OBLIGATIONS AS A PUBLIC COMPANY

REPORTING AND DISCLOSURE OBLIGATIONS

Any public company must file periodic reports with the Securities and Exchange Commission, consisting, for domestic issuers, of annual reports on Form 10-K and quarterly reports on Form 10-Q, as well as current reports on Form 8-K. Foreign private issuers file annual reports on Form 20-F and current reports on Form 6-K. The Company should ensure that it has procedures in place to prepare its periodic reports in a timely manner and circulate them for comment among Company officials, its Disclosure Committee (if applicable), and outside advisors.

Periodic Reports

Form 10-K.

An annual report on Form 10-K must be filed on an annual basis, within (i) 60 days after the end of the fiscal year for large accelerated filers, (ii) 75 days after the end of the fiscal year for accelerated filers, and (iii) 90 days after the end of the fiscal year for all other registrants. An "accelerated filer" is a company that meets the following conditions at the end of each fiscal year: (i) has an aggregate worldwide market value of voting and non-voting common equity held by non-affiliates (a "public float") of $75 million or more, but less than $700 million, as of the last business day of the most recently-completed second fiscal quarter; (ii) has been subject to the reporting requirements of the Exchange Act for at least twelve calendar months; and (iii) has filed at least one annual report under the Exchange Act. A "large accelerated filer" is an accelerated filer that has a public float of $700 million or more as of the last business day of the most recently-completed second fiscal quarter.

The form contains various information about the Company, including descriptions of its business, properties, financial condition and risk factors. It also includes audited financial statements, accompanied by management's discussion and analysis of financial condition and results of operations for the last three years, which must include a description of known trends and uncertainties that are reasonably expected to have a material impact. Certain information relating to management, executive compensation, related party transactions, and principal stockholders that is required by Part III of Form 10-K may be incorporated by reference from the Company's proxy statement if the proxy statement is filed within 120 days after the end of the fiscal year. A company that intends

to incorporate by reference Part III information from its proxy statement but does not file its proxy statement within the 120-day period must amend its Form 10-K prior to the end of the 120-day period to provide the information that was to have been incorporated by reference. The Form 10-K must be signed by the Company, its principal executive officer, principal financial officer, principal accounting officer and a majority of the directors serving on the Company's board of directors (the "Board"). Officers and directors should review carefully the draft Form 10-K submitted to them, involve the professionals they deem necessary to assure the Form 10-K's accuracy and completeness, and allow time to review and discuss the document at a meeting of the Board prior to filing with the SEC. This review is particularly recommended of members of the audit committee and members of other committees of the Board responsible for reviewing the Company's financial statements and related disclosure.

Form 10-Q.

Quarterly reports on Form 10-Q must be filed after each fiscal quarter (other than the last quarter of the fiscal year), within: (i) 40 days after the end of the fiscal quarter for large accelerated filers and accelerated filers, and (ii) 45 days after the end of the fiscal quarter for all other registrants. The major component of a Form 10-Q is unaudited financial statements for the most recent fiscal quarter and for the year-to-date (and for corresponding periods in the preceding fiscal year), accompanied by management's discussion and analysis of financial condition and results of operations for those periods. Risk factors also must be updated to reflect any material changes. Some companies include all of their risk factors, updated as necessary, in each Form 10-Q, while other companies opt to disclose only new risk factors that have arisen since the filing of the Form 10-K and any previously disclosed risk factors with material changes. The Form 10-Q must be signed by the Company and by its principal financial officer or principal accounting officer.

Legal Proceedings and Loss Contingency Disclosure.

Form 10-K and Form 10-Q each requires the disclosure of certain legal proceedings pursuant to Item 103 of Regulation S-K and loss contingencies pursuant to applicable accounting standards. The term "Legal Proceedings" is broader than just litigation, it includes arbitrations, court orders and administrative hearings. However, threatened legal proceedings generally do not need to be disclosed under Item 103 as the Item calls for "pending" legal proceedings, subject to certain exceptions for proceedings known to be contemplated by the government and claims known to be contemplated that would have to be aggregated with other similar claims under Item 103(b)(2). Courts and the SEC look at two factors to determine whether a pending or threatened legal proceeding is material to a reasonable investor: (1) the probability of incurring losses in such a proceeding and (2) the anticipated magnitude of those losses.

In addition to the Item 103 disclosure there is Loss Contingency disclosure required by applicable accounting standards in the footnotes to a company's financial statements. These are two different types of disclosure with different objectives. The loss contingency disclosure is directed at understanding management's view of the

likelihood of a loss and the potential financial statement impact of the potential loss. In comment letters, the SEC's focus is frequently on disclosure (or lack thereof) on reasonably possible losses or ranges of losses.

Sarbanes-Oxley Certifications.

In addition to signing Forms 10-K and 10-Q, principal executive officers and principal financial officers are required to make certain certifications that are filed with each Form 10-K and 10-Q pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"). Pursuant to Section 404(a) of Sarbanes-Oxley, each annual report must contain a statement by management that it has responsibility for establishing and maintaining adequate internal controls for financial reporting and an assessment of the effectiveness of such controls as of the end of each fiscal year. Section 404(b) requires that the Company's independent auditor attest to management's assessment of the effectiveness of those internal controls. Newly public companies are provided a transition period such that a newly public company is not required to provide management's assessment or the auditor attestation until its second annual report on Form 10-K.

Cybersecurity Risk Disclosures.

In July 2023, the SEC adopted rules that require public companies to include cybersecurity risk management, strategy and governance disclosures in their Form 10 Ks. Specifically, under the rules, the Company is required to disclose in its Form 10-K (i) its processes for assessing, identifying and managing material cybersecurity risks, including whether those processes cover cybersecurity risks from its third-party service providers, (ii) how its board oversees cybersecurity risks and (iii) its management's role in assessing and managing its material cybersecurity risks, including the processes by which its management are informed about and monitor cybersecurity incidents.

The rules also require companies to file a current report on Form 8-K to report any material cybersecurity incident generally within four business days after the company has determined it experienced such an incident. Such Form 8-K must describe the nature, scope and timing of the incident and the impact or reasonably likely impact of the incident, including financial impact, but need not disclose information that would impede the company's response or remediation of the incident.

Current Reports

Form 8-K.

A current report on Form 8-K generally must be filed with the SEC within 4 business days after certain significant corporate events. Examples of Form 8-K reportable events include entry into, termination or material amendment of a material agreement, completion of significant acquisitions or dispositions of assets, occurrence of a material cybersecurity incident, departure and appointment of, and compensation arrangements with, certain officers and directors and amendments to the Company's charter or bylaws, among others. Form 8-K may also be used as a way to voluntarily report events that

need not otherwise be immediately reported. Voluntarily reported information may either be "furnished" under Item 7.01 or "filed" under Item 8.01 of Form 8-K.

Information that is "furnished" under Item 7.01 will not be subject to liability under Section 18 of the Exchange Act, unless the company specifically states that the information is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act. (General Instruction B.2. of Form 8-K.) See **Annex A** regarding the differences between furnishing and filing reports and other information with the SEC.

Timeliness in Filing Periodic and Current Reports

Failing to file required periodic or current reports or failing to file such reports within the time frames set forth in the SEC rules can have adverse consequences.

Form S-3.

Form S-3 is a short form registration statement that permits incorporation by reference of Securities Exchange Act of 1934, as amended (the "Exchange Act") reports. In order to be eligible to use Form S-3, the registrant must have timely filed all required Exchange Act reports during the preceding 12 months (except for certain reports required on Form 8-K for which the timeliness of the filing will not affect S-3 eligibility) and meet certain other minimum requirements. If a registrant making offers and sales of securities under an effective Form S-3 fails timely to file an Exchange Act report, it may not continue making offers and sales under the Form S-3 registration statement after it files its next annual report on Form 10-K, but it may do so before that Form 10-K is filed. In addition, in order to qualify as a well-known seasoned issuer (a "WKSI"), the issuer must be S-3 eligible. In order to be able to use Form S-3, an issuer must satisfy certain registrant requirements, including, among other things, that the issuer must be a U.S. corporation, have a class of securities registered under Section 12 of the Exchange Act, and have timely filed all Exchange Act reports required to be filed during the past 12 months. In addition, the issuer must comply with applicable transaction requirements that are based on the size of the issuer's public float, the type of securities being offered and whether the offering is a primary or secondary offering. A key benefit to being a WKSI is that a registration statement filed on Form S-3 will become effective automatically upon filing and is therefore not delayed by SEC review.

Rule 144.

Subject to some exceptions, it is a condition to the use of the safe harbor under Rule 144 that the Company has current public information, which generally means that it has filed all of its required reports under the Exchange Act during the preceding 12 months. Rule 144 is applicable for resales by affiliates that are not registered and by non-affiliates that purchased shares in a private placement.

Non-Periodic Public Disclosures

Because of the difficulties of managing information dissemination, it is important that the Company adopt and maintain internal procedures regarding communications with the financial community and the public. A limited number of persons should be authorized to communicate with the financial community, and all employees should be instructed to refer inquiries to the responsible person(s).

Duty to Disclose.

There is no general obligation to disclose material information. Under the U.S. securities laws, the Company must first have a duty to disclose in order for there to be an actionable claim. A public company is generally only required to disclose information when it files Exchange Act reports, when it sells securities, and when it repurchases its securities. In addition, if it discovers that an earlier statement was materially inaccurate when made, it has a duty to correct that statement. There may also be a duty to update statements that, while correct when made, have a forward-looking connotation that ceases to be correct in light of subsequent events. However, there is a trend toward more frequent disclosure and, if the Company does elect to make a disclosure, it must do so candidly and completely.

In addition, management must evaluate, with the participation of the Company's principal executive and principal financial officers, or persons performing similar functions, the effectiveness of its disclosure controls and procedures as of the end of each fiscal quarter.

Press Releases.

A public company generally should make timely disclosure to the investing public of developments in those affairs that are "material," whether favorable or unfavorable. Such disclosures are normally made through press releases, which may be supplemented by communications directly to stockholders and the filing of a Form 8-K. Press releases require a high degree of accuracy, completeness and balance between positive and negative factors. "Material" facts are those that a reasonable investor would consider important when making an investment decision. A new fact is material if there is a substantial likelihood that the disclosure would be viewed by a reasonable investor as significantly altering the "total mix" of available information, which requires balancing the probability of an event and the anticipated magnitude of such event.

Company Web Sites and Social Media.

Corporate web sites and social media channels, such as X (formerly Twitter), Threads, LinkedIn or Facebook, can be used by public companies to disseminate material information, without running afoul of Regulation FD. For purposes of complying with Regulation FD (which is further discussed below), a company makes public disclosure when it distributes information through a recognized channel of distribution.

Whether a company's web site or social media channel is a recognized channel of distribution will depend on the steps that the company has taken to alert the market and investors to its web site or social media channel and the company's disclosure practices. Steps that a company can take to establish its web site or social media channel as a recognized channel for disclosing information include: (a) listing a company's web site address or identifying the specific social media channel(s) a company intends to use for such investor communications in its periodic reports and press releases, (b) establishing a pattern of posting important information on its corporate web site or social media channel(s), (c) informing investors that they can find important information about the company on its web site or social medial channel(s), and (d) using "push" technology, such as RSS or other social media feeds, to alert investors when new information has been posted and informing investors that these feeds are available and how to subscribe.

