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The definition of "performance metrics" is one of the components of compensation most frequently commented on by shareholders since the adoption of Say on Pay. Common complaints include that the performance metrics are not robust enough, are not sufficiently long-term, or are not significantly varied.

My clients seriously consider the comments received directly from their shareholders and strive to effectively balance the requests of shareholders with what their boards believe, based on experience and intimate knowledge of the company, the best interests are of their companies and those they represent. There are certain shareholder comments that are more easily, and more frequently, addressed. For instance, when companies receive the comment that the goals are not varied enough, my experience is that the boards will act quickly to introduce additional metrics in the following year. In addition, in response to shareholder comments and the comments of proxy advisory firms, most companies now consider Total Shareholder Return (TSR), whether relative or absolute, at least to some extent when measuring long-term performance. However, one difficulty that is not always considered is that the comments of individual shareholders often directly conflict with each other, so even the most responsive companies cannot be responsive to all shareholder comments.

Certainly, there is no one-size-fits-all approach. Shareholders should recognize that companies are more likely to change their metrics in response to individual shareholder feedback when the feedback is tailored to the company rather than simply representative of the shareholder's across-the-board approach.

Erica Schohn's practice focuses on compensation and benefits arrangements in U.S. and cross-border corporate transactions (including mergers and acquisitions, public offerings, and bankruptcy reorganizations), the negotiation of executive employment and severance arrangements, and the drafting and implementation of equity and other compensation programs.

Schohn frequently advises clients on the U.S. Securities and Exchange Commission (SEC) rules governing executive compensation disclosure and corporate governance matters relating to compensation practices. As part of this practice, Schohn is a member of panels and committees comprised of leading government and private- and public-company governance professionals, and she speaks regularly with representatives from the SEC, stock exchanges, institutional investor groups, and proxy advisory firms on the latest issues in corporate governance.

Schohn also regularly advises clients regarding tax planning with respect to compliance with Internal Revenue Code Section 409A and the tax rules relating to deferred compensation, the excise tax on excess parachute payments, and limits on the deductibility of executive compensation.

Schohn received her J.D. from Duke University School of Law (magna cum laude) and her B.A. from Pennsylvania State University (high honors).