

Proxy Season Considerations And Design Issues under the New Tax Laws

Presentation for:
Executive Compensation Webinar Series
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Presentation by:
Anthony J. Eppert
anthonyeppert@andrewskurth.com
713.220.4276

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andrewskurthkenyon.com

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About Anthony “Tony” Eppert



Anthony Eppert , Partner
Andrews Kurth Kenyon LLP
Tel: +1.713.220.4276
Email: AnthonyEppert@AndrewsKurth.com

- Tony practices in the areas of executive compensation and employee benefits

- Before entering private practice, Tony:
 - Served as a judicial clerk to the Hon. Richard F. Suhrheinrich of the United States Court of Appeals for the Sixth Circuit
 - Obtained his LL.M. (Taxation) from New York University
 - Obtained his J.D. (Tax Concentration) from Michigan State University College of Law
 - Editor-in-Chief, Journal of Medicine and Law
 - President, Tax and Estate Planning Society

Upcoming 2018 Webinars

- Upcoming 2018 webinars:
 - How to Structure Management Carve-Out and Change-in-Control Plans (3/8/2018)
 - Effective Compensation Governance – The A-Z Course (4/12/2018)
 - Accounting Considerations that Impact Equity Compensation Design (5/17/2018)
 - Training Course on Forms 3, 4 and 5 (6/14/2018)
 - Pay Ratio: Developments from Last Proxy Season (7/12/2018)
 - Preparing for Proxy Season: Start Now (Annual Program) (8/9/2018)
 - Planning for an IPO: Compensation Considerations (Part 1 of 2) (9/13/2018)
 - Compensation Changes Due to Loss of EGC Status (Part 2 of 2) (10/11/2018)
 - Taxation of Equity Awards: The 101 Training Course (11/8/2018)
 - How to Negotiate Executive Employment Contracts (12/13/2018)

- Upcoming 2019 webinars:
 - List will be created around September 2018

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Our Compensation Practice – What Sets Us Apart

- Compensation issues are complex, especially for publicly-traded companies, and involve substantive areas of:
 - Tax,
 - Securities,
 - Accounting,
 - Governance,
 - Surveys, and
 - Human resources

- Historically, compensation issues were addressed using multiple service providers, including:
 - Tax lawyers,
 - Securities/corporate lawyers,
 - Labor & employment lawyers,
 - Accountants, and
 - Survey consultants

Our Compensation Practice – What Sets Us Apart (cont.)

- The members of our Compensation Practice Group are multi-disciplinary within the various substantive areas of compensation. As multi-disciplinary practitioners, we take a holistic and full-service approach to compensation matters that considers all substantive areas of compensation



Our Compensation Practice – What Sets Us Apart (cont.)

- Our Compensation Practice Group provides a variety of multi-disciplinary services within the field of compensation, including:

Traditional Consulting Services

- Surveys
- Peer group analyses/benchmarking
- Assess competitive markets
- Pay-for-performance analyses
- Advise on say-on-pay issues
- Pay ratio
- 280G golden parachute mitigation

Corporate Governance

- Implement “best practices”
- Advise Compensation Committee
- Risk assessments
- Grant practices & delegations
- Clawback policies
- Stock ownership guidelines
- Dodd-Frank

Securities/Disclosure

- Section 16 issues & compliance
- 10b5-1 trading plans
- Compliance with listing rules
- CD&A disclosure and related optics
- Sarbanes Oxley compliance
- Perquisite design/related disclosure
- Shareholder advisory services
- Activist shareholders
- Form 4s, S-8s & Form 8-Ks
- Proxy disclosures

Design/Draft Plan

- Equity incentive plans
- Synthetic equity plans
- Long-term incentive plans
- Partnership profits interests
- Partnership blocker entities
- Executive contracts
- Severance arrangements
- Deferred compensation plans
- Change-in-control plans/bonuses
- Employee stock purchase plans
- Employee stock ownership plans

Traditional Compensation Planning

- Section 83
- Section 409A
- Section 280G golden parachutes
- Deductibility under Section 162(m)
- ERISA, 401(k), pension plans
- Fringe benefit plans/arrangements
- Deferred compensation & SERPs
- Employment taxes
- Health & welfare plans, 125 plans

International Tax Planning

- Internationally mobile employees
- Expatriate packages
- Secondment agreements
- Global equity plans
- Analysis of applicable treaties
- Recharge agreements
- Data privacy

Purpose of this Presentation

- The purpose of this presentation is to help the attendee prepare for proxy season with respect to considerations under the new tax law

- To that end, this presentation covers:
 - 6 new financial metrics from ISS and the impact upon TSR designs;
 - Revisions to Section 162(m);
 - Net withholding considerations and the change in the supplemental rate to 22%;
 - Director compensation; and
 - Pay ratio

Performance Pay – 6 New Financial Metrics from ISS

- As part of its quantitative evaluation (*i.e.*, the Relative Pay and Financial Performance Assessment), ISS added the following financial metrics (in addition to the TSR metric) to help it determine whether a pay-for-performance misalignment exists:
 - Return on equity,
 - Return on assets,
 - Return on invested capital,
 - Revenue growth,
 - EBITDA growth, and
 - Growth in cash flow from operations

- Financial performance will be measured by a weighted average of the above 7 financial metrics, and weightings will vary depending on the company's GICS code

- This means that a company's CEO pay will be compared to the 3-year financial performance of the weighted average of the above 7 financial metrics

Revisions to Section 162(m): Generally

- The Tax Cuts and Jobs Act of 2017 (the “**Act**”) eliminated the performance-based exception to the \$1mm deduction limit (the “**Exception**”) and expanded the definition of “who” is subject to the \$1mm deduction limit
 - This means that, starting January 1, 2018, all compensation paid to a covered employee that exceeds \$1mm will not be deductible unless the compensation is covered by the grandfathered rules
 - With the exception of grandfathered awards, equity incentive and annual bonus plans should be reviewed to reduce restrictions related to the Exception (e.g., setting performance goals within a certain period of time, certifying the achievement of goals, etc.)
 - With respect to the foregoing, issuers should review and update equity plan prospectuses to the extent Section 162(m) tax disclosure is contained therein
 - Annual grant sub-limits within a plan could be removed (though retaining sub-limits could be a form of good compensation governance) and any removal will likely require shareholder approval under NYSE and NASDAQ listing rules (i.e., removal of a sub-limit enlarges a possible benefit to a participant)
 - Severance provisions within executive contracts could be amended because, with the elimination of the Exception, performance conditions no longer have to be satisfied in order to receive severance pay (i.e., compliance with Rev. Rul. 2008-13 is no longer necessary)
 - The prevalence of soft goals is likely to increase (e.g., leadership)

Revisions to Section 162(m): Generally (cont.)

