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2020 Proxy Disclosure and 17th Annual Executive Compensation Conferences, hosted by TheCorporateCounsel.net and CompensationStandards.com

Day 3
The SEC All-Stars: The Bleeding Edge
Date: 09-23-20

Liz Dunshee: Welcome back everyone. Welcome to the third day of our conference. Today is the Executive Compensation Disclosure Conference. I'm Liz Dunshee, the managing editor of CCR Corp, which is the company behind TheCorporateCounsel.net and CompensationStandards.com. Just a few quick reminders before we get started today. First, to get CLE credit, which is very important, you need to be in the chat that shows to the right of the player that you're watching this video on. So enter your name in that little box, click accept terms, and join that chat. And to test things out, to make sure you found it and to check in on how everyone's feeling today, please participate in our very scientific survey. We are going to put up a picture with some sheep and you can tell us which sheep you feel like today. So drop a number into the chat box and I will look forward to seeing how people are feeling.

A few other reminders, don't forget to visit our sponsors. You can click through to their sites in the exhibit hall. These are great companies, they can likely help you with your work, and we are very proud to have them involved with our events. Our sponsors this year are Alliance Advisors, CGLytics, The Nuvo Group, Clermont Partners, Lumen Worldwide Endeavors, and Semler Brossy. So thank you again to all of our sponsors. Thank you also, of course, to all of our speakers. They have gone the extra mile this year in light of all the world events and developments in our space and SEC rule makings. These are some of the most well-known and accomplished people in our field of interest so I'm grateful to them for participating and for sharing their insights.

Thank you to our team, to all of our editors, Dave Lynn, Alan Dye, Mark Borges, Mike Melbinger, John Jenkins, Lynn Jokela. Thanks to our Marketing and Customer Service and Sales folks, and everybody behind the scenes, and also to the Markey's folks who have put in a lot of effort on this platform for us. Everybody's worked really hard to bring this event together so I just want to thank them as well.

A reminder that we don't have live Q&A for the sessions today but if you have an inquiry you can submit that on the forums on the CorporateCounsel.net or CompensationStandards.com. To find the course materials, go to the more tab and pull those up. Those are really helpful because they have detailed session agendas and they also have a ton of practical nuggets that all of our speakers have taken the time to put together. So you should definitely look at those and they will also be available in the archives on the CorporateCounsel.net and CompensationStandards.com. Of course if

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you are looking for information about Proxy Disclosure and Executive Compensation Disclosure, you should make sure to check out the CorporateCounsel.net and CompensationStandards.com. We have a ton of really useful resources, checklists, handbooks, a lot of law firm memos, Q&A forums, and we also just published our two treatises: The Proxy Disclosure Treatise and the Executive Compensation Disclosure Treatise, which deal with a lot of the topics that we've been covering at these conferences. We have other treatises too, but those are the ones that relate to these topics and you should make sure to check those out. We have detailed tables of contents posted on our sites where you can see what all we cover in there. If you have any questions during the conference, please reach out to our Marketing Event Manager, Victoria Newton. That's vnewton@ccrcorp.com, vnewton@ccrcorp.com. Thank you again for being in attendance.

We're thrilled to have everybody and I'm going to introduce our first panel so they can get into their interesting information. This is our SEC All-Stars- The Bleeding Edge panel and I am joined by Brian Breheny at Skadden Arps. Prior to joining Skadden in 2010, Brian held numerous leadership positions at the SEC in Corp Fin, including the Chief of the SEC's Office of M&A and the Deputy Director of Legal and Regulatory Policy. We also have Meredith Cross of Wilmer Hale. Meredith also held many positions at the SEC, including the Director of Corp Fin. Keir Gumbs currently of Uber, formerly of Covington. Keir spent six years with the SEC including Counsel to Commissioner Campos and Special Counsel in the office of Chief Counsel in Corp Fin. Keith Higgins of Ropes and Gray, also a former Director of the SEC's Division of Corporation Finance, and then Dave Lynn of Morrison and Foerster and the CorporateCounsel.net and former Chief Counsel in Corp Fin.

I will turn things over to Dave to talk about COVID-19 disclosures. Dave?

Dave Lynn: Great, thank you very much Liz and thanks to everyone on the CCR Corp team for all the hard work in putting this conference together. I'm going to talk about COVID-19 disclosures to kick us off today. I think the question that was posted with the pictures of the sheep is pretty appropriate because I think a lot of us feel like sheep in the midst of the COVID-19 pandemic. We've been herded into our homes and penned up for a while and hopefully we don't get led to slaughter here, but I think the COVID-19 pandemic was a really challenging issue from a disclosure perspective because it was so sudden and dramatic in terms of the effect. Sort of the closest in time analogy we can look back to from a disclosure perspective would be the financial crisis, but as you recall, the financial crisis was more of a sort of slow burn in a lot of ways, as things unfolded in that timeframe. Here we had in the course of really just a couple of weeks, a very dramatic change to the market environment, a dramatic change to the economy, and to this day an enormous amount of uncertainty as to where this will end up and how things will unfold.

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So when you think about back in mid-March, when we got started with all this, it was a tough time, too, from a disclosure perspective in the sense that many companies had just filed their 10Ks and they really weren't scheduled to communicate with the market again until mid-April or so as the earnings season kicks off for the first quarter. We were sort of in a no-man's land at that time and I think what it really resulted in, just from the legal perspective of disclosure decisions is we had to go back to basics basically, and say to ourselves, "Do I have affirmative disclosure obligation? Is there something here in terms of a curve report or a periodic report? A securities offering? Share repurpose program that's in affect and ongoing. Are there any buying or selling of securities or other affirmative disclosure obligations that make me have to say something now in light of all the things that happened?" I think we saw very much a variety of outcomes as people decided whether or not to say anything immediately as the impact unfolded.

I think the points that were made at the time, particularly by the SEC and the staff, you know, was effectively, a reminder that if you chose to speak then what you said had to be accurate and not misleading. If you were going to talk about what was unfolding and looking forward into the circumstances that were known, you should avail yourselves of the safe harbor for forward-looking statements. That was sort of the initial round of guidance that we were operating under from the division.

Then as we moved through time and we came up on the 10-Q cycle we didn't get the benefit of additional guidance from the Commission. As Bill Hinman mentioned in the interview we had yesterday, he and the chairman put out a statement that really focused on the earning cycle and the type of information that should be provided. Not only really from a strict disclosure perspective, but more from sort of a public policy perspective, in terms of giving people some insight into what the plans were with respect to the pandemic. We got the CF Disclosure Guidance Topic 9 which really gave us a nice checklist and framework for evaluating disclosure decisions through time and then subsequent to that, over the summer, Topic 9A came out, which focused really more on liquidity issues that arose.

