

Online Appendix to *A Proposed Postpandemic Framework for Ordinary Course and MAE Provisions in Merger Agreements*  
 Gail Weinstein and David A. Cooperstein

Target Name	Transaction in Dataset?	Specific Mention of COVID-19 in MAE?	Disproportionate Effect Exception to Pandemic MAE Exclusion	Some Definition to Industry?	Efforts Standard in OCC	Materiality Qualifier in OCC	Consistent With Past Practice	Not Unreasonably Withhold Consent	Clause 1 Flexibility	Same for Clause 2	Same for Clause 3	Prior Consultation with Buyer
1st Constitution Bancorp	Y	Y	Y	N	N	N	Y	N	LawsOnly	N	N	N
3M Company - Food Safety Business	N (spinoff)											
Acceleron Pharma Inc.	Y	Y	Y	N	Y-Reasonable	N	N	Y	Laws+ Guidance	Y	Y	N
Activision Blizzard, Inc.	Y	Y	Y	N	N	N	N	Y	Any Reasonable	Y	Y	N
Adamas Pharmaceuticals, Inc.	Y	Y	N	Y-SimilarlySized	Y-Reasonable	Y	N	Y	Laws+ Guidance	Y	Y	N
Allegiance Bancshares, Inc.	Y	Y	Y	N	N	Y	N	Y	Laws+ Guidance*	Y	N	N
American National Group, Inc.	Y	Y	Y	N	N	Y	Y	Y	Laws+ Guidance**	Y	Y	N
Apria, Inc.	Y	Y	N	N	Y-Reasonable	N	N	Y	AnyReasonable	Y	Y	N
Arena Pharmaceuticals, Inc.	Y	Y	Y	Y-IndustryDefined	N	Y	Y	Y	Laws+ Guidance# ab	Y	N	N
Aspen Technology, Inc.	Y	Y	Y	N	Y-ReasonableBest	N	Y	Y	Laws+ Guidance	Y	N	Y-IfPracticable
Atlantic Capital Bancshares, Inc.	Y	Y	Y	N	N	Y	N	Y	Laws+ Guidance**	Y	N	N
Atotech Limited	N (non-US target)											
Bluerock Residential Growth REIT, Inc.	N (affltd. trnsctn.)											
Bottomline Technologies, Inc.	Y	Y	Y	Y-SimilarlySized	N	Y	Y	Y	LawsOnly%	Y	Y	Y-IfPracticable
BP Midstream Partners LP	N (affltd. trnsctn.)											

Capstead Mortgage Corporation	Y	Y	Y	Y-SameRegion	Y-Reasonable	Y	Y	Y	LawsOnly	Y	Y	N
Casper Sleep Inc.	Y	Y	Y	N	Y-ReasonableBest	Y	Y	Y	Any Reasonable	Y	N	N
Castlight Health, Inc.	Y	Y	Y	N	Y-Reasonable	Y	Y	Y	Any Reasonable	Y	N	N
Cerner Corporation	Y	Y	Y	N	N	N	Y	Y	LawsOnly#a	Y	Y	N
Citrix Systems, Inc.	Y	Y	Y	N	Y-Reasonable	Y	Y	Y	Laws+Guidance	Y	N	N
CMC Materials, Inc.	Y	Y	Y	N	Y-ReasonableBest	N	Y	Y	Laws+Guidance**#d	Y	N	Y-IfPracticable
Columbia Property Trust, Inc.	Y	Y	Y	Y-IndustryDefined	Y-Reasonable	N	Y	Y	Laws+Guidance	Y	Y	N
CorePoint Lodging Inc.	Y	Y	Y	Y-SimilarlySized	Y-ReasonableBest	N	N	Y	Laws+Guidance	Y	Y	Y-IfPracticable
CoreSite Realty Corporation	Y	Y	Y	N	Y-Reasonable	Y	N	Y	Exigent Circumstances	Y	Y	N
Cornerstone OnDemand, Inc.	Y	Y	Y	N	Y-Reasonable	N	Y	Y	Laws+Guidance#a	Y	Y	N
Covanta Holding Corporation	Y	Y	Y	N	Y-ReasonableBest	Y	N	Y	Laws+Guidance	Y	N	N
CyrusOne Inc.	Y	Y	Y	N	Y-Reasonable	Y	N	Y	Laws+Guidance	Y	N	Y-IfPracticable
Del Taco Restaurants, Inc.	Y	Y	N	N	N	Y	Y	N	LawsOnly	Y	Y	N
Dicerna Pharmaceuticals, Inc.	Y	Y	Y	N	Y-ReasonableBest	Y	Y	Y	LawsOnly#ab	Y	N	Y-IfPracticable
Dover Motorsports, Inc.	Y	Y	Y	N	N	Y	Y	N	LawsOnly	Y	N	N
DSP Group, Inc.	Y	Y	Y	N	Y-Reasonable	Y	Y	Y	Laws+Guidance	Y	Y	N
Echo Global Logistics, Inc.	Y	Y	Y	Y-SimilarlySized	N	Y	N	Y	LawsOnly	Y	N	N
Exterran Corporation	Y	Y	Y	N	Y-ReasonableBest	N	Y	Y	Exigent Circumstances	N	N	N
Flexion Therapeutics, Inc.	Y	Y	N	N	Y-Reasonable	Y	N	Y	Laws+Guidance	Y	Y	N