- [Continued from prior slide]
 - There is a potential erosion of performance-based compensation (e.g., Netflix folding its performance-based bonus into its salary structure), but a large deviation is not likely given that institutional shareholders demand performance-based compensation
 - Existing written binding contracts in effect on 11/2/2017 and not materially modified or renewed on or after such date could have grandfathered treatment, however:
 - The contract cannot be modified on or after 11/2/2017
 - IRS guidance is expected
 - There is no consensus among the practitioners as to whether the presence of negative discretion would void grandfathered treatment (though from the audit perspective, some accounting firms are taking a conservative position); however, there is consensus among practitioners that the exercise of negative discretion would destroy grandfathered treatment
 - A written “binding” contract is not likely to exist if the Compensation Committee has the discretion to terminate or materially modify such contract

Revisions to Section 162(m): Generally (cont.)

- [Continued from prior slide]
 - “Who” is a covered employee subject to the \$1mm deduction limit was expanded to include the CFO, and too, once a covered employee ALWAYS a covered employee
 - Covered employee includes the CEO, CFO and the next 3 most highly compensated executive officers for the tax year whose compensation is required to be disclosed in the Summary Compensation Table
 - Any individual who is a covered employee on or after January 1, 2017, will always remain a covered employee (e.g., even years after termination of employment). However, because the Act does not become effective until January 1, 2018, any covered employee who terminates employment in 2017 would not be included within this “once a covered employee always a covered employee” rule (i.e., he or she would no longer be a covered employee the day after termination of employment within 2017)
 - Form 8-K disclosure could be required in instances where a 2018 compensatory decision or award varies from the terms of the plan or prior proxy disclosure
 - Review the Compensation Committee charter to determine whether any revisions are required (note: if the issuer has grandfathered plans, then changes are likely nominal)
 - Review and revise proxy disclosure for both substantive and procedural changes
 - Shareholder re-approval of equity plans will no longer be required every 5 years or, to the extent applicable, upon expiration of any transition periods

Revisions to Section 162(m): Generally (cont.)

- [Continued from prior slide]
 - Be sure to maintain “outside director” status
 - The Compensation Committee will still need to certify whether performance objectives have been attained with respect to grandfathered plans
 - And too, it is important to keep in mind that Compensation Committee members must maintain independence under Rule 16b-3 and NYSE/NASDAQ listing rules

 - If preserving a state income deduction is important, then determine “when” the Exception was or will be eliminated for state income tax purposes
 - Generally, state tax codes conform to the Internal Revenue Code in most respects
 - However, the timing of such conformance varies. Some states conform in real time with changes to the Internal Revenue Code. Other states have a static approach and conform as of a certain date

Revisions to Section 162(m): New Designs

- With respect to future bonuses that are not grandfathered:
 - Flexibility exists because it is no longer required that performance targets be determined within the first quarter of the performance period
 - However, if targets are established when they are substantially certain to occur, then the bonus will be reported as a discretionary bonus in the SCT and not within the non-equity incentive column of the SCT
 - Any use of positive discretion will convert a performance-based award that is otherwise reported in the non-equity incentive column of the SCT, to an award that is reported as a discretionary bonus in the SCT
 - Any exercise of positive discretion will need to be disclosed in the CD&A

- Will the loss of the deduction impact grant practices? Not likely
 - The priority is to attract and retain talent
 - The loss of the deduction due to elimination of the Exception may be offset by the effect of the corporate tax rate moving from 35% to 21%
 - ISS has indicated that it will continue to focus on pay-for-performance

Revisions to Section 162(m): New Designs (cont.)

- Notwithstanding the prior slide, design considerations that could preserve deductions include:
 - Replace the traditional 3-year vesting schedule with longer vesting schedules
 - Pay severance in installments instead of a lump sum payment
 - Create time windows within which stock option exercises must occur (if at all), and create an annual ceiling on the dollar value of any spread (*i.e.*, the difference between the exercise price and the then fair market value of the underlying stock) that may exist at exercise per calendar year
 - Will we see a resurgence of the secular trust?

Net Withholding

- Should net withholding under the equity plan be applied at the minimum statutory rate of 22% or at the maximum individual rate of 37%?
 - Remember that due to the change in position by the Financial Accounting Standards Board (which generally became effective January 1, 2017), the maximum individual rate could be used without the equity award being classified as a liability award for purposes of measuring accounting expense (*i.e.*, equity classification would be maintained)
- Keep in mind that accounting rules did not change tax rules
- This means that, according to the IRS, supplemental wages can only be withheld in accordance with one of the following:
 - The flat rate (*i.e.*, 22% for supplemental wages less than \$1mm, and highest marginal rate of 37% for supplement wages over \$1mm), or
 - The aggregate method
- The aggregate method involves the employer “aggregating” regular and supplemental wages, and then using the employee’s Form W-4 to determine the applicable withholding rate
 - To accomplish the desired goal of maximum withholding, the employee could file a revised Form W-4 and the employer could elect to use such immediately

