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2022 PROXY SEASON UPDATES

In this article the authors lay out a number of updates for the 2022 proxy season from amendments to Regulation S-K to virtual/hybrid shareholder meetings.

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On December 2, 2021, we, along with Ernst & Young LLP and Meridian Compensation Partners, shared updates for the 2022 proxy season as part of Katten's annual proxy season program. As discussed during the presentation, there are various matters for registrants to consider during the 2022 proxy season, many of which are briefly discussed below.

AMENDMENTS TO REGULATION S-K FINANCIAL DISCLOSURE

In November 2020, the U.S. Securities and Exchange Commission (the "SEC") adopted amendments to Regulation S-K items that impact financial disclosures in Form 10-K that are frequently incorporated by reference into proxy statements for annual meetings.¹ Specifically, the amendments (i) eliminated Item 301 of Regulation S-K, thereby removing the requirement to provide five years of selected financial data and (ii) revised Item 302 of Regulation S-K such that companies are no longer required to provide two years of selected quarterly financial data in tabular form but, instead, when there are one or more material retrospective changes for any of the quarters within the last two fiscal years and any subsequent interim period for which financial statements are included, are required to

disclose the reasons for those changes. The amendments also modified Item 303 of Regulation S-K, by, among other things:

- adding a new "Objectives" subsection that clarifies the principal purposes of Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A), including an emphasis on both an analysis of short-term results and future prospects;
- modifying the liquidity and capital resources disclosure requirements, to require companies to provide a broad discussion of material short- and long-term cash requirements (including capital expenditures) in lieu of the former requirement to discuss material commitments for capital expenditures;
- revising the requirement relating to costs and revenues to clarify that companies are required to disclose known events that are "reasonably likely" to cause (rather than those that "will cause") a material change in the relationship between costs and revenue;
- clarifying that companies are required to disclose material changes in net sales or revenue, rather than only material increases;

¹ Release No. 33-10890 (2020); Release No. 34-90459 (2020).

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