Securities Regulation and Compliance Alert

Skadden

Skadden, Arps, Slate, Meagher & Flom LLP

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Planning for the 2014 Annual Meeting and Reporting Season

As companies plan for the 2014 annual meeting and reporting season,[1] we have once again compiled an overview of the corporate governance, executive compensation and disclosure matters that we believe companies should consider. Some of the matters covered below are requirements based on new rules and others are recommendations based on 2013 developments, our experiences advising public companies and lessons gleaned from the 2013 proxy season. Items discussed below will not apply equally to all companies. Whether a particular item applies and how a company should address it will depend on, among other things, the company's business, shareholder base, and executive compensation plans and programs. We also urge companies to consult with internal and external advisors as early in the process as possible in order to make the most appropriate decisions with respect to their corporate governance and executive compensation programs and related disclosures.

☐ **Incorporate lessons from 2013 say-on-pay results.** There are a number of lessons that companies can learn from the say-on-pay results in the 2013 proxy season. The overall breakdown of the results for the season were approximately as follows:[2]

- 73 percent of say-on-pay proposals passed with more than 90 percent support;
- 12 percent passed with between 80 and 89 percent support;
- 6 percent passed with between 70 and 79 percent support;
- 3.5 percent passed with between 60 and 69 percent support;
- 2.5 percent passed with between 50 and 59 percent support; and
- 3 percent (56 companies) obtained less than 50 percent support.

While these percentages are not substantially different than 2012 results, companies generally received slightly higher levels of support, with companies that had the lowest levels of support in 2012 seeing particularly large year-over-year increases. Interestingly, more

[1] The deadlines for annual reports and related proxy statements to be filed with the SEC are set forth below. Other information regarding 2014 SEC filing deadlines is included on the back page of this memorandum.

SEC Filing Deadlines for Year Ended December 31, 2013		
March 3	10-K Large Accelerated Filers	60 days after fiscal year-end
March 17	10-K Accelerated Filers	75 days after fiscal year-end
March 31	10-K Non-Accelerated Filers	90 days after fiscal year-end
April 30	Definitive proxy statement (or information statement) if Part III of Form 10-K incorporates by reference information from proxy statement	120 days after fiscal year-end
April 30	20-F Filers	120 days after fiscal year-end

[2] Numbers reflect results at Russell 3000 companies. Percentages follow the (For/(For + Against + Abstain)) formulation and have been rounded to the nearest .5 percentage.

than 80 percent of the companies that had failing votes in 2012 had passing votes in 2013 and more than 80 percent of companies that had failing votes this year passed in 2012. The year-to-year change in voting results underscores the importance of maintaining a constant focus on potential issues in this area.

"Enhancing previous shareholder outreach programs is particularly important when a company's 2013 say-on-pay proposal failed or passed without strong support."

As an initial step, we recommend that companies analyze any reports issued by ISS, Glass Lewis or any other proxy advisory firms. These reports can help companies better understand the concerns of the advisory firms, and companies should consider whether identified concerns can and should be addressed. Similarly, companies should conduct a post-mortem of their 2013 shareholder engagement efforts to assess shareholder feedback on executive compensation and other issues and whether to address any concerns raised by shareholders. Companies also should assess whether those outreach efforts were appropriate or should be expanded or enhanced. Enhancing previous shareholder outreach programs is particularly important when a company's 2013 say-on-pay proposal failed or passed without strong support. ISS, Glass Lewis and institutional investors expect that companies in these situations will focus on shareholder outreach efforts, respond to concerns raised and include a detailed description of those efforts in the next proxy statement.

It also may be helpful for companies to consider the areas that appear to have driven proxy advisory firms to recommend a vote against say-on-pay at other companies, including:

- a "pay for performance disconnect" (as calculated using the advisor's methodology);
- an emphasis on time-based equity award grants rather than performance-based grants;
- retention bonuses and "mega" equity grants;
- performance goals deemed to be insufficiently challenging;
- insufficient shareholder outreach and/or outreach in which the compensation committee is not directly involved;
- termination and severance payments to an outgoing CEO, particularly in the case of a "friendly" termination (such as a termination characterized as a retirement or where the individual remains on the board);
- "make-whole" payments and grants to a new CEO to decrease the money "left on the table" by the individual in leaving the prior employer;
- severance payments that could (based on the advisor's calculations) result in the multiple of compensation being greater than three; and
- bonuses that are not solely determined by a formula based on achievement of pre-specified performance criteria.

Although any changes to executive compensation programs should be a function of the company's particular circumstances and its ability to attract, retain and incentivize management, an analysis of the advisory reports, the feedback received from shareholders and concerns raised by advisory firms regarding compensation programs more broadly, may inform whether changes to executive compensation plans and programs, and/or the related disclosures regarding those plans and programs, should be considered. In some cases, the interests of the company and its shareholders may best be served by making a decision that is contrary to the views expressed by certain shareholders or proxy advisory firms. Even if changes are not made in response to concerns raised, companies should consider including in the 2014 proxy materials a description of the concerns, as well as disclosure that the concerns were reviewed and considered and, if appropriate, an explanation of why changes were not made.

Many companies in the 2013 proxy season attempted to rebut recommendations from advisory firms by issuing additional proxy soliciting materials. The responses included in these additional proxy materials are a helpful source of information for companies to preemptively address known advisory firm concerns and to make effective decisions with respect to 2014 compensation matters. Some ideas to consider include:

Accuracy of Compensation Arrangement Descriptions. A number of companies asserted that the proxy advisory firms had made mistakes regarding the terms and parameters of compensation arrangements, particularly in the case of incentive compensation plans. While each situation has its own unique characteristics and context, the fact that this issue was raised by multiple companies is a reminder that when drafting proxy disclosure with respect to complex arrangements, it is critical to be exceptionally clear and to have the disclosure carefully reviewed by multiple parties to check for overall comprehensibility. The use of charts and graphics can be useful in this regard. It also is important to review carefully the advisory firms' descriptions of the company's compensation arrangements for factual accuracy.

Peer Groups. Following the 2012 proxy season, ISS and Glass Lewis each indicated that it would be making changes to the methodology by which it determined peer groups. It was anticipated that this would result in advisory firm peer groups and company peer groups becoming more aligned. While the initial wave of supplementary filings by companies in response to negative ISS recommendations in 2013 did contain fewer complaints about peer group methodology, there was an uptick in companies' supplemental filings addressing peer group concerns as the season evolved. Criticisms of ISS and Glass Lewis peer group methodologies include:

- the use of revenue to choose peers when other measures (such as market capitalization) would be more relevant, at times resulting in peer groups in which not a single peer was in the same market capitalization range;
- excluding peers in the company's geographical area, when that is the area within which the company competes for talent (and/or not taking into account that the geographical area in question has an unusually high cost of living);
- inclusion of many companies not in the subject company's industry (although this particular complaint has been less common than in last year's proxy season); and
- differences between the peer groups constructed by ISS and Glass Lewis, with several companies indicating that they viewed the peer group constructed by Glass Lewis as being more appropriate.