Director Compensation: Adopt Reasonable Sub-Limits

- Should shareholders approve all or a portion of director compensation?
- At a minimum, due to the decisions by the Delaware Supreme Court in *Seinfeld* and *Calma*, as narrowed by *In re Investors Bancorp, Inc. Stockholder Litigation* (December 2017), outside compensation advisers should be hired to help the board establish the fairness of their compensation
 - As background, directors' decisions with respect to their own compensation can be challenged as self-dealing and are subject to the "entire fairness" standard (including both fair dealing and a fair price) rather than the more deferential and director-friendly "business judgment rule" (*i.e.*, a board's decision will be upheld unless it cannot be attributed to a rational business purpose) unless such decisions were ratified by the issuer's shareholders
 - *Seinfeld* and *Calma* essentially stood for the proposition that the entire fairness standard of review would not apply with respect to equity awards to directors if the equity plan contained sub-limits (applicable to directors) that were both meaningful and approved by the shareholders (*i.e.*, ratification defense). The end result is that the directors would have the benefit of the business judgment rule with respect to their actions
 - However, *In re Investors Bancorp* held that the business judgment rule would apply only if the company's shareholders approved the specific equity awards in question or if the awards were pursuant to a self-executing (non-discretionary) equity plan that was approved by the shareholders

Director Compensation: Adopt Reasonable Sub-Limits

- The following should be implemented as a result of *Seinfeld*, *Calma* and *In re Investors Bancorp*:
 - Review existing compensatory arrangements for non-employee directors, including the associated process and practice for determining such compensation
 - Meaningful per-director and annual sub-limits should be contained within equity incentive plans
 - A benchmarking analysis against a peer group should be performed to help determine “meaningful”
 - In accordance with *Seinfeld* and *Calma*, outside compensation advisers should be hired to help the issuer determine the “fairness” of the compensation it pays to its directors

*See **Tab A** (containing equity plan amendments for non-employee directors with respect to certain of the Forbes Top 50 Public Companies during 2016-2017 proxy seasons)

- For those issuers seeking more robust protection, consider whether shareholders should specifically approve:
 - Retainers and meeting fees,
 - Any irregular and unusually large compensatory awards, and/or
 - Formulaic or self-executing cash and/or equity awards
- To the extent applicable, the foregoing should be disclosed in the narrative that directly precedes the Director Compensation table of the proxy statement

Director Compensation: ISS

- ISS has a policy with respect to evaluating proposals seeking shareholder ratification of non-employee director cash and equity compensation
- Qualitative factors that will be considered include:
 - Director compensation compared to companies with a similar corporate profile,
 - Any problematic pay practices with respect to non-employee director compensation,
 - Presence of any stock ownership guidelines (*i.e.*, at least 4x the annual cash retainer) or hold requirements applicable to non-employee directors,
 - Vesting schedules with respect to equity awards,
 - The mix between cash and equity compensation,
 - Presence of any meaningful limits on director compensation (*i.e.*, likely a result from *Seinfeld* and *Calma*),
 - Presence of retirement benefits and/or perquisites, and
 - The quality of the disclosure address non-employee director compensation
- The above is another reason why robust disclosure should be included within the narrative that directly precedes the Director Compensation table of the proxy statement

Director Compensation: ISS (cont.)

- Evaluations of non-employee director pay (beginning in 2019)
 - A negative recommendation by ISS against the members of the committee could result if there is excess non-employee director compensation in two or more consecutive years without a compelling rationale or mitigating factors
 - Emphasis added because ISS is looking for a pattern of excessive compensation
 - To determine whether compensation is excessive, ISS will compare individual non-employee compensation totals to the median of the non-employee directors at peer companies
 - ISS is looking for extreme outliers (meaning non-employee directors paid above the top 5% of the median non-employee director at peer companies)

Director Compensation: Adopt a Separate Equity Plan

- As background, the equity plan scorecard (“**EPS**”) was adopted by ISS in 2015 and weighs positive and negative factors around the following 3 pillars:
 - Plan cost,
 - Plan features, and
 - Grant practices
- As part of the “plan features” pillar, a certain number of points are allocated to whether the equity plan has a minimum vesting feature
 - Full points within this bucket if the equity plan has a 1 year minimum vesting schedule for all equity awards, subject to a 5% carve-out
 - No points within this bucket if anything less
- Frequently, non-employee director awards will contain a vesting schedule of less than 1 year (e.g., vest quarterly, etc.)
- As a result, and to help ease the strain on the 5% carve-out otherwise associated with both employees and non-employee directors receiving equity awards with vesting schedules of less than 1 year, consider moving non-employee directors to their own equity plan
 - EPS does not apply to a non-employee director equity plan
 - However, this issue should not be considered to the extent the issuer needs full points under the employee-based equity incentive plan

Pay Ratio

- Effective for fiscal years beginning on or after January 1, 2017, the rule requires most public companies to disclose:
 - The annual total compensation of their CEO,
 - The annual total compensation of the median employee of the issuer (excluding the CEO) and its consolidated subsidiaries,
 - A reasonable estimate of the ratio of the amount determined in the above two items,
 - The date the above was determined (which must be within the last 3 months of the last completed fiscal year), and
 - The methodologies the issuer used to identify the median employee and total compensation

- The ratio may be presented numerically (e.g., 75:1) or in narrative form
 - Disclosure in the form of a percentage is not permitted

- Additionally, issuers are required to disclose the following:
 - The methodology used to identify the median employee
 - All material assumptions, COLAs and consistently applied compensation measures (“CACMs”) used to identify the median employee or to determine total compensation
 - Any estimates must be clearly disclosed

Pay Ratio (cont.)

- Disclosure of additional ratios are permitted. However, the additional ratios:
 - Must be clearly identified,
 - Cannot be misleading, and
 - Cannot be presented with greater prominence when compared to the required pay ratios (*i.e.*, this portion of the rule is similar to the rule applicable for any supplemental table to the Summary Compensation Table)

- Expect that questions will be asked with respect to the disclosure of the median employee's total compensation

- To that end, consider adding explanatory language
 - To proactively address differences in ratios between the issuer and its peers (*e.g.*, employees in low cost jurisdictions, seasonal and part-time employees, and differences between an issuer that both manufactures and sells a product compared to a company that only sells such product)
 - To address the disclosure of the median employee's total compensation from the perspective of the issuer's other employees

- In terms of placement, consider having it appear immediately after the Summary Compensation Table because such placement avoids the disclosure being subject to the CD&A and the Compensation Committee's certification

Pay Ratio (cont.)

