Preparing for Proxy Season: Start Now

Presentation for:
Executive Compensation Webinar Series
September 14, 2017

Presentation by:
Anthony J. Eppert
anthonyeppert@andrewskurth.com
713.220.4276

ANDREWSKURTH KENYON
andrewskurthkenyon.com

Housekeeping: Technical Issues and Questions

- Technical issues
  - If you are having difficulty viewing this presentation, please call Cisco WebEx Tech Support toll free at 866.229.3239

- Questions during this presentation
  - We encourage questions (even though your audio lines are muted)
  - To submit a question, simply type the question in the blank field on the right-hand side of the menu bar and press return
  - If time permits, your questions will be answered at the end of this presentation. And if there is insufficient time, the speaker will respond to you via e-mail shortly after this presentation

Housekeeping: Recording, CE Credits and Disclaimer

- Recording
  - This presentation is being recorded for internal purposes only
- Continuing education credits
  - A purpose of the webinar series is to provide FREE CE credits
  - To that end, each presentation is intended to provide 1 credit hour in the following areas:
    - CLE: 1 credit hour (Texas)
    - CPE: 1 credit hour (Texas)
    - HRCI: This activity has been approved for 1 (HR (General)) recertification credit hours toward California, GPHR, PHRi, SPHRi, PHR, and SPHR recertification through the HR Certification Institute
    - SHRM: This program is valid for 1 PDC for the SHRM-CPSM or SHRM-SCPSM
  - If you have any questions relating to CE credits, please direct them to Anthony Eppert at AnthonyEppert@AndrewsKurth.com or 713.220.4276
- Disclaimer
  - This presentation is intended for informational and educational purposes only, and cannot be relied upon as legal advice
  - Any assumptions used in this presentation are for illustrative purposes only
  - No attorney-client relationship is created due to your attending this presentation or due to your receipt of program materials

Housekeeping: 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

Our Compensation Practice – What Sets Us Apart

- Compensation issues are complex, especially for publicly-traded companies, and involve the 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

Housekeeping: Upcoming 2017 Webinars

- Upcoming 2017 webinars:
  - How to Properly Design a Nonqualified Deferred Compensation Plan (10/12/2017)
  - Navigating Employee v. Independent Contractor Classifications (11/9/2017)
  - Sharing the Dream: M&A Transactions & Retaining Key Employees (12/14/2017)

- Upcoming 2018 webinars
  - To be determined
  - Suggestions welcomed!

Purpose of this Presentation

- The purpose of this presentation is to help publicly-traded companies prepare for the 2018 proxy season
- To that end, this presentation covers the following select topics:
  - Say-on-pay results from last proxy season,
  - Frequency of say-on-pay results from last proxy season,
  - Shareholder compensation-related proposals,
  - Negative recommendations against directors,
  - A reminder to consider whether to seek 162(m) re-approval,
  - Revisit performance metrics and total shareholder return, and
  - Prepare for pay ratio disclosure – select thoughts

Recent Proxy Season: Say-on-Pay Results

- According to our friends at Alliance Advisors LLC, companies had record support for their say-on-pay proposals this past proxy season
  - Approximately 78% of the companies received more than 90% support for their say-on-pay proposals (highest rate ever)
  - Approximately 15% of the companies received support that was greater than 70% but less than 90%
  - Approximately 6.8% of the companies received support that was greater than 50% but less than 70% support (*i.e.*, 70% is the ISS threshold, below which triggers enhanced ISS scrutiny)
- The rate of failed say-on-pay proposals this past proxy season was less than the prior proxy season
  - Approximately 1.4% failed in 2017, compared to approximately 1.7% failing in 2016
- ISS recommended AGAINST say-on-pay proposals
  - Approximately 9.7% of the time for S&P 500 companies, and
  - Approximately 12.6% of the time for Russell 3000 companies
- Many large institutional investors continue to follow their own voting methodology (as opposed to following institutional shareholder services such as ISS)
  - That said, a negative recommendation from ISS still has influence and could downward adjust an issuer's say-on-pay pass rate by approximately 26%

Recent Proxy Season: Say-on-Pay Results (cont.)