Personal social media sites of individual directors, officers or employees of a public company would not ordinarily be assumed to be channels through which the company would disclose material corporate information. Such individuals, however, should be aware that posting information about their company on personal media sites could potentially implicate Regulation FD, and therefore, such persons must exercise caution when communicating through social media.

On September 29, 2018, the SEC announced that Elon Musk, CEO and then-Chairman of Tesla, Inc., had agreed to pay a $20 million fine and step down from his position as Tesla's Chairman for three years to settle securities fraud charges brought by the SEC against him. The SEC charged that Mr. Musk's highly publicized August 7, 2018 tweet stating that he was considering taking Tesla private at $420 per share and that funding for the transaction had been secured, as well as subsequent tweets and disclosures, violated Section 10(b) of the Exchange Act and Rule 10b-5. According to the SEC's complaint, Mr. Musk's tweets, which contained alleged false and misleading statements and omissions of material facts, caused Tesla's stock price to jump by more than 6% on August 7, 2018 and led to significant market disruption. Further compounding the alleged violations, Mr. Musk made no public attempts to clarify his August 7th statements until August 13, 2018. Tesla also agreed to pay a $20 million penalty in connection with a settlement of related SEC charges that Tesla failed to have required disclosure controls and procedures covering Mr. Musk's tweets. Specifically, the SEC had charged Tesla with failing to have disclosure controls or procedures in place to: (i) assess in a timely manner whether the information Mr. Musk disseminated via X (formerly Twitter) was required to be disclosed in reports Tesla files under the Exchange Act and (ii) ensure that the information Mr. Musk published via X (formerly Twitter) was accurate and complete. This case is an important reminder for companies to review their disclosure controls and procedures to ensure appropriate oversight over their executives' public communications via social media.

Analysts and the Media.

Regulation FD

Under Regulation FD, the Company must disclose material, non-public information broadly to the public if it is conveyed to any securities market professional (e.g., broker-dealers, investment advisers, institutional investment managers, mutual funds, hedge funds, and buy-side or sell-side analysts) or stockholder. Any public disclosure required under Regulation FD shall be made simultaneously, if the disclosure is intentional, or promptly, if the disclosure is non-intentional. Selective disclosure may be made to the following categories of individuals without triggering the requirement to disseminate the information more widely: those who owe a duty of confidence to the Company (e.g., employees, lawyers and accountants), those who agree to keep the information confidential and, subject to certain limitations, those who receive a communication in connection with a registered public offering.

Analysts

Members of the financial community may contact the Company from time to time to obtain information. The Company is permitted to have individual or group discussions with analysts covering background or general information, but care should be taken not to disclose material, non-public information to someone unless such information is simultaneously disseminated to the public generally (as described above) or such individual or group has agreed to keep such information confidential. If, for example, the Company privately discloses or confirms to one analyst or stockholder (whether intentionally or accidentally) an earnings or revenue projection or any other material, non-public information, this information should be disclosed to the public at large by a press release or a Form 8-K, or both. Investors generally will only agree to keep information confidential for a short period of time given the restrictions on trading that holding such information poses.

Non-GAAP Financial Measures

Overview.

There are two primary rules that govern the use of non-GAAP measures.

Regulation G requires that any time publicly disclosed material information includes a non-GAAP financial measure, the issuer must accompany the non-GAAP measure with the most directly comparable GAAP measure and a reconciliation. It also requires that the measure not be misleading, which provides the Staff of the Division of Corporation Finance of the SEC (the "Staff") with broad discretion to challenge non-GAAP measures, including measures that (i) exclude items the Staff views as normal, recurring, cash operating expenses necessary to operate the business, (ii) are not presented consistently from period to period, (iii) exclude charges, but not gains, (iv) alter revenue recognition and measurement criteria required to be applied in accordance with GAAP or (v) fail to clearly label or explain adjustments, including separately identifying and explaining tax effects.

Item 10(e) of Regulation S-K contains several additional requirements whenever a non-GAAP financial measure is included in an SEC filing, including in Item 10(e)(1)(i) that

the comparable GAAP measure must be given equal or greater prominence and that management must disclose the reasons that the non-GAAP measure provides useful information to investors. In May 2016, the Staff issued updated guidance suggesting that equal or greater prominence will be interpreted to mean that the GAAP measure must be given greater prominence. Item 10(e)(1) also includes certain prohibitions, including that an issuer may not exclude cash settled items from liquidity measures (subject to certain exceptions) or identify items as non-recurring, infrequent or unusual if such items are reasonably likely to recur within two years or have occurred within the prior two years. Note, however, that, subject to Regulation G, the fact an issuer is not permitted to describe a charge or gain as non-recurring, infrequent or unusual in such circumstances, does not mean that the issuer cannot adjust for that charge or gain, it just means the issuer may not identify the item as non-recurring.

In December 2022, the Staff updated its guidance on non-GAAP measures. In the guidance, the Staff clarified that the nature and effect of a non-GAAP adjustment and how it relates to a company's operations, industry and regulatory environment determine whether an expense is a normal, operating expense and further clarified that an operating expense that occurs repeatedly or occasionally, including at irregular intervals, should be treated as a recurring operating expense. The guidance provided additional examples of misleading non-GAAP measures, including those presenting a non-GAAP measure of revenue on a net basis when gross presentation is required by GAAP, or vice versa, and labeling a non-GAAP measure the same as a GAAP measure even though it is calculated differently than the similarly labeled GAAP measure. The guidance also provided additional examples of non-GAAP measures presented with greater prominence than their comparable GAAP measure, including a chart of a non-GAAP measure presented without a corresponding chart with the related GAAP measure and a non-GAAP reconciliation that starts with a non-GAAP measure. The Staff also confirmed in the guidance that a non-GAAP measure could still be misleading notwithstanding that it is accompanied by extensive, detailed disclosure about the nature and effect of each adjustment.

Forward-Looking Disclosures.

With respect to forward-looking information, the reconciliation must be quantitative, to the extent available without "unreasonable efforts." If the GAAP financial measure is not accessible on a forward-looking basis, the issuer must disclose that fact and provide reconciling information that is available without an unreasonable effort. Furthermore, the issuer must identify information that is unavailable and disclose its probable significance. In the event a quantitative reconciliation is not available, the reconciling information must disclose the types of gains, losses, revenues or expenses that would need to be added to or subtracted from the non-GAAP financial measure to arrive at the most directly comparable GAAP measure, even though the issuer cannot quantify all of those items. At a minimum, issuers should provide the types of gains, losses, revenues or expenses that would need to be added to or subtracted from the non-GAAP financial measure to arrive at the most directly comparable GAAP measure and state that those adjustments may be significant. Issuers should also show the reconciliation based on the current forecast, including readily quantifiable adjustments baked into the projections, and note

that if in future periods there are additional gains, losses, revenues or expenses of the type noted, then those would be added to or subtracted from the non-GAAP financial measure as well and such amounts may be significant.

Earnings Releases.

An earnings release is not considered filed with the SEC; however, both Regulation G and Item 10(e)(1)(i) apply to earnings releases. Item 10(e)(1)(ii) does not apply, which provides more flexibility with respect to the presentation of measures the Staff may consider liquidity measures (e.g., unlevered free cash flow and non-GAAP earnings per share). Under the May 2016 equal or greater prominence guidance, issuers may receive a Staff comment if the GAAP figure does not precede the non-GAAP figure, including in headlines or if the non-GAAP measure is discussed without similar discussion of the GAAP results. In the same guidance, the Staff also indicated that EBITDA based measures should not be presented on a per share basis.

On December 26, 2018, the SEC settled enforcement proceedings against ADT Inc. involving certain ADT earnings releases that did not comply with the SEC's non-GAAP disclosure requirements. Specifically, the SEC's cease-and-desist order stated that when ADT presented non-GAAP financial measures in the headlines to its 2017 full-year and 2018 first quarter earnings releases without giving the comparable GAAP financial measures equal or greater prominence, ADT violated Item 10(e)(1)(i)(a) of Regulation S-K, Section 13(a) of the Exchange Act and Rule 13a-11 thereunder. Among other non-GAAP financial measures, ADT presented adjusted EBITDA in the headlines of both earnings releases and stated that EBITDA had increased by a stated percentage over the comparable prior period without disclosing net income or loss, the comparable GAAP financial measure, in the headlines. ADT paid a $100,000 fine in connection with the settlement. This enforcement action is an important reminder that the SEC regards compliance with applicable non-GAAP disclosure requirements as a serious matter and will take enforcement action in appropriate cases.

Earnings Calls.

Regulation G applies to earnings calls. However, the requirement to include a reconciliation and the most directly comparable GAAP measure is satisfied by posting that information on the issuer's web site at the time of the call and referring investors to the web site on the call. If a slide deck is used on the call and later posted to the web site, the slide deck should include the reconciliation within the deck.

Exchange Act Reports and Registration Statements.

Regulation G and Item 10(e) apply both to registration statements and Exchange Act reports filed with the SEC.

Safe Harbor for Forward-Looking Information

There are three alternative ways to obtain the benefits of the forward-looking safe harbor under the Private Securities Litigation Reform Act ("PSLRA"). The safe harbor is

available if: (1) the statement is identified as a forward-looking statement and "accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement," (2) the forward-looking statement is immaterial, or (3) if the plaintiff fails to establish that defendants had actual knowledge of the falsity of the statement. Because the third alternative requires an inquiry into the state of mind of the defendant, it is unlikely to have significant value on a motion to dismiss. As a result, the first alternative is generally perceived as the most valuable prong of the safe harbor.

As a general matter, there are three basic requirements that must be met in order to satisfy the first alternative.

1. Forward-looking statements must be ***identified as forward-looking statements***, which some courts have construed as meaning more than just identifying with words such as "expect," "will," "anticipate," etc.

    - ***Best practice*** is to mention specifically each topic for which the issuer is providing forward-looking information in the particular document.

2. Forward-looking statements must be ***accompanied*** by meaningful cautionary statements identifying important risk factors. While most courts have found that the safe harbor protection applies to a statement in a written document that references cautionary language from an SEC filing, the PSLRA does not specifically permit a document containing forward-looking statements to cross-reference another document. As a result, many practitioners worry that such a cross-reference may not always be sufficient to satisfy the requirement that the cautionary language ***accompany*** the forward-looking statements.

    - ***Best practice*** is both to (1) note specific risks relevant to the included forward-looking information and (2) cross-reference the specific Risk Factors section of the most recent Exchange Act report.

3. Forward-looking statements must be accompanied by ***meaningful cautionary statements identifying important risk factors***. While identifying the particular factor that ultimately causes the forward-looking statement not to materialize is not necessary for such statement to be protected by the safe harbor, courts have struggled to determine what constitutes meaningful cautionary language. It is, however, clear that general boilerplate risk factors that are not updated over time, or that would be equally applicable to any number of companies within the industry, will not be sufficient. Identifying a general risk when there is a known specific risk is also more likely to be viewed as mere boilerplate (*See e.g., Slayton v. American Express*).

    - ***Best practice*** is to specifically tailor substantive risk factors to the particular forward-looking statements. The more specific and concrete the cautionary language is, the more likely a court will find the language to be meaningful. The best way to demonstrate that the risk factors are not mere boilerplate is to

update them frequently. If updates are not needed for long periods of time, it is generally a sign that the risk factors are too broad.