I think that leaves us now in somewhat of a turning point from a disclosure perspective as we enter the next quarterly period and the preparation of our annual reports and the like, in that we now know what's happened and a lot has happened. Yet there is still a great deal of uncertainty in terms of the duration and effect and whether there will be continuing efforts to prevent the spread of the virus. All of those things will have to be taken into account for the upcoming disclosure decisions. In some cases, I think just recently we've seen reports where companies are basically saying, "Okay, we're stuck with this for the long term. It's not going to be over quickly. No, we want to revisit our business operations and things that we may have put on hold." So I think that will create some disclosure challenges as to how much should be said regarding those types of plans, again, given the level of uncertainty.

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I would also say that there was an aspect and continues to be an aspect of the disclosure decision making process where it's not just a legal question. Is the disclosure required? Do you have an affirmative obligation? Is what you're saying accurate and complete and the like? I think there has been an enormous sort of public relations and investor relations aspect to it that has prompted people to probably say more than they might have otherwise in a similar situation, simply because it affects companies' brands and confidence of consumers and companies' products and services, and a broader impact than just investment decision making. For that reason I think we've seen people making announcements between filing their 10-Qs and earnings releases where they're talking about changes to compensation programs, suspending share repurchase programs, making changes to their workforce, measures they've taken to address the spread of the virus and the like. I think that's something that, in different times, might have waited until an affirmative disclosure obligation arose, like a 10-Q or 10-K.

I think the next frontier, from a disclosure perspective, is going to focus on a few areas, and I'll just sort of outline those. First off, where the action has been and I think where the action will be, are in basically a few disclosure items. First and foremost, risk factors, which Meredith is going to address separately, so I won't get into that. Second, I think is management's discussion analysis and that to me is the appropriate place that we see many of the COVID-19 disclosures and here it's really a great sort of case study in the disclosure realm trends, events, or uncertainties that can arise. I think when the people have gone through the typical analysis of what constitutes a trend, event, or uncertainty, COVID-19 certainly from the vast majority of companies, qualifies as a situation that needs to be addressed.

I think one of the challenges when you look back at the guidance in this regard, the SEC has always expected quantification of the effects of the trend are uncertain to the extent that information is available. While you may be able to assess the known trend and uncertainty of the COVID pandemic and the steps taken to prevent its spread, very often it's difficult to quantify that either on a, most likely, on a forward-looking basis. So we've probably seen less disclosure in that area than one might have expected in normal times, but I think the uncertainty again continues to drive that and no doubt that may be an area the staff focuses on as it looks at people's disclosures. I think some of the key areas where we've seen disclosure under this rubric are things like significant changes to the amount of revenues that companies are generating or the sources of revenues among their business operations, the increases and costs that have been associated with taking steps to address the spread of the virus, changing to their work from home environments, shuttering operations and then reopening those operations, providing benefits to employees, and addressing customer concerns. Those are some of the key areas I think that we continue to see play out in that regard. The accounting cash flows and diminishing access to capital resources are something people have talked about in some respects. What I've heard-

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Meredith Cross: Dave one thing I would note that it goes back over to MD&As is there are things that companies have been including as risk factors that happened. And so you know, you've talked about your customers might go bankrupt. And they've now gone bankrupt. It's going to be moving from risk factors over to MD&A and I could see that sort of migration needs to be followed carefully I would say. So I would use that as part of my road map for writing MD&A. If things are coming out of risk factors they might be going over there.

Dave Lynn: Yeah that's certainly an area from the staff comment perspective that we were talking about earlier that has always been a focus. Is something that you're talking about in risk factors not adequately reflected in MD&A? Another challenge I see coming on the horizon is addressing the description of business. Either the rules have now changed for the Item 101 of S-K, but the COVID pandemic has changed a lot about the way companies are doing their business. Some of which may be temporary but nonetheless may need to be addressed and I think that will be something we'll have to carefully think about as we go into the 10-K season, because we really haven't had the situation to reevaluate how that business description should be revised.

Legal proceedings I think is another area where perhaps we will see some disclosures, you know, given the fact that people had to get out of contracts and the like and may cause some litigation related to the pandemic. Then financial statement disclosures. I think there's a laundry list of items there that will be implicated as people prepare their 4 Quarter and annual financial statements. I would just highlight the biggest one I think that has really sort of reared its ugly head is the going concern considerations. This is something the CF Disclosure Guidance 9-A the staff addressed and that is something that management has to evaluate at each interim and annual reporting period. There's a chance or likelihood to continue is a going concern. If there's question as to that, a plan has to be put in place and that plan needs to have the potential to alleviate that going concern consideration. The auditors are particularly sensitive to this topic right now because they have obligations under PCAOB standards and certainly something that PCAOB will be focused on in their inspections. I think there's a lot of dialogue about this topic.

One area I would say, if you haven't talked about this topic with your Audit Committee and there really is the concern or potential for a going concern issue, it should be addressed up front. Contingency planning should be done even before you have to come up with a plan to alleviate the going concern. You really should think about whether the disclosures are adequately foreshadowing the concern if in fact it has potential to exist. With that, I will turn it over to Meredith to talk about risk factors.

Meredith Cross: Thank you David. Good morning everyone. We can't see you but it's great to be with you. We can only see each other. So as I was preparing for this panel, the topics for this panel and we are giving them up, and I got COVID-19 risk factors and other risk factors, I thought I would be just updating folks on what's happening with

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COVID-19 risk factors. But now we have more stuff on risk factors to talk about and obviously with the SEC's rulemaking in this area, there's a lot of questions coming out of it. I'll just touch briefly on each of those topics.