- According to Alliance Advisors LLC, there were 31 failed say-on-pay votes, including 3 from the S&P 500 (Bed Bath & Beyond, ConocoPhillips and Mylan, the latter of which scored a 16.5% approval rate)

Company	Meeting Date	Vote*	Previous Failed Votes*	Index
Nuance Communications, Inc.	30-Jan-17	33.5%	2015, 2013	R1000
Microsemi Corp.	14-Feb-17	45.4%		R2000
Immunomedics, Inc.	3-Mar-17	38.4%		R2000
Sprouts Farmers Market, Inc.	2-May-17	43.3%		R1000
American Axle & Manufacturing Holdings, Inc.	4-May-17	38.8%		R2000
Pain Therapeutics, Inc.	4-May-17	47.9%		
Patriot Scientific Corp.	4-May-17	31.2%	2016, 2015, 2014, 2013	
Whitestone REIT	11-May-17	43.1%		R2000
ConocoPhillips	16-May-17	32.2%		R1000, S&P 500
Medifast, Inc.	18-May-17	42.2%	2014	R2000
Senior Housing Properties Trust	18-May-17	46.0%	2016	R1000
Atlas Air Worldwide Holdings, Inc.	24-May-17	32.9%	2016, 2013	R2000
NII Holdings, Inc.	24-May-17	23.3%		R2000
Sanchez Energy Corp.	24-May-17	47.8%		R2000
Tutor Perini Corp.	24-May-17	42.3%	2016, 2015, 2014, 2013, 2012, 2011	R2000
Endologix, Inc.	31-May-17	40.5%		R2000
Rockwell Medical, Inc.	1-Jun-17	25.9%		R2000
SL Green Realty Corp.	1-Jun-17	42.8%	2015	R1000
IMAX Corp.	6-Jun-17	30.0%		R2000
Nabors Industries Ltd.	6-Jun-17	44.0%	2016, 2014, 2013, 2012, 2011	R1000
New York Community Bancorp, Inc.	6-Jun-17	49.7%	2014	R1000
Spectrum Pharmaceuticals, Inc.	13-Jun-17	43.9%	2015, 2014, 2013	R2000
SeaWorld Entertainment, Inc.	14-Jun-17	42.6%		R2000
Hospitality Properties Trust	15-Jun-17	48.0%		R1000
Universal Insurance Holdings, Inc.	15-Jun-17	47.0%		R1000
ImmunoCellular Therapeutics, Ltd.**	16-Jun-17	59.0%		
FleetCor Technologies, Inc.	21-Jun-17	37.4%	2014	R1000
Argan, Inc.	22-Jun-17	45.4%	2015	R2000
Mylan N.V.	22-Jun-17	16.5%	2012	R1000, S&P 500
PHH Corp.	28-Jun-17	36.3%		R2000
Bed Bath & Beyond Inc.	29-Jun-17	43.9%	2016	R1000, S&P 500

Source: SEC filings.
*Calculated as the number of FOR votes as a percentage of FOR and AGAINST votes.
**Received less than majority support after counting abstentions.

Recent Proxy Season: Frequency of Say-on-Pay

- Under Dodd-Frank, issuers are required to put the frequency of their say-on-pay votes to the shareholders no less than every six years. Such frequency is either every 1, 2 or 3 years

- ISS prefers annual say-on-pay votes in order to provide shareholders with a consistent method of communication with respect to executive compensatory programs

- And the votes support annual frequency
  - Approximately 85% of boards recommended annual frequency
  - Approximately 80% of shareholders approved annual frequency
  - Noteworthy is that shareholders rejected triennial frequencies at 10 companies which either had failed pass rates on say-on-pay vote or had less than a 70% pass rate on their say-on-pay vote

Shareholder Compensation-Related Proposals

- According to our friends at Alliance Advisors LLC, shareholder compensation-related proposals during the last proxy season were as follows:

Compensation Proposals	2016 Submitted	2016 Voted On[1]	2016 Majority Votes[2]	2016 Average Support[2]	2017 Submitted	2017 Voted On[1]	2017 Majority Votes[2]	2017 Average Support[2]
Severance pay	4	4	1	36.0%	2	1	0	36.0%
Accelerated vesting of equity awards	17	15	0	31.6%	6	5	0	29.6%
Revolving door payments	6	5	0	23.7%	5	4	0	28.3%
Clawbacks	6	6	0	14.3%	7	6	0	13.9%
Retention of equity awards	13	12	0	17.6%	4	3	0	29.8%
Performance-based awards	1	1	0	6.7%	0	0	0	
Performance metrics	6	4	0	16.6%	0	0	0	
CEO/worker pay disparity	6	3	0	5.8%	12	6	0	4.4%
Gender pay equity	13	5	1	16.9%	29	13	0	12.9%
Minimum wage reform	7	0	0		6	0	0	
Pay caps	3	1	0	2.8%	1	0	0	
Link pay to social issues	14	9	0	8.4%	11	8	0	11.5%
Proxy policy congruency – compensation	2	1	0	4.4%	3	3	0	3.8%
Miscellaneous compensation	7	1	0	0.6%	11	1	0	8.1%
Total Compensation	**105**	**67**	**2**		**97**	**50**	**0**	