Under the PSLRA ***oral forward-looking statements*** do not need to be accompanied by meaningful cautionary language if (1) they are accompanied by a warning that actual results may differ materially from the forward-looking statements and (2) the warning is accompanied by an oral statement referring listeners to a readily available document, such as the Risk Factors section of the most recent Exchange Act report, that contains adequate cautionary language (*See e.g. In re Coinstar Securities Litigation* (W.D. Washington Oct. 6, 2011) where the court determined virtually identical statements were protected by the safe harbor when accompanied by a verbal warning and an oral statement referencing a readily available written document containing cautionary language but were not protected in a subsequent communication where such statements were not so accompanied. The court also refused to take judicial notice of a PowerPoint slide that was displayed during the oral presentation because its authenticity was disputed). As a result, each oral presentation should generally follow the script on Annex C for an oral disclaimer.

In addition to the safe harbor, Rule 175 of the Securities Act and the "bespeaks caution" doctrine, which renders a forward-looking statement immaterial if meaningful cautionary statements accompany it, may also offer some protection.

- ***Best practice*** is to omit reference to the PSLRA in the cautionary statement because (1) the statute does not require the reference, (2) the safe harbor expressly does not apply to statements made in connection with a tender offer, going private transaction, IPO and certain limited other cases and (3) such a reference could diminish an issuer's ability to rely on the "bespeaks caution" doctrine.

See **Annex B** for examples of forward-looking statement legends.

Proxy Materials

The Company will generally solicit proxies from its stockholders in connection with its annual stockholder meeting and in connection with any special stockholder meeting. The proxy solicitation materials must disclose information relating to management, executive compensation, related party transactions, and principal stockholders, and must be furnished to the SEC in advance of their delivery to stockholders. Under the SEC's proxy rules, the Company is obligated to include in its proxy statement any proposals submitted in a timely manner by stockholders who meet certain minimum qualification standards unless the proposal fits within certain limited exceptions.

In addition, companies are required, among other things, to (i) include additional disclosure on executive compensation in proxy materials, (ii) hold a non-binding

stockholder "say on pay" vote at least once every three years and (iii) hold a stockholder vote at least once every six years on whether to have a "say on pay" vote every one to three years. Emerging growth companies are not required to hold such votes. See Section III.B. for further details.

CEO Pay Ratio.

Public companies, except emerging growth companies, smaller reporting companies and foreign private issuers, must disclose the ratio of median employee compensation to principal executive officer compensation (the "CEO pay ratio"). A newly public company is required to begin disclosing CEO pay ratio starting with the ratio for its first fiscal year following the year in which it becomes a reporting company.

Hedging Disclosures.

All public U.S. operating companies, including emerging growth companies, smaller reporting companies and business development companies, are required to provide a description of any practices or policies they have adopted regarding the ability of their employees, officers and directors to engage in certain hedging transactions. Foreign private issuers and listed closed-end funds are exempt from the requirement.

Pay Versus Performance.

In August 2022, the SEC finalized its pay versus performance disclosure rule, as required by the Dodd-Frank Act. The rule requires tabular disclosure of the relationship between the compensation "actually paid" to a company's named executive officers and the company's financial performance, over a five-year (three-year for smaller reporting companies) period, subject to a phase-in for the 2024 proxy statement. Newly public companies are not required to provide pay versus performance disclosure on fiscal years prior to the year such company began reporting under the Exchange Act. The performance data disclosed in the table must include the company's total shareholder return, the total shareholder return of the company's peer group and the company's net income, and a company-selected financial performance measure. Graphical or narrative disclosure of the relationships between the compensation and the financial performance measures must accompany the table. Companies that are not smaller reporting companies must also include a tabular list of the three to seven most important financial performance measures used by them to link the compensation to performance for the most recently completed fiscal year. The rule, which is set out in item 402(v) of Regulation S-K, first became applicable to proxy and information statements for fiscal years ending on or after December 16, 2022.

Clawback Policy.

In October 2022, the SEC adopted rules, as required by the Dodd-Frank Act, requiring securities exchanges to establish listing standards that require listed issuers to adopt and comply with a policy (a "clawback policy") for the recovery of erroneously awarded incentive-based compensation—that is, incentive-based compensation awarded based on a misstated financial performance measure (including stock price and

total shareholder return). The rules also require listed issuers to disclose information about their clawback policy and their compliance with the policy. The rules, which apply to most listed issuers, including those that are emerging growth companies, smaller reporting companies and foreign private issuers (with exemptions only for the listing of certain securities), apply only to the recovery of such compensation from "executive officers."

Under the rules, a listed issuer that is required to prepare an accounting restatement, including a "little r restatement" (i.e., a restatement to correct an immaterial error to prior period financial statements that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period), would be required to recover from any current or former executive officers the incentive-based compensation that was erroneously awarded to such person during the three fiscal years preceding the date such restatement was required (as well as any transition period resulting from a change in the issuer's fiscal year within or immediately following those three completed fiscal years). Under the rules, recovery of erroneously awarded compensation is without regard to any misconduct by an executive officer in connection with the error that triggers the restatement. Delisting is the ultimate sanction for not adopting or complying with a clawback policy.

A listed issuer is required to file its clawback policy as an exhibit to its annual report filed with the SEC and is required to disclose in its annual report or proxy statement certain information about compliance with its clawback policy. Listed issuers must begin to comply with the rules' disclosure requirements in proxy statements and annual reports filed on or after they adopt their clawback policy.

Nasdaq "Golden Leashes" Disclosure Rule.

For Nasdaq-listed companies, the Company must disclose, at least annually, the parties to, and the materials terms of, all agreements and arrangements between any director or nominee and any person or entity, other than the Company, relating to compensation or other payments in connection with candidacy or service as a director (so-called "golden leash" arrangements). In a typical golden leash arrangement, an activist stockholder would compensate its nominee(s) for service on the board based on certain company or stock performance criteria. The Company may make this disclosure on its web site (or through it by hyperlinking to another web site) or in its proxy statement or information statement for any stockholders' meeting at which directors are elected (or, if the Company does not file proxy or information statements, in its Form 10-K or 20-F). The Nasdaq rule does not prohibit such golden leash arrangements. Note that the rule also generally overlaps with certain SEC disclosure requirements (e.g., Items 401(a) and 402(k) of Regulation S-K, Item 5(b) of Schedule 14A, and Item 5.02(d) of Form 8-K).

Annual Report to Stockholders

In connection with the Company's annual meeting of stockholders, an annual report must be distributed to stockholders prior to or contemporaneously with the definitive proxy materials. The annual report must contain audited financial statements

and management's discussion and analysis of financial condition and results of operations. Some issuers choose to send stockholders a copy of their Form 10-K as an annual report, instead of producing a separate, glossy report for this purpose. The annual report must also be submitted electronically to the SEC via EDGAR under Form ARS. The electronically submitted annual report must capture the same graphics, styles of presentation and prominence of disclosures as the version given to stockholders. The electronic submission must be made available on EDGAR no later than the date on which the report is first sent or given to stockholders. The Staff has yet to provide guidance as to whether a Form 10-K that is used as such an annual report is required to be refiled with the SEC under a Form ARS.

SARBANES-OXLEY AND OTHER COMPLIANCE REQUIREMENTS

Sarbanes-Oxley Requirements

Under Sarbanes-Oxley, standards were adopted on a number of topics, including: (i) loans to directors and executive officers, (ii) audit committees and audit committee member independence, (iii) disclosure controls and procedures and internal control over financial reporting, (iv) disclosure of non-GAAP information, (v) off-balance sheet financing, (vi) codes of ethics, (vii) improper influence on the conduct of audits, (viii) forfeiture of bonuses/ profits, (ix) officer and director bars and penalties, and (x) whistleblower protections. Although the complexity and breadth of the Sarbanes-Oxley standards do not permit a detailed description of those standards in this memorandum, some were adopted through rules of the national securities exchanges and are described in Part IV below. We also have described below a few of the other standards which are of particular significance:

Loans to Directors and Executive Officers.

Sarbanes-Oxley prohibits the Company from extending, maintaining, arranging for or renewing a personal loan to or for any director or executive officer. Margin loans by registered broker-dealers, consumer credit, charge cards, open end credit plans, and home improvement and manufactured home loans are permitted if the credit is extended in the ordinary course of business, is of a type generally offered to the public and is made either on market terms or on terms no more favorable than those offered to the general public. Loans to directors and executive officers would have to be repaid before the Company publicly files its IPO registration statement.

Forfeiture of Bonus/ Profits.

If the Company is required to restate its financial results due to material noncompliance with any financial reporting requirement under the securities laws resulting from misconduct, the chief executive officer and chief financial officer must reimburse the Company for any bonus or other incentive-based or equity-based compensation received and any profits realized from the sale of Company securities during the 12-month period following the first publication of the financial document being restated.

Additional Disclosure.

Public companies must disclose in their periodic reports whether they have adopted a code of ethics for senior financial officers, and if not, why they have not done so. A public company must also disclose whether its audit committee has at least one member who is a financial expert, and if not, why not.

Sarbanes-Oxley also implemented rules relating to document retention and destruction that require certain relevant materials to be preserved when litigation or an investigation is pending within a federal agency or department or is reasonably foreseeable, or as relates to certain corporate audit records.

Internal Controls

The Exchange Act requires that all companies with a registered class of securities impose internal controls designed to assure the adequacy and integrity of the company's financial statements, reports and internal accounting procedures. The Exchange Act requires the Company to make and keep books, records and accounts that, in reasonable detail, accurately and fairly reflect the Company's transactions and dispositions of assets. The Company must also devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (1) transactions are executed in accordance with management's general or specific authorization, (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets, (3) access to assets is permitted only in accordance with management's general or specific authorization and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to differences.

On October 16, 2018, the SEC issued a Report of Investigation detailing the SEC Enforcement Division's consideration of the internal accounting controls of nine companies that were victims of "business email compromises," a form of cyber fraud in which perpetrators posed as company executives or vendors and used emails to dupe company personnel into sending large sums to bank accounts controlled by the perpetrators. The companies described in the report lost a combined total of nearly $100 million after their internal accounting controls failed to protect against two types of fraudulent email schemes: (i) emails from fake executives, and (ii) emails from fake vendors. The SEC issued the report, foregoing a traditional enforcement action, to draw attention to the prevalence of these cyber-related scams and as a reminder that all public companies should consider cyber-related threats when devising and maintaining a system of internal accounting controls.

As discussed in Section I.A.4, under Section 404 of Sarbanes-Oxley, the Company must provide its report on internal controls in its Form 10-K. Generally, the internal report of management must (1) state management's responsibility for establishing and maintaining adequate internal control over financial reporting, (2) identify the framework management uses to evaluate the effectiveness of those controls, (3) contain

management's assessment of the internal controls' effectiveness and (4) state that the independent auditors have issued an attestation report.

JUMPSTART OUR BUSINESS STARTUPS ACT OF 2012

On April 5, 2012, the JOBS Act was signed into law. The purpose of the JOBS Act is to expand and ease the methods of capital raising by, and relax the regulatory burdens on, smaller companies. One component of the JOBS Act initiative implements measures designed to ease the cost and burden of reporting requirements for public companies that are designated as emerging growth companies.