- Pay ratio
 - Pay ratio will be included in ISS' proxy research reports, but such will not be factored into the ISS recommendation with respect to say-on-pay
 - And too, ISS asked companies and investors to consider the following 3 questions:
 - How does the ratio compare with peer companies
 - Is it the CEO's pay or the median employee's pay that is driving the ratio
 - Whether there are mitigating circumstances such as low cost labor, etc.

- See **Tab B** for voluntary disclosures of pay ratio during the last proxy season

Don't Forget Next Month's Webinar

- Title:
 - How to Structure Management Carve-Out and Change-in-Control Plans

- When:
 - 10:00 am to 11:00 am Central
 - March 8, 2018

FIRM LOCATIONS

AUSTIN

111 Congress Avenue
Suite 1700
Austin, TX 78701
P +1.512.320.9200
F +1.512.320.9292

BEIJING

Room 2007, Capital Mansion
No. 6 Xin Yuan Nan Lu
Chao Yang District
Beijing, China 100004
P +86.10.8486.2699
F +86.10.8486.8565

DALLAS

1717 Main Street
Suite 3700
Dallas, TX 75201
P +1.214.659.4400
F +1.214.659.4401

DUBAI

Andrews Kurth Kenyon DMCC
45th Floor
Mazaya Business Avenue, BB2
Jumeirah Lakes Towers
P.O. Box 118273
Dubai, UAE
P +971.4.567.0767
F +971.4.567.0768

HOUSTON

600 Travis Street
Suite 4200
Houston, TX 77002
P +1.713.220.4200
F +1.713.220.4285

LONDON

Andrews Kurth Kenyon (UK) LLP
16 Old Bailey
London EC4M 7EG
United Kingdom
P +44.20.3053.8300
F +44.20.3053.8299

NEW YORK – BATTERY PARK

One Broadway
New York, NY 10004
P +1.212.425.7200
F +1.212.425.5288

NEW YORK – MIDTOWN

450 Lexington Avenue
New York, NY 10017
P +1.212.850.2800
F +1.212.850.2929

RESEARCH TRIANGLE PARK

4505 Emperor Boulevard Suite
330 Durham, NC 27703 P
+1.919.864.7200

SILICON VALLEY

1801 Page Mill Road
Suite 210
Palo Alto, CA 94304
P +1.650.384.4700
F +1.650.384.4701

THE WOODLANDS

Waterway Plaza Two
10001 Woodloch Forest Dr.
Suite 200
The Woodlands, TX 77380
P +1.713.220.4800
F +1.713.220.4815

WASHINGTON, DC

1350 I Street, NW
Suite 1100
Washington, DC 20005
P +1.202.662.2700
F +1.202.662.2739



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Director Compensation¹

1. Alphabet Inc.

Amended and Restated 2012 Stock Plan (but amendment was to increase share reserve)

Non-Employee Director Awards

In order to retain and compensate the non-employee members of the Board of Directors for their services, and to strengthen the alignment of their interests with those of the stockholders of the Company, the Plan permits the grant of cash-based and stock-based Awards to any non-employee member of the Board of Directors. Aggregate Awards granted to any non-employee member of the Board of Directors in respect of any calendar year, solely with respect to his or her service as a non-employee member of the Board of Directors, may not exceed \$1,500,000 based on the aggregate value of cash-based Awards and the Fair Market Value of any stock-based Awards, in each case determined as of the date of grant. The Board of Directors will reassess this cap at least once every five years. Non-employee members of the Board of Directors shall not be eligible to receive any Incentive Awards other than Awards.

2. Microsoft Corporation

2017 Stock Plan

Non-Employee Director Awards. The Board may grant Director Fee Awards and Stock Awards in its discretion to any Non-Employee Director. Aggregate Director Fee Awards and Stock Awards to any individual Non-Employee Director in respect of any fiscal year of the Company, solely with respect to service as a Non-Employee Director, may not exceed 20,000 Shares (or, in the event the Award is paid in cash, the equivalent cash value thereof as determined by the Board based on the market price of the Company common stock on the last trading day preceding the date of payment). The Board may make exceptions to these limits for individual Non-Employee Directors in extraordinary circumstances, as the Board may determine in its discretion, provided that the Non-Employee Director receiving such additional compensation shall not participate in the decision to award such compensation.

¹ **Note:** The descriptions set forth in this Tab are derived from proxy statements filed during the 2016 and 2017 proxy seasons for certain publicly-traded corporations within the Forbes Top 50 Public Companies.

3. **Facebook, Inc.**

Proposal: Approval of Our Annual Compensation Program for Non-Employee Directors

Requested Stockholder Approval

The board of directors believes that stockholder approval of the annual compensation program for non-employee directors (Annual Compensation Program) is in the best interests of us and our stockholders because it allows us to attract and retain highly qualified non-employee directors which we believe are critical to our long-term success. We believe that the compensation paid to non-employee directors pursuant to the Annual Compensation Program is reasonable and appropriate, in line with market practice, and compensates our non-employee directors for services as non-employee directors and aligns the interests of us and our stockholders. The board of directors believes that approving the Annual Compensation Program for non-employee directors is in the best interests of us and our stockholders. In January 2016, we engaged Compensia, Inc., a national compensation consulting firm, to advise the compensation & governance committee of the board of directors regarding the amount and type of compensation to be paid to non-employee directors pursuant to the Annual Compensation Program in 2016, including a review of comparative data from the peer group of companies that we benchmark against for executive compensation purposes. Overall, based on Compensia's analysis of this peer group, average cash compensation per director approximated the 20th percentile of our peers and annual equity compensation per director approximated the 80th percentile of our peers. In addition, Compensia's analysis concluded that our overall board of director compensation approximated the 15th percentile of our peers, which was in part driven by the size of our board of directors being relatively smaller than our peers, and our average compensation, including both the cash and equity components, approximated the 75th percentile of our peers. The compensation & governance committee then conducted a review and assessment of compensation paid to non-employee directors pursuant to the Annual Compensation Program and recommended to the board of directors that no changes be made to the Annual Compensation Program for 2016. The board of directors then reviewed the recommendation of the compensation & governance committee and resolved to make no changes to the Annual Compensation Program for 2016. As part of the Proposed Settlement, we have agreed that the compensation & governance committee and the board of directors will conduct an annual review of all compensation to be paid to non-employee directors in future calendar years based on the same process undertaken in 2016. We are asking our stockholders to approve the Annual Compensation Program for calendar year 2016 and future calendar years or until otherwise modified by our board of directors. If the Annual Compensation Program is not approved by our stockholders, we will not provide our non-employee directors with compensation under the Annual Compensation Program until such time, if any, as stockholder approval of a subsequent similar proposal is obtained. We believe this will have an adverse effect on our ability to attract and retain qualified directors to our board of directors.