Negative Recommendations Against Directors

- 38 directors received a negative recommendation from ISS towards their re-election. ISS had determined that the companies to which these directors served failed to address compensation concerns through shareholder outreach
  - According to ISS policy, if a company receives less than 70% support for its say-on-pay, then the company must engage in shareholder outreach efforts, and such outreach efforts need to be disclosed in the next proxy statement
  - In the 2016 proxy season, the prior companies received less than 70% support for its say-on-pay vote and either didn't engage or disclose shareholder outreach efforts for the 2017 proxy season
  - That said, only 2 directors received less than a majority support from the shareholders
- Additionally, if a company does not have a say-on-pay vote on the ballot and ISS has compensatory concerns, then it will take such concerns out on the directors by recommending against their re-election
  - 67 directors received negative recommendations
  - The applicable companies had a biennial or triennial say-on-pay frequency vote, and no say-on-pay vote was on the ballot
  - That said, only 2 of such directors received less than a majority support from the shareholders
- 4 companies had compensation practices that ISS deemed egregious, and therefore, even though a say-on-pay proposal was on the ballot, ISS recommended against a total of 20 directors
  - That said, no director received less than a majority support from the shareholders

A Reminder to Consider Whether to Seek 162(m) Re-Approval

- According to the performance-based exception to the $1mm deduction limit under Section 162(m), the material terms of the plan must be disclosed to, and approved by, the stockholders before the compensation is paid. Such material terms include:
  - The eligible employees (by class or title),
  - The performance goals that may be used (*e.g.*, EBITDA, TSR, etc.), and
  - The maximum amount of compensation that could be payable during the specified period

- Generally, the Compensation Committee retains the authority to change the performance goals on an annual basis. In such cases:
  - The material terms of the plan must be re-approved by the stockholders by the first annual stockholder meeting that occurs in the fifth year after the year that the stockholders previously approved the performance goal

- For new public companies, the foregoing period is generally limited until the earlier of:
  - The first annual stockholders meeting at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the IPO occurs (for companies that became public due to an IPO)
  - The first annual stockholders meeting at which directors are to be elected that occurs after the close of the first calendar year following the calendar year that the corporation becomes publicly held (for companies that became public without an IPO)

Revisit Performance Metrics and Total Shareholder Return

- For publicly-traded companies, performance-based equity awards such as RSUs and PSUs tend to focus on financial performance measures that drive stock price, such as:
  - Total shareholder return (“***TSRs***”);
  - Operating income, earnings per share, EBITDA and net income;
  - ROE, ROA, and ROIC; and
  - Revenue, sales growth, and cash flow
- In addition, common performance metrics chosen by energy companies that we surveyed tend to include:
  - Return on average capital employed,
  - Reserve replacement ratio,
  - Production per debt adjusted share, and
  - Reserve adds per debt adjusted share

Revisit Performance Metrics and Total Shareholder Return (cont.)

- Payout levels typically include:
  - A minimum level of performance (*i.e.*, a floor or threshold) that must be achieved before any of the award is earned
    - For example, 25% of target (though a typical range for a floor is 25%-50% of target)
  - A target level of performance (typically 100%, though sometimes TSRs have a lower target percentile)
  - A maximum level of performance (*i.e.*, a stretch goal)
    - For example, achieving performance at 150% of target (though a typical range is 150%-200% of target)
- The most common performance period with respect to RSUs and PSUs at publicly-traded companies is 3 years
  - Though some programs will allow an opportunity for the participant to “kick the can down the road” for an additional year (*i.e.*, an additional year for the participant to satisfy the performance metric before the award is otherwise forfeited)

Revisit Performance Metrics and Total Shareholder Return (cont.)

- During the 2017 proxy season, ISS released a new pay-for-performance methodology by adding the following financial metrics (in addition to the pre-existing TSR metric) to its qualitative pay-for-performance tests:
  - Return on equity,
  - Return on assets,
  - Return on invested capital,
  - Revenue growth,
  - EBITDA growth, and
  - Growth in cash flow from operations
- According to ISS, financial performance will be measured by a weighted average of the 7 financial metrics (*i.e.*, TSR plus the new 6 financial metrics)
  - Weightings will vary depending on the company's GICS code
- This means that for purposes of the ISS qualitative pay-for-performance tests (and probably for the quantitative pay-for-performance tests), the pay of a public company's CEO will be compared to the three-year financial performance of the weighted average of the 7 financial metrics

Revisit Performance Metrics and Total Shareholder Return

- Currently, TSR is the most common performance metric used by publicly-traded companies
  - This is mostly the result of pay-for-performance methodologies adopted by institutional shareholder advisory services such as ISS
  - However, this may change going forward given the addition of performance metrics by ISS (discussed in a prior slide)
  - And too, companies are beginning to realize that TSR should not be the sole performance metric
    - TSRs do not have direct line of sight to the business goal for the executive
    - Depending upon the TSR design and the selection of the peer group, an unintended consequence is that TSRs can payout even though the stock price didn’t perform (and not payout even though the stock price did perform)
    - Perhaps TSRs will be used in the future as a modifier to another performance-based award?