Definition of an Emerging Growth Company

A company qualifies as an emerging growth company if it has total annual gross revenues of less than $1.235 billion during its most recently completed fiscal year. A company will retain emerging growth status and the reduced regulatory requirements associated with it until the earliest of:

(a) The end of the fiscal year in which its total annual gross revenues are $1.235 billion or more.

(b) The end of the fiscal year in which the fifth anniversary of its IPO occurred.

(c) The date on which the company has, during the previous rolling three-year period, issued publicly or privately more than $1.0 billion in non-convertible debt securities.

(d) The date on which the company qualifies as a large accelerated filer.

Exemptions for Emerging Growth Companies

Shareholder Votes on Compensation.

Emerging growth companies are not required to hold stockholder advisory votes on "say on pay," the frequency of "say on pay," and "say on golden parachutes." "Say on pay" is an advisory vote whereby stockholders vote on whether to approve the compensation of named executive officers every one to three years. The frequency vote is an advisory vote whereby stockholders vote on whether the "say on pay" vote should be held every one, two or three years. The "say on golden parachutes" vote arises in the event of an M&A transaction and requires an advisory vote of the stockholders on payments made to any named executive officer in connection with such transaction. However, once issuers lose their emerging growth company status, they must begin to hold say on pay votes no later than:

(i) Three years after losing emerging growth company status if a company was an emerging growth company for less than two years after completing its IPO; or

(ii) One year after losing emerging growth company status for all other emerging growth issuers.

Executive Compensation Metrics.

As required by the Dodd-Frank Act, emerging growth companies are not required to disclose:

(i) The relationship between executive compensation actually paid and the financial performance of the company; or

(ii) The ratio between the annual total compensation of the CEO and the median of the annual total compensation of all employees of the company.

Regulation S-K Item 402 Disclosures.

An emerging growth company need only comply with the provisions of Item 402 applicable to smaller reporting companies, which, for example, do not include a Compensation Discussion and Analysis.

Other Exemptions.

Emerging growth companies are also exempt from:

(i) Compliance with new or revised accounting standards until those are applicable to private companies.

(ii) Section 404(b) of the Sarbanes-Oxley Act of 2002, which requires auditor attestation of a company's internal controls and procedures. However, emerging growth companies are required to present management's assessment and conclusions regarding the effectiveness of internal controls and procedures.

(iii) Any Public Company Accounting Oversight Board (PCAOB) rules regarding mandatory audit firm rotation or an expanded auditor report, and any other PCAOB rules adopted after the date of enactment unless the SEC determines new rules are necessary for protecting the public.

(iv) Inclusion of Critical Audit Matters ("CAMs") in audit reports. However, auditors may early adopt CAM requirements or apply them voluntarily to audits for which they are not required.

Opting Out of Emerging Growth Company Status.

Section 107(a) of the JOBS Act generally permits emerging growth companies to opt out of one or more of the exemptions described above and instead comply with the

requirements that apply to other issuers. However, a company is required to notify the SEC in its initial registration statement whether it will take advantage of the extended transition period for complying with new or revised accounting standards.

NYSE REQUIREMENTS

In addition to statutory and regulatory requirements, NYSE-listed companies must comply with certain disclosure and corporate governance requirements imposed by the NYSE.

Disclosure Rules

The NYSE requires issuers to release quickly to the public any information that might reasonably be expected to materially affect the market for its securities. Information that should be immediately disclosed includes annual and quarterly earnings, dividend announcements, mergers, acquisitions, tender offers, stock splits, and major management changes. Information required to be disclosed immediately must be released via a press release or any other Regulation FD-compliant method.

If the Company can keep discussions of material information confidential, it does not need to release it immediately. However, when the Company has to involve more than a small group of top management and the Company's confidential advisors in such discussions, disclosure is generally required. If the NYSE determines that market activity suggests undisclosed material information, the NYSE may require the Company to provide such information to the NYSE or to publicly disclose such information immediately. Furthermore, the Company is expected to act quickly to dispel unfounded rumors that cause unusual market activity or price variations.

The Company must inform the NYSE by telephone if it intends to make a material public announcement (including a statement dispelling unfounded rumors) between 7:00 AM and 4:00 PM Eastern Time (at least ten minutes prior to the announcement). Under NYSE listing rules, the Company is prohibited from issuing material news after the close of trading until the earlier of 4:05 PM Eastern Time or the publication of the Company's official closing price on the NYSE, except when disclosing material information following a non-intentional disclosure in order to comply with Regulation FD. In addition, if the Company intends to make a material public announcement shortly after market close, the NYSE encourages it to delay doing so until the earlier of publication of the official closing price on the NYSE or fifteen minutes after the official closing time in order to facilitate an orderly closing process to trading on the NYSE.

The NYSE's material news policy requires listed companies to provide the NYSE with advance notice at least ten minutes before making a public announcement ***at any time*** with respect to a dividend or stock distribution. This advance notice requirement for dividends and stock distributions is in addition to the requirement to notify the NYSE at least ten days in advance of the related record date.

The NYSE may also impose a temporary trading halt of the Company's securities if it deems it necessary to allow for full dissemination of the released information and to

maintain an orderly market. Trading halts are instituted, among other reasons, to ensure that material information is fairly and adequately disseminated to the investing public and the marketplace, providing investors with the opportunity to evaluate the information.

Corporate Governance

Governing Documents.

The Company must adopt and disclose corporate governance guidelines. The guidelines must cover director qualification standards, director responsibilities, director access to management and independent advisors, director compensation, director orientation and continuing education, management succession, and annual performance evaluation of the Board.

The Company must also adopt and disclose a code of business conduct and ethics that applies to directors, officers, and employees. The code must cover conflicts of interest, corporate opportunities, confidentiality, fair dealing, protection and proper use of company assets, compliance with laws, rules, and regulations (including insider trading laws), and reporting of illegal or unethical behavior. Any waivers of the code for directors or executive officers must be approved by the Board or a committee of the Board and must be disclosed within four business days of such approval by filing a current report on Form 8-K or including such disclosure on the Company's web site (in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K).

The Company's corporate governance guidelines and code of business conduct and ethics must also be made available on or through the Company's web site.

The chief executive officer of the Company is required to certify to the NYSE each year that the Company has not violated any of the NYSE corporate governance listing requirements.

Directors.

Except in the case of a "controlled company," the NYSE requires that the Company's board be composed of a majority of independent directors (as defined in Annex C), subject to applicable phase-in rules. A company listing in connection with its IPO has 12 months from the date of listing to comply with the majority independent board requirement in NYSE Listed Company Manual Section 303A.01. A company that has ceased to be a "controlled company" will be permitted to phase-in its majority independent board on the same schedule as companies listing in conjunction with their IPO (i.e., one year from loss of "controlled company" status).

The non-management directors must meet at regularly scheduled executive sessions without management. In addition, the independent directors must meet without the non-independent directors at least once a year. The Board must not be divided into more than three classes of directors. If the Board is divided into classes, each class should be of approximately equal size and tenure, and each director's term of office should not exceed three years.

Committees.

The Board is required to have an audit committee and, except in the case of a "controlled company" (a company of which more than 50% of the voting power for the election of its directors is held by a single person, entity or group), a compensation committee, and a nominating/corporate governance committee. Subject to applicable phase-in rules, the audit committee must be composed of at least three members, all of whom must meet the heightened standards detailed on **Annex C**. All audit committee members must be financially literate or become financially literate within a reasonable time after their appointment to the audit committee, and at least one member must have accounting or related financial management expertise. The Company must conduct an appropriate review of all related party transactions for the potential conflict of interest situations on an ongoing basis through the audit committee or a comparable independent body of the Board. Subject to applicable phase-in rules following an IPO and the loss of "controlled company" status, the compensation committee and the nominating/corporate governance committee must be composed solely of independent directors. In affirmatively determining the independence of any director who will serve on the compensation committee, the Board must consider all factors specifically relevant to determining whether a director has a relationship to the Company that is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to: (i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the listed company to such director; and (ii) whether such director is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.

Each committee must have and disclose a written charter that addresses the committee's duties and responsibilities and that includes a procedure for an annual performance evaluation of the committee. Copies of each committee charter must also be made available on or through the Company's web site.

In addition to having an audit committee and an outside independent auditor, subject to applicable phase-in rules, the Company must have an internal audit function, which may be outsourced to a firm other than the Company's independent auditor.

Stockholders.

The Company is generally required to hold an annual stockholders' meeting during each fiscal year. Stockholders' meetings must be publicized if they will affect the rights or privileges of stockholders or if they are otherwise non-routine. The Company must also notify the NYSE of stockholders' meetings at least ten days in advance of the record date. If the Company changes its record date, it must again notify the NYSE at least ten days in advance of the new record date. Record date notifications must be communicated directly to the NYSE and publication of a record date by means of a press release or SEC filing does not constitute notice to the NYSE. The Company is required to actively solicit proxies for all stockholder meetings. The Company is not required to provide hard copies of its proxy materials to the NYSE if the proxy materials (including the proxy card) are

filed with the SEC on EDGAR. However, if the Company's proxy materials are available on EDGAR but not filed on Schedule 14A, the Company must provide information sufficient to identify such filing to the NYSE no later than the date on which such materials are first sent to any stockholder.

Stockholders must be given the opportunity to vote on the approval of all equity-compensation plans (except for employment inducement awards for new employees and tax qualified employee benefit plans) and all material revisions to such plans. Stockholder approval must also be obtained prior to (1) certain issuances of stock to certain related parties; (2) issuances that will result in a change of control of the Company; and (3) issuances of common stock (or securities convertible into or exercisable for common stock) amounting to 20% or more of the number of shares or voting power of the common stock outstanding, unless the issuance is a public offering for cash or certain bona fide private financings.

Other Required Disclosures and Notifications

Notifications of Certain Corporate Events.

The Company is required to promptly notify the NYSE (generally within five business days) of certain corporate events such as a change in the independence status of a director, a change in board or committee membership, certain matters with respect to reliance on exemptions or cure periods for committee membership, a change in status as a "controlled company," foreign private issuer or smaller reporting company, and non-compliance with the NYSE's corporate governance rules. The Company is required to provide these notifications by submitting an Interim Corporate Governance Affirmation.

In addition, various corporate events, including a change in transfer agent or registrar, a change in auditor, a change in executive officers, material dispositions, cash dividends, stock splits, stock dividends and rights offerings, a change in the general nature of the Company's business, redemptions or other retirement or cancellation of a listed security, certain increases in the number of shares outstanding, a change in the Company's name, and a change in the form or nature of a listed security, will trigger a requirement to notify the NYSE.

NASDAQ REQUIREMENTS

In addition to statutory and regulatory requirements, Nasdaq-listed companies must comply with certain disclosure and corporate governance requirements imposed by Nasdaq.

Disclosure Rules

Subject to certain exceptions noted below, Nasdaq generally requires that issuers disclose promptly (via any Regulation FD compliant method) any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Companies must notify Nasdaq of the release of any such information at least 10 minutes prior to its release to the public if the information involves certain material

events and is made between 7:00 am to 8:00 pm ET. If the public release is made outside of these hours, companies must notify Nasdaq of the material information prior to 6:50 am ET.

These events include: (a) financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance"; (b) corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships; (c) new products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order); (d) senior management changes of a material nature or a change in control; (e) resignation or termination of independent auditors, or withdrawal of a previously issued audit report; (f) events regarding the company's securities (e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities; (g) significant legal or regulatory developments; and (h) any event requiring the filing of a Form 8-K.