Companies should consider providing detailed information regarding their peer-selection process, in order to provide meaningful context for shareholders to make decisions regarding say-on-pay proposals.

Stock Options. As with last year's supplemental filings, companies continued to express frustration that ISS does not consider stock options to be "performance-based compensation" (absent a performance-based vesting schedule), despite the fact that no value can be received with respect to a stock option unless the stock price increases.

Bonus Awards. Some companies defended their use of bonus awards that were not completely formulaic, noting that at times it is reasonable and/or more appropriate to permit the compensation committee to adjust bonuses in ways that are sensitive to factors that cannot be adequately captured in a formula.

Proxy Advisory Firm Policy Changes. At least one supplemental proxy filing last year noted that an ISS policy change caused previously acceptable practices (such as entering into pre-IPO excise tax gross-ups with a limited term) to transform into unacceptable practices, thus generating a negative recommendation that could not have been anticipated at the time the compensation arrangements were entered into. If a policy change by one of the advisory firms could have a negative impact, companies should highlight the issue and describe what steps, if any, the company has taken to address the issue going forward.

Pension Value Increases. Finally, at least one company expressed concern about pension value "increases" based almost entirely on interest rate changes being treated as a true increase in pay. While it may not affect the ultimate view of advisory firms as to the characterization of the increase, companies should consider explaining these types of "artificial" increases with clarity and specificity in public disclosures.

Companies also should be mindful of an ISS U.S. voting policy change for 2014 that will become effective for shareholder meetings taking place on or after February 1, 2014. The change relates to ISS's pay-for-performance quantitative screen. ISS uses several pay-for-performance metrics to gauge the alignment between executive compensation and performance. ISS's Relative Degree of Alignment (RDA) measure compares a company's total shareholder return (TSR) rank with its CEO total pay rank within the company's peer group over a one-year period (weighted 40 percent) and a three-year period (weighted 60 percent). ISS is eliminating the stand-alone, one-year timeframe and will compare compensation and TSR over three years (thereby not "double counting" the one-year results) for purposes of its pay-for-performance quantitative screen. Companies should consider whether this policy change might impact ISS's recommendation and take steps, if possible, to avoid the perception of a disconnect.

More generally, we also recommend that companies consider whether their proxy materials could be revised to more effectively communicate the company's executive compensation plans and programs. In the last few years companies have incorporated useful features into the executive compensation disclosures in their proxy statements. These features have included charts, graphs and other reader-friendly tools to achieve maximum clarity of the company's message. A number of companies also have included a summary section in the proxy statement. These summaries generally are included in the beginning of the proxy statement and highlight key points about the disclosures, such as the date, time and location of the meeting, the agenda for the meeting, the nominees to the board (including summary biographical information for each nominee), business highlights and key compensation elements, features and decisions.

As there are a number of individuals, including representatives from legal, human resources, finance, stock administration and other departments, as well as external legal counsel, compensation consultants and accounting firms, that may be necessary to involve in the preparation of proxy materials, it is important to begin the proxy drafting process as early as possible.

> "Reporting pursuant to the SEC's conflict minerals disclosure rules begins in 2014."

☐ **Prepare for new Form SD (Specialized Disclosure) filing requirements.** Reporting pursuant to the SEC's conflict minerals disclosure rules begins in 2014. These new rules will require public companies that manufacture or contract to manufacture a product in which gold, tin, tungsten or wolframite (collectively referred to as "conflict minerals") are necessary to the functionality or production of the product to conduct diligence regarding the use and source of those minerals and to report certain information on a new Form SD filed pub-

licly with the SEC.[3] The first Form SD is due by May 31, 2014 and will include information regarding calendar year 2013 — regardless of whether the company reports its fiscal results on a calendar-year basis.

A number of key implementation issues have been raised as companies consider whether they will need to report information pursuant to the conflict minerals disclosure rules. Those issues include identifying a company's products for purposes of the rules and determining whether a company contracts to manufacture items viewed as products. Companies also are struggling with the level of due diligence that is required to support the reasonable country of origin inquiry that certain companies must conduct pursuant to the rules. For instance, attempts to get information from suppliers about the origin of minerals have not been as successful as companies originally had hoped. Companies will need to assess what additional steps should be taken to address low supplier responses and, thereafter, whether all the steps taken properly support a good-faith determination about the application of the rules.

Although the conflict minerals disclosure rules remain the subject of a legal challenge in the federal courts in Washington, D.C., we do not recommend that companies wait for a reprieve from reporting under the rules. Companies should assess the impact of the conflict minerals disclosure rules as early as possible. If a Form SD will need to be filed, companies should consider the procedures that will need to be performed and whether outside advisors — lawyers, accountants or other consultants — may be helpful to the process. Because all companies that are obligated to do so will first have to file a Form SD by May 31, 2014 and, therefore, it is unlikely that examples of Forms SD will be available much before the filing deadline, advisors may be able to provide particularly helpful guidance. We also recommend that initial drafts of the disclosures to be provided in the Form SD and the potential conflict minerals report that may need to be filed on the Form SD be prepared and shared with relevant company personnel well before the May 31 filing deadline. Finally, we recommend that companies be mindful of any further guidance the SEC or its staff may provide regarding the rules. Although the SEC provided some guidance in the release it issued when it adopted the conflict minerals disclosure rules and the SEC staff issued answers to some frequently asked questions,[4] there are still a number of difficult questions on the conflict minerals rules that companies remain hopeful the SEC will answer.

At the same time that the SEC adopted the conflict minerals disclosure rules, it also adopted the resource extraction issuer disclosure rules required by the Dodd-Frank Act. The rules would have required resource extraction issuers to disclose, also on Form SD, certain payments made by the issuer, a subsidiary of the issuer or another entity under the issuer's control to foreign governments or the U.S. federal government for the purpose of the commercial development of oil, natural gas or minerals. These rules currently are not in effect. On July 2, 2013, the U.S. District Court for the District of Columbia vacated the resource extraction issuer disclosure rules. The court remanded the rules back to the SEC, which is now reportedly considering revisions to the rules.

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[3] Additional information about the conflict minerals disclosure rules is available on our website at: http://www.skadden.com/newsletters/SEC_Adopts_Conflict_Minerals_Rules.pdf.

[4] An overview of the SEC staff's guidance on the conflict minerals disclosure rules is available on our website at: http://www.skadden.com/insights/sec-staff-issues-conflict-minerals-resource-extraction-payments-disclosure-guidance.

The SEC staff's guidance is available on the SEC's website at: http://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm.

☐ **Ensure compliance with revised listing standards related to compensation committees and advisors.** In early 2013, the SEC approved the revised listing standards adopted by the New York Stock Exchange (NYSE) and the Nasdaq Stock Market (Nasdaq), which largely track the SEC's rules requiring the exchanges to revise their standards as mandated by new Exchange Act Section 10C(c)(2). The revised listing standards address:

- enhanced independence requirements for compensation committee members;
- the authority and responsibility for the selection, compensation and oversight of advisors to the compensation committee; and
- factors to be considered in evaluating the independence of advisors to the compensation committee.