First off, covering COVID-19 risk factors, as we're getting ready for calendar year companies, you're getting ready for Q3 10-Qs, there is the continuing question about if you need to update your COVID-19 risk factor if you have one. I'm assuming most people do actually have something. The timing as David mentioned was that the Ks were mostly filed before COVID-19 risk factors were a thing. There were some people talking about it, but not much, and so folks put out COVID-19 risk factors if they were doing capital market's deals before the first quarter Qs, those were in A-Ks. Then a lot of people repeated those in their 10-Qs. Then the question comes up as you go through the year, "What do you do if you are a company that doesn't repeat those factors in full in your Qs? What do you do with your COVID risk factors?" And there's the lingering question about whether under the rules you have to update from the 10-K in every 10-Q because sort of the rules say that. Most people don't do that. Most people take the position as long as you say, "Well I gave a risk factor in my last 10-Q. I can say **other than (20:17)** is in my 10-K and subsequent 10-Qs, there have been no material changes to my risks." Other people think you have to repeat them because the rules technically say that. So there's that question to tackle. I tend to tell clients that you could reasonably decide you don't need to repeat them, to repeat a material update that you provided in a prior quarter. So if you had put COVID risk factors in prior 10-Qs and there's no material changes to them at this point, as long as you reference the prior disclosures, you don't have to put your COVID risk factor back in to this 10-Q.

I did have some clients last quarter where there weren't material changes to the COVID risk factor. We were still sort of in the midst of it. There weren't material changes and so they did not repeat it. They made sure they addressed it in MD&A or topic, because it was important they actually included it in the forward-looking statements list, but they didn't write a COVID risk factor specifically updated for the 10-Q. You need to look at it very carefully to make sure there aren't material changes to that risk factor or any other risk factors that you would need to add if you're a company that doesn't repeat risk factors in your Qs.

If you're a company that does repeat risk factors in your Qs, then you need to read it really carefully because even though it may not seem materially different, in hindsight it may seem that something was materially off by the time you're trying to defend the disclosure. So that means going and looking and seeing if you have any of these hypothetical risk factors that customers may file bankruptcy or it turns a bunch have or you may not be able to get certain supplies and it turns out actually if you asked the right people at the company, you'd know you're not getting the supplies, that kind of thing. So you would need to go through and surgically update them to put them in.

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I think we mostly know what the COVID risks are at this point. I think in talking about issues that one would want to think about for this upcoming set of Qs, thought on risk factors, and also I think going into their 10-Ks, but we'll know a lot more by the 10-Ks. But for this one I would say had the trends at the beginning of the pandemic shifted? You know, at the beginning of the pandemic, some retailers were having run-on staples and now, staples being food staples, and now it shifted over to other things: electronics, home office equipment, that kind of thing. So those kinds of trends that have changed, make sure you're talking about the right kinds of trends there.

I think a big one is what are the risks of the upcoming cold weather? A lot of the world has gotten by because we can be outside. People are riding a lot of bikes but people might not buy so many bikes once it gets cold. The restaurant business is really going to struggle I think, when they have their little space inside. New York is going to allow 25% capacity inside and they don't have a lot of space for that. Issues about the cold weather I think are going to be important. Then as I mentioned before, had your customer survived, are they further on the brink? Are you at risk of impairments that you had indicated? Has that become a greater risk as the pandemic goes on?

Those are all things that I would keep in mind if I was redoing my COVID risk factor right now. If I don't redo it, I would make sure I cover those things in my forward-looking statement disclaimer and in my MD&A, because those are certainly issues that could be material. And I would also use the checklist from 9-A. It's right there in front of you to go through. If you don't go through and do it, there might be something that's easy to point to that you could've covered. So that's COVID risk factors. Before I move to general risk factors, anybody else got something on COVID risk factors? Anything else?

Keir Gumbs: The only thing I would add and I hope you guys can hear me okay because my internet's been odd today. But the only thing I will add, from my perspective, and I think this is a theme through all of the topics that we're covering, this feels a lot like the financial crisis in the sense that it is a financial crisis, for sure, but in the sense that I feel like the facts underlying litigation is being developed every single day as companies are making these disclosures. I know at least from our perspective I've taken a much more defensive approach as we're drafting our disclosures. We are that small number of companies that update all of our risk factors every single quarter, because frankly it's easier just to look at everything fresh and then republish it as opposed to making that very difficult call, "Do I highlight this one as opposed to the other each quarter?" But I think that idea of defensive drafting is hard to overcome as you're working on these materials, because you do know at the end of it, hindsight is 20/20 and the companies that fail or have their customers fail or have significant adverse impacts or results, they're going to be challenged at some point. I think it's just a reality we have to accept as we're drafting these documents.

Meredith Cross: I agree and I think this has been an interesting area where companies that have been loath to, for example, add a risk factor if they don't generally **happen in**

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Qs (26:07), put them in. This has been a very good lesson in being very forthright with what you know and what you don't know. So that's been really challenging. So on general risk factors, I just wanted to briefly talk about it. We have some open issues on these I think. The SEC adopted its proposal to amend Item 105 risk factors and it changed, for example, that you have to talk about the material risks, not the most significant risks. I don't think that changes much. If your risk factors are more than 15 pages, you have to write a two-page summary, sort of bulleted summary. You have to group them by topic. If you insist on including generic risk factors, which I would, then you need to put them at the end under something called general risk factors. So now you're going to know, here's my generic ones, I'm including those because I'm a company, like every company, I could get sued. I'm not going to be stupid and leave them out.

Keith Higgins: Including generic COVID risk factors?

Meredith Cross: You know, that's not generic.

Keith Higgins: Yeah, well sort of.

Meredith Cross: It used to be saying we might have a pandemic, you know, there might be a zombie apocalypse, too. No, this one, I don't mean to joke, it's been such a tragedy. But I never knew what anyone was talking about when they talked about having a pandemic risk factor. Now, of course, it sure has come true and it doesn't seem like a generic risk. Anyway, back to the sort of issues that come up as a result of this.

The first one is what happens with the upcoming 10-Qs? So if you are a company who repeats risk factors in your 10-Q and if the rules become effective, I can't remember how far after publication they'll register, but let's say-

Keith Higgins: It's 30 days and they haven't been published yet.

Meredith Cross: So we're getting close.

Keith Higgins: We're getting close.

Meredith Cross: If they are affective when you file your 10-Q, if you repeat risk factors and there are more than 15 pages, would you need the two-page summary? Would you have to reorganize them, all that good stuff? And our view is that you don't. The rules refer to annual reports, prospectuses, you didn't amend 10-Q, and so while if you have time, which not very many people have right now, and if you have time you write the summary and reorganize them, perhaps you would want to. But I don't think you have to. I think it would be a matter of choice. They haven't said yet. The staff hasn't said whether they would apply. If they did say they do apply, then of course, you'd deal with

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that. If they don't say and then they, in comment letters, tell you it did apply, then the next thing that will happen is you will say, "Okay, I'll do it in my 10-K" because that would be the next **___ (29:20)**. So I don't think it's required and I think you'll be able to deal with it in the 10-K. I think the good thing to do here now, when you finish with the Qs, is to focus on building out what the summary would look like and take a close look at the risk factors. If you've got 16 pages of risk factors, you might try to bring them down below 15. If you've got 35, you're pretty much sticking with your 35 in a list, I would assume. I doubt very many companies will reduce down to 15.