FTS International, Inc.	Y	Y	N	N	N	N	Y	Y	Any Reasonable	Y	Y	Y-IfPracticable
GCP Applied Technologies Inc.	Y	Y	Y	N	Y-ReasonableBest	Y	Y	Y	Laws+Guidance#a	Y	Y	N
Golden Nugget Online Gaming, Inc.	Y	Y	Y	N	N	N	Y	Y	Laws+Guidance	Y	N	N
Goodrich Petroleum Corporation	Y	Y	N	Y-IndustryDefined	N	N	Y	Y	Exigent Circumstances	Y	Y	Y-IfPracticable
Great Western Bancorp, Inc.	Y	Y	Y	N	N	Y	Y	Y	Any Reasonable*	Y	N	Y-Always
GreenSky, Inc.	Y	Y	Y	N	Y-Reasonable	Y	N	Y	Exigent Circumstances	Y	Y	N
Guaranty Federal Bancshares, Inc.	Y	Y	Y	N	Y-Reasonable	Y	N	Y	Exigent Circumstances	Y	Y	N
Hexion Holdings Corporation	Y	Y	Y	N	N	Y	Y	N	Laws+Guidance#ab	Y	Y	Y-IfPracticable
Hill-Rom Holdings, Inc.	Y	Y	N	N	Y-ReasonableBest	Y	N	Y	Any Reasonable*	Y	N	N
Howard Bancorp, Inc.	Y	Y	N	N	N	Y	N	N	LawsOnly	Y	N	N
IEC Electronics Corp.	Y	Y	Y	N	N	Y	Y	Y	Any Reasonable	Y	N	N
Independence Holding Company	Y	Y	N	Y-SameRegion	Y-Reasonable	Y	N	Y	Any Reasonable	Y	Y	N
Inovalon Holdings, Inc.	Y	Y	Y	N	N	Y	N	Y	Laws+Guidance	Y	Y	Y-IfPracticable
Intersect ENT, Inc.	Y	Y	Y	N	N	Y	Y	Y	Any Reasonable	Y	Y	Y-IfPracticable
Investors Bancorp, Inc.	Y	Y	Y	Y-IndustryDefined/SimilarlySituat	N	Y	Y	Y	Any Reasonable*	Y	N	N
J. Alexander's Holdings, Inc.	Y	Y	Y	Y-IndustryDefined	N	Y	Y	Y	Laws+Guidance!	Y	N	Y-IfPracticable
JMP Group LLC	Y	Y	Y	N	N	N	Y	Y	Any Reasonable*	Y	Y	N
Kadmon Holdings, Inc.	Y	Y	N	N	N	Y	N	Y	Any Reasonable	Y	Y	N
Kansas City Southern	Y	Y	Y	Y-IndustryDefined	N	Y	N	Y	Exigent Circumstances	Y	Y	N