> "Companies must comply with the exchange listing standards' provisions regarding enhanced independence of compensation committee members by the earlier of the company's first annual meeting after January 15, 2014, or October 31, 2014."

Companies were required to comply with the exchange listing standards relating to authority of the compensation committee to retain advisors and review the independence of advisors to the committee under the factors set forth in the standards commencing July 1, 2013. Companies must comply with the exchange listing standards' provisions regarding enhanced independence of compensation committee members by the earlier of the company's first annual meeting after January 15, 2014, or October 31, 2014.

In light of these deadlines, companies that are required to comply with the exchange listing standards and their compensation committees should ensure that their practices and procedures comply with the revised listing standards. Nasdaq companies will be required to certify to Nasdaq, no later than 30 days after the applicable deadline (the earlier of their first annual meeting after January 15, 2014 or October 31, 2014), that they have complied with the new compensation committee rules. While there is no new NYSE certification requirement, NYSE-listed companies will continue to provide annual written affirmations certifying compliance with the NYSE corporate governance listing standards.

Nasdaq-listed companies should note that Nasdaq recently proposed further revisions to its enhanced independence requirements for compensation committee members. In November 2013, Nasdaq proposed a revision to the listing standard so, like the equivalent NYSE provision, a member of the compensation committee of a Nasdaq-listed company is required to qualify as an independent director under Nasdaq's general standards on director independence and the board of directors of the listed company is required to affirmatively determine the independence of compensation committee members considering all factors "specifically relevant to determining whether a director has a relationship to the Company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member."[5] This change would remove the current bright-line test that restricts compensation committee members, similar to audit committee members, from accepting directly or indirectly, any consulting, advisory or other compensatory fees from the listed company or any subsidiary of the company. The factors that the board would need to consider when determining the independence of compensation committee members include the source of director's compensation, including any consulting, advisory or other compensatory fees paid by the listed company to the director, and any affiliate relationship with the listed company. These new revisions are expected to be in effect shortly and to apply for the 2014 proxy season.

[5] A copy of Nasdaq's rule amendment filing is available at: http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2013/SR-NASDAQ-2013-147.pdf.

Companies should ensure that any director and officer questionnaires used to solicit information needed to comply with SEC reporting and stock exchange listing requirements capture the expanded listing requirements for compensation committee members and advisors to the compensation committee. For instance, it may be helpful to seek information about any relationships compensation committee members have with compensation consultants, legal counsel and other advisors.

☐ **Evaluate potential impact from compensation-related litigation.** In 2012 and 2013, there was a wave of lawsuits alleging breaches of fiduciary duties by management and directors in connection with compensation-related decisions. These lawsuits involved generic allegations of inadequate proxy disclosure with respect to compensation-related proxy proposals (typically say-on-pay proposals and proposals to increase the number of shares reserved under equity compensation plans) and sought to enjoin the company's annual meeting until supplemental disclosures were made. While "investigations" have continued to be announced by law firms specializing in this type of litigation, there has been a slowdown in reported litigation activity arising from those investigative efforts.

There also was a "third wave" of lawsuits that do not seek to enjoin a shareholder vote, but rather to challenge compensation decisions that already have been made. These cases often involve claims that a company has failed to meet the requirements of Section 162(m) of the Internal Revenue Code by, for example, granting awards in excess of a plan's stated per-person limits or failing to get reapproval of performance goals every five years. At least one company that had exceeded the per-person limit in its equity award plan voided the grant in question and then sought shareholder approval for an increase in the annual per-person limit under the plan, postponing the annual meeting to provide additional time for the proposed increase to be considered (and ultimately approved) by shareholders. Similar rescissions of grants by other companies occurred, which in many cases are thought to have been made in response to threats of litigation. As companies prepare for their next round of equity grants, we encourage them to monitor any equity grant activity carefully and to involve internal counsel and equity specialists, as well as external advisors, to maintain compliance with all relevant laws and the terms of the company's plans and arrangements.

Although there is no single approach to avoiding these lawsuits, companies should be aware of this threat of litigation and determine whether proactive disclosure with respect to any equity compensation plan proposals may be warranted. For example, several of these lawsuits allege that the dilutive effect of the equity plan proposal under consideration was not properly disclosed, an allegation that may be addressed via more fulsome disclosure regarding the dilutive impact of a requested increase in the number of shares reserved under an equity compensation plan. As always, companies also should pay particular attention to the requirements of Regulation S-K Items 402 and 407, Schedule 14A Item 10 and IRC Section 162(m) (additional information about compliance with these provisions is provided below) to ensure full compliance with these rules.

☐ **Confirm impact of swaps clearing rules and the need for the end-user exception.** The Dodd-Frank Act and new Commodity Futures Trading Commission (CFTC) rules require that, subject to certain exceptions, swap counterparties clear swaps at a clearing house and execute them on a facility or exchange. One of the exceptions is the "end-user exception," which may be available for companies that are not "financial entities" and that use swaps to manage risk. There are several requirements that these entities must meet in order to rely on the end-user exception. For public companies, these include taking certain governance steps that involve board-level approval of the company's use of uncleared swaps and review of company policies on swaps.

The CFTC clearing requirements applicable to non-financial entities went into effect on September 9, 2013. Accordingly, companies should ensure they are taking appropriate steps to comply with the new mandatory clearing rules for certain types of swaps unless an exception (such as the end-user exception) is available.[6]

"Companies should prepare for another season of proposals submitted by institutional investors, activists and other special interest shareholders for inclusion in company proxy materials for the annual shareholder meeting."

☐ **Prepare for shareholder proposals.** Companies should prepare for another season of proposals submitted by institutional investors, activists and other special interest shareholders for inclusion in company proxy materials for the annual shareholder meeting. As in the past, we expect these shareholder proposals to focus on corporate governance, executive compensation, and social and environmental matters.

The hottest shareholder proposal topics in 2014 likely will be political contributions and lobbying expenditures. Interested parties, like the nonprofit Center for Political Accountability (CPA), continue to support shareholder proposals that request companies disclose indirect political spending, such as trade association dues that went toward political activities and information about companies' lobbying expenditures. We expect that shareholders will continue to make these requests during the upcoming proxy season. Despite the popularity of these proposals, however, many of them fail to receive majority support (averaging less than 35 percent). Companies that believe they may be the target of interest concerning disclosure of political and/or lobbying spending should consider taking measures to address these concerns. Best practices in this area include adopting or revising stand-alone political and/or lobbying spending policies and amending appropriate board committee charters to delineate specifically the responsibility for analyzing and determining which political and/or lobbying activities, if any, the company will engage in. It also may be prudent for companies to consider the CPA's 25 indicators when taking steps to implement these measures.