Another question that was raised is whether you could use your forward-looking statements bullet list as your summary, because it has to be in the full part of the document, I think that that would only work if your forward-looking statement bullet is a summary of your risk factors. My guess is that your FLS list is longer than your risk factors. You probably don't have a risk factor on everything in that last. They probably don't quite align. It's worth taking a look at it to see if that might work, because otherwise there's going to be an awful lot of bullets about your risks before one gets to anything else in the packet. So it would be worth revisiting your FLS list. And I think with that, those are the main things I wanted to cover.

Keith Higgins: Meredith I have a question on the summary. Do you think that people will put the summary in and then include the statement you typically see, "This is a summary only and it's qualified in its entirety by the reference to the risk factors later on in the document." How will the staff react to that?

Meredith Cross: Well I think you would need to say it's a summary.

Keith Higgins: Of course, yeah.

Meredith Cross: I would think you'd need to say, "And you'd need to read the risk factors." I don't know how in the world they could object to that. I'm sorry. I guess they could.

Keith Higgins: We'll see.

Meredith Cross: What do the others think?

Keith Higgins: Well the summary is a separate requirement and so saying it's qualified by reference to stuff in the back of the bus, I'm not sure that that meets the requirement. I mean, to the extent that a summary has to summarize. But saying it's a summary, it may not include all the information that is important to you, is certainly a typical qualification.

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Keir Gumbs: I'm curious about what you think the summary is going to look like, because in my mind, at least when I saw that requirement, I was assuming that people would put something together similar to what you put in a prospectus in the **___ (32:09)**

Keith Higgins: ___ (32:10)

Keir Gumbs: Yeah, exactly. But do folks think it will be something more meaty or substantive than that?

Keith Higgins: I do not.

Meredith Cross: I would expect that you would take the headings of each of your risks because those are supposed to be communicative anyway. So those might fit nicely to make a bullet summary and that's how I would start. There might be some that can be grouped but then there's more original drafting. I'd start with that.

Keith Higgins: Yeah, great.

Meredith Cross: Okay I think next up is-

Keir Gumbs: I think it's me on non-GAAP.

Meredith Cross: Keir.

Keir Gumbs: Again, sticking with the theme here of challenging disclosures in the face of COVID, even though in theory I'm going to talk about non-GAAP generically. I think realistically a lot of the challenges that people are having with non-GAAP is tied to the challenge of COVID and the impact that COVID is having on companies' businesses. As folks may remember, there was guidance that came out earlier this year from the staff relating to COVID-19. In many ways the guidance just repeated things that the staff has said before, but as with anything in life, when people's backs are against the walls, sometimes their behavior may change. I think it's a useful reminder from the staff as companies are thinking about how to address COVID-19 and its impact on their financials.

So the first thing I'll just point out from the guidance from the staff is that if folks really have to think about the forward-looking information and the estimates that companies include when they're providing their non-GAAP numbers. A lot of companies, in the face of COVID, suspended their guidance. I think the vast majority suspended their guidance. For those who maintain some sort of guidance, some sort of forward-looking information about their future financial performance, that included estimates. One of the pieces of guidance from the staff to the extent that you have a non-GAAP measure, a forward-looking measure, for example, that is reconciled to an estimate. That estimate has to be reasonable and that's a little bit of just a reminder of common sense but I think

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it's really important because when you're having discussion internally with your management teams around some of the guidance that they want to put out there, for many companies, certainly the case for us, you have a multitude of scenarios that your business is mapping its forecast against. You want to make sure that you're not just providing disclosure with respect to the most optimistic of those scenarios. You really want to think about, "Yeah that's possible but what's likely?" And on top of that, what is the most reasonable of those scenarios? And then that's what we should be mapping our forward-looking guidance against. So that's just, again, a reminder to use common sense.

The second thing, and I think this is a big challenge for companies in the current environment is that the non-GAAP measures can't be presented more prominently than the GAAP measures. Again, this is something that has always been around, in terms of staff guidance, but I think it's more significant for many companies presently because there's the temptation to talk about the non-GAAP measures and a moment where you're being challenged financially, because the GAAP measures don't look quite as good. So for that reason the staff was reminding companies.

Third thing is you can't use fairyland numbers for the non-GAAP measures that you're using. By fairyland, what I'm talking about are sometimes the super optimistic numbers that might be in the hands of some of your leads of business, but aren't necessarily things that you report to the Board or things that you actually use in managing the business. And so, it's an extent that there are non-GAAP measures that you want to use for your public disclosures, you really have to think about whether or not you're actually using those in terms of the way that you're managing the business and the way that you're reporting things out to your Board of Directors. You shouldn't have two separate sets of financial metrics that you're using internally versus externally.

Then the last big one that I'll mention is to the extent that you are reconciling to an estimate, you should explain why. To the extent that you can't provide an estimate, you have to be able to rely on the specific safe harbor for companies where they're unable to do a reconciliation because the information can't be produced without unreasonable effort or expense or because it's unavailable. It's interesting, I think that companies have been very aggressive with using that particular exemption. I had a question from a client several years ago when I was still in private practice where they said, "Well you know, you guys are telling us we need to reconcile this forward-looking statement, this reconciliation, but when I look at our peers, no one else is doing that." And the truth is, there weren't a lot of companies doing it. The staff hasn't necessarily raised that comment in every instance where they could, but it is something that companies are required to do if you're providing a forward-looking non-GAAP numbers to provide the reconciliation or explain why you can't.

For many companies, COVID is all about liquidity. If you hear our earnings calls with my CFO, something he likes to talk about is how important it is for companies to have

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liquidity, particularly companies like us that aren't profitable yet. If you are focusing and discussing liquidity with investors, you have to be mindful of the limits on non-GAAP measures. There are basically two that I'll highlight.

The first is that if you are presenting a non-GAAP liquidity measure, you can't make adjustments for charges or liabilities that require cash settlement. That's a very clear piece of guidance that the staff said time and time again. I do think in the COVID instance you are seeing companies forgetting about that guidance in some cases. Second thing is that you can't provide any per share non-GAAP liquidity measures. So if you're thinking about a free cash flow per share or something along those lines, that's something the staff specifically said you're not supposed to do. Again, hopefully this isn't news to companies that are listening, but it could be for some.

