

ICONIX BRAND GROUP, INC.
Form DEF 14A
August 27, 2018

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

**Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934 (Amendment No.)**

Filed by the Registrant Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

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Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

(Name of Registrant as Specified In Its Charter)

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Dear Fellow Stockholders:

You are cordially invited to attend the 2018 Annual Meeting of Stockholders (the “Annual Meeting”) of Iconix Brand Group, Inc. (the “Company” or “Iconix”), which will be held on Thursday, September 27, 2018, at 10:00 a.m., local time, at the offices of the Company, located at 1450 Broadway, Third Floor, New York, New York 10018.

Iconix is proud to be part of your portfolio and the Company thanks you for your support. The Notice of Annual Meeting and proxy statement (the “Proxy Statement”), which follow, describe the business to be conducted at the Annual Meeting.

The board of directors of the Company (the “Board of Directors” or the “Board”) has over the last three (3) years restructured the Company’s executive compensation and governance policies to respond to stockholder feedback. The Board, the Compensation Committee of the Board (the “Compensation Committee”) and the Nominating and Governance Committee of the Board (the “Governance/Nominating Committee”) also continue to review the Company’s governance and compensation practices and will make additional changes where appropriate. Specifically, our most recent changes include:

Refreshing the composition of our Board: This year, we added one new independent director to our Board and committed to decreasing the size of our Board from eight (8) to seven (7) directors. Our newest director brings extensive experience in the areas of global business management, data, consumer insight and governance, and is helping us further develop a complementary mix of key skills on our Board. The qualifications and biographies of all of our directors are provided in the attached Proxy Statement.

Establishing the Steering Committee: In July 2018, the Company established an ad hoc Steering Committee (the “Steering Committee”), the purpose of which is to conduct an operational review with respect to the Company’s business and operating model. The Steering Committee will periodically make recommendations to the Board regarding actions to be considered in furtherance of this purpose.

Whether or not you will be able to attend the Annual Meeting, it is very important that your shares be represented. We urge you to read the accompanying Proxy Statement carefully and to use the enclosed proxy card to vote for the Board of Directors’ nominees, and in accordance with the Board of Directors’ recommendations on the other proposals, as soon as possible. You may vote your shares by signing and dating the enclosed proxy card and returning it in the postage-paid envelope provided, whether or not you plan to attend the Annual Meeting. For your convenience, you may also vote your shares via the Internet or by a toll-free telephone number by following the instructions on the enclosed proxy card.

Holders of shares as of the close of business on August 13, 2018, the record date for voting at the Annual Meeting, are urged to submit a proxy card, even if your shares were sold after such date.

If your brokerage firm, bank, dealer or other similar organization is the holder of record of your shares (*i.e.*, your shares are held in “street name”), you will receive voting instructions from the holder of record. You must follow these instructions in order for your shares to be voted. Your broker is required to vote those shares in accordance with your instructions. If you do not give instructions to your broker, your broker can vote your shares with respect to “discretionary” items, but not with respect to “non-discretionary” items. Discretionary items are proposals considered routine under the rules on which your broker may vote shares held in “street name” without your voting instructions. On “non-discretionary” items for which you do not give your broker instructions, the shares will be treated as broker non-votes. For example, under current broker voting rules, any election of a member of the Board of Directors is considered “non-discretionary” and therefore brokers are not permitted to vote your shares held in street name for the election of directors in the absence of instructions from you.

Your vote is very important. Whether or not you plan to attend the Annual Meeting in person, we appreciate a prompt submission of your vote. We hope to see you at the Annual Meeting. On behalf of the Company and your Board of Directors, thank you for your continued support.

Cordially,

F. Peter Cuneo

Executive Chairman and Interim Chief Executive Officer

August 27, 2018

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to be Held on September 27, 2018: The Notice of the Annual Meeting and accompanying Proxy Statement as well as the 2017 Annual Report on Form 10-K are available at: <http://www.cstproxy.com/iconixbrand/2018>.

Notice of
Annual Meeting
of Stockholders

To be held on THURSDAY, SEPTEMBER 27, 2018

10:00 a.m., Local Time

1450 Broadway, Third Floor, New York, New York 10018

To the Stockholders of ICONIX BRAND GROUP, INC.:

NOTICE IS HEREBY GIVEN that the 2018 Annual Meeting of Stockholders (the “Annual Meeting”) of Iconix Brand Group, Inc. (the “Company”) will be held on Thursday, September 27, 2018, at 10:00 a.m., local time, at the Company’s offices at 1450 Broadway, Third Floor, New York, New York 10018, for the following purposes:

1. To elect six (6) directors to hold office until the next annual meeting of stockholders and until their respective successors have been duly elected and qualified;
2. To ratify the appointment of BDO USA, LLP as the Company’s independent registered public accountants for the fiscal year ending December 31, 2018;
3. To approve, by non-binding advisory vote, the resolution approving named executive officer compensation; To approve a proposal to adopt an amendment to the Company’s Certificate of Incorporation, as amended, to
4. authorize the Board to effect a reverse stock split of the issued shares of the Company’s common stock, \$0.001 par value per share, at a reverse stock split ratio of not less than 1-for-5 and not more than 1-for-10; and
5. To transact such other business as may properly come before the Annual Meeting or any adjournment(s) or postponement(s) thereof.