Annual Compensation Program Benefits

Except for our non-employee directors, no other person is eligible to participate in the Annual Compensation Program. While the compensation to be paid under our Annual Compensation Program will be made in accordance with the terms described above under "Proposals Four

Through Six: Director Compensation-Background Regarding Annual Compensation Program for Non-Employee Directors," the specific amounts that will be received by our non-employee directors under the Annual Compensation Program will depend on a number of factors, including the number of non-employee directors on our board of directors during any particular time and, with respect to the equity component, the market price of our Class A common stock which is used to determine the number of RSUs to be granted in any particular year. As a result, the value of the equity component that will be awarded under the Annual Compensation Program is not determinable at this time.

4. **Chevron Corporation**

Amendment Number One to the Chevron Corp Non-Employee Directors Equity Compensation and Deferral Plan

Annual Award Limits. The maximum number of Shares with respect to which any Options, Stock Units or Restricted Stock Award may be granted to any Non-Employee Director in any calendar year shall be 40,000 Shares, subject to adjustments made in accordance with Section X. hereof, or the cash equivalent thereof to the extent such Awards are payable in cash or property.

5. **Verizon Communication Inc.**

2017 Long-Term Incentive Plan

Limit on Non-Employee Director Awards. Effective beginning with calendar year 2017, the maximum number of Shares subject to those Awards that are granted under the Plan during any one calendar year to an individual who, on the grant date of the award, is a Non-Employee Director is the number of Shares that produce a grant date fair value for the Award that, when combined with the grant date fair value of any other Awards granted under the Plan during that same calendar year to that individual in his or her capacity as a Non-Employee Director, is \$600,000. For purposes of this Section 4.4, "grant date fair value" means the value of the Award as of the date of grant of the Award and as determined using the equity award valuation principles applied in the Company's financial reporting. The limits of this Section 4.4 do not apply to, and shall be determined without taking into account, any Award granted to an individual who, on the date of grant of the Award, is an officer or employee of the Company or one of its Subsidiaries. The limits of this Section 4.4 apply on an individual basis and not on an aggregate basis to all Non-Employee Directors as a group.

6. **Comcast Corporation**

2002 Restricted Stock Plan (amendment was for increasing share reserve)

*Our Board is responsible for granting awards to nonemployee directors.

Our 2002 Non-Employee Director Compensation Plan sets compensation for our nonemployee directors. This plan provides that on each November 20, our Board will grant an award of RSUs to each nonemployee director having a fair market value of \$170,000 on the date of grant. Nonemployee directors are also eligible to receive awards of RSUs upon commencement of service with us. These awards will have a fair market value ranging from \$42,500 to \$170,000 on the date of grant, depending on the date the nonemployee director commences service with us. Each award of RSUs is fully vested on the grant date. All awards of RSUs specified in the 2002 Non-Employee Director Compensation Plan are made under the 2002 Restricted Stock Plan such that the awards of RSUs are reflected in the number of shares issued under the 2002 Restricted Stock Plan.

7. **Intel Corporation**

Amended and Restated 2006 Equity Incentive Plan (amendment did not change director limits)

OUTSIDE DIRECTOR AWARDS

Each Outside Director may be granted up to 100,000 Shares underlying Awards (each an "Outside Director Award") each fiscal year, as determined by the Board of Directors. Notwithstanding anything to the contrary in this Plan, the foregoing limitation shall be subject to adjustment under Section 11. The number of Shares subject to each Outside Director Award, or the formula pursuant to which such number shall be determined, the type or types of Awards included in the Outside Director Awards, the date of grant and the vesting, expiration and other terms applicable to such Outside Director Awards shall be specified from time to time by the Board of Directors, subject to the terms of this Plan, including the terms specified in Section 8. If the Board of Directors reasonably believes that an Outside Director has committed an act of misconduct as specified in Section 8(a)(v) or 8(b)(vi), the Board of Directors may suspend the Outside Director's right to exercise any Stock Option or SAR and/or the vesting of any Restricted Stock or Restricted Stock Unit Award pending a determination of whether an act of misconduct has been committed. If the Board of Directors determines that an Outside Director has committed an act of misconduct, neither the Outside Director nor his or her estate shall be entitled to exercise any Stock Option or SAR whatsoever and shall forfeit any unvested Restricted Stock or Restricted Stock Unit Award.

8. **Cisco Systems, Inc.**

Amendment and Restatement of the 2005 Stock Incentive Plan

The Amended Stock Plan is also being submitted to our shareholders for approval to place a limit on the total amount of equity and cash compensation that may be granted or paid to our non-employee directors each fiscal year. Our Board of Directors approved the Amended Stock Plan, subject to shareholder approval, to provide that the maximum value of stock awards granted during a single fiscal year under the Amended Stock Plan, taken together with any cash fees paid during such fiscal year for services on the Board of Directors, will not exceed \$800,000 in total value for any non-employee director. In setting such a limit, our Board of Directors considered the recommendation of the Compensation Committee and FWC, the Compensation Committee's independent compensation consultant. In addition, the Board of Directors considered the effectiveness and reasonableness of the equity and cash compensation that we offer to our non-employee directors along with prevalent practices among our Peer Group (as defined in the "Compensation Discussion and Analysis" section), the current and future responsibilities of our non-employee directors, and whether such a limit provides sufficient flexibility to adjust non-employee director compensation in the future if such changes are necessary to remain competitive with our peers. We believe that such a limit allows us to stay within reasonable bounds of what the market requires in a competitive environment for qualified directors, while also imposing meaningful limits on the amount of compensation that may be awarded to our non-employee directors.