One challenge that we have seen in our industry within tech is individually tailored accounting principles. This, in my mind, is a really tough one, because the staff is prohibiting non-GAAP measures that substitute individually tailored revenue recognition and measurement methods for those of GAAP or other measures that are individually tailored. This is one more thing that I think is very much in the eye of the beholder kind of challenge. If you're adjusting a non-GAAP measure or thinking about a non-GAAP measure and you're trying to come up with something that is both descriptive and informative to investors, it can be tempting to come up with things that don't necessarily align with GAAP. By the way, everything that's non-GAAP doesn't align with GAAP, so there's that challenge on top of it, but I have seen comment letters the staff is very vigilant here. So to the extent that you are adjusting your non-GAAP measures or coming up with new ones, you really want to think back and look at some of the staff guidance on what an individually tailored non-GAAP measure is.

In the interest of time, the last thing that I'll highlight from staff guidance on non-GAAP is adjustments. This is something that's very personal because at Uber we have this debate every single quarter, about what kinds of adjustments are and are not acceptable. In the context of COVID, the overwhelming majority of companies did not make adjustments to their non-GAAP measures to reflect unusual COVID-related expenses, but about 10% did. One of the challenges for the companies that did is one, avoiding characterizing something as non-recurring, for example, where the staff has basically said, "You know, to the extent that you're characterizing something as non-recurring, it shouldn't happen again." In the case of COVID, where you've got this extended negative economic impact that COVID is having on many companies, many industries, it's really hard to say, "Does this qualify as a non-recurring event? I'm not sure that it does." And in the event that it does not, that's a challenge for companies who are thinking about making COVID-related adjustments. So you know, we haven't seen the full cycle of comment letters from the staff following the beginning of the COVID crisis, but I would expect that you're going to see a number of comment letters when they're resolved, coming out with the staff really poking at companies that are making

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some of the COVID-related adjustments to their non-GAAP measures. And with that, just in the interest of time, I'll go ahead and stop there.

Keith Higgins: Great, I think I'm up next. My topic is corporate governance and I want to first not that there has not been a lot on the SEC regulatory front related to corporate governance. Meredith certainly did a lot of it during her time with the SEC and I did a little bit, but as far as rulemaking goes, we haven't seen a lot. That being said, there's a ton, and really an explosion of corporate governance disclosures that we could spend a day going over all of them on all things from board refreshment to board evaluation to independence to all topics related to governance. I don't want to go through those today. I want to talk about a few discreet things because there is a new disclosure topic related to governance, really related to human capital management, and we're going to be writing on a clean slate. That was in the S-K amendments that Meredith talked about earlier with risk factors and legal proceedings. We also have a change in the business description in Item 101-C of S-K requiring that companies describe their human capital resources and then also include human capital measures or objectives that their company uses or focuses on in managing its business all to the extent of material to the business. Companies are going to have to figure that out by the time the 10-K comes around and people are starting to do it now.

There's plenty of places where you might find helpful guidance or helpful things to include. Certainly on describing on your human capital resources what the rule is looking for is how many employees you have, full time, part time, contingent workers, seasonal workers, maybe U.S., non U.S., etc. That's the statistics on your workforce. I think the harder part is going to be the second aspect of it and disclosing metrics, measurements, and objectives that you use to manage your workforce. There, you can look at a number of places. There was a rulemaking addition that went into the SEC that the Investor Advisory Committee sort of adopted as their recommendations. You can look at the types of things there that they were looking for, but basically it's supposed to be something that you actually use in managing your workforce. You look at the types of topics, things like workforce stability, turnover, voluntary, involuntary, what the internal hire rates are, training, how much you spend on training, return on your workers, compensation and incentive, the rights commitments, how you deal with employees or workers in your supply chain. All of that. The real problem is going to be the audience for this disclosure and are companies going to be in a position to say, "Well, anything you don't put in is going to be presumptively you don't really care about that. You don't consider that material in managing your workforce."

So my guess is and I'd be interested to hear what the other panel members think, but my guess would still be a little bit of over disclosure here. In fact, many companies are already disclosing metrics like this. It's in their sustainability reports. If you look at GRI data, for example, holistic things relate to this kind of information and companies are already putting it in their sustainability reports. We'll now be talking about importing it into the 10-K. Then as a governance matter, most human capital management

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disclosure to date has been in the proxy statement. So what are you going to do? It's got to be in the 10-K, Part 1 information doesn't incorporate necessarily into a proxy statement. Are you going to repeat it in the proxy statement? Are you going to refer to it back in the proxy statement? I think there's a lot of questions to what I don't presume to have any answers. In fact I don't have any preliminary straw people to throw out, but I'd be interested- other panel members if anybody wants to take a crack at how people are going to tackle this? I know it's unfair because I didn't-

Keir Gumbs: Keith I was frankly assuming that we would be able to incorporate the information from our proxy into the 10-K or vice versa because to your point, we put in the kind of human capital information that we actually use into our proxy. It was also in our EST report, by the way, although I have to confess we haven't spent a ton of time thinking about it yet, because we're kicking the can down the road until we actually have to.

Keith Higgins: I think you only get Item 3 and 4 information that you can wait for the proxy statement on, unless you're prepared to file your proxy statement at the same time with all your 10-K, which I think probably isn't going to be the case for most companies. I think that's going to be a bit of a challenge. Other sources that you might want to look to and kind of metrics that measure human capital management, the International Standards Organization has a standardized ISO 30414 that has internal and external metrics for evaluating human capital management **___ (47:01)** I'm mindful of time, I don't want to short **shirt to (47:10)** Brian, a few other things of interest on governance disclosures, a GAO report that came out in July of this year. It's worth taking a look at. I looked at that ESG disclosures and concluded that, not surprisingly, investors weren't entirely happy, but companies were actually putting in a lot of information, either in their annual reports or their sustainability reports or the like. It isn't always comparable information so I don't think we really learned anything from the report that we didn't already know, but it's certainly something that is worth taking a look at.

Then finally, another trend I saw this year that's interesting in the disclosure, the governance disclosure area, was companies mapping their governance practices to the Investor Stewardship Group principles, the six principles of governance. There's some examples, those principles being boards are accountable to stockholders, stockholders are entitled to voting rights in proportion to their economic interest, boards should be responsible to stockholders, boards should have independent leadership, boards should adopt practices that enhance their effectiveness, and then there should be appropriate incentive structures. A number of companies put in matrices this year showing how they applied the Investor Stewardship Principles and I think a lot of investors are looking for that kind of disclosure. With that, I'll turn it over to Brian to give us the late, breaking developments perhaps on 14A.