Revisit Performance Metrics and Total Shareholder Return (cont.)

- As background, TSR is defined as stock price appreciation/depreciation, plus reinvestment of dividends, over a measurement period
  - Another way to look at it, is that TSR measures the return an investor would receive if he or she bought one share of common stock at the beginning of the measurement period, accumulated dividends during the measurement period, and then sold the common stock at the end of the measurement period

- There are two main formulas with respect to TSR programs
  - Absolute,
  - Relative, and
  - A combination of both

- An absolute TSR formula is calculated as follows:

$$TSR = \frac{\text{Ending Price} - \text{Beginning Price} + \text{Dividends}}{\text{Beginning Price}}$$

- The payout is then determined as a function of the company's TSR compared to predetermined goals (*i.e.*, it is not compared to the TSR of the peer group)

Revisit Performance Metrics and Total Shareholder Return (cont.)

- A relative TSR program has the same math formula as an absolute TSR program; however, with a relative TSR program the payout is determined as a function of the company's TSR ranking/ratio compared to the TSR ranking/ratio of its peer group
  - For example, if the company's TSR percentile rank/ratio equals or exceeds x%, then the percentage of the target award that becomes earned equals x%

- The following represents a hypothetical (though typical) relative TSR program:

	Relative TSR Rank	Payout %
Maximum:	75th percentile	200%
Target:	50th percentile	100%
Threshold:	25th percentile	50%
Below:	Less than 25th percentile	0%

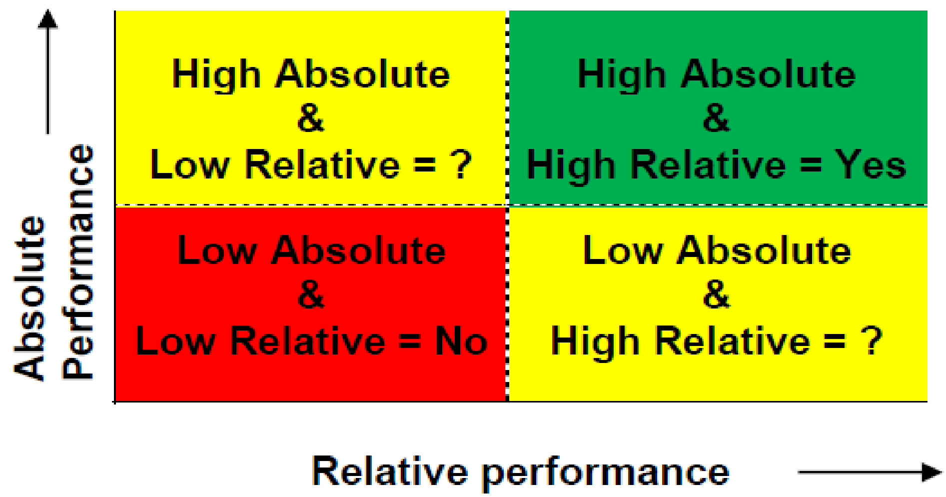
- In the above example, if the company's TSR rank relative to its peer group is at the 80th percentile, then the payout would be 200% of the target shares

Revisit Performance Metrics and Total Shareholder Return (cont.)

- How should a relative TSR program address changes to members of the peer group of companies that occur during the measurement period due to bankruptcy, M&A activity or going private transactions?
  - Should it be fixed (*i.e.*, the number of peer group companies could then decrease over the measurement period due to, for example, an M&A event), or
  - Prior to the measurement period should there be a determination as to how replacement peer group companies will be chosen (*e.g.*, use a stand-in dummy entity with TSR that is deemed equal to the average TSR of all remaining peers), or
  - Should the choosing of a replacement peer group member be left to the discretion of the compensation committee of the board of directors (this is the alternative currently chosen by APA)

Revisit Performance Metrics and Total Shareholder Return (cont.)