9. **Citigroup Inc.**

Amended and Restated 2014 Stock Incentive Plan (amendment was to increase share reserve, did not change director limits)

Limits on Awards to Directors. Awards under the Plan in any calendar year to a Director in respect of service as a Director (including Awards made at the election of a Director in lieu of all or any portion of his or her cash retainers) may not exceed \$900,000 in value, based on the combined grant-date fair value of each Stock Award and the grant-date fair value (in each case as determined in accordance with GAAP) of each Option or SAR that is granted during a calendar year.

10. **PepsiCo, Inc.**

Amendment of Long-Term Incentive Plan

Impose a limit on the awards that may be granted to any non-employee director in a single calendar year:

- \$500,000 for annual equity awards
- \$500,000 for annual cash retainers
- \$250,000 for one-time initial awards to any newly appointed or elected non-employee director

11. **3M Co**

2016 Long-Term Incentive Plan

Non-Employee Director Compensation. Notwithstanding any provision to the contrary in the Plan or in any policy of the Company regarding non-employee Director compensation, the Administrator may establish compensation for non-employee Directors from time to time, subject to the limitations in the Plan. The Administrator will from time to time determine the terms, conditions and amounts of all such non-employee Director compensation in its sole discretion and pursuant to the exercise of its business judgment, taking into account such factors, circumstances and considerations as it shall deem relevant from time to time, provided that the sum of any cash compensation, or other compensation, and the value (determined as of the grant date in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, or any successor thereto) of Awards granted to a non-employee Director as compensation for services as a non-employee Director during any calendar year may not exceed \$600,000.

12. **Kraft Heinz Co**

2016 Omnibus Incentive Plan (No specific Director Limits but the Participant limits are below)

The following individual Participant limitations shall apply:

(i) The maximum number of Shares subject to (x) any Award of Options or Stock Appreciation Rights or (y) any Award of Restricted Stock, Restricted Stock Units or Other Stock-Based Awards for which the grant of such Award or the lapse of the relevant restriction period is subject to the attainment of Performance Goals in accordance with Section 10 which may be granted under the Plan during any fiscal year of the Company to any Participant shall be 2,000,000 Shares individually for any such type or in the aggregate (the “Annual Individual Plan Share Limit”). If a Stock Appreciation Right is granted in tandem with an Option, it shall apply against the Participant’s individual share limitations for both Stock Appreciation Rights and Options.

(ii) There are no annual individual share limitations applicable to Participants on Restricted Stock, Restricted Stock Units or Other Stock-Based Awards for which the grant, vesting or payment (as applicable) of any such Award is not subject to the attainment of Performance Goals.

(iii) In the case of Awards that are subject to the attainment of Performance Goals in accordance with Section 10 and that are settled in cash based on the Fair Market Value of a Share, the maximum aggregate amount of cash that may be paid pursuant to Awards granted in any fiscal year of the Company under the Plan shall be equal to the per-Share Fair Market Value as of the relevant vesting, payment or settlement date multiplied by the Annual Individual Plan Share Limit.

(iv) The maximum value of a cash payment made under a Performance Award (other than an award based on the Fair Market Value of a Share) which may be granted under the Plan with respect to any fiscal year of the Company to any Participant shall be \$10,000,000.

13. **Celgene Corporation**

Amendment To 2008 Stock Incentive Plan (Amended and Restated as of April 15, 2015)

- Adoption of a limitation on the aggregate equity compensation that may be provided to non-employee members of our Board of Directors during each “compensation year” that commences in each of calendar years 2015 through 2018 as required by the terms of a previously disclosed court-approved settlement of a litigation against non-employee members of our Board of Directors. The settlement defines “compensation year” to mean the period beginning immediately after the occurrence of an annual meeting of our stockholders and ending immediately prior to the occurrence of the annual meeting of our stockholders in the immediately subsequent calendar year. Pursuant to the limitation, equity compensation granted to nonemployee directors during each compensation year shall consist of stock options and/or restricted stock units having an aggregate value not

in excess of 7,500 restricted stock units (treating each restricted stock unit, solely for this purpose, as having the equivalent value of one non-qualified stock option to purchase three (3) shares of our Common Stock), subject to any applicable adjustment in accordance with the terms of the Plan.

14. **Honeywell International Inc.**

2016 Stock Plan for Non-Employee Directors

Individual Share Limit. The maximum aggregate number of Shares with respect to which Awards may be granted in any one calendar year to any one Participant shall be 10,000.

* * * * *

Select Pay Ratio Precedent

Presentation for:

Executive Compensation Webinar Series
February 15, 2018

Presentation by:

Anthony J. Eppert
anthonyeppert@andrewskurth.com
713.220.4276

ANDREWSKURTH
KENYON

andrewskurthkenyon.com

Purpose of this Presentation

- The following slides contain sample pay ratio disclosures from select early filers
- The following disclosures have not been reviewed by us in terms of their compliance with the Pay Ratio rule

InVivo Therapeutics Holdings Corp.

- New IPO company

- Placement of disclosure
 - Not in the CD&A
 - Instead, contained after the Equity Compensation Plan Information and before the Director Compensation Table
 - See page 80:
https://www.sec.gov/Archives/edgar/data/1292519/000110465918004326/a18-3643_1s1.htm#COMPENSATIONDISCUSSIONANDANALYSI_013018

InVivo Therapeutics Holdings Corp. (cont.)