Another shareholder proposal topic that has received much attention the last two years is proxy access. Proxy access would allow qualifying shareholders to nominate a limited number of director candidates and have those candidates appear in company proxy materials alongside the board's nominees. As was the case in 2012, proxy access proposals in 2013 contained a variety of ownership thresholds. A consensus among institutional investors appears to be emerging to support proxy access proposals modeled on a vacated SEC rule — proxy access rights would be available to shareholders holding at least 3 percent of company shares for at least three years. Three year/3 percent proxy access proposals achieved majority support at CenturyLink, Darden Restaurants and Verizon Communications — companies that were not viewed as presenting corporate governance or executive compensation concerns. In addition, the universe of proxy access proponents appears to be expanding, with the Nathan Cummings Foundation submitting the proposal to Darden Restaurants and CtW Investment Group submitting a proxy access proposal for Walgreen's 2014 annual meeting. As a result of these developments, companies should be prepared to consider and respond to proxy access proposals.

Shareholder proposals seeking a majority voting standard in uncontested board elections remain popular among shareholders, averaging greater than approximately 58 percent support. More than 80 percent of the companies in the Standard & Poor's 500 Index have adopted a majority voting standard for the election of directors. Corporate governance proposals focusing on board composition, such as reduced director tenure and enhanced board diversity and leadership, also remain an area of interest for some shareholder proponents. These proposals, however, generally average less than majority support of shareholders. This is in contrast to proposals seeking the declassification of boards. Declassification proposals continue to average greater than 80 percent shareholder support. According

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[6] Additional information about these rules and the steps required to rely on the end-user exception is available on our website at: http://www.skadden.com/insights/new-cftc-swap-clearing-rules-require-board-review-and-approval-election-rely-commercial-end.

to Harvard Law School's Shareholder Rights Project (SRP), a group responsible for approximately 58 successful declassification proposals over the last two proxy seasons, only approximately 10 percent of S&P 500 companies continue to elect board members with staggered terms. Vanguard, the mutual fund company, also has been pressing companies to elect all directors annually. We expect that those remaining companies that have staggered boards will receive shareholder proposals on this topic and, based on past results, the proposals have a high likelihood of getting strong shareholder support. Companies that intend to declassify their boards in response to a declassification proposal generally have some flexibility regarding the implementation process.

Companies also should be mindful of a change in ISS's proxy voting policies that will be in effect for shareholder meetings that take place after February 1, 2014. ISS has announced that it will recommend that shareholders vote against or withhold votes from individual directors, committee members or the entire board of directors, as appropriate, if the board failed to act on a shareholder proposal that received the support of a majority of the shares cast in the previous year. ISS has stated that responses that involve less than full implementation will be considered on a case-by-case basis, taking into account:

- disclosed outreach efforts by the board to shareholders in the wake of the vote;
- the board's rationale for less than full implementation, as disclosed in the proxy statement;
- the subject matter of the proposal;
- the level of support and opposition provided to the resolution in past meetings;
- actions taken by the board in response to its engagement with shareholders;
- the continuation of the underlying issue as a voting item on the ballot; and
- other factors that ISS deems appropriate.

Companies that had a shareholder proposal receive majority shareholder support in 2013 should consider these factors, take appropriate steps to address them and include relevant disclosures in their annual meeting proxy statements.

☐ **Determine impact of SEC staff disclosure initiatives.** The staff of the SEC's Division of Corporation Finance continues to meet its obligation to review the disclosures of companies on a regular and systematic basis and, in any event, no less frequently than once every three years. While the focus of any staff review generally depends on the company, its industry and the filing type, there are a few areas that the staff has been particularly focused on recently. Those areas include:

Performance Metrics. SEC staff comments have focused on the use of performance metrics (statistical measures that do not have a non-GAAP component) in SEC filings. The staff has issued a number of comments soliciting improved disclosures about how these metrics reflect company performance, how they were calculated and why the company believes the measures would be beneficial to investors. To head off potential comments from the staff, companies choosing to use performance metrics should consider explaining in clear terms how the metrics are calculated and, most importantly, how they tie back to company performance as reflected in the financial statements.

Non-GAAP Financial Measures. The use of non-GAAP measures in filings continues to draw staff attention. While the staff is not seeking to discourage the use of these measures, it closely monitors them to ensure that investors have sufficient information to understand the meaning and usefulness of the measures. The staff frequently will request

changes to a company's disclosures regarding the calculation of non-GAAP measures, including more detailed explanations of why certain amounts are included or excluded from a non-GAAP calculation.

One area of recent staff focus involves EBITDA measures that remove gains or losses related to defined benefit plans but that are described as excluding only noncash and nonrecurring items. Because defined benefit obligations ultimately are settled in cash and related accounting adjustments are expected to occur in the fourth quarter of each year, the staff has taken the view that such costs generally should not be characterized as noncash or nonrecurring. As a result, in order for investors to understand the significance of the defined benefit adjustment, the staff has requested that companies expand their explanation of adjusted EBITDA to include quantification of the defined benefit adjustment and to disclose the actual return versus estimated return on plan assets. The staff also has asked companies to explain why those non-GAAP measures provide useful information to investors.

Other Public Disclosures; Internet Sales. The SEC staff continues to monitor public disclosures made by companies outside of their SEC filings. The staff focuses on these disclosures to ensure that the disclosure documents filed with the SEC generally are consistent with other public statements made by the company. This year, the staff focus resulted in comments being issued to a number of companies in the retail industry.

The staff noted that some retailers made statements during their quarterly earnings calls that addressed increases in their e-commerce businesses, which to the staff appeared to underscore the importance of Internet sales to the companies' overall performance. Those companies' SEC filings, however, lacked the level of disclosure that the staff would expect to see regarding a significant and growing element of a business.

"Companies should continue to revisit their MD&A disclosure to ensure that they appropriately emphasize material information and describe all known trends and uncertainties reasonably likely to have a material effect on the company's financial condition or results of operations."

In response, the staff asked the companies for more information about the contribution of their e-commerce businesses to their overall sales and, in some instances, requested that Internet sales data be broken out separately in SEC filings. In addition, the staff reminded companies of their obligation to describe in their management's discussion and analysis (MD&A) known trends and uncertainties that have had or are reasonably expected to have a material impact on operating results. In some instances, the comment letter process revealed that Internet sales represented a much smaller portion of overall sales than certain companies' public statements tended to suggest.

This line of inquiry by the staff serves as a reminder to companies that the statements they make outside of their SEC filings often provide the basis for staff comments and that the staff occasionally will seek additional disclosure regarding immaterial elements of a business to give context to statements already made by a company.

Known Trends and Uncertainties. Companies should continue to revisit their MD&A disclosure to ensure that they appropriately emphasize material information and describe all known trends and uncertainties reasonably likely to have a material effect on the company's financial condition or results of operations. Companies should consider the guidance in the SEC's 1989 and 2003 MD&A interpretive releases,[7] which often is cited in staff comments that seek enhanced or refined disclosures. This guidance reminds companies that, among other things, known trends and uncertainties should be disclosed when it is *reasonably likely* they will occur. This disclosure threshold is different from the general materiality standard of probability and magnitude.[8] Companies also should review other areas of their

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[7] Copies of these releases are available on the SEC's website at: http://www.sec.gov/rules/interp/33-6835.htm and http://www.sec.gov/rules/interp/33-8350.htm.