- What happens when there is no alignment between absolute TSR and relative TSR? For example:
  - Should management be rewarded when absolute TSR is high, but relative TSR is low (*i.e.*, a reward to reflect the gains realized by shareholders)?
  - Should management be rewarded when absolute TSR is low, but relative TSR is high (*i.e.*, a reward to reflect outperformance of the peer group)?



- Possible ways to address negative returns are on the next slide

Revisit Performance Metrics and Total Shareholder Return (cont.)

- Possible ways to address negative returns:
- 1st – Eliminate any payouts when absolute TSR is negative over the performance period
  - Consider too whether this should work in the reverse, to provide a payout when absolute TSR is high but relative TSR is low (*i.e*., a reward to reflect the gains realized by shareholders)
- 2nd – cap the payout opportunity when absolute TSR is negative over the performance period (*i.e*., APA caps the payout at target when absolute TSR is negative)
  - Such caps typically limit the payout to the target level
  - If applicable, the cap would apply irrespective of whether the relative TSR formula would have otherwise required a higher payout opportunity
  - Consider whether the cap should work in the reverse, to protect management in instances where absolute TSR is high but relative TSR is low (*i.e*, a reward to reflect the gains realized by shareholders)
- 3rd – have a formula modifier that downward adjusts the payout when the company has a negative return (*i.e.*, similar in formula to an upward adjustment that would apply if the company had positive TSR)

Prepare for Pay Ratio Disclosure – Select Thoughts

- It is unlikely the SEC will delay the effectiveness of the pay ratio rule (though we would welcome the surprise of being wrong!)
  - This means companies should continue their efforts to have pay ratio disclosures ready for the upcoming proxy season
  - Within this effort, consider how investors will incorporate pay ratios into their say-on-pay reviews, if at all
  - It is possible that investors will, over time, look at a company's pay ratios to see how they evolve (*e.g.*, looking for a widening differential)

- Keep in mind that a number of cities and states are attempting to effectuate an added tax on issuers that exceed a certain ratio threshold. For example:
  - Proposed legislation was introduced in the Massachusetts Legislature that would impose a new corporate tax based upon an issuer's compensation ratio, effective January 1, 2018. As a gross overview, if an issuer's compensation ratio exceeds 100, then the issuer will incur an additional 2% excise tax on its net income derived within Massachusetts for the next tax year
  - The city of Portland, Oregon approved a proposal to the city ordinance that would impose a surtax on the issuer's current city business income tax 2.2%
    - 10% surtax if the CEO's ratio is 100 to 250 times the median employee
    - 25% surtax if the CEO's ratio is above 250 times the median employee
  - Bills were proposed in Rhode Island and Minnesota that are similar to the Portland proposal

Prepare for Pay Ratio Disclosure – Select Thoughts (cont.)

- The Rule requires most public companies to disclose:
  - The annual total compensation of their CEO,
  - The median annual total compensation of all employees of the issuer (excluding the CEO) and consolidated subsidiaries,
  - The ratio of the amount determined in the above two items,
  - The date the above was determined (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

Prepare for Pay Ratio Disclosure – Select Thoughts (cont.)

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

- Issuers are required to disclose the following:
  - What methodology was used to identify the median employee (though consider whether to disclose general information about the median employee's position);
  - All material assumptions, COLAs and consistently applied compensation measures used to identify the median employee or to determine total compensation;
  - The compensation measure used to make the identification (assuming annual total compensation is not used);
  - Any estimates used must be clearly disclosed;
  - Any change to the use or non-use of COLAs; and
  - The determination date

Prepare for Pay Ratio Disclosure – Select Thoughts (cont.)

- Similar to an Alternative Compensation Table concept, issuers are permitted to provide additional ratios. However:
  - The additional ratios must be clearly identified,
  - The additional ratios cannot be misleading, and
  - The additional ratios cannot be presented with greater prominence when compared to the required pay ratios

- Additional language is also permitted to, for example:
  - Address an issuer's ratio that is substantially different from the issuer's peer group;
  - Address the impact of the issuer having employees residing in low cost jurisdictions;
  - Explain seasonal and part-time employees, and their impact on the ratios;
  - Compare against certain peer companies that such companies only sell the product, whereas the issuer manufactures and sells the product (the latter requiring cheaper labor and causing the ratio to skew upward)

Don’t Forget Next Month’s Webinar

- Title:
  - How to Properly Design a Nonqualified Deferred Compensation Plan

- When:
  - 10:00 am to 11:00 am Central
  - October 12, 2017

Pay Ratio Examples

- The following slides contain sample disclosures
- Please note that the following issuers voluntarily disclosed their pay ratio, and as a result, the following disclosures have not been reviewed by us in terms of their compliance with the Rule (on the contrary, upon a cursory review, many of the examples are not compliant with the Rule, and were not required to be compliant)