- Text of disclosure

- Pay Ratio

Following is a reasonable estimate, prepared under applicable SEC rules, of the ratio of the annual total compensation of our Chief Executive Officer to the median of the annual total compensation of our other employees. We determined our median employee based on base salary (annualized in the case of full- and part-time employees who joined the Company during 2017) of each of our 16 employees (excluding the Chief Executive Officer) as of December 1, 2017. Of the two potential median employees, we selected the employee without significant severance payments. The annual total compensation of our median employee (other than the Chief Executive Officer) for 2017 was \$384,528. As disclosed in the Summary Compensation Table appearing on page 76, our former Chief Executive Officer's annual total compensation for 2017 was \$2,471,333. Our former Chief Executive Officer served in this capacity from January 1, 2017 to December 18, 2017, which includes December 1, 2017, the date of determination for the median employee. As noted in the footnotes of the Summary Compensation Table, Mr. Perrin's salary in the Summary Compensation Table includes a payment of 10 days salary in conjunction with his resignation in lieu of the notice period in his Employment Agreement, so his annual total compensation includes salary for a full year. Based on the foregoing, our estimate of the ratio of the annual total compensation of our CEO to the median of the annual total compensation of all other employees was 6.4 to 1. Given the different methodologies that various public companies will use to determine an estimate of their pay ratio, the estimated ratio reported above should not be used as a basis for comparison between companies.

Teva Pharmaceutical Industries Limited

- Filed within its annual report on Form 10-K (a foreign filer)

- Placement of Disclosure
 - In Item 11, entitled “Executive Compensation”
 - See Item 11, page 204:
https://www.sec.gov/Archives/edgar/data/818686/000119312518039076/d529462d10k.htm#toc529462_18

Teva Pharmaceutical Industries Limited (cont.)

- Text of disclosure
 - 2017 Pay Ratio

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, we are required to disclose the median of the annual total compensation of our employees, the annual total compensation of our principal executive officer, President and CEO Mr. Kåre Schultz, and the ratio of these two amounts.

We have estimated the median of the 2017 annual total compensation of our employees, excluding Mr. Schultz, to be \$64,081. The annualized total compensation of our President and CEO, who was hired in 2017, was \$19,374,347. The ratio of the annualized total compensation of our President and CEO to the estimated median of the annual total compensation of our employees was 302 to 1. We believe this pay ratio is a reasonable estimate calculated in a manner consistent with SEC rules. We note that a substantial portion of our President and CEO's total compensation for 2017 was the sign-on equity awards he received in accordance with his employment agreement, which had a grant date fair value of approximately \$10.2 million. Excluding the sign-on equity awards, the ratio would have been 143 to 1.

The following paragraphs provide important context related to our employee population and describe the methodology and the material assumptions, adjustments, and estimates that we used to calculate this ratio.

Teva is a global company, with complex operations worldwide and with many of its executive officers and a majority of its employees located outside of Israel, the country in which our headquarters office is located.

As of November 1, 2017, Teva's workforce consisted of approximately 52,419 full-time and part-time employees, including hourly employees, who worked for our parent company and consolidated subsidiaries. Approximately 45% of these employees are located in Europe, approximately 17% are located in the U.S., approximately 12% are located in Israel, and approximately 26% are located throughout the rest of the world. Approximately 50,441 individuals are full-time employees, with the remainder employed on a part-time basis.

In determining the employee population to be used to calculate the compensation of the median employee, we included employees in all countries except for 424 employees in Venezuela, who represented less than 5% of our total employees, as permitted under the applicable SEC de minimis rule. As a result, the employee population that we used for purposes of determining the compensation of our median employee was 51,995 employees.

We selected November 1, 2017, which is within the last three months of 2017, as the date upon which we would identify the "median employee," because it enabled us to make such identification in a reasonably efficient and economical manner, and it was also the date that our new CEO commenced employment.

Teva Pharmaceutical Industries Limited (cont.)

- [Continued from prior slide]
 - 2017 Pay Ratio

We included all of our full-time, part-time, and temporary employees globally, but excluded our President and CEO. We annualized the compensation of approximately 2,562 full-time and part-time employees who were hired in 2017 but did not work for us for the entire fiscal year. Earnings of our employees outside the U.S. were converted to U.S. dollars using the currency exchange rates used for organizational planning purposes, which consider historic and forecasted rates as well as other factors. We did not make any cost of living adjustments.

To identify the “median employee,” we utilized the annualized 2017 base salary and target annual cash incentive for our consistently applied compensation measure because we believe that this measure reasonably reflects the annual compensation of our employees. We do not grant equity to a large percentage of our employee population, so using base salary plus target annual incentive is representative.

Using this measure, we identified a “median employee” who is a full-time, salaried employee located in Israel. Initially, a different employee had been identified, but in the process of determining that employee’s total compensation in accordance with applicable SEC rules, we recognized that there were anomalous elements in that employee’s compensation which we believe did not reasonably reflect the annual compensation of our employees generally. Consequently, we identified an employee whose amount for the consistently applied compensation measure was very close to the initial employee, but who did not have such unusual elements. Once we identified this median employee, we totaled all of the elements of the employee’s compensation for 2017 in accordance with the requirements of the applicable SEC rules and converted the amounts from Israeli shekels to U.S. dollars using the relevant monthly average currency exchange rate of 3.50 to 3.82 shekels per U.S. dollar. This resulted in an annual total compensation of \$64,081, of which \$29,159 is base salary and \$34,922 is comprised of Company contributions to a pension fund, as is required by Israeli law, and other compensation such as overtime pay, travel and other cash allowances, and Company contributions to a study fund, as is common practice for Israel-based employees of the Company.

With respect to the annual total compensation of our President and CEO, we adjusted the amount reported in the “Total” column of our 2017 Summary Compensation Table included in this Annual Report on Form 10-K, by annualizing his base salary and certain components of “all other compensation” to account for the fact that he only commenced employment with us on November 1, 2017, resulting in an adjusted total amount of \$19,374,347. As indicated above, we note that a substantial portion of the total compensation of our newly-hired President and CEO for 2017 was the sign-on equity awards he received in accordance with his employment agreement, which had a grant date fair value of approximately \$10.2 million.