[8] *Basic v. Levinson*, 108 S.Ct. 978 (1988).

disclosure, such as their risk factors, to determine whether these other disclosures suggest the existence of known trends and uncertainties not discussed in MD&A and revise their disclosure accordingly.

☐ **Disclose proper voting requirement.** The New York Stock Exchange Listed Company Manual was amended earlier this year to remove the requirement that the total vote cast on any proposal requiring shareholder approval under the NYSE rules must represent more than 50 percent in interest of all securities entitled to vote on the proposal. Matters requiring shareholder approval under the NYSE rules include the issuance of shares in excess of 20 percent of the shares or voting power outstanding, the issuance of shares to related parties in excess of 1 percent of the shares or voting power outstanding, the issuance of shares in a change of control scenario, and the adoption of, or a material amendment to, an equity compensation plan. For these matters to obtain shareholder approval going forward, they must receive the support of a majority of votes cast (*i.e.*, the total number of "for" votes must exceed the sum of all "against" votes and abstentions) and, to the extent applicable, satisfy any other voting requirements provided under state law and included in a company's governing documents. Listed companies planning to present matters that require shareholder approval under the NYSE rules at their upcoming shareholder meetings should confirm the disclosure of the proper voting standards in their proxy statements.

☐ **Plan for compliance with proposed SEC pay ratio disclosure rules.** In September 2013, the SEC proposed a new rule that would require public companies to disclose the ratio of the compensation of its chief executive officer (CEO) to the median compensation of its employees. These proposed rules will not be in effect for the 2014 proxy season. Assuming the SEC adopts the final rules in 2014, it is expected that companies with a December 31st fiscal year end first would be required to disclose the pay-ratio information relating to 2015 compensation in their proxy or information statements for their 2016 shareholder meetings.[9]

There will be a number of compliance burdens on companies when the CEO pay-ratio disclosure rules are adopted by the SEC, notwithstanding the fact that the SEC's proposed rules would provide companies with a certain level of flexibility when complying with the rules. Given the significant time and costs associated with developing the pay ratio disclosure, we recommend companies begin considering an appropriate method for identifying the median employee that would work best for their own facts and circumstances. Careful consideration is particularly important for companies that have multiple business and/or geographical segments that maintain separate payroll systems and whose median calculation would be especially complicated. In light of the disclosure requirements concerning methodology, assumptions and estimates, particularly with respect to any year-to-year changes, companies should consider carefully the ramifications of all available alternatives before choosing a methodology. Companies also may want to advise their board committee members about these impending rules and their anticipated impact moving forward.

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[9] Additional information about the proposed compliance timeline and other aspects of the SEC's proposed CEO pay-ratio rules is available on our website at: http://www.skadden.com/insights/sec-proposes-ceo-pay-ratio-disclosure-rules.

"Given the increasing frequency with which companies are using social media to engage with clients, customers, employees, shareholders and other key constituents, we recommend that companies assess their policies and procedures regarding social media use."

☐ **Assess social media use compliance matters.** Given the increasing frequency with which companies are using social media to engage with clients, customers, employees, shareholders and other key constituents, we recommend that companies assess their policies and procedures regarding social media use. A social media use policy is particularly helpful because of all the potential policies, rules and regulations that could be implicated by information posted on social media channels, including Regulation FD (Fair Disclosure), Regulation G (Disclosure of Non-GAAP Financial Measures), the federal proxy rules, the registration and exemption requirements of the Securities Act of 1933, insider trading policy quiet period restrictions, stock exchange public reporting requirements and liability for forward-looking statements.

We believe these policies and procedures should address, among other things, who is authorized to use the company's social media channels, whether company communications on social media channels are required to be preapproved by persons from the legal and/or communication departments, any guidelines that could impact the personal use of social media by company employees and whether material nonpublic information about the company will first appear on company social media channels. This last point gives rise to a particular Regulation FD compliance question.

Because a company may satisfy its Regulation FD public disclosure requirement through any method of disclosure that is reasonably designed to provide broad, nonexclusionary distribution of the information to the public, whether social media channels qualify as a broad, nonexclusionary distribution of information to the public is critical to assessing Regulation FD compliance. On April 2, 2013, the SEC weighed in on this debate when it issued a report of investigation that makes clear public companies may use social media channels to announce information in compliance with Regulation FD as long as the companies made investors aware in advance which social media will be used to disseminate the information.[10]

Companies that intend to use social media channels to disseminate material nonpublic information should:

- provide clear notice to investors in advance that they will routinely disseminate key information via social media;
- identify specific information about the social media channels they intend to use on the company's website and in their SEC filings and press releases to the extent appropriate;
- consider providing prominent hyperlinks on the company's website to all the social media channels that it intends to use as Regulation FD-compliant distribution channels;
- establish a regular pattern of using the identified social media channels to make public disclosures; and
- monitor the social media channels with a view to ensuring that the company communications are readily and widely available.

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[10] An overview of the SEC's Report of Investigation is available on our website at: http://www.skadden.com/newsletters/Corporate_Finance_Alert_Tweet_This_SEC_Addresses_Application_of_Regulation_FD_to_Social_Media.pdf. The Report of Investigation is available on the SEC's website at: http://www.sec.gov/litigation/investreport/34-69279.pdf.

Notwithstanding the SEC's guidance in this area, companies still may want to consider implementing social media disclosure side-by-side with the company's current methods of disclosure (*e.g.*, issuing a press release or filing or furnishing a Form 8-K).

☐ **Reconsider trading plan practices and procedures.** The practices and procedures companies, executives and directors follow when trading in company securities has been the focus of media and investor attention over the last year. In late 2012, *The Wall Street Journal* published a number of articles that analyzed the trading practices of certain public company executives, in many cases under trading plans that were entered into in accordance with the affirmative defense provisions provided by the SEC pursuant to Rule 10b5-1 under the Securities Exchange Act of 1934. The trades examined in the *Journal* articles were called into question because they were sizable and were reported to have occurred shortly before announcements of key information about the companies. The articles also compared returns by executives who traded irregularly against those who followed a consistent pattern, and concluded that irregular trading resulted in greater gains. These articles have reignited interest in "best practices" for Rule 10b5-1 trading plans.

The Council of Institutional Investors (CII), a group of pension funds that oversees more than $3 trillion in assets, picked up on the issue of potential misuse of Rule 10b5-1 trading plans and submitted a rulemaking petition to the SEC earlier this year requesting interpretive guidance or amendments to Rule 10b5-1. The SEC has yet to announce whether it will take action in response to the petition.