Kirkland Lake Gold Ltd.	N (non-US target)												
Kraton Corporation	Y	Y	Y	N	N	N	Y	Y	Laws+ Guidance	Y	Y	Y-IfPracticable	
Level One Bancorp, Inc.	Y	Y	Y	N	N	N	Y	N	None	Y	N (laws)	N	
Lonestar Resources US Inc.	Y	Y	Y	Y-SimilarlySituat	N	Y	Y	Y	Any Reasonable	Y	N	Y-IfPracticable	
McAfee Corp.	Y	Y	Y	N	Y-ReasonableBest	N	N	Y	Laws+ Guidance#ae	Y	Y	N	
Medallia, Inc.	Y	Y	N	Y-SimilarlySized	Y-ReasonableBest	N	N	Y	Laws+ Guidance	Y	Y	Y-IfPracticable	
Meredith Holdings Corporation	N (spinoff)												
MetroMile, Inc.	Y	Y	Y	N	Y-ReasonableBest	N	N	Y	LawsOnly	Y	Y	N	
MGM Growth Properties LLC	Y	Y	N	Y-SameRegion	N	Y	Y	Y	LawsOnly#ae	Y	N	Y-IfPracticable	
Mimecast Limited	N (non-US target)												
Misonix, Inc.	Y	Y	Y	N	Y-Reasonable	N	N	Y	Laws+ Guidance	Y	Y	N	
Momentive Global Inc.	Y	Y	Y	Y-SimilarlySituat	Y-ReasonableBest	N	Y	Y	LawsOnly	Y	Y	Y-IfPracticable	
Monmouth Real Estate Investment Corporation	Y	Y	N	N	Y-Reasonable	Y	Y	Y	Any Reasonable*	Y	Y	Y-Always	
NeoPhotonics Corporation	Y	Y	N	N	Y-Reasonable	Y	N	Y	Any Reasonable	Y	N	Y-IfPracticable	
Oasis Midstream Partners LP	Y	Y	Y	Y-SimilarlySituat	Y-ReasonableBest	N	N	Y	LawsOnly	Y	Y	N	
Ortho Clin. Diag. Holdings plc	N (non-US target)												
PAE Incorporated	Y	Y	Y	N	N	N	Y	Y	Any Reasonable*!	Y	N	N	
Partners Bancorp	Y	Y	Y	N	N	Y	N	Y	Laws+ Guidance	Y	Y	N	
Phillips 66 Partners LP	N (affltd. trnsctn.)												
Pretium Resources Inc.	N (non-US target)												

R.R. Donnelley & Sons Company	Y	Y	Y	N	Y-ReasonableBest	N	Y	Y	Any Reasonable*	Y	Y	Y-Always
Reliant Bancorp, Inc.	Y	Y	Y	Y-IndustryDefined/SimilarlySituating	Y-Reasonable	Y	N	Y	Laws+Guidance	Y	Y	N
Retail Properties of America, Inc.	Y	Y	Y	Y-IndustryDefined/SameRegions	N	Y	Y	Y	Laws+Guidance#c	Y	N	Y-Always
Sanderson Farms, Inc.	Y	Y	Y	N	Y-Reasonable	Y	N	Y	Laws+Guidance	Y	Y	N
Santander Consumer USA Holdings Inc.	N (affltd. trnsctn.)											
Score Media and Gaming Inc.	N (non-US target)											
Shaw Communications Inc.	Y	Y	Y	N	N	Y	N	Y	Exigent Circumstances	Y	Y	Y-IfPracticable
Spirit of Texas Bancshares, Inc.	Y	Y	Y	N	N	N	Y	Y	Laws+Guidance!	Y	Y	N
SPX FLOW, Inc.	Y	Y	Y	Y-SimilarlySized	N	Y	Y	Y	LawsOnly	Y	N	N
Stamps.com Inc.	Y	Y	Y	N	N	N	N	Y	Laws+Guidance	Y	Y	N
State Auto Financial Corporation	Y	Y	Y	N	Y-ReasonableBest	N	N	Y	Laws+Guidance#e	Y	Y	Y-Always
Teekay LNG Partners L.P.	N (non-US target)											
Terminix Global Holdings, Inc.	Y	Y	Y	N	Y-Reasonable	Y	N	Y	Exigent Circumstances	Y	Y	Y-IfPracticable
The ExOne Company	Y	Y	Y	N	N	Y	N	Y	Laws+Guidance	N/A-No Clause 2	Y	N
Translate Bio, Inc.	Y	Y	Y	Y-SameRegion	N	Y	N	Y	Laws+Guidance	Y	Y	N
Trillium Ther. Inc.	N (non-US target)											
Triple-S Mgt. Corporation	N (non-US target)											
TriState Capital Holdings, Inc.	Y	Y	Y	N	N	Y	Y	Y	LawsOnly*	Y	Y	N
Umpqua Holdings Corporation	Y	Y	Y	N	N	Y	N	Y	Any Reasonable*	Y	N	Y-Always