Brian Breheny: Excellent, thanks Keith. Good to see you all, good to be here with you. Looking around the screen it's always nice to be with this group and I was particularly

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thinking about our dear departed friend, Marty Dunn, who would have been with us, and in particular, because I'm taking his topic, so I hope I do it justice. I'm going to cover 14A and I'm going to cover three things. To the point Keith made, you may know that at this very moment the Commission is considering amendments to 14A which I'll get to in a minute. So if you've seen me distracted, looking off while other people are talking, please understand it's only because I'm watching the transcript coming up and I have some folks who are IM'ing me on some late-breaking developments going on at the SEC. They started with whistleblowers and those rules were adopted and now they're in the midst of talking about 14-a8.

So three areas, one I think I'll talk a little bit sort of like administration and takeaways from the program this year. Two, I thought I would kind of touch on one substantive to take away from last season and then I mentioned I'll talk about the rules themselves. So you know, from an administrative standpoint, the proposals were down last year as they were in the past. I think they're getting a little bit more focused. Corporate governance proposals remain the most common, like the ability to call a written consent to the percentage, lobbying- oversight of lobbying by companies. Those proposals have been, for a long time, an area of focus and again they were the hottest topic. This season you may have heard that the staff decided to adopt a new process where they weren't going to necessarily respond to every request, but they put together the "chart" where they were updating and giving answers to requested no action relief in the chart. The chart was made publicly available. At the beginning of the season when they talked about the "chart", I think a lot of us were scratching our heads to see what this meant and why they needed to do it. I think ultimately the staff thought this was a more streamlined process. Based on some reports, the staff only responded to 18% of the requests, meaning with an actual letter as opposed to putting something in the chart.

Annually the SEC has a "stakeholder meeting." I think Meredith was the first to start that out when she was Director and it continued. When the staff gets together, people on all sides of the 14A debate divide and they have a meeting. I didn't attend the meeting. I think some of the folks on the panel may have, but I heard that a big part of the meeting was talking about the chart and sort of the administration and getting some feedback. I think we're going to see the chart again. We didn't get a staff legal bulletin out of the SEC which we've had for many years. After the season was over, the staff would get together, have this meeting, talk about hot topics and put out some guidance. I suspect that's probably because we're getting new rules today and they probably thought that to the extent they had any guidance, they would put it in the adopting release. So that sort of generally admin.

Takeaways, I think in sort of my view, glimmers of hope for the board analysis line of letters. You may recall back in October of 2019 the staff put out one of those legal bulletins that I mentioned, and it related to companies' ability to exclude shareholder proposals from their proxy statements by addressing the significance of the proposal through a board analysis. Initially, by the way, that guidance also talked about

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micromanagement. Initially when people attempted to do this by getting the Board to kind of weigh in on what they thought about it, the staff sort of rejected it. People were surprised and the staff tried in subsequent staff legal bulletins to give further guidance as to how companies could potentially cover this in order to get the relief that they were looking for. This season we saw some glimmers of hope. We saw a couple **of ____ (52:21)** that were granted based on the board analysis. And by the way, I'll also say in some responses, I think it was clear that the absence of the board analysis impacted the staff decision. So I think, again, it wasn't everyone that came in with a board analysis and that is something that is a bit of a heavy lift, to ask your board or your governance committee to get involved and spend a lot of time, and also describe that in a document that will be publicly available as sort of like the rationale as to why the Board thought that this was something that went beyond ordinary business. It required some public disclosure, so there weren't many people. And even if they did in the past, they kept getting shot down. So will we see more coming up for this season? We might, especially if they fit squarely within the letters that were issued last year.

Meredith Cross: Brian, I'll just jump in. I still think this is a hard sell for companies, at least large cap companies whose boards don't get together very often. It's a lot of work to take this to the Board and then so few have gone. So anyway, I'm skeptical that this is something that companies are going to feel is a really meaningful path to exclusion **___, I don't know if others feel differently. (53:43)**

Brian Breheny: So certainly after the season when this was brought up, Mack McNair was at an ABA meeting and I raised a question on this. I said, "Did you really anticipate that people would use it?" Bill Hinman was there, I didn't realize, and he jumped to the microphone. He was like, "Yeah we expected, we wouldn't have done it if we didn't think so." I pleasantly surprised. So the second season we were back, kind of saying, "No, no you should try it." And I'm with you, Meredith. Most people said that it's not worth it, we're not doing it. But anyways, I'd be happy to hear from others including Keir who's in the boardroom, might be able to tell us whether he would do it or his board members would be interested.

Keir Gumbs: Well I'm not sure I want to say this publicly, but I think from her perspective, I think it is unlikely that we will spend a ton of time on some of these. On the proposals, themselves, with the Board, I think we find it would be more useful to actually engage on the underlying substance, underlying the proposals as opposed to trying to do this analysis solely for the purpose or in part for the purpose of getting a no action letter. And I'll also say, for what it's worth, when I was in private practice, we had a bunch of clients do this and it was a waste of time. For a vast majority of them, they did not get any sort of needle moving response from the staff and I think you know, my own personal perspective, I felt burned by it. You go through all this, they spend the money on outside counsel in the analysis and all that, and at the end of it, and it didn't make a difference. So I hear what the staff is saying, I'm not sure I'm necessarily going to take them up on this one, but, we'll see.

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Brian Breheny: Any takeaways from the chart or the approach the staff took this year? I don't know if it made a difference to many people.

Meredith Cross: I thought the chart wasn't bad. They made it so you can look quickly.

Brian Breheny: Yeah.

Meredith Cross: I kind of like letters. It was a little bit choppy at times and you weren't sure that you had all the information. But in general, the chart, they were precommunicative through the chart.

Brian Breheny: Yeah, yeah.

Meredith Cross: The quality of the chart was quite high, I thought. I don't know if others thought that. That was my reaction to the chart.

Brian Breheny: It's something to keep in mind when you're doing research on letters, because you used to do a lot of online research, now you need to kind of reflect on the chart. It's an important part of it. If you don't factor it in, you're going to miss what happened last season. I think it makes our jobs a little bit harder. At first I couldn't understand exactly. I guess when you unpack what was going on behind the scenes and all the time and energy the staff had to put the letters together to post them and things, because at the end of the day, the analysis still has to happen, considerations still have to happen. So what was the real help on putting a chart as opposed to giving a response?