Nasdaq does not require issuers to make public disclosure of material events under certain circumstances, such as when it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its corporate objectives. Nasdaq issuers, however, remain obligated to disclose such information to Nasdaq upon request. Furthermore, if rumors or unusual market activity indicate that information on impending developments has become known to the investing public, a clear public announcement may be required as to the state of such developments.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's listed securities, the Nasdaq MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. Trading halts are instituted, among other reasons, to ensure that material information is fairly and adequately disseminated to the investing public and the marketplace, providing investors with the opportunity to evaluate the information.

Corporate Governance

Governing Documents.

The Company must adopt a publicly available code of conduct that satisfies the Sarbanes-Oxley definition of a "code of ethics." The code of conduct must apply to all directors, officers, and employees, although the Company may adopt multiple codes applicable to different types of employees. Any waivers to the code of conduct for directors or executive officers must be approved by the Board or a committee of the Board and publicly disclosed by filing a current report on Form 8-K or including such disclosure on the Company's web site (in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K).

Directors.

Except in the case of a "controlled company" (a company of which more than 50% of the voting power for the election of its directors is held by a single person, entity or group), Nasdaq requires that the Company's board be composed of a majority of independent directors (as defined in **Annex D**), subject to applicable phase-in rules. A company listing in connection with its IPO has 12 months from the date of listing to comply with the majority independent board requirement in Rule 5605(b). A company that has ceased to be a "controlled company" will be permitted to phase-in its majority independent board on the same schedule as companies listing in conjunction with their IPO (i.e., 12 months from loss of "controlled company" status). Independent directors must also hold executive sessions without the rest of the board, at least twice a year.

Committees.

Subject to applicable phase-in rules, the Company must establish an audit committee, with at least three members, comprised solely of board members that meet a special, heightened standard of independence (see **Annex D**). The audit committee must adopt a formal charter, granting the committee certain authority and responsibilities. All audit committee members must be able to read and understand fundamental financial statements, and at least one member must have employment experience in finance or accounting or have other experience qualifying that member as a financial expert. The Company must conduct an appropriate review of all related party transactions for potential conflict of interest situations on an ongoing basis through the audit committee or a comparable independent body of the Board.

In addition, except in the case of a "controlled company" and subject to applicable phase-in rules following an IPO, the Company must also establish a compensation committee with at least two members. Subject to applicable phase-in rules following an IPO and the loss of "controlled company" status, the compensation committee must be composed solely of independent directors. In affirmatively determining the independence of any director who will serve on the compensation committee, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the Company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to: (i) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and (ii) whether such director is affiliated with the Company, a subsidiary of the Company or an affiliate of a subsidiary of the Company. The compensation committee must be given specific authority with respect to retention of, and obtaining advice from, compensation consultants, legal counsel or other advisers.

Nasdaq does not require listed companies to have a nominating committee. Pursuant to Nasdaq Rule 5605(e) and subject to applicable phase-in rules following an IPO and the loss of "controlled company" status, if such a committee does exist, it must be comprised solely of independent board members. If such committee does not exist, however, a majority of the independent directors must nominate new directors.

Stockholders.

Each year the Company must (1) distribute an annual report to its stockholders (interim reports need merely be made available to stockholders), (2) hold an annual meeting of stockholders and provide notice of that meeting to Nasdaq, and (3) solicit proxies and provide proxy statements for all meetings of stockholders. The Company must also provide copies of such solicitation documents and all SEC filings to Nasdaq (this is accomplished if the Company uses EDGAR to file with the SEC).

Under Nasdaq rules, certain stock issuances will require stockholder approval, including (1) issuances that will result in a change of control (which would occur when, as a result of the issuance, an investor or group would own, or have the right to acquire, 20% or more of the outstanding number of shares or voting power of common stock and such ownership or voting power would be the largest ownership position); (2) issuances of common stock (or securities convertible into common stock) amounting to 20% or more of the outstanding number of shares or voting power of the outstanding common stock prior to issuance at a price that is less than a "Minimum Price," unless the issuance is a public offering; and (3) certain issuances in connection with the acquisition of stock or assets of another company. Under Nasdaq rules, "Minimum Price" means a price that is the lower of (i) the closing price (as reflected on Nasdaq.com) immediately preceding the signing of a binding agreement; or (ii) the average closing price of the common stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of the binding agreement. Stockholder approval is also required when equity compensation plans (except for employment inducement awards for new employees and tax qualified employee benefit plans) are made or materially amended.

The Company cannot issue any class of security, or take any other corporate action, that has the effect of nullifying, restricting, or disparately reducing the per share voting rights of its common stock. For example, board rights granted to investors must be proportional to investment. The Nasdaq should be consulted in circumstances where an investor is seeking board rights with respect to a proposed investment that would represent less than 5% of the Company's outstanding shares of common stock.

Other Required Disclosures and Notifications

Notifications of Certain Corporate Events.

Various corporate events, including cash dividends, stock splits, stock dividends and rights offerings, listing of additional shares, mergers, tender offers, increases or decreases of 5% or more in the number of shares outstanding, a change in the Company's name, a change in security title or par value, a change in state of incorporation, and noncompliance with corporate governance rules, will trigger a requirement to notify Nasdaq. A list of corporate events and the applicable notification forms and deadlines are available on Nasdaq's on-line Listing Center.

FIDUCIARY DUTIES

Under Delaware Law

Under Delaware law, the Company's directors have certain fiduciary duties to the Company and its stockholders. These duties fall into two broad categories: a duty of care and a duty of loyalty. Delaware courts have also articulated a third possible duty, the duty of disclosure. Directors who satisfy these fiduciary duties will not be subject to personal liability.

Duty of Care.

The duty of care requires a corporate director to act in good faith and on the basis of adequate information when making a business decision. A director should act with the care that an ordinary prudent person in a like position would exercise under similar circumstances and in a manner the director reasonably believes to be in the best interests of the Company. The standard for determining whether a business judgment made by the board was an informed one is gross negligence, defined as "reckless indifference or a deliberate disregard of the whole body of stockholders or actions which are without the bounds of reason." Giving greater precision to concepts such as "good faith" and "prudence" or applying them to a particular factual situation is more of an art than a science.

To make these concepts of "good faith" and "prudence" more vivid, it may be useful to consider the well-known Delaware case of Smith v. Van Gorkom, in which the directors of a Delaware corporation were asked to approve a management-initiated sale of the corporation. None of the directors (other than management) knew that the proposal would be considered by the board until the meeting was convened; the chief financial officer's view that the proposal was insufficient was not shared with the directors; the corporation's regular investment banker was not consulted; no questions were asked of the management officers outlining the proposal; the entire board meeting took two hours; no papers were presented; and the agreement as signed did not reflect all that the directors had contemplated. Even though no higher bid could be obtained by investment bankers hired by the board at the request of dissenting members of management and even though the sales price was approved by the stockholders, the court held that the directors did not fulfill their duty of care. Commentators believe that the court relied on four deficiencies in the process: (1) haste, (2) lack of board preparation, (3) lack of questioning or involvement by the board and (4) lack of a paper record.

In fulfilling his or her duty of care, a director should generally be entitled to rely on opinions and reports made available to him or her by officers and employees of the Company, or by committees of the board on which he or she does not serve (absent knowledge that would make the reliance unwarranted). Management should supply directors with sufficient and accurate information about the business of the corporation, and directors should request additional information that they feel is necessary in order to be fully informed. A director who relies on those to whom matters are delegated has a responsibility to keep informed of their efforts.

In the absence of self-dealing transactions, if directors fulfill the procedural aspects of the duty of care, they will be entitled to the benefit of the presumption of the "business judgment rule" under which the merits of their decision will not be questioned. The business judgment rule presumes that in making a business decision, the disinterested directors acted on an informed basis, in good faith, and in an honest belief that the action was taken in the best interests of the corporation. This rule, well established in Delaware law, protects a disinterested director from personal liability to the corporation (and its stockholders), even though a corporate decision made by the directors turns out to be unwise or produces unsuccessful results. Even if an interested party transaction is involved, although an "entire fairness" standard of review applies, the business judgment rule may still be applicable so that a court will not substitute its judgment for that of the board. A limited circumstance in which the business judgment rule may not apply is when there is a change-in-control transaction in which the courts apply an "enhanced scrutiny" standard that looks at both the board's process and actions.

Duty of Loyalty.

The duty of loyalty is the general corporate law concept that requires a director to act in the good faith belief that his or her actions are in the best interests of the corporation and its stockholders, and not in his or her own interest or in the interest of any other person or organization. Simply put, a director should not (1) use his or her position for personal profit, gain or other personal advantage, (2) intentionally act with a purpose other than that of advancing the best interests of the corporation, (3) act with the intent to violate the law or (4) intentionally fail to act when he or she has a known duty to act. Examples of breaches of the duty of loyalty include (a) engaging in a self-dealing transaction that either is not approved by a majority of the corporation's independent directors or stockholders or is not entirely fair to the corporation, (b) taking a corporate opportunity for himself or herself without giving the corporation's independent directors a chance to reject the corporate opportunity and (c) systematically failing to exercise oversight or to attempt to assure that a reasonable information and reporting system exists.

Duty of Disclosure.

While it is unclear whether the courts technically consider the duty of disclosure to be a separate fiduciary duty, directors in certain circumstances have a duty to provide complete and accurate information to the stockholders. This duty of disclosure establishes as a matter of state corporate law information requirements akin to the SEC's proxy rules.

INSIDER TRADING

The operation and impact of the securities law antifraud rules are too extensive and intricate to cover in detail in this memorandum, but, at a minimum, Company insiders should be aware of the following:

Rule 10b-5

Rule 10b-5 is the general "antifraud" rule promulgated under Section 10(b) of the Exchange Act. Rule 10b-5 makes it unlawful for any person, in connection with the purchase or sale of any security, (i) to employ any device, scheme or artifice to defraud, (ii) to make any untrue statement of a material fact or to omit to state a material fact necessary to make any statements made not misleading or (iii) to engage in any act, practice or course of business that would operate as a fraud or deceit upon any person. The federal mail and wire fraud statutes are usually also implicated when securities fraud is alleged.

Claims under Rule 10b-5 require proof that the defendant acted with scienter, and that the injured plaintiff reasonably relied on the misrepresentation or omission of a material fact to its detriment. The U.S. Supreme Court has defined scienter as "a mental state embracing intent to deceive, manipulate, or defraud."

Insider Trading

The Company, its insiders and others may face civil and criminal liability for insider trading if they trade in Company securities while in the possession of material, non-public information. "Non-public" information is information that has not been publicly released, and such information is "material" if a reasonable investor would consider it important in reaching an investment decision. What is and is not material information is, of course, often extremely difficult to determine. As indicated above, under certain circumstances, material information may be temporarily withheld from the public if, for example, the facts are in a state of flux and a more appropriate moment for disclosure is imminent, or if disclosure would prejudice the ability of the Company to pursue a legitimate corporate objective. During any such period, both the Company and insiders must refrain from trading until the information is publicly disclosed.

"Trading" is broadly defined to include (1) the purchase or sale of the Company's securities, (2) the purchase or sale of puts, calls or other options with respect to the Company's securities, (3) the initial establishment or a subsequent modification of a Rule 10b5-1 trading plan, (4) the trading of any Company securities in which an insider has any beneficial interest, direct or indirect, whether or not the securities are actually held in the insider's name and (5) revealing material, non-public information to outside individuals, or "tipping," to enable such individuals to trade in the Company's securities on the basis of undisclosed information.

