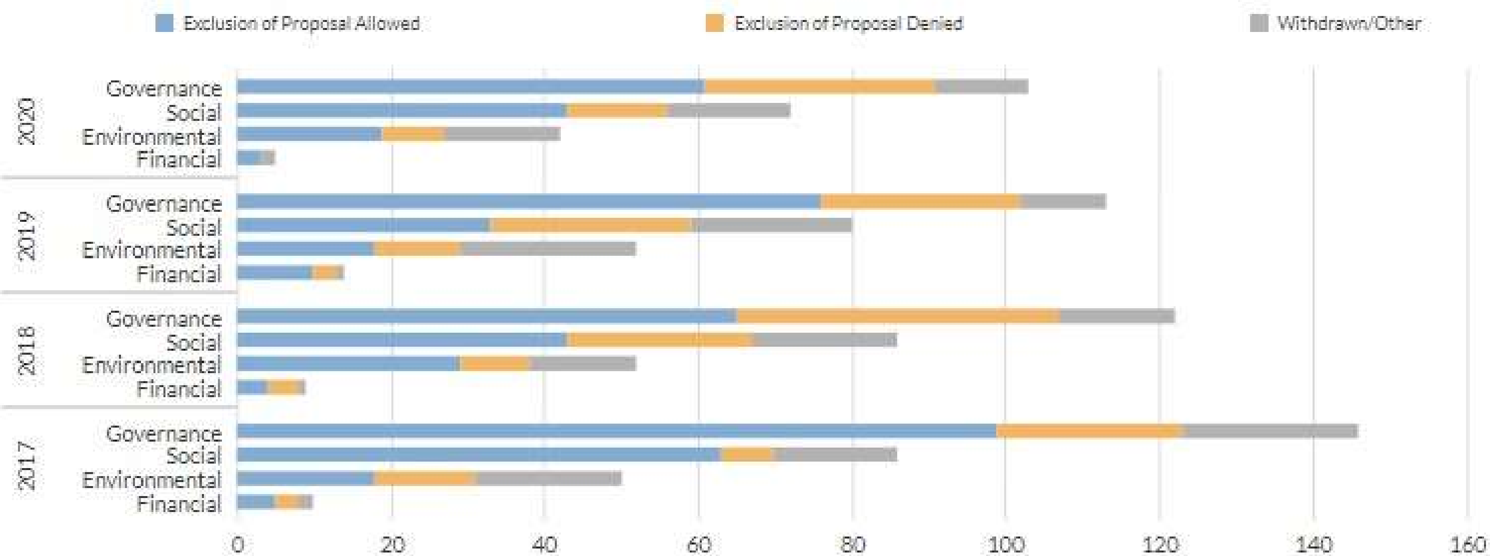
- Over the last 12 months, the most common categories of shareholder proposals for which Rule 14a-8 no-action relief was sought have been:

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

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

Request Outcome by Proposal Category



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

Status of SEC Proposed Amendments to Rule 14a-8

- In November 2019, the SEC proposed amendments to Rule 14a-8 that would revise:
  - The eligibility requirements under Rule 14a-8(b)
    - $2,000 of stock held for 3 years; $15,000 of stock held for 2 years; or $25,000 of stock held for 1 year
    - Shareholders no longer allowed to aggregate securities to meet minimum ownership thresholds
  - The one-proposal limit under Rule 14a-8(c)
    - Apply to each person rather than each shareholder (proponent cannot submit for self and as representative for another; representatives can only submit one proposal)
  - The resubmission threshold under Rule 14a-8(i)(12)
    - Thresholds of 5%, 15%, and 25% support for matters voted on 1, 2, or 3+ times in last five years (additional "momentum" requirements for 3+)

Status of SEC Proposed Amendments to Rule 14a-8 (cont.)

- Proponent must indicate availability to discuss proposal
- Changes in documentation requirements
- The proposed amendments have garnered significant attention from market participants, with some investors continuing to comment on the proposal into May 2020
- The proposed amendments to the rule have not been finalized, and we are now past the "deadline" Congressional Review Act
  - Given the upcoming election and the possibility of a new administration, the changes could be undone pursuant to the Congressional Review Act, similar to the current administration's rollback of regulations in 2017
  - Are part of the SEC's Spring Reg Flex Agenda

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

QUESTIONS?

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Celia focuses her practice on advising public companies with respect to corporate governance, federal securities laws, stock exchange and executive compensation matters. She also advises clients in connection with mergers and acquisitions and capital market transactions.

Previously, Celia served for over five years as an attorney-advisor with the US Securities and Exchange Commission (SEC) in the Division of Corporation Finance. While at the SEC, Celia worked on a number of transactional and securities compliance matters specific to large financial institutions, including bank holding companies, investment advisers and alternative investment companies.

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David represents and counsels clients in a range of matters related to employee benefit plans and executive compensation agreements. He advises on the design and implementation of tax-qualified, nonqualified deferred compensation, equity compensation, and health and welfare plans, and he helps clients draft and negotiate executive employment agreements, severance arrangements, and change-in-control arrangements. David's clients include tax-exempt organizations, and public/private Fortune 500 and emerging growth companies in the technology and life sciences fields.