Rule 10b5-1 plans, which provide affirmative defenses to the assertion that a purchase or sale of a security was made on the basis of material nonpublic information about the security or its issuer, are a useful tool for executives, directors and companies who are likely to have only limited windows in which they do not possess material nonpublic information. With increased media scrutiny, however, interest in Rule 10b5-1 trading plans and practices by the plaintiff's bar and potentially the SEC is possible — whether in support of broader securities fraud claims or on a stand-alone basis. Executives, directors and companies, therefore, should continue to conform their trading plans with the requirements of Rule 10b5-1 and follow generally recognized best practices, including:

- entering into trading plans only during issuer open trading windows;
- avoiding frequent modifications or cancellations of trading plans;
- ensuring that any overlapping trading plans cover separate securities; and
- waiting a period of time before trading begins under the plan.

☐ **Comply with IRC Section 162(m).** Internal Revenue Code Section 162(m) generally limits a public company's deduction for compensation paid to its CEO and its next three most highly compensated officers (excluding the CFO) to $1 million each per year. However, performance-based compensation (PBC), which is compensation paid pursuant to a plan or other arrangement and is payable only upon the attainment of objective performance targets set in advance by a committee of two or more outside directors based on shareholder approved performance goals, is not subject to the $1 million deduction cap. There are a number of important documentary and procedural compliance requirements under Section 162(m) that companies should ensure have been satisfied.

Stock options and stock appreciation rights will constitute PBC without satisfying the otherwise applicable rules under Section 162(m) if:

- they are granted by outside directors (as that term is defined in the rule and explained more fully below) under a shareholder-approved plan that contains a limit on the number of awards that an individual can receive in any specified period, and
- the grants have an exercise price that is not less than the fair market value of the stock subject to the award on the grant date.

"There are a number of important documentary and procedural compliance requirements under Section 162(m) that companies should ensure have been satisfied."

Shareholder Reapproval of Section 162(m) Plans Approved in 2009 or Earlier. Importantly, the Section 162(m) regulations require that shareholders reapprove every five years the performance goals with respect to which PBC is paid. This means that companies that obtained shareholder approval of such goals in 2009 or earlier must resubmit their goals for shareholder approval in 2014. This five-year reapproval requirement does not apply to stock options and stock appreciation rights. However, many public companies grant performance-based equity awards, such as restricted stock or restricted stock units, under the same equity incentive plan adopted in 2009 or earlier and used for stock option and stock appreciation right grants. Unless a company's equity incentive plan's performance goals are reapproved in 2014, future performance-based equity awards granted under the plan will not qualify as PBC under Section 162(m). Likewise, performance goals applicable to cash bonus awards intended to qualify as PBC under Section 162(m) (which awards may be authorized under omnibus incentive plans or paid under separate plans) also must be reapproved every five years.

Consider Adopting Section 162(m) Compliant Plans. Companies intending to compensate executives with cash bonuses or equity-based compensation other than options and stock appreciation rights should consider adopting plans designed to comply with the requirements of Section 162(m) and submitting them to shareholders for approval in 2014. If a company is submitting other equity incentive plan amendments to shareholders for approval in 2014, it should consider adding provisions sufficient to qualify other cash bonuses and equity compensation payable under the plans as PBC under Section 162(m).

Review Outside Director Status. Compensation qualifies as PBC only if it is awarded and administered by outside directors, generally defined as board members who are not employees or current or former officers and who do not receive remuneration other than director compensation from the company (directly or indirectly through entities of which such directors are employees or owners), unless it qualifies as "de minimis remuneration" under narrow and complex rules. Public companies should make certain at least annually that the directors administering their PBC plans continue to qualify as outside directors.

Review Status of Grandfathered Plans. Under certain circumstances, compensation plans that are effective before a company becomes publicly held are subject to special transition rules that defer compliance with Section 162(m) for between one and three years after the company becomes publicly held, depending on whether the company becomes public through an initial public offering, spin-off or otherwise. Adoption of material amendments to such grandfathered plans can shorten the transition period. Companies that went public in 2013 or earlier should check to see whether compliance is now required for 2014 and thereafter.

Litigation. As noted in the "Evaluate potential impact from compensation-related litigation" section above, companies also should be mindful of lawsuits that have been filed based on failures to meet the requirements of Section 162(m). We strongly encourage companies to monitor their equity award granting processes carefully and ensure that in-house and outside counsel are afforded an opportunity to review proposed executive compensation actions, particularly with respect to significant grants to executives and new hires.

☐ **Rethink director nomination requirements and board conduct requirements.** Companies may wish to proactively consider taking a few steps regarding director nomination requirements and conduct in this era of heightened shareholder activism. Shareholder activism in the U.S. has increased significantly over the past several years, with activist campaigns increasingly targeting well-known, larger market capitalization companies, such as Apple, Hess, Procter & Gamble and Sony. In 2013, the number, nature and degree of success of these campaigns has garnered the attention of boards of directors, shareholders and the media. While the continued level of success of activists is uncertain, and the longer-term impact of activism is unknown, shareholder activism currently is exerting considerable influence on companies.

These activities can certainly have a detrimental impact on boardroom dynamics. We believe that for certain companies attempting to mitigate the potential risk of dysfunction from directors representing specific interests (rather than shareholders as a whole) and addressing the possibility of, among other things, a loss of confidentiality with respect to company information, including discussions among and views expressed by directors, is a valid focus of board attention. The optimal time to focus on mitigating this potential risk may be when there are no pressures or confusion about motives surrounding a threatened or pending election contest.

Although the concerns of the impact from activism and the proper responses thereto will vary by company, among the potential steps a company can take to address these concerns are:

- establishing in the company's bylaws a director nomination requirement that, prior to being accepted as a nominee, each proposed nominee must confirm in writing, in form acceptable to the company, that she or he will abide by all policies applicable to directors from time to time, including policies defining and specifying the treatment of company confidential information;
- establishing a confidentiality policy (or amending an existing one) to specifically provide that the director will not disclose company confidential information or information relating to board deliberations, including not making disclosures to any shareholder that nominated the director to serve on the company's board; and
- either as an alternative or in addition to the other suggested requirements, all proposed nominees could be required pursuant to a board-adopted company bylaw to represent and agree in writing, in form satisfactory to the company, prior to being accepted as nominees, that they are not acting and will not act as the representative of any particular stockholder or group of stockholders while serving as a director.

Another step that companies can take to address concerns of potential outside influences on a director's role on the board is to restrict the compensation a director can receive from a third party in connection with his or her service on the board. A few companies have taken this approach recently by having their boards adopt a bylaw provision that contains restrictions on board compensation. Restrictions that are broad enough to cover compensation paid to director candidates — as opposed to compensation paid to current board members — may be viewed negatively by the proxy advisory firms. For instance, ISS recommended in November 2013 that shareholders withhold votes for members of one company's (Provident Financial Holdings, Inc.) board governance committee because the compensation restrictions were viewed as overly broad. ISS stated that its negative recommendation also was prompted by the fact that the bylaw provision was not approved by shareholders. The directors that received the withhold votes were re-elected, albeit with lower than average percentages — approximately 65 percent.

> "The Public Company Accounting Oversight Board (PCAOB), the entity established by Congress to oversee the audits of public companies, has proposed a number of rule changes and issued requests for public comment on certain conceptual ideas that could have a significant impact on audit firms and the audit process."