Pay Ratio Examples – RANGE RESOURCES CORPORATION

- Market cap approximately $5.39bb

- Placement of disclosure
  - Not in the CD&A
  - Instead the above is contained in the narrative disclosure that accompanies the Summary Compensation Table and the Grants of Plan-Based Awards Table
  - Found here, page 52: https://www.sec.gov/Archives/edgar/data/315852/000130817917000122/lrrc2017_def14a.htm

- Text of disclosure

"**CEO PAY RATIO**

As a result of the recently adopted rules under the Dodd-Frank Act, beginning with our 2018 proxy statement, the SEC will require disclosure of the CEO to median employee pay ratio.

Mr. Ventura had 2016 annual total compensation of $9,862,925 as reflected in the Summary Compensation Table included in this Proxy Statement. Our median employee's annual total compensation for 2016 was $127,938. As a result, we estimate that Mr. Ventura's 2016 annual total compensation was approximately 77 times that of our median employee."

Pay Ratio Examples – NOVAGOLD RESOURCES INC.

- Market cap approximately $1.39bb

- Placement of disclosure
  - Not in the CD&A
  - Instead the above is contained in the narrative disclosure that accompanies the Summary Compensation Table and the Grants of Plan-Based Awards Table, and immediately after the Realized and Realizable Pay Table
  - Found here, page 69: https://www.sec.gov/Archives/edgar/data/1173420/000117184317001728/def14a_032317.htm

Pay Ratio Examples – NOVAGOLD RESOURCES INC. (cont.)

- Text of disclosure

CEO Pay Ratio – 13.5:1

We believe our executive compensation program must be consistent and internally equitable to motivate our employees to perform in ways that enhance shareholder value. We are committed to internal pay equity, and the Compensation Committee monitors the relationship between the pay of our executive officers and the pay of our non-executive employees. The Compensation Committee reviewed a comparison of our CEO's annual total compensation in fiscal year 2016 to that of all other Company employees for the same period. The calculation of annual total compensation of all employees was determined in the same manner as the "Total Compensation" shown for our CEO in the "Summary Compensation Table" on page 64 of this Circular. Pay elements that were included in the annual total compensation for each employee are:

- salary received in fiscal year 2016
- annual incentive payment received for performance in fiscal year 2016
- grant date fair value of stock option and PSU awards granted in fiscal year 2016
- Company-paid 401(k) Plan or RRSP match made during fiscal year 2016
- Company-paid ESPP match made during fiscal year 2016
- Company-paid life insurance premiums during fiscal year 2016
- Auto allowance paid in fiscal year 2016
- Reimbursement for Company-paid executive physical during fiscal year 2016

Our calculation includes all employees as of November 30, 2016. We applied a Canadian to U.S. dollar exchange rate to the compensation elements paid in Canadian currency.

We determined the compensation of our median employee by: (i) calculating the annual total compensation described above for each of our employees, (ii) ranking the annual total compensation of all employees except for the CEO from lowest to highest (a list of 12 employees), and (iii) since we have an even number of employees when not including the CEO, determining the average of the annual total compensation of the two employees ranked sixth and seventh on the list ("Median Employee").

The annual total compensation for fiscal year 2016 for our CEO was $5,476,244 and for the Median Employee was $406,170. The resulting ratio of our CEO's pay to the pay of our Median Employee for fiscal year 2016 is 13.5 to 1.

Pay Ratio Examples – NORTHWESTERN CORPORATION

- Market cap approximately $2.88bb

- Placement of disclosure
  - Summarized in the Proxy Summary
  - More detail addressed within the CD&A
  - Found here, pages 2 and 21-22: https://www.sec.gov/Archives/edgar/data/73088/000007308817000070/a2017proxystatement.htm

- Text of proxy summary disclosure

Alignment of Pay with Shareholder and Customer Interests

Our executive pay program is designed to align the long-term interests of our executives, shareholders, and customers. About 77 percent of the compensation of our chief executive officer, or CEO, and about 58 percent of the compensation of our other named executive officers is at risk in the form of performance-based incentive awards that use Board-established metrics and targets, based upon advice from the Board's independent compensation consultant. The performance metrics did not change from the prior year. We also require our executives to retain meaningful ownership of our stock. This structure encourages our executives to focus on short- and long-term performance and provides a reward to our executives, shareholders, and customers when we achieve our financial and operating objectives. ***Our CEO to median employee pay ratio for 2016 was 22:1***. [Emphasis added]

Pay Ratio Examples – NORTHWESTERN CORPORATION (cont.)

- Text of full disclosure

CEO Pay Ratio and Wealth Accumulation

We believe executive pay must be internally consistent and equitable to motivate our employees to create shareholder value. We are committed to internal pay equity, and the Compensation Committee monitors the relationship between the pay our executive officers receive and the pay our non-managerial employees receive. The Compensation Committee reviewed a comparison of CEO pay (base salary and incentive pay) to the pay of all our employees in 2016. The compensation for our CEO in 2016 was approximately 22 times the median pay of our full-time employees.

22:1

CEO Pay Ratio

Since 2010, we have voluntarily disclosed our CEO to median employee pay ratio in our proxy statement. Beginning with our 2018 proxy statement, such disclosure will be required under the Dodd-Frank Act.

Our CEO to median employee pay ratio is calculated in accordance with what the SEC will require in our 2018 proxy statement pursuant to Item 402(u) of Regulation S-K. We identified the median employee by examining the 2016 total cash compensation for all individuals, excluding our CEO, who were employed by us on December 16, 2016, the last day of our payroll year. We included all employees, whether employed on a full-time, part-time, or seasonal basis. We did not make any assumptions, adjustments, or estimates with respect to total cash compensation, and we did not annualize the compensation for any full-time employees that were not employed by us for all of 2016. We believe the use of total cash compensation for all employees is a consistently applied compensation measure because we do not widely distribute annual equity awards to employees. Approximately seven percent of our employees receive annual equity awards.

After identifying the median employee based on total cash compensation, we calculated annual total compensation for such employee using the same methodology we use for our named executive officers as set forth in the 2016 Summary Compensation Table later in this proxy statement.

Pay Ratio Examples – NORTHWESTERN CORPORATION (cont.)

- Text of full disclosure (cont.)
  - As illustrated in the table below, our 2016 CEO to median employee pay ratio is 22:1. In 2015 the ratio was 19:1

CEO to Median Employee Pay Ratio

	President and CEO	Median Employee
Base Salary	$ 590,641	$ 87,525
Stock Awards	1,454,138	—
Non-Equity Incentive Plan Compensation	538,403	1,086
Change in Pension Value and Nonqualified Deferred Compensation Earnings (1)	68,952	8,211
All Other Compensation	97,933	27,186
TOTAL	$ 2,750,067	$ 124,008
CEO Pay to Median Employee Pay Ratio	22 : 1	

(1) These amounts are attributable to a change in the value of each individual's defined benefit pension account balance and do not represent earned or paid compensation. Pension values are dependent on many variables including years of service, earnings, and actuarial assumptions.

Pay Ratio Examples – NOBLE ENERGY, INC.

- Market cap approximately $13.48bb
- Placement of disclosure
  - Contained within the CD&A
  - Found here, page 42 and 43:
    https://www.sec.gov/Archives/edgar/data/72207/000007220717000025/nbl-2017proxydef.htm
- Text of disclosure

CEO PAY RATIO

For the last three years, we elected to disclose an estimate of the ratio between the pay of our CEO and the median for all of our other employees. A final rule on CEO pay ratio has been adopted by the SEC, with disclosure currently required to be made in the proxy statement for our 2018 Annual Meeting of Stockholders. The Acting Chairman of the SEC has directed the staff to reconsider the implementation of the rule. At this time, the Acting Chairman's directive does not delay the implementation of the pay ratio disclosure requirement. We have attempted to incorporate the methodology of the final rule in our pay ratio calculation for 2016 and, for consistency, have utilized the same median employee for 2015 and 2016.

Mr. Stover had 2016 annual total compensation of $10,137,682 and 2015 annual total compensation of $7,253,154 as reflected in the Summary Compensation Table included in this Proxy Statement. Our median employee's annual total compensation for 2016 was $128,050 and for 2015 was $139,440. 2015 total compensation for purposes of this comparative calculation included a one-time payment representing the Company's buyout of retiree medical benefits. Taking this into account, we estimate that Mr. Stover's annual total compensation was approximately 79 times and 52 times that of our median employee in 2016 and 2015, respectively.

Pay Ratio Examples – GENCOR INDUSTRIES, INC.

- Market cap approximately $230mm

- Placement of disclosure
  - Contained immediately after the Summary Compensation Table
  - Found here, page 9:

    https://www.sec.gov/Archives/edgar/data/64472/000119312517013736/d295554ddef14a.htm

- Text of disclosure

CEO PAY RATIO

Mr. E.J. Elliott, who was both Chairman and CEO had fiscal 2016 total compensation of $606,418, 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 $46,700 for 2016. As a result, Mr. E.J. Elliott's 2016 annual compensation was approximately 13 times that of the median annual compensation for all employees

Pay Ratio Examples – TEXAS REPUBLIC CAPITAL CORPORATION

- Placement of disclosure
  - Contained immediately after the Summary Compensation Table
  - Found here, page 11:
    https://www.sec.gov/Archives/edgar/data/1560452/000118518517000901/texasrepub-def14a041017.htm

- Text of disclosure

2016 Compensation Disclosure Ratio of the Median Annual Total Compensation of All Company Employees to the Annual Total Compensation of the Company's Chief Executive Officer

The 2016 compensation disclosure ratio of the median annual total compensation of all Company employees to the annual total compensation of the Company's chief executive officer is as follows:

Category	2016 Total Compensation and Ratio
Median annual total compensation of all employees (excluding Mr. Miller)	$ 41,500
Annual total compensation of Timothy R. Miller, President	$ 252,000
Ratio of the median annual total compensation of all employees to the Annual total compensation of Timothy R. Miller, President	16.47%

Pay Ratio Examples – FIRST REAL ESTATE INVESTMENT TRUST NJ

- Market cap approximately $119mm
- Placement of disclosure
  - Contained in the CD&A
  - Found here, page 21:
    https://www.sec.gov/Archives/edgar/data/36840/000117494717000241/def14a-17114_frevs.htm
- Text of disclosure

Chief Executive Officer Compensation and Employee Compensation

The table below sets forth comparative information regarding (A) the total compensation of the Chief Executive Officer for the 2016 fiscal year, (B) the median of the total compensation of all other employees of the Trust, not including the Chief Executive Officer, for the 2016 fiscal year, and (C) the ratio of the Chief Executive Officer's total compensation to the median of the total compensation of all other employees (other than the Chief Executive Officer). As of October 31, 2016, the Trust had 42 employees, including 30 full-time employees, 10 part-time and seasonal employees and 2 Executive Officers of the Trust but not including the Chief Executive Officer.

Chief Executive Officer compensation (A)	$531,826
Median compensation of all employees (not including Chief Executive Officer) (B)	$35,360
Ratio of (A) to (B)	15.04

Pay Ratio Examples – ADAMS RESOURCES & ENERGY, INC.

- Market cap approximately $175.2mm

- Placement of disclosure
  - Contained in the CD&A
  - Found here, page 11:
    https://www.sec.gov/Archives/edgar/data/2178/000000217817000023/formdef14a.htm

- Text of disclosure

Pay Ratio Disclosure Rule

In August 2015 pursuant to a mandate of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd – Frank Act"), the Securities and Exchange Commission ("SEC") adopted a rule requiring annual disclosure of the ratio of the median employee's annual total compensation to the total annual compensation of the principal executive officer ("PEO"). The Company's PEO is Mr. Smith. The purpose of the new required disclosure is to provide a measure of the equitability of pay within the organization. The Company believes its compensation philosophy and process yield an equitable result and is presenting such information in advance of the required disclosure date as follows:

Median Employee total annual compensation	$70,057.00
Mr. Smith ("PEO") total annual compensation	$400,000.00
Ratio of PEO to Median Employee Compensation	5.7:1.0

In determining the median employee, a listing was prepared of all employees as of December 31, 2016. Employees on leave of absence were excluded from the list and wages and salaries were annualized for those employees that were not employed for the full year of 2016. The median amount was selected from the annualized list. For simplicity, the value of the Company's 401(k) plan and medical benefits provided was excluded as all employees including the PEO are offered the exact same benefits and the Company utilizes the Internal Revenue Service safe harbor provision for 401(k) discrimination testing. As of December 31, 2016 the Company employed 654 persons of which 434 are professional truck drivers.

Pay Ratio Examples – INTER PARFUMS, INC.

- Market cap approximately $1.11bb

- Placement of disclosure
  - Not in the CD&A
  - Instead contained immediately following the Summary Compensation Table
  - Found here, page 23:
    https://www.sec.gov/Archives/edgar/data/822663/000114420416114275/v444585_def14a.htm

- Text of disclosure:

Ratio of CEO's Compensation to Global Median Compensation of All Employees (Excluding CEO Compensation)

We have determined that for 2015, the global median total compensation for all of our employees, but excluding the compensation of our Chief Executive Officer, was $111,883. The total compensation for our Chief Executive Officer for 2015 as set forth in the Summary Compensation above was $742,408. Therefore, for 2015, the ratio of the total compensation for our Chief Executive Officer as compared to the global median total compensation to all of our employees excluding the compensation of our Chief Executive Officer is 6.6:1.

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

ANDREWSKURTH
KENYON
andrewskurthkenyon.com