Note that the SEC has also pursued insider trading cases where MNPI related to one company served as the basis of trading in a second, unrelated company. This type of trading has been termed "shadow trading." On April 5, 2024, in the SEC's first victory in a shadow trading case, a civil jury found the defendant, Matthew Panuwat, liable for insider trading for using MNPI about his employer (namely, that the employer was going to be acquired) to trade in the securities of a purportedly comparable company that was not a direct competitor or business partner of his employer. Shadow trading transactions present incremental difficulty to compliance personnel in detecting misuse of MNPI

because of the difficulty of determining whether MNPI that an employee obtains about one issuer results in MNPI about other issuers. Sometimes, the connection may be obvious – e.g., MNPI about a large defense contractor winning a major Department of Defense contract is likely to affect the contractor's major subcontractors. The connections in other fact patterns may be more difficult to detect.

Release of material information to the media does not immediately free insiders to trade in the Company's securities. Insiders must refrain from trading until the market has had an opportunity to absorb and evaluate the information. There are certain periods during which an insider should be particularly sensitive to insider trading problems. These include the period near the end of each fiscal quarter until earnings results and dividends, if any, are announced and any other period when the release of information concerning an important Company development is expected.

As a general matter and subject to any applicable company trading windows and/or blackout periods, the period commencing one to two full trading days following the release of quarterly or annual financial results and lasting until the beginning of the last month in the financial period may provide the safest time for trading by directors and officers of the Company. Even during such periods, however, an insider must consider whether he or she is in possession of material, non-public information and, if so, should refrain from trading.

As part of its insider trading policy, the Company may establish trading window or blackout periods in order to assist directors, officers and/or employees (such as members of the finance, accounting, and legal departments) who may be aware of material, non-public information to comply with their obligations under the securities laws. Companies generally have regularly scheduled quarterly blackout periods that commence during the final month of each fiscal quarter and end one to two trading days after the company has publicly announced its earnings for the quarter. In addition, companies may also impose special blackout periods in connection with potentially significant corporate developments (such as M&A or capital markets transactions) that constitute material, non-public information. The Company's insider trading policy should also make clear that the existence of a special blackout period should be treated as confidential information. The Company will typically end the special blackout period by publicly disseminating the material, non-public information. The appropriate universe of employees who will be subject to regularly scheduled or special trading window or blackout periods generally depends on the extent of such employees' access to sensitive information.

SEC rules require each issuer to disclose in its annual report whether it has adopted insider trading policies and procedures (including those governing trading by the issuer itself) and, if not, why it has not done so. Issuers that have adopted insider trading policies are required to file a copy of their insider trading policy as an exhibit to their Form 10-K (or Form 20-F). If all of an issuer's insider trading policies are contained in its code of ethics, the issuer may satisfy the exhibit requirement by filing the code of ethics.

Issuers (other than foreign private issuers) must also annually disclose certain information regarding options, stock appreciation rights and similar instruments granted

to named executive officers (with scaled disclosure requirements for emerging growth companies and smaller reporting companies) within four business days before or one business day after, (i) filing of a quarterly report on Form 10-Q or annual report on Form 10-K, or (ii) filing or furnishing a Form 8-K (other than a Form 8-K reporting only the grant of a material new option award that includes material nonpublic information). The disclosure, which must be in tabular format, would need to include the number of shares underlying the award, the date of the grant, the grant date fair value, the exercise price and the percentage change in the closing price of the shares underlying the award between the trading day before and after the relevant disclosure of material nonpublic information. Such issuers must also annually disclose their policies and practices on the timing of awards of options in relation to the disclosure of material nonpublic information, including whether and, if so, how the board or compensation committee takes material nonpublic information into account when determining the timing and terms of such awards.

In February 2018, in response to the increasing significance of cybersecurity incidents, the SEC issued interpretive guidance on cybersecurity disclosure. Among other things, the guidance encouraged companies to consider how their codes of ethics and insider trading policies take into account and prevent insider trading on the basis of material, non-public information related to cybersecurity risks and incidents. In addition, the guidance asked companies to consider whether and when it may be appropriate to implement insider trading blackout periods during the investigation and assessment of material cybersecurity incidents.

In addition to the restrictions discussed above, the SEC adopted Regulation BTR, which made it unlawful for any director or executive officer to purchase, sell or otherwise transfer, directly or indirectly, any equity or derivative security of the Company (which was acquired in connection with his or her services as director or executive officer) during a pension plan blackout period during which participants in the plan cannot engage in such a transaction. The Company is required to notify directors and executive officers of blackouts that may affect them. Any such blackout period notice must be filed with the SEC under Item 5.04 of Form 8-K.

Rule 10b5-1 Plans

Rule 10b5-1 provides an affirmative defense to a claim of trading on the basis of material, non-public information. A person's purchase or sale is not "on the basis of" material, non-public information if (i) the purchase or sale is made pursuant to a written plan for trading securities that either provided for the basic terms of future sales or did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales, (ii) the plan was adopted (or modified, as applicable) in good faith at a time when the person was not aware of any material nonpublic information with respect to the relevant securities and (iii) the plan meets all other applicable requirements of Rule 10b5-1, including the requirement to act in good faith with respect to the plan.

Under Rule 10b5-1, qualifying plans adopted (or, with respect to amount, price or timing of trades, modified) by persons other than the issuer of the security must be subject

to cooling-off periods, which vary depending on the person who adopts the plan. Directors and officers (as defined in Rule 16a-1(f)) are subject to a cooling-off period ending 90 days after adoption or modification of a plan or, if later, two business days after filing the Form 10-Q or Form 10-K covering the fiscal quarter in which the plan was adopted, or for FPIs, in a Form 20-F or Form 6-K that discloses the issuer's financial results, subject to a maximum of 120 days following adoption or modification of a plan. Persons who are not directors and officers are subject to a 30-day cooling-off period. Persons other than issuers are also prohibited from having multiple/overlapping plans, subject to certain limitations, and may only adopt single trade plans (i.e., plans that only contemplate a single trade) once in 12 months. In addition, a qualifying plan adopted or modified (in the manner noted above) by directors and officers must include a representation that, on the date of the adoption or modification, the director or officer is not aware of any material nonpublic information about the securities or the issuer and is adopting the plan (or modified plan) in good faith.

Companies that file Form 10-Qs and Form 10-Ks are required to quarterly disclose in those reports the material terms (other than price) of Rule 10b5-1 plans and other trading plans adopted, modified (as noted above) or terminated by their directors and officers during the related quarter (last fiscal quarter for a Form 10-K).

Dissemination of Financial Information

In designing protocols regarding the sharing of sensitive corporate information within the organization, the Company should consider if there is a business need for the information to be disseminated to the employees who receive it. The Company should weigh the business justification against the risks of potential leaks and the need to subject each employee that receives such information to the quarterly trading or blackout periods under the Company's insider trading policy. If material, non-public information is inadvertently disclosed by an employee, the Company would be required to broadly disseminate the information to the market as soon as possible under Regulation FD.

- ***Best practice*** is for the Company to: (1) conduct periodic trainings on insider trading and Regulation FD, (2) send reminders regarding the treatment of confidential information, and (3) notify affected employees regarding the opening and closing of trading windows.

If the Company decides that the business justification for sharing sensitive corporate information with a larger group outweighs the risks of leaks and the burden of monitoring compliance, then, in addition to the best practices described above, the Company should also consider encouraging every insider to establish Rule 10b5-1 plans to limit the amount of purely discretionary trades. In addition, Rule 10b5-1 plans are particularly useful around the vesting of stock awards and related expiration events.

Liability Resulting From a Purchase and Sale or a Sale and Purchase Within Six Months

Section 16(b) of the Exchange Act requires a director or specified officer to forfeit to the Company any profit realized from any non-exempt purchase and sale, or any sale and purchase, of Company stock within any period of less than six months (so-called short-swing profit). The Section also applies to a person who beneficially owns (or is a member of a group that beneficially owns) more than 10% of a registered class of equity securities of the Company. For purposes of determining who is a 10% beneficial owner, the SEC uses the same definition it uses for purposes of Section 13(d), which looks to the power to vote or dispose securities and is discussed below. The purpose of Section 16(b) is to prevent the unfair use of inside information regarding the Company. However, Section 16(b) requires such forfeiture regardless of whether the insider in question acted in good faith or used inside information. The profits are subject to recovery either by the Company or by a stockholder on behalf of the Company, and, as a result of Forms 4 and 5, transactions by officers, directors and 10% stockholders are matters of public record.

Generally, in measuring the amount of short-swing profits, the courts simply match the highest sale prices against the lowest purchase prices within the six-month period. Note that this rule treats as profits not only gain from an ordinary purchase and a sale, but also "profits" realized from a sale followed by a purchase during the next six months at less than the prior sale price. Thus, there may be liability even though the director, officer or 10% stockholder in question had a net loss from all transactions during the period.

Section 16(b) covers the purchase and sale of Company stock of which a director, officer or 10% stockholder is deemed to be an indirect owner as well as that stock of which he is the direct owner. The analysis of what shares a person is deemed to own is described below as applicable in reporting ownership on Forms 3, 4 and 5. The case law on the subject is complex and, in some instances, takes an expansive view of what constitutes beneficial ownership.

Section 16(b) also covers transactions involving derivative securities, such as stock options, rights and convertible securities. A transaction involving a derivative security is deemed to be a transaction in the underlying security. The rules under Section 16(b) provide exemptions for some transactions. The acquisition of options under the Company's stock plans, for example, will generally not be a matchable purchase. The acquisition of shares upon exercise of those options is also generally not a matchable purchase. Open market purchases of shares constitute purchases, and the sale of shares acquired upon exercise of options, of course, as well as the sale of other shares owned by a director, officer or 10% stockholder, constitute sales for purposes of the Section. The acquisition or disposition of puts, calls or other rights to buy or sell Company stock (other than pursuant to Company stock plans) will generally be considered purchases and sales, and will be matched against sales and purchases of other derivative securities or of Company stock.

Section 16(b) does not apply if the relevant issuer is a foreign private issuer.

Prohibition of Short Sales of Securities

A director, specified officer or 10% beneficial owner may not sell any equity security of the Company if he or she does not own the security sold (i.e., a short sale).

This prohibition does not apply if the relevant issuer is a foreign private issuer.

EQUITY OWNERSHIP REPORTS

SEC Reporting Requirements

Form 3.

Upon effectiveness of the Company's 8-A registration statement in connection with an IPO (typically the day of the pricing or the following day), persons subject to Section 16 are required to file with the SEC a report on Form 3 reporting his or her beneficial ownership of Company stock, or the absence of such ownership. Persons that become subject to Section 16 at a later date are required to file a Form 3 within ten days after becoming subject to Section 16.

A person is an "officer" subject to Section 16 if he or she is the president, principal financial officer, principal accounting officer (or controller if there is no such accounting officer), a vice president in charge of a principal business unit, division or function, or any other person who performs a significant policy-making function for the Company. In addition, officers of any of the Company's parent company or subsidiaries may be deemed "officers" of the Company if they perform significant policy-making functions for the Company. Persons identified by the Company as "executive officers" pursuant to Item 401(b) of Regulation S-K are presumed to be "officers" for purposes of Section 16.