Because the SEC rules for identifying the median of the annual total compensation of our employees and calculating the pay ratio based on that employee’s annual total compensation allow companies to adopt a variety of methodologies, to apply certain exclusions, and to make reasonable estimates and assumptions that reflect their employee populations and compensation practices, the pay ratio reported by other companies may not be comparable to the pay ratio for our Company, as other companies have headquarters offices in different countries, have different employee populations and compensation practices and may utilize different methodologies, exclusions, estimates and assumptions in calculating their pay ratios.

Apollo Global Management, LLC

- Placement of disclosure

- Not in the CD&A
- Instead, contained after the Change in Control Table and immediately prior to the Director Compensation Table
- See page 225:
<https://www.sec.gov/Archives/edgar/data/1411494/000141149418000010/apo-1231201710k.htm>

- Text of disclosure

- CEO to Median Employee Pay Ratio

For 2017, SEC rules newly require companies to disclose the ratio of the total annual compensation of the principal executive officer (“PEO”) to the median employee’s total annual compensation. Our PEO is Mr. Black and our ratio is as follows:

Mr. Black’s total annual compensation: \$251,888

Median employee total annual compensation: \$249,750

Ratio of PEO to median employee compensation: 1:1

In determining the median employee, we prepared a list of all employees as of December 31, 2017. Consistent with applicable rules, we used reasonable estimates both in the methodology used to identify the median employee and in calculating the annual total compensation for employees other than the PEO. In measuring our employees’ total compensation, for employees other than the PEO, we used their base salary paid in 2017, their annual cash bonus paid in 2017 and the value of the equity awards they received in 2017 (unless they received an equity award in January 2018 for services provided in 2017, in which case we included the value of that January 2018 equity award because such employees did not otherwise receive an equity award as part of their annual total compensation in 2017). As noted above under “—Note on Distributions on Apollo Operating Group Units,” Mr. Black receives distributions on his AOG Units that are distributions on equity rather than compensation, and accordingly are not included here.

magicJack VocalTec Ltd.

- Placement of disclosure

- Not in the CD&A
- Instead, contained immediately after the Summary Compensation Table
- Contains an alternative pay ratio
- See page 88:
<https://www.sec.gov/Archives/edgar/data/1005699/000117891318000430/zk1821125.htm>

- Text of disclosure

- 2017 Pay Ratio Disclosure

For purposes of calculating the 2017 ratio of the median annual total compensation of all Company employees to the total annual compensation of the Company's chief executive officer, the Company included in its calculation of compensation: base salary, commissions, annual bonus amounts, stock-based compensation (based on the grant date fair value of awards granted during 2017) and other incentive payments (including sign-on bonuses for the new executive officers). The Company used December 31, 2017 as its measurement date. Base salary amounts were annualized for any employee who had less than a full year of service during 2017, including the Chief Executive Officer. Total compensation for Don Carlos Bell, III, the Company's Chief Executive Officer was determined to be \$6,792,747 and was approximately 85 times the median annual compensation of all Company employees excluding the chief executive officer of \$79,919. If stock based compensation amounts are excluded from the calculation, Mr. Bell's annual compensation is approximately \$1,545,000, or 19 times the median employee compensation of \$79,919. For purposes of this calculation, the Company had 135 employees worldwide, excluding the chief executive officer.

Gencor Industries, Inc.

- Placement of disclosure

- Not in the CD&A
- Instead, contained immediately after the Summary Compensation Table
- See page 10:

<https://www.sec.gov/Archives/edgar/data/64472/000119312518032777/d497286ddf14a.htm>

- Text of disclosure

- CEO Pay Ratio

Mr. John Elliott had fiscal 2017 total compensation of \$463,138, as reflected in the Summary Compensation Table included in this Proxy. We estimate that the median annual compensation for all Gencor employees, excluding our CEO, was \$50,975 for 2017. As a result, Mr. John Elliott's 2017 annual compensation was approximately 9 times that of the median annual compensation for all employees.

Don't Forget Next Month's Webinar

- Title:
 - How to Structure Management Carve-Out and Change-in-Control Plans

- When:
 - 10:00 am to 11:00 am Central
 - March 8, 2018

FIRM LOCATIONS

AUSTIN

111 Congress Avenue
Suite 1700
Austin, TX 78701
P +1.512.320.9200
F +1.512.320.9292

BEIJING

Room 2007, Capital Mansion
No. 6 Xin Yuan Nan Lu
Chao Yang District
Beijing, China 100004
P +86.10.8486.2699
F +86.10.8486.8565

DALLAS

1717 Main Street
Suite 3700
Dallas, TX 75201
P +1.214.659.4400
F +1.214.659.4401

DUBAI

Andrews Kurth Kenyon DMCC
45th Floor
Mazaya Business Avenue, BB2
Jumeirah Lakes Towers
P.O. Box 118273
Dubai, UAE
P +971.4.567.0767
F +971.4.567.0768

HOUSTON

600 Travis Street
Suite 4200
Houston, TX 77002
P +1.713.220.4200
F +1.713.220.4285

LONDON

Andrews Kurth Kenyon (UK) LLP
16 Old Bailey
London EC4M 7EG
United Kingdom
P +44.20.3053.8300
F +44.20.3053.8299

NEW YORK – BATTERY PARK

One Broadway
New York, NY 10004
P +1.212.425.7200
F +1.212.425.5288

NEW YORK – MIDTOWN

450 Lexington Avenue
New York, NY 10017
P +1.212.850.2800
F +1.212.850.2929

RESEARCH TRIANGLE PARK

4505 Emperor Boulevard Suite
330 Durham, NC 27703 P
+1.919.864.7200

SILICON VALLEY

1801 Page Mill Road
Suite 210
Palo Alto, CA 94304
P +1.650.384.4700
F +1.650.384.4701

THE WOODLANDS

Waterway Plaza Two
10001 Woodloch Forest Dr.
Suite 200
The Woodlands, TX 77380
P +1.713.220.4800
F +1.713.220.4815

WASHINGTON, DC

1350 I Street, NW
Suite 1100
Washington, DC 20005
P +1.202.662.2700
F +1.202.662.2739



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