There are a number of important factors to consider when adopting any of these or other recommendations.[11] Those factors include ensuring that any decisions in this area are balanced and informed.

☐ **Consider PCAOB guidance and potential changes to audit standards.** The Public Company Accounting Oversight Board (PCAOB), the entity established by Congress to oversee the audits of public companies, has proposed a number of rule changes and issued requests for public comment on certain conceptual ideas that could have a significant impact on audit firms and the audit process. These changes and ideas include new standards for the auditor's reporting model[12] and mandatory audit firm rotation.[13] There have been significant concerns raised about these matters and, therefore, it is possible that the PCAOB may revise the proposals before they are adopted or may choose not to revise its rules to address these matters. Nevertheless, it may be helpful for audit committee members to receive an update on the proposed changes and the related potential timing of implementation.

The PCAOB also recently has issued guidance related to the audits of internal controls over financial reporting.[14] In its guidance, which is based on audit deficiencies the PCAOB identified in its inspections of audit firms over the past three years, the PCAOB suggested that audit committees of companies for which audits of internal control are conducted may want to:

- discuss with their auditors the level of auditing deficiencies in this area identified in their auditors' internal inspections and PCAOB inspections;
- request information from their auditors about potential root causes of such findings;
- ask how they are addressing the matters discussed in the PCAOB's guidance;
- inquire about the involvement and focus by senior members of the firm on these matters;
- inquire of the issuer's auditor how the controls to be tested will address the assessed risks of material misstatement for relevant assertions of significant accounts and disclosures; and
- discuss with the auditor his or her assessment of risks, evaluation of control deficiencies, and whether the auditor has adjusted as necessary the nature, timing, and extent of his or her control testing and substantive audit procedures in response to risks related to identified control deficiencies.

If relevant, these are suggestions that should be highlighted for audit committee members.

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[11] Additional information about these concerns and suggested steps companies can take to proactively address them are available on our website at: http://www.skadden.com/newsletters/Activist_Shareholders_in_the_US_A_Changing_Landscape.pdf and http://www.skadden.com/insights/rethinking-director-nomination-requirements-and-conduct-era-shareholder-activism.

[12] A copy of the PCAOB's rule proposal on this matter is available on its website at: http://pcaobus.org/Rules/Rulemaking/Docket034/Release_2013-005_ARM.pdf.

[13] A copy of the PCAOB's concept release on this matter is available on its website at: http://pcaobus.org/Rules/Rulemaking/Docket037/Release_2011-006.pdf.

[14] A copy of the PCAOB's Staff Audit Practice Alert No. 11 (Considerations for Audits of Internal Control Over Financial Reporting) is available on its website at: http://pcaobus.org/Standards/QandA/10-24-2013_SAPA_11.pdf.

The benefits and risks of establishing an exclusive forum for certain potential shareholder litigation matters continue to be weighed by companies and their advisors.

☐ **Evaluate the adoption of a forum selection governance provision.** The benefits and risks of establishing an exclusive forum for certain potential shareholder litigation matters continue to be weighed by companies and their advisors. These forum selection clauses, which a number of companies already have adopted, have the potential to meaningfully reduce the risk of multijurisdictional litigation against companies and their directors and officers in corporate transactions, and perhaps to provide for greater consistency in the application of state law. As a result, companies who have not already adopted a selection provision should evaluate their benefits.

Although a forum selection provision can be adopted as part of a company's certificate of incorporation or bylaws, most of the recent attention has focused on forum selection bylaw provisions adopted by boards of directors. These bylaw provisions generally provide that litigation relating to corporate affairs, such as derivative suits, breach of fiduciary duty suits, suits based upon the state corporate statute and internal affairs suits, should be conducted in the state of incorporation of the company (often Delaware). A forum selection bylaw does not guarantee that any claim made by a shareholder against the company can only be brought in the designated state court. Claims that are not based on the shareholder-company relationship are typically not covered by these types of bylaws. Shareholder plaintiffs seeking to bring a suit in another jurisdiction also may be able to challenge the circumstances of adoption or assert that application of the bylaw under the particular circumstances is unreasonable or inequitable. The Delaware Court of Chancery, however, upheld the statutory and contractual validity of a board-adopted forum selection bylaw.[15] The ruling did not address the fiduciary duties of directors in adopting these bylaws, but the views of the court in this matter will still be a helpful factor for Delaware companies considering whether to adopt a forum selection provision.

Companies also should consider the potential impact on the voting recommendations of proxy advisory firms if a forum selection provision is adopted. Glass Lewis has stated that it will generally recommend voting against the chair of the governance committee when a board adopts a forum selection provision without shareholder approval. ISS does not have a similar withhold policy, but both ISS and Glass Lewis have stated that they will consider on a case-by-case basis whether to recommend in favor of forum selection provisions that are put to a shareholder vote.

☐ **Remember to file annual Form 13H.** Exchange Act Rule 13h-1(b), which went into effect on October 3, 2011, requires persons defined as "large traders" to file a Form 13H with the SEC on the following timetable:[16]

- promptly after first effecting aggregate transactions, or after effecting aggregate transactions subsequent to becoming an inactive large trader, equal to or greater than the identifying activity levels in Rule 13h-1 (*e.g.*, either 2 million shares or shares with a fair market value of $20 million during any calendar day or either 20 million shares or shares with a fair market value of $200 million during any calendar month);
- promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing become inaccurate for any reason; and
- within 45 days after the end of each full calendar year.

The annual Form 13H filing is required regardless of whether any of the previously reported information is inaccurate. Companies and other persons that have triggered the large trader reporting rules should file an annual Form 13H on or before February 14, 2014.

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[15] *Boilermakers Local 154 Retirement Fund v. Chevron Corp.*, Del. Ch. C.A. No. 7220-CS, and ICLub Inv. Partnership v. Fedex Corp., Del. Ch. C.A. No. 7238-CS.

[16] Additional information about the large trader reporting rules is available on our website at: http://www.skadden.com/newsletters/Large_Trader_Reporting.pdf.

☐ **Plan for additional Dodd-Frank Act requirements.** There are a number of corporate governance and disclosure provisions in the Dodd-Frank Act that require SEC action but have not been implemented yet. These provisions include rules related to mandatory compensation claw-back provisions and new disclosure requirements related to compensation matters, such as pay-for-performance and the hedging activities of company employees and directors. These rules will not be in effect for the 2014 annual meeting and reporting season. However, companies may want to advise their board committee members about these impending rules and their anticipated impact moving forward.