David also represents benefit plan sponsors in audit and corrective action matters before the IRS, counsels plan sponsors and committees on ERISA fiduciary matters, and advises on matters related to the IRS code (IRC), including Section 409A.

As part of an active pro bono practice, David has helped entities file with the IRS for tax-exempt status under Section 501(c)(3) of the IRC. He is also an adjunct professor at Villanova University, where he teaches executive compensation planning during the summer session.

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Leland counsels public companies on the federal securities laws and corporate governance. Before joining Morgan Lewis, Leland served the US Securities and Exchange Commission (SEC) for five years as an attorney-adviser in the Division of Corporation Finance, where he reviewed transactions including securities offerings, acquisitions and divestments, as well as periodic reports and proxy statements.

While at the SEC, Leland also served as a member of the Rule 14a-8 Shareholder Proposal Taskforce in the Division of Corporation Finance's Office of Chief Counsel, where he considered various rationales presented by public companies to exclude shareholder proposals from their proxy materials. He also served in the Office of Disclosure Standards, which critically evaluates the Division of Corporation Finance's filing review program for quality and consistency, and tests the Division's internal controls and procedures.

In addition to working at the SEC prior to joining Morgan Lewis, Leland taught at the Georgetown University Law Center as an adjunct professor of law. He instructed foreign-trained attorneys on American common law jurisprudence, efficient research methods and legal analysis. He also previously served as a C.V. Starr Lecturer of Law at the Peking University School of Transnational Law in Shenzhen, China, where he taught deal documentation, contract drafting, and legal research and writing.

Our Global Reach

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San Francisco
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Tokyo
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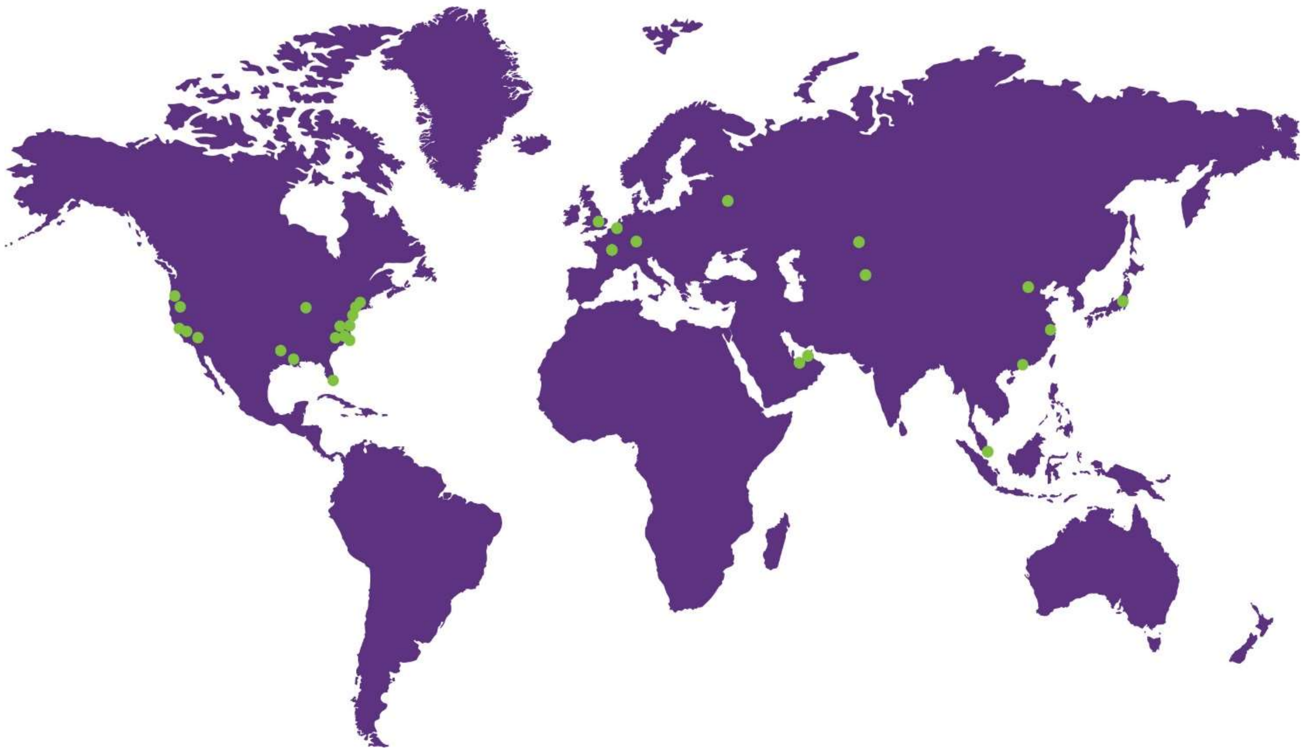
Wilmington



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