Veoneer, Inc.	Y	Y	N	Y-SameRegion	Y-ReasonableBest	N	Y	Y	Laws+Guidance	Y	Y	N
Verso Corporation	Y	Y	Y	N	N	Y	N	Y	Laws+Guidance	Y	Y	N
Vine Energy Inc.	Y	Y	Y	Y-IndustryDefined	Y-ReasonableBest	N	Y	Y	Any Reasonable	Y	N	N
Vocera Communications, Inc.	Y	Y	Y	N	Y-Reasonable	N	Y	Y	LawsOnly#a!	Y	N	Y-IfPracticable
Vonage Holdings Corp.	Y	Y	Y	N	Y-Reasonable	N	N	Y	LawsOnly	Y	Y	N
West Suburban Bancorp, Inc.	Y	Y	N	N	N	N	N	Y	None	Y	Y	N
Zix Corporation	Y	Y	Y	Y-SimilarlySized	N	N	N	Y	LawsOnly	Y	Y	N
Zogenix, Inc.	Y	Y	Y	N	N	N	Y	Y	Laws+Guidance	Y	Y	N
Zynga Inc.	Y	Y	N	N	Y-ReasonableBest	Y	Y	Y	LawsOnly	Y	Y	Y-IfPracticable
<b>Number of "Yes"</b>	86	85	69	24	42	51	46	80		83	54	
<b>% "Yes"</b>		98.84%	80.23%	27.91%	48.84%	59.30%	53.49%	93.02%		97.65%	62.79%	

## LEGEND

### Explanation as to “Clause 1 Flexibility” on the Chart:

- **“LawsOnly”**: Target can take any reasonable action to comply with laws, or binding regulations or policies issued by governmental authorities, relating to COVID-19
- **“Laws+Guidance”**: Target can take any reasonable action to comply with laws—or to comply with [or in response to] *non*-binding regulations, guidelines or recommendations issued by governmental authorities—relating to COVID-19
- **“AnyReasonable”**: Target can take any reasonable action in response to COVID-19
- **“Exigent Circumstances”**: Target can take any reasonable action in response not only to COVID-19 but in other “exigent circumstances” [or upon other “extraordinary events”]
- **“None”**: No flexibility to respond to COVID-19 or COVID-19 Measures is provided (*i.e.*, a flat obligation is stated, without even a stated exception for actions taken to comply with laws)

### Footnotes:

- \*: Any reasonable action taken in response to COVID-19 *or any other pandemics* [or epidemics, public health events, disease outbreaks, other viruses]
- @: So long as the action is consistent with the responses by other companies in the same industry and geographical areas [or other similarly situated companies]
- \*\*: Any action “required by law (including COVID-19 Measures)”—where COVID-19 Measures is defined to include non-binding regulations, guidelines and recommendations
  - *Note*: We have resolved the ambiguity in drafting by interpreting this to mean Laws+Guidance
- %: Any action required by laws—but, during a worsening of the pandemic and a period of full or partial shutdown, can take reasonable action to protect the health/safety of employees and others or to respond to third-party supply or service disruptions, in each case related to COVID-19
- #: Any action required by laws—but flexibility is limited to actions, or more flexibility is provided if the actions relate to, **(a)** protecting the health/safety of employees [or others having business dealings with the company] relating to COVID-19; **(b)** addressing third-party service or supply disruptions relating to COVID-19; **(c)** if action is consistent with the company’s practices prior to the merger agreement; **(d)** if a, b and c; or **(e)** if action is to address business disruption generally or to preserve the business