These items of business are more fully described in the proxy statement (the “Proxy Statement”) accompanying this Notice of the Annual Meeting.

Only stockholders of record at the close of business on August 13, 2018 are entitled to notice of, and to vote at, the Annual Meeting or any adjournment(s) or postponement(s) thereof. A list of all stockholders entitled to vote at the Annual Meeting will be available for examination at our principal executive office, located at 1450 Broadway, Third Floor, New York, New York 10018, for the ten (10) day period before the date of the Annual Meeting, between 9:00 a.m. and 5:00 p.m., local time, and at the place of the Annual Meeting during the Annual Meeting for any purpose germane to the Annual Meeting.

PLEASE NOTE THAT ATTENDANCE AT THE ANNUAL MEETING WILL BE LIMITED TO STOCKHOLDERS OF THE COMPANY AS OF THE RECORD DATE (OR THEIR AUTHORIZED REPRESENTATIVES) HOLDING EVIDENCE OF OWNERSHIP. IF YOUR SHARES ARE HELD BY A BANK OR BROKER, PLEASE BRING TO THE ANNUAL MEETING YOUR BANK OR BROKER STATEMENT EVIDENCING YOUR BENEFICIAL OWNERSHIP OF THE COMPANY'S COMMON STOCK TO GAIN ADMISSION TO THE ANNUAL MEETING.

YOUR VOTE IS VERY IMPORTANT. EVEN IF YOU PLAN TO ATTEND THE ANNUAL MEETING, WE REQUEST THAT YOU READ THE PROXY STATEMENT AND VOTE YOUR SHARES BY VOTING VIA THE INTERNET OR BY TELEPHONE BY FOLLOWING THE INSTRUCTIONS PROVIDED ON THE ENCLOSED PROXY CARD OR BY SIGNING AND DATING THE ENCLOSED PROXY CARD AND RETURNING IT IN THE POSTAGE-PAID ENVELOPE PROVIDED.

Dated: August 27, 2018

By Order of the Board of Directors,

F. Peter Cuneo

Executive Chairman

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PROXY STATEMENT

This proxy statement (this “Proxy Statement”) is furnished in connection with the solicitation of proxies by the board of directors (the “Board of Directors” or the “Board”) of Iconix Brand Group, Inc., a Delaware corporation (the “Company”, “Iconix”, “we”, “us” or “our”), for use at the 2018 Annual Meeting of Stockholders (the “Annual Meeting”) to be held on September 27, 2018 at 10:00 a.m., local time, including any adjournment(s) or postponement(s) thereof, for the purposes set forth in the accompanying Notice of the Annual Meeting. The Annual Meeting will be held at the Company’s offices, located at 1450 Broadway, Third Floor, New York, New York 10018. For directions to the Annual Meeting, please write to our Secretary at Iconix Brand Group, Inc., 1450 Broadway, Third Floor, New York, New York 10018.

If your shares are held in the name of a bank, broker or other holder of record, you will receive instructions from the holder of record. You must follow the instructions of the holder of record in order for your shares to be voted. Internet voting also will be offered to stockholders owning shares through certain banks and brokers. If your shares are not registered in your own name and you plan to vote your shares in person at the Annual Meeting, you should contact your broker or agent to obtain a legal proxy or broker’s proxy card and bring it to the Annual Meeting in order to vote.

Proxies duly executed and returned to the management of the Company, and not revoked, will be voted at the Annual Meeting. Any proxy given may be revoked by the stockholder at any time prior to the voting of the proxy by a subsequently dated proxy or by voting again at a later date on the Internet or by telephone, by written notification of such revocation to the Secretary of the Company, or by personally withdrawing the proxy at the Annual Meeting and voting in person. Only the latest ballot or Internet or telephone proxy submitted by a stockholder prior to the Annual Meeting will be counted.

The address and telephone number of the principal executive offices of the Company are:

1450 Broadway, Third Floor

New York, New York 10018

Telephone No.: (212) 730-0030

OUTSTANDING STOCK AND VOTING RIGHTS

Only stockholders of record at the close of business on August 13, 2018 (the “Record Date”) are entitled to notice of and to vote at the Annual Meeting. As of the Record Date, there were issued and outstanding 68,343,711 shares of the Company’s common stock, \$0.001 par value per share (the “Common Stock”), the Company’s only class of voting securities. Each share of Common Stock entitles the holder to one vote on each matter submitted to a vote at the Annual Meeting.