Keith Higgins: Exactly. I kind of wonder how much time was- the letters themselves didn't take that much time to write and if you assume that they had to do the same analysis, I'm not sure how much of the staff's time it really saved.

Keir Gumbs: Yeah, but I don't know.

Meredith Cross: How do you sight the chart in a No Action letter?

Brian Breheny: Pardon?

Meredith Cross: How do you sight the chart?

Brian Breheny: Oh, right.

Meredith Cross: You're going in and you're like, "Okay, in the chart, line…"

Brian Breheny: Yeah, right.

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Keir Gumbs: I do think it makes a difference, timing wise, for the staff. I mean, I agree with you all that you know, the work that it had to do with the research and the memo, like that's still there. I totally agree with that. But you know, it's like the construction rule, like you can get most of the construction 90% done in like 30 days, and then that last 10% takes another 20 days. Like disproportionate. And I do think, at least my recollection was, you labored over the words in those letters so much. Even those letters didn't necessarily say that much and I would imagine that this would make it at least a little bit less stressful for the staff.

Keith Higgins: You labor to avoid saying something, that's what the labor was.

Keir Gumbs: Yes, correct.

Brian Breheny: Okay, onto the rule proposals, as our time is ticking away. I'm still looking to see if we can get more takeaways. So as you may recall, back in November of last year, the SEC proposed, it was a 3-2 vote along party lines to amend the shareholder proposal rules, which many people on this panel and others have been thinking about this for a very long time. And ultimately, they came out with these proposals.

There were basically five areas of focus. Number one, the ownership thresholds. As you probably now, as of now, you only need to own $2,000 worth of a company's stock continuously for at least one year to satisfy the ownership threshold. That was proposed, and I understand from my sources here, adopted to a 3 tier structure, so now you need to own at least 2000 of the company's securities for at least three years, 15,000 of the company's for at least two years, or 25,000 for at least one year. Although if I'm following this correctly, I think they grandfathered in anybody who as of today owned the requisite, which is today's threshold, which is just 2000 for at least one year. I don't know whether they believe this will apply for the upcoming season which is getting pretty close because these rules will have to be published in the federal register. There will be a period of time and many of the companies will already start to be getting proposals, but perhaps we'll see through the rest of this meeting, what they're intending to do by grandfathering in these people to allow it for people who own those percentages now so you're not taking away a right that they feel like they may have at this point.

Number two, they quantify what some of the requirements for what you need to document, to submit a proposal as a representative. That process was already a staff rule or a staff guidance required in the legal bulleting. That was something they proposed to adopt in the rule. I haven't seen anything where they suspect that will probably be included.

Number three, they are requiring in the rule now that if you are a proponent, you have to include in your response your ability to meet with the company in person or by

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teleconference not less than ten days, no more than 30 days after submission of the proposal. And if you look at the reg text, it's not like, "Will you be willing to meet?" It was like "When will you be willing to meet? And give us some time." So I think the intent is that they're going to require that the proponent, in order to satisfy the 14-a8, or to put it another way, the company could potentially ask for the proposal to be excluded if the person isn't willing to meet with them. I think one, I'm sure it's to try to drive the ability to negotiate. We saw some of those negotiated settlements decrease this past season. So maybe what they're, I think, intending to do is to try to force people to at least sit down and maybe something out. Now a lot of that happens with proponents you know, who are like sophisticated and actually interested in a topic. There's a lot of discussion and negotiation. Many companies will attempt to try to find a path forward so the proposal doesn't have to be put through a vote. I also think it's another way of getting at one of our perennial shareholder proponents who kind of abuse the system because he technically says he's representing other people, but do people really understand exactly what he's doing? Are they kind of giving him carte blanche in order to do things? So maybe this is another way. If he has to not only get people to document that they've appointed him, but they actually have to show up on a call, that may be another hurdle for them to say, "Look, I'm not really interested in participating."

The fourth thing they did was to amend the requirement of the one proposal limitation to make it clear that it's limited to each person that submits a proposal. Again, I think they're trying to cut down on multiple proposals being submitted in essence by the same person. I'm not sure, well I'll finish the last part, we could talk about whether we think those things will actually result in reducing Mr. Chevedden's work in this area, but it seems like some of this is at least pointed at trying to chore some of that up.

The last thing is they proposed changes to the resubmission thresholds. They proposed it to be if the vote was less than 5%, if it was voted on once less than 15%, if it was voted on twice and less than 25%, if it was voted on three or more times, it looks like it's possible that maybe they removed the 15% vote, because I see Liz as saying as she heard them only say 5 and 25. So did one of my colleagues. I don't know if that was something that just wasn't picked up by accident. Because I think Bill Hinman gave an overview, so we'll see. The other thing that they proposed was this new potential momentum requirement, wehre you would basically be able to exclude the proposal if it was voted on three or more times in the proceeding five years and the percentage that voted on it actually started to decrease. There was a story in Reuters a week or so ago that said that was going to hit the cutting room floor. Often times when that happens it's because it's being sought in my view, soft leaked to the press to see what the reaction might be. I haven't seen anything on that so I have a feeling that momentum might have not made it into the final rule. But anyway, that's kind of what I have on shareholder proposal. I'm happy to have some commentary that people have on what you think the impact will have on these rules.

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Keir Gumbs: Well I'll just start. You know, so the CII has been having its annual meeting yesterday and there are portions that are today. For many members in the institutional investor community, this proposal is borderline offensive I think with some of the things that are included. Whether or not there's a rationale for them or not, the truth is I think many investors are very upset about it. In my mind, at least, I would expect that there will be a challenge, just based on what some of the institutional investor crown has said about the rulemaking, which is by the way, something I think we all anticipated with any shareholder proposal-related change, because it's such a major part of the corporate governance ecosystem. My expectation is that even if there was a desire to have this go into effect in the relatively near future, I would imagine that there's going to be a challenge that may delay this going into effect, even with I understand to be very wrong phase and period already contemplated.

Brian Breheny: The resubmissions of 5, 15, and 25 I think Mack McNair just read those that I missed.

Keith Higgins: I was just going to say it's also assuming it doesn't get repealed under the Congressional Review Act.

Brian Breheny: Yeah. Keith, why don't you explain what that's about that? Then we can talk about-

Keith Higgins: I have no idea. There's a byzantine way of counting when the period of time during which rules are adopted at the end of a Congress in which the next Congress can repeal those, but we're within the window, so that any major rule adopted by a federal agency during this time period can be repealed by the next Congress if they say chose. Depending on the makeup of the next Congress, somebody had a statistic yesterday that there were a number of rules repealed in 2017.