Contributing Attorney Contacts

Mergers and Acquisitions, Securities Regulation, Corporate Finance and Corporate Governance

Brian V. Breheny
Washington, D.C.
202.371.7180
brian.breheny@skadden.com

Marc S. Gerber
Washington, D.C.
202.371.7233
marc.gerber@skadden.com

Michael P. Rogan
Washington, D.C.
202.371.7550
michael.rogan@skadden.com

Richard J. Grossman
New York
212.735.2116
richard.grossman@skadden.com

Andrew J. Brady
Washington, D.C.
202.371.7344
andrew.brady@skadden.com

Executive Compensation

Neil M. Leff
New York
212.735.3269
neil.leff@skadden.com

Regina Olshan
New York
212.735.3963
regina.olshan@skadden.com

Erica Schohn
New York
212.735.2823
erica.schohn@skadden.com

Joseph M. Yaffe
Palo Alto
650.470.4650
joseph.yaffe@skadden.com

Securities Regulation and Compliance associate, **Hagen J. Ganem** assisted in the preparation of this alert.

If you have any questions regarding the matters discussed in this memorandum, please contact one of the attorneys listed or your regular Skadden contact.

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Office Contacts

Beijing

Peter H. Huang
Corporate, International Finance Transactions, Mergers and Acquisitions
86.10.6535.5599
peter.huang@skadden.com

Boston

Margaret A. Brown
Mergers and Acquisitions, Corporate and Securities Law
617.573.4815
margaret.brown@skadden.com

Brussels

James S. Venit
Antitrust Matters and Competition Law
32.2.639.4501
james.venit@skadden.com

Chicago

Brian W. Duwe
Mergers and Acquisitions, Corporate Finance, and other Corporate and Securities Matters
312.407.0816
brian.duwe@skadden.com

Frankfurt

Bernd M. Mayer
Corporate Transactions, Mergers and Acquisitions, Compliance and Governance
49.69.74220.0 | 49.89.244.495.121
bernd.mayer@skadden.com

Hong Kong

Jonathan B. Stone
Corporate Finance and Mergers and Acquisitions
852.3740.4703
jonathan.stone@skadden.com

Houston

Frank E. Bayouth
M&A, Private Equity Transactions and General Corporate Matters
1.713.655.5115
frank.bayouth@skadden.com

London

Michael E. Hatchard
Mergers and Acquisitions and Corporate
44.20.7519.7020
michael.hatchard@skadden.com

Los Angeles

Brian J. McCarthy
Corporate, Securities and Merger and Acquisition Transactions
213.687.5070
brian.mccarthy@skadden.com

Moscow

Dmitri V. Kovalenko
Cross-Border Mergers and Acquisitions and Private Equity
7.495.797.4600
dmitri.kovalenko@skadden.com

New York

Howard L. Ellin
Corporate Transactions and Mergers and Acquisitions
212.735.2438
howard.ellin@skadden.com

Palo Alto

Kenton J. King
Corporate and Securities Law
650.470.4530
kenton.king@skadden.com

Paris

Pierre Servan-Schreiber
Mergers and Acquisitions and Corporate Finance
33.1.55.27.11.30
pierre.servan-schreiber@skadden.com

São Paulo

Richard S. Aldrich Jr.
Securities Offerings and Public and Private Financings
55.11.3708.1830
richard.aldrich@skadden.com

Shanghai

Gregory G.H. Miao
Mergers and Acquisitions, Finance Transactions
86.21.6193.8282
greg.miao@skadden.com

Singapore

Rajeev P. Duggal
Corporate Finance, Mergers and Acquisitions and Financial Institutions
65.6434.2980
rajeev.duggal@skadden.com

Sydney

Adrian J. S. Deitz
Corporate
61.2.9253.6015
adrian.deitz@skadden.com

Tokyo

Mitsuhiro Kamiya
Mergers and Acquisitions, Corporate and Corporate Transactions
81.3.3568.2228
mitsuhiro.kamiya@skadden.com

Toronto

Christopher W. Morgan
Corporate and Securities Law
416.777.4710
christopher.morgan@skadden.com

Washington, D.C.

Pankaj K. Sinha
Mergers and Acquisitions, Corporate Finance, and General Corporate and Securities
202.371.7307
pankaj.sinha@skadden.com

Wilmington

Bob Pincus
Corporate Transactions
302.651.3090
bob.pincus@skadden.com

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SEC Filing Due Date

SEC Closed

* Based on December 31, 2013 fiscal year end. EDGAR filings may be made between 6:00 a.m. and 10:00 p.m. (ET) on weekdays (excluding SEC holidays). Filings submitted after 5:30 p.m. (ET) receive the next business day's filing date (except Section 16 filings and filings pursuant to Rule 462(b), which receive the actual date of filing).

** Requests for extensions for Forms 10-Q, 10-K and 20-F may be made by filing a Form 12b-25, pursuant to which a filer may receive an extension of up to five additional calendar days for Form 10-Q and up to 15 additional calendar days for Forms 10-K and 20-F. Form 12b-25 must be filed by 5:30 p.m. (ET) on the next business day after the original deadline.

*** Reflects actual filing deadline in light of weekends and holidays. Where the regulatory date falls on a weekend or federal holiday, the deadline is extended to the next business day. See Exchange Act Rule 0-3(a).

2014 SEC Filing Deadlines*

Schedule 13G and Form 5 for Year Ended December 31, 2013		
February 14	Schedule 13G Form 5 Form 13H (Large Trader Reporting)	45 days after calendar year end 45 days after fiscal year end 45 days after calendar year end
10-K for Year Ended December 31, 2013**		
March 3	10-K Large Accelerated Filers	60 days after fiscal year end***
March 17	10-K Accelerated Filers	75 days after fiscal year end***
March 31	10-K Non-Accelerated Filers	90 days after fiscal year end
April 30	Definitive proxy statement (or information statement) if Part III of Form 10-K incorporates information from proxy by reference	120 days after fiscal year end
Form 20-F for Year Ended December 31, 2013**		
April 30	Form 20-F (foreign private issuers)	4 months after fiscal year end
10-Q for Quarter Ended March 31, 2014**		
May 12	10-Q Large Accelerated and Accelerated Filers	40 days after fiscal quarter end***
May 15	10-Q Non-Accelerated Filers	45 days after fiscal quarter end
10-Q for Quarter Ended June 30, 2014**		
August 11	10-Q Large Accelerated and Accelerated Filers	40 days after fiscal quarter end***
August 14	10-Q Non-Accelerated Filers	45 days after fiscal quarter end
10-Q for Quarter Ended September 30, 2014**		
November 10	10-Q Large Accelerated and Accelerated Filers	40 days after fiscal quarter end***
November 14	10-Q Non-Accelerated Filers	45 days after fiscal quarter end
Other Filing Deadlines		
Form 3	Within 10 days of becoming an officer, director or beneficial owner of more than 10 percent of a class of equity registered under the Exchange Act; however, if the issuer is registering equity under Section 12 for the first time, then no later than the effective date of the applicable registration statement.	
Form 4	2 business days after the transaction date.	
Form 11-K	90 days after the plan's fiscal year end, provided that plans subject to ERISA may file the plan statements within 180 calendar days after the plan's fiscal year end.	
Schedule 13D	10 days after acquiring more than 5 percent beneficial ownership; amendments due promptly after material changes.	
Form SD	May 31, 2014.	