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GENERAL INFORMATION

Revocation of Proxies

You can change your vote or revoke your proxy at any time before it is exercised at the Annual Meeting by doing any of the following:

- (1) you can submit a valid proxy with a later date;
- (2) you can change your vote via the Internet or by telephone by following the instructions on the enclosed proxy card;
- (3) you can notify our Secretary in writing at Iconix Brand Group, Inc., c/o Secretary, 1450 Broadway, Third Floor, New York, New York 10018 that you have revoked your proxy; or
you can vote in person by written ballot at the Annual Meeting. If you are not a record holder of shares, you must
- (4) provide a “legal” proxy from the record holder in order to vote your shares in person at the Annual Meeting. Simply attending the Annual Meeting will not, by itself, revoke your proxy.

If your shares are held in “street name” through a broker, bank or other nominee, you need to contact the record holder of your shares regarding how to revoke your proxy.

Receipt of Multiple Proxy Cards

Many of our stockholders hold their shares in more than one account and may receive separate proxy cards or voting instructions forms for each of those accounts. To ensure that all of your shares are represented at the Annual Meeting, we recommend that you **vote every proxy card you receive**.

VOTING PROCEDURES

You may vote “FOR” the six (6) nominees to the Board of Directors or you may vote “against” any nominee you specify. The directors will be elected by a majority of the votes “cast” at the Annual Meeting (the number of shares voted “for” a director nominee must exceed the number of votes cast “against” that nominee), provided a quorum is present. The reverse stock split proposal will be decided by the affirmative vote of the holders of a majority of the shares of common stock outstanding as of the Record Date. All other matters to be voted upon at the Annual Meeting will be decided by a majority of votes cast for such matter at the Annual Meeting, provided a quorum is present. A quorum is present if at least a majority of the shares of common stock outstanding as of the Record Date are present in person or represented by proxy at the Annual Meeting. Votes will be counted and certified by one or more inspector of elections who are expected to be one or more employees of the Company’s transfer agent. In accordance with Delaware law, abstentions, “votes against” and “broker non-votes” (i.e., proxies from brokers or nominees indicating that such persons have not received instructions from the beneficial owner or other person entitled to vote shares as to a matter with respect to which the brokers or nominees do not have discretionary power to vote) will be treated as present for purposes of determining the presence of a quorum.

Stockholders vote by casting ballots (in person or by proxy), which are tabulated by the inspector of elections. Abstentions and broker “non-votes” are included in the number of shares present at the Annual Meeting for quorum purposes. Abstentions will have the same effect as negative votes for purposes of Proposal IV (authorization to effect the reverse stock split), but will not be considered votes “cast” and therefore will have no effect for purposes of

Proposals I, II and III.

Broker “non-votes” are not counted in the tabulations of the votes cast on proposals that constitute “non-routine” or “non-discretionary” matters because stockholders are not considered to be entitled to vote on matters as to which broker authority is withheld. Broker non-votes occur when a beneficial owner of shares held in “street name” does not give instructions to the broker or nominee holding the shares as to how to vote on matters deemed “non-routine.” Generally, if shares are held in street name, the beneficial owner of the shares is entitled to give voting instructions to the broker or nominee holding the shares. If the beneficial owner does not provide voting instructions, the broker or nominee can still vote the shares with respect to matters that are considered to be “routine,” but not with respect to “non-routine” matters. Accordingly, banks, brokers and other nominees have discretionary voting power only with respect to Proposals II (the ratification of the appointment of our auditor) and IV (authorization to effect the reverse stock split), as these are the only proposals considered to be “routine” matters. Banks, brokers and other nominees will not have discretionary voting power with respect to Proposals I (the election of directors) and III (the non-binding advisory vote on named executive officer compensation) in the absence of specific instruction. We encourage all beneficial owners to vote their shares because banks, brokers and other nominees cannot vote on other matters.

Proxies will be voted in accordance with the instructions thereon. Unless otherwise stated, all shares represented by a proxy will be voted as instructed. Proxies may be revoked as noted above.

[Back to Contents](#)**Proposal I** Election of Directors

At the Annual Meeting, six (6) directors will be elected to hold office for a term expiring at the next annual meeting of stockholders, which is expected to be held in 2019, or until their successors have been duly elected and qualified, or until their earlier death, resignation or removal.

At the Annual Meeting, proxies granted by stockholders will be voted individually for the election of the persons listed below as directors of the Company, unless a proxy specifies that it is not to be voted in favor of a nominee for director. Each of the persons named below, whether a current Board member or a nominee for election as a director, has indicated to the Board that he or she will be available to serve on the Board, if elected at the Annual Meeting. The Board recommends that you vote “FOR” the nominees listed below.

When reviewing candidates for our Board, the Nominating and Governance Committee of our Board (the “Governance/Nominating Committee”) and the Board consider the evolving strategy of the Company, its operating environment and outlook, as well as the needs of the Board to seek candidates that fill any current or anticipated future needs. The Governance/Nominating Committee and the Board also believe that all directors should possess the attributes described below under “Consideration of Director Nominees by the Board.” While the Governance/Nominating Committee does not have a formal policy with respect to diversity, the Board and the Governance/Nominating Committee believe that it is important that Board members represent diverse viewpoints in order to