Meredith Cross: Yeah, they did, in the beginning of the Trump Administration and there were 16 agents in government rules including from the SEC, the Resource Extraction rule. But it takes both houses plus the President, so there'd have to be a complete flip for this to happen. I'm not going to get political here. I do think that if there is a complete flip, I would expect them to take this up under CRA and also to try to challenge it in court. I'm not sure the DC circuit would be a really friendly place to take this to try to get it challenged from the investor side. I'm also sort of surprised about what is so horrible about this, because it's kind of low-hanging fruit. There's been a lot of talk for years about trying to fix this rule, redefine ordinary business, you know, much higher submission requirements. The institutional investors will satisfy the submission requirements. Chevedden may not but these the institutional investors will.

Keith Higgins: ___ (01:06:24) if he holds for three years, I mean it'll just affect his portfolio turnover.

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Meredith Cross: Right, I imagine the harder thing here is the resubmission thresholds for some of the more fringe topics. So as something is becoming a topic that you're putting in a company and it's slowly getting uptick, it's going to need to get uptick quicker for it not to get knocked out, if I'm understanding it correctly. Is that right?

Brian Breheny: Yep.

Keith Higgins: Yes.

Meredith Cross: And that's what they would be upset about?

Keir Gumbs: You've named two of the three. I think the third is the stuff about a shareholder representative. The truth about individual, kind of gadflies, like John Chevedden is that even if they don't necessarily fall in line with the larger institutional investors, the fact is that I think the broader investor community sees itself as having benefitted from the blanketing of proposals by those gadflies. So he increases the reach of many of the governance proposals. And as you all know, what he tends to do is find a successful governance proposal that an investor and then send it to everybody else. So I think their concern is that that structure may be threatened under these proposals, and I also think whether we think this makes sense of not, I think the increase of the submission thresholds will have the effect, at least with some smaller investors, of keeping them out of the process. Even if that doesn't necessarily impact the institutions themselves, the truth is it does make it more difficult for the smaller investors to participate, whether we think they should or they shouldn't at the same frequency as they have separate discussion. But I do think that there is this sense that it's a less egalitarian process as a result of some of these changes.

Meredith Cross: It's funny because I recall, when Brian and I were working on proxy access, there's a lot of questions as to what the possible theory is for 14-a8, what authority there is for the rule in the first place. Like the SEC adopted it and it's not clear what the statutory basis for it is. As we were working on proxy access and we were looking at all the authority corrections. But as you said it's completely engrained in the system at this point. So trying to walk back from it is difficult. I am a strong proponent of what they're trying to do here because it has gone so far afield from what, it's such an expense for companies and it's mostly a waste of shareholders' money, I have to say, what dealing with it is. One of the things Brian Lane and I talked about when we were working there in the nineties was just have an appendix to a proxy statement where you stick them all, every one that you get, or pick them by **___ (01:09:36)** any crazy thing to try to get the distraction out of the proxy statement.

Keith Higgins: I think you could do that, couldn't you? Right now, I mean, I don't know, do you need a rule to do that? They're in the appendix, they're voted on at the meeting.

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Keir Gumbs: It's the vote and I think the vote is the challenging. The truth is the vote by itself isn't a problem. It's the role that the vote plays with proxy advisory firms. Like that's the real teeth behind all of it. I get it, from my perspective, I actually don't care about shareholder proposals. We'll see how many we get. I hope we don't get the Amazon like number 10 or 20 or whatever it is. The engagement that we've had on the substance that will eventually go into proposals has been, from my perspective, way more meaningful than what we would put in the proxy. If we do our job well, hopefully we'll get fewer of them. To me it is a little bit of a distraction but my God, there are people that spend all of their time just on these engagements, just on these ESG items. I know because I hired someone and it's what we have to do in order to manage the demand from investors.

Brian Breheny: Well Dave, we went over. But Liz said it was okay.

Dave Lynn: We're okay and we appreciate everybody sticking with us. I'm just going to wrap up with one minute about comment letter trends from the Division of Corporation Finance because I feel obliged to talk about that on every panel we do. The good news is they keep going back. Maybe they'll slow down to such a trickle that we won't have to talk about them anymore. But you know, an eWise study just came out this month and they basically said comment letters were down 15% from where they were last year, which has been a continuing trend as the staff has sort of raised their materiality threshold. So you may not get a comment letter at all, even though they've reviewed your filing or you may only get a handful of comments or one comment. So that certainly has been a big change. I noticed in a GAO report recently that it said they had reallocated the review of nonfinancial disclosures to accountants. So that included things like risk factors and the like, which makes me wonder what you do as a lawyer **over at FIN (1:11:49)** these days, but I want to just focus on the COVID-19 comment letters and there really haven't been many on periodic reports, very much for the reasons Kier highlighted when talking about non-GAAP, but we've seen them on registration statements and disclosures there. I think that's a good way to kind of foreshadow what we might see coming forward and as the 10-Ks are filed and the next round of 10-K comment letters get sent out. I think MD&A risk factors as we talked about earlier are the big area of focus that the staff will comment on. Are the aligned in terms of things we were talking about the risk factors or the same trends and uncertainties we talked about in your MD&A, is your MD&A talking about the liquidity issues we had touched on earlier, there are big **increases (01:12:51)** on debt covenants, whether we have talked about debt covenants provided the information quantitatively about debt covenants that the staff expects and sort of risk of not meeting those covenants. The impairment issue obviously is going to be, this is where we've had a long period of rising stock prices and now we've had a period of rapidly rising and falling stock prices, and certainly that will impact impairment analysis. I always call the impairment comments the damned if you do, damned if you don't comment, because they comment when you haven't taken an impairment question and they comment when

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you have taken an impairment, why you didn't take a bigger impairment. So paying attention to those disclosures and the MD&A is important.

The question mark is how much they'll focus on its internal control over financial reporting. The vast majority of companies didn't report any material changes to their internal control over financial reporting as a result of COVID-19. Some address things like changes to the home environment, if you had to **___majority (01:13:59)** and the like. But that's been the focus _____ **(01:14:03)**. And that's everything I had on the comment letters.

Liz Dunshee: Alright well thank you to all of our SEC All-Stars. Thanks Keith, Dave, Brian, Keir, and Meredith. That was a very informative discussion and you got the late-breaking news in there, so thanks Brian for multitasking.

Markeys/pti:lr

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