Individuals or entities who directly or indirectly beneficially own more than 10% of a class of the Company's equity securities registered under Section 12 of the Exchange Act will also have reporting obligations under Section 16. As noted above, for purposes of determining who is a 10% beneficial owner, the SEC uses the same definition it uses for purposes of Section 13(d), which looks to the power to vote or dispose securities.

Form 3 filing obligations do not apply if the relevant issuer is a foreign private issuer.

Forms 4 and 5.

When a change in beneficial ownership occurs that is not exempted from reporting, the director or officer must file a report on Form 4 with the SEC within two business days after the change occurs. Gifts of the securities must also be reported on Form 4 within two business days.

Certain transactions do not trigger a Form 4 filing obligation. These transactions include acquisitions under tax-qualified plans (but not as a result of intra-plan transfers), purchases under employee stock purchase plans, acquisitions under dividend reinvestment plans and mere changes in the form of beneficial ownership. Holdings that

result from these transactions will nonetheless need to be reflected in connection with events that are otherwise reported on a Form 4 or 5. Also, any transactions executed under a Rule 10b5-1 plan must be identified in a Form 4 and 5 by ticking a checkbox.

A Form 5 may also be required. Forms 5 are required to be filed to report certain transactions, most notably certain small acquisitions, and to report previously unreported transactions. An insider who is not required to file a Form 5 in a given year must file with the Company a written representation to that effect. Many insiders may never have to file a Form 5. Forms 5, if required, are due 45 days after the end of the Company's fiscal year. Some insiders elect to voluntarily file a Form 4 early, close to the time of the transaction, to report transactions that would otherwise be required to be reported on a Form 5 in order to avoid potential errors or missed filings.

After leaving office, a director or officer is also required to report any change in beneficial ownership that results from a non-exempt transaction within six months after any non-exempt, "opposite-way" transaction that occurred while the individual was a director or officer. So long as the director or officer had no non-exempt transactions in the six months prior to leaving office, he or she will have no post-termination Section 16 reporting obligations. An "exit report" may be voluntarily filed, but is not required.

Form 4 and 5 filing obligations do not apply if the relevant issuer is a foreign private issuer.

Disclosure.

Forms 3, 4 and 5 must be filed electronically via the SEC's EDGAR database and are required to be posted by the Company on its web site. Directors and officers who prepare their own reports should be required to send copies of Form 3 and of each Form 4 and Form 5, to the Company at the time of filing with the SEC. In addition, the manually signed signature pages for any electronic filings should be retained for five years in a manner that allows them to be easily retrieved. In lieu of obtaining manual, physical signatures from filers, the SEC permits electronic signatures if the signatory first manually signs a document attesting that the signatory consents to the use of electronic signatures in SEC filings. Insiders should note that the SEC requires disclosure under a separate caption in proxy statements and annual reports of the names of delinquent filers and the number of reports and transactions involved.

Forms 3, 4 and 5 and instructions for filing electronically via the SEC's EDGAR database should be made available through the Company's legal department. The Company's legal department or external counsel often facilitates the filings of Forms 3, 4 and 5 for directors and officers pursuant to a power of attorney.

Determining the Amount of Beneficial Ownership.

Other than for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered under Section 12 of the Exchange Act, for purposes of Section 16 the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship

or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities. Section 16 insiders are required to report all equity securities (not just registered equity securities) of the Company of which they are the beneficial owner, whether directly or indirectly. Direct ownership means any securities held by a person for his or her own benefit, no matter how acquired. These include any securities acquired upon the exercise of options under the Company's stock plans. Also reportable are derivative securities, such as options, warrants and other rights that derive their value from the Company's stock.

Indirect ownership means securities owned by others where an individual, while not the direct owner, has pecuniary benefits substantially equivalent to ownership. These include securities held for a person's benefit under a trust, partnership or other arrangement or in a corporation. Shares held by or for the benefit of a member of the insider's immediate family who shares his or her home are presumed to be indirectly owned, although in some circumstances the insider may disclaim beneficial ownership.

If a person can vest or revest title in himself or herself, such shares may also be indirectly owned, even though that person does not currently have the benefits of ownership described above.

Schedules 13D and 13G.

For the purposes of Section 13(d) and determining 10%-ownership status under Section 16, "beneficial ownership" means the power to vote or dispose of the equity securities, even though the person or group may have no economic interest in the securities. A person is also deemed to have beneficial ownership over any security that such person has the right (not subject to a material contingency outside of its control) to acquire either voting or dispositive power over within 60 days (or, if such right was acquired with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, at any point in the future even if the shares cannot be obtained for more than 60 days).

Persons or groups who beneficially own more than 5% of any registered class of equity securities of the Company must also file a Schedule 13D or 13G with the SEC, both initially and upon certain subsequent acquisitions of the Company's equity securities, with the deadlines for filing depending on whether the reporting person is filing a Schedule 13D or is filing a Schedule 13G as a qualified institutional investor, an exempt investor or a passive investor.

In determining percentage ownership for these purposes, calculations are not made on a fully-diluted basis. Instead, the numerator is the number of shares beneficially owned by the relevant investor. The denominator is the sum of the number of shares of the relevant class then outstanding plus shares subject to options, warrants, rights or conversion privileges which are held by the investor and exercisable within 60 days (or which were with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect) but not shares subject to options, warrants, rights or conversion privileges held by other

persons. As a result, in some circumstances, such as in high-vote/low-vote structures, the percentage of securities owned as calculated under the SEC's rules can far exceed an investor's economic or voting interest and result in investors with relatively small positions having to comply with filing obligations.

When calculating the 5% threshold, securities held by other members of any "group" that an investor is part of should also be included. The concept of "group" is broadly construed under the Exchange Act. Rule 13d-5 under the Exchange Act provides that a "group" is formed when "two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer." Whether or not a "group" has been formed in any particular case is a facts-and-circumstances analysis and has been the subject of recent SEC guidance and a substantial number of judicial decisions.

HSR Filings

In addition to the SEC reporting requirements described above, the Hart-Scott-Rodino Antitrust Improvements Act of 1975, as amended (the "HSR Act) requires that each party to an acquisition of voting securities, assets, and/or non-corporate interests (e.g., partnership or membership interests) meeting certain jurisdictional thresholds file a Notification and Report Form with the Federal Trade Commission's ("FTC") Premerger Notification Office and the Antitrust Division of the Department of Justice and observe a waiting period before consummating the acquisition. Whether a particular acquisition is subject to the requirements of the HSR Act depends on the value of the acquisition. On January 22, 2025, the FTC announced the annual changes to the HSR Act notification thresholds. The minimum size of transaction requiring an HSR filing was increased to $126.4 million (the "size-of-transaction" test). Where the size-of-transaction test is met, generally one party to a transaction also must have assets or annual revenues of at least $252.9 million and the other must have assets or annual revenues at least $25.3 million to trigger an HSR filing (the "size-of-person" test). Transactions valued at more than $505.8 million will be subject to pre-merger notification without regard to the sales or assets of the parties. The HSR Act thresholds are adjusted on an annual basis to account for changes in the gross national product.

Acquisitions of company shares by executives are potentially reportable if the value of the shares held by the executives will exceed the $126.4 million threshold, regardless of how the shares are acquired (e.g., open market purchases, delivery of shares pursuant to RSUs, exercise of options or warrants, reinvestment of dividends or interest earned in 401(k) plan accounts, etc.).

The HSR Act also provides several exemptions that may eliminate the need to make an HSR filing. For example, the "passive investment" exemption generally allows an investor to hold 10% or less of the outstanding voting securities of a given issuer or entity, without the need to file HSR if the acquisition is made "solely for the purpose of investment."

The failure to make a required HSR filing and observe the HSR waiting period can result in civil penalties of up to $53,088 per day.

SALES PURSUANT TO RULE 144

Restricted securities are securities acquired in unregistered sales from the issuer or an affiliate of the issuer. Holders of restricted securities cannot freely resell restricted securities to the public without an available exemption from registration. Rule 144 provides a safe harbor for the resale or transfer of restricted securities under certain conditions, which are further discussed below. Affiliates also generally must comply with Rule 144 when they sell securities of the issuer (regardless of how they were acquired), unless sold in a transaction registered under the Securities Act.

Sales of Stock and Gifts by Affiliates: Rule 144

A person who controls, or is deemed to control, a company is an "affiliate" of that company. Affiliate status is not clearly defined and is a facts and circumstances analysis, but the directors and executive officers of a company are generally presumed to be affiliates, as are persons who own a significant portion of a company's stock (or persons who have an investment in the company with board representation). Spouses, children and other relatives living with an affiliate and entities with which an affiliate is associated, are likely to also be considered affiliates of a company. Affiliates should consult with counsel as to whether or not family members who are not covered under the foregoing descriptions might also be deemed to be affiliates. Absent significant stockholdings, non-policy making officers and officers and directors of subsidiaries are not ordinarily considered to be affiliates, unless their functions with respect to Company matters correspond to those of officers of the Company.

Sales by affiliates under Rule 144 must generally meet the following five requirements:

- *Current Public Information*. Rule 144 is only available if the Company is current in its reports (other than current reports on Form 8-K) to the SEC.
- *Holding Period*. Shares acquired, directly or indirectly, from the Company or an affiliate of the Company in a private placement must be held for twelve months (six months if the Company has been subject to reporting requirements under the Exchange Act for at least 90 days and is current in its reporting (other than current reports on Form 8-K)) before a sale in the public market may be made pursuant to Rule 144. The holding period does not apply to securities acquired in the open market or in an offering registered under the Securities Act.
- *Volume Limitations*. During any three-month period, the number of shares of Company stock sold by an affiliate under Rule 144 may not exceed the greater of (1) one percent of the Company's outstanding stock or (2) the Company's weekly average trading volume (determined by averaging volume for the four weeks preceding the week in which the Form 144 is filed or, if volume

increases, an amended Form 144). In computing whether their sales are within this quantity limit, affiliates must count not only their own Rule 144 sales but also Rule 144 sales during the preceding three months by (a) their relatives or the relatives of their spouse, if any such persons have the same home as the affiliate; (b) trusts or estates in which they or any of the relatives described above have a ten percent or more beneficial interest or serve as trustee or executor; (c) corporations in which they or any of the relatives described above own individually or collectively ten percent or more of either the equity interest or any class of equity securities; (d) donees or trusts established by them, for six months after the making of the gift or trust settlement; (e) pledgees of shares pledged by them, for six months after a default in the obligation secured by the pledge; and (f) persons with whom they act in concert.

- *Manner of Sale*. Sales by affiliates under Rule 144 must be made in "brokers' transactions" (a technical term aimed at preventing solicitation of a buyer) or directly to a market maker.
- *Notice of Sale*. Further, if the amount of sales within the three-month period exceeds 5,000 shares or $50,000, an affiliate selling Company stock in reliance upon Rule 144 must electronically file a Form 144 with the SEC. The Form 144 must be transmitted for filing concurrently with either the placing with a broker of an order to execute the sale or the execution directly with a market maker of the sale.

Gifts of Company stock by affiliates should be made under arrangements that ensure that the donee will comply with Rule 144 (or some other exemption from registration, such as the private placement exemption) and afford the donor appropriate notice in connection with subsequent resales.

Non-affiliates may freely resell restricted securities under Rule 144 after one year from the date of acquisition, or after six months if the issuer has current public information available.

COMPANY PURCHASES OF ITS OWN STOCK

Section 13(e) of the Exchange Act authorizes the SEC to adopt rules and regulations governing an issuer's purchase of any of its equity securities registered under Section 12 of the Exchange Act.

Safe Harbor

The SEC has provided a safe harbor from violation of the anti-manipulation provisions of the Exchange Act for certain repurchases by an issuer of its common stock in transactions other than tender offers, such as open-market purchases. See Rule 10b-18.

Tender Offers

When there is a pending third party tender offer for any of the Company's equity securities, the Company may not purchase any of its equity securities unless it first files a disclosure statement with the SEC setting forth certain information about its proposed purchases. The rule provides an exception for periodic repurchases in connection with an employee benefit plan or other similar plan so long as the purchases are made in the ordinary course and not in response to the third-party tender offer. See Rule 13e-1.

Tender offers by the Company must meet certain disclosure, dissemination and substantive requirements, many of which are similar to those imposed on third party tender offerors, including the requirement to file and disclose information on Schedule TO. See Rule 13e-4.

Going Private

If a transaction by the Company or any of its affiliates has the purpose or the likely effect of causing either a delisting or deregistration of a class of equity securities or the suspension of the Company's obligation to file reports under the Exchange Act, the Company must make very detailed disclosures regarding the purpose and likely effect of the transaction and must meet specific dissemination and substantive requirements. See Rule 13e-3.

Regulation M

Under Regulation M, the Company is not permitted to bid for, purchase, or attempt to induce any person to bid for or repurchase, any of its securities (the "target securities") if at the time of such repurchase the Company is engaged in a distribution of the target securities or any securities convertible into the target securities. Under Regulation M, a distribution is considered an offering of securities that is distinguished from ordinary trading transactions by its magnitude and the presence of special selling efforts.

INDEMNIFICATION

Liability of Directors and Officers

The principal claims involving directors and officers in a public offering relate to the following: (i) Section 11 of the Securities Act (liability for a "defective" registration statement), (ii) Section 12(a)(2) of the Securities Act (liability for untruths or omissions in a "prospectus"), (iii) Section 10(b) of the Exchange Act and SEC Rule 10b-5 (materially misleading statements or omissions), and (iv) state law fraud and duty of disclosure claims. Section 11 and Section 12(a)(2) claims have no scienter requirement and are more difficult to defend than 10b-5 claims.

SEC Position: Indemnification Against Public Policy

While the Company's certificate of incorporation and bylaws generally provide indemnification rights for the Company's directors and officers, the SEC has generally

asserted that indemnification arrangements that cover liabilities incurred by a company's directors and officers under the Securities Act are against public policy and unenforceable. Directors will be found to have violated Section 11 of the Securities Act where they have not exercised "due diligence" with regard to a misleading registration statement covering the Company's sale of its shares, and in these situations the Company must, pursuant to an undertaking required of all companies registering their shares under the Securities Act, submit to an appropriate court the question of whether indemnification of its directors is against public policy. Depending upon the circumstances, the SEC might appear in any such court proceeding and argue against allowance of indemnification.

There is also a legal doctrine (called the Globus doctrine after the leading case in the area) generally prohibiting, on the grounds of public policy, indemnification against breach of a special duty imposed under the federal securities laws, including the Securities Act and the Exchange Act. Under this doctrine, directors could be prohibited from receiving indemnification from the Company by reason of any violation of these laws.

D&O Insurance

Insurance coverage for directors and officers of a public company in connection with claims arising out of a public offering may be limited by the terms of the D&O policy itself, as well as by public policy considerations. For example, there is case law indicating that D&O coverage may not extend to cover disgorgement or restitution payments that are made in connection with recoveries in securities fraud litigation, although it is not clear whether this holding extends to directors and officers or just to the corporate issuer itself. Directors and officers should try to address these issues in the insurance underwriting process when fixing the definitions of "loss" and "personal conduct" in the terms of the policy. However, little can be done to address the risk that a court will determine such coverage to be against public policy

Annex A: What is the difference between "filed" versus "furnished" information?

Section 18 of the Exchange Act imposes liability for material misstatements or omissions contained in reports and other information "filed" with the SEC. Section 18 of the Exchange Act makes reporting issuers liable for "false or misleading statements" if investors rely on such statements when purchasing or selling securities at a price which was affected by such statements.

Reports and other information that are "furnished" to the SEC are not subject to Section 18 liability unless a company specifically states that the information is to be considered "filed." In addition, "furnished" information is not automatically incorporated by reference into a company's filings with the SEC unless the company specifically incorporates that information into its filings.

Information that is "furnished" to the SEC is not subject to the requirements of Item 10 of Regulation S-K, while "filed" information is subject to those requirements. Note, however, that Item 10(e)(i) of Regulation S-K expressly does apply to earnings releases that are furnished under Item 2.02 of Form 8-K.

Reporting issuers who are required to "furnish" information to the SEC as an exhibit to an annual filing may still be subject to liability for violations of Sections 13(a) or 15(d) of the Exchange Act if they fail to furnish a required exhibit. Note that other liability provisions under the Exchange Act (e.g., Section 10(b) and Rule 10b-5) may apply that are not dependent on the filing of documents with the SEC but may otherwise be triggered by disclosure made by the company to the public.

Annex B: Forward-Looking Statement Legends

Below is a template for a forward-statement statement disclaimer in **written materials**:

Cautionary Note Regarding Forward-Looking Statements

This [press release][presentation] includes forward-looking statements. These forward-looking statements generally can be identified by the use of words such as "anticipate," "expect," "plan," "could," "may," "will," "believe," "estimate," "forecast," "goal," "project," and other words of similar meaning. These forward-looking statements address various matters including ***{insert description of specific forward-looking statements contained in the document}***. Each forward-looking statement contained in this [press release][presentation] is subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied by such statement. Applicable risks and uncertainties include, among others, ***{insert risks specifically related to the forward-looking statements included in the document}***; and the risks identified under the heading "Risk Factors" in our [Annual][Quarterly] Report on Form 10-[K][Q] for the [year][three months] ended {Date}, and filed with the Securities and Exchange Commission, as well as the other information we file with the SEC. ***{Note: reference specific portion of most recent Exchange Act report.}*** We caution investors not to place considerable reliance on the forward-looking statements contained in this [press release][presentation]. You are encouraged to read our filings with the SEC, available at www.sec.gov, for a discussion of these and other risks and uncertainties. The forward-looking statements in this [press release][presentation] speak only as of the date of this document, and we undertake no obligation to update or revise any of these statements. Our business is subject to substantial risks and uncertainties, including those referenced above. Investors, potential investors, and others should give careful consideration to these risks and uncertainties.

Below is a script for an oral disclaimer ***{Note: be mindful that anything conveyed orally could be converted to a writing if later transcribed or recorded and posted to a company web site}:***

This presentation includes forward-looking statements about ***{insert description of specific forward-looking statements contained in the presentation}***. Each forward-looking statement contained in this presentation is subject to risks and uncertainties that could cause actual results to differ materially from those projected in such statement. Additional information regarding these factors appears [in the slide entitled "Cautionary Note Regarding Forward-Looking Statements" and] under the heading "Risk Factors" in our [first quarter 10-Q] that is filed with the Securities and Exchange Commission and available at www.sec.gov and on our web site at ***{web site address}***. The forward-looking statements in this presentation speak only as of the original date of this presentation, and we undertake no obligation to update or revise any of these statements.

Annex C: NYSE Independence Test

A director of a NYSE-listed company is only independent if the Board determines that the director has no material relationship with the Company. For this purpose, the Board must also take into account any relationship the director has with any parent or subsidiary in a consolidated group with the Company, and any relationship between the Company or such parent or subsidiary and any organization in which the director is a partner, shareholder or officer. The Board should broadly consider all potential conflicts of interest and other circumstances that might bear on the materiality of the director's relationship. The Board should be concerned with independence from management, so ownership of even a significant amount of stock should not by itself be a bar to finding independence. In addition to the required determination by the Board, a director will not be considered independent if he or she:

- Is an employee of the Company, or has been within the last 3 years;
- Has an immediate family member who is an executive officer of the Company or has been within the last 3 years;
- Has received or has an immediate family member who has received more than $120,000 in direct compensation from the Company in any 12-month period in the last 3 years, not taking into account director or committee fees and pension or other deferred compensation for prior service (provided such compensation is not contingent in any way on continued service);
- Is a current partner or employee of the Company's internal or external auditor, or was a partner or employee of such firm within the last 3 years and personally worked on the Company's audit during that time;
- Has an immediate family member who (1) is a current partner of the Company's internal or external auditor, (2) is a current employee of such firm and personally works on the Company's audit, or (3) was a partner or employee of such firm within the last 3 years and personally worked on the Company's audit during that time;
- Is, or has an immediate family member who is, employed as an executive officer of another company where any of the Company's present executive officers at the same time serves on that company's compensation committee;
- Was, or has an immediate family member who was, in the last 3 years, employed as an executive officer or another company where any of the Company's present executive officers at the same time served on the company's compensation committee; or
- Is a current employee, or has an immediate family member who is a current executive officer, of a company that has made payments to, or received payments from, the Company in an amount which, in any of the last 3 fiscal years, exceeds the greater of $1 million or 2% of such other company's consolidated gross revenues.

For purposes of this test, “immediate family member” includes a director’s spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person residing in the director’s home (except for domestic employees).

Directors who serve on the audit committee have heightened standards of independence. In addition to the above requirements, audit committee members must:

- **Meet the criteria for independence in SEC Rule 10A-3(b)(1); and**
- Not have participated in preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past 3 years.

Annex D: Nasdaq Independence Test

Under Nasdaq rules, "independent director" means a person other than an executive officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. To qualify as independent, a director of a Nasdaq-listed company must not:

- Be an executive officer or employee of the Company (or have been an employee within the last 3 years);
- Have accepted, or have a family member who has accepted, compensation of more than $120,000 from the Company during any period of 12 consecutive months within the past 3 years, unless such compensation was (1) for board or board committee service, (2) paid to a family member who is an employee but not an executive officer of the Company, or (3) paid as part of a tax-qualified retirement plan or non-discretionary compensation;
- Have a family member who is, or who was in the last 3 years, an executive officer of the Company;
- Be, or have a family member who is, a partner in or a controlling shareholder or executive officer of any organization to which the Company made, or from which the Company received, payments for property or services (other than investments in the Company's securities or payments under non-discretionary charitable contribution matching programs) that exceeded the greater of $200,000 or 5% of the recipient's consolidated gross revenues in the current year or any of last 3 years;
- Be, or have a family member who is, employed as an executive officer of another entity where at any time during the past 3 years any executive officer of the Company serves on the compensation committee of such other entity; or
- Be, or have a family member who is, a current partner of the Company's outside auditor or who was a partner or employee of such firm who worked on the Company's audit at any time during the past 3 years.

For purposes of this test, "family member" means a director's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, as well as any other person residing in the director's home (other than domestic employees).

Directors who serve on the audit committee have heightened standards of independence. In addition to the above requirements, audit committee members must:

- Meet the criteria for independence in SEC Rule 10A-3(b)(1); and
- Not have participated in preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past 3 years.

For more information, please contact your usual Ropes & Gray attorney or reach out to a member of our capital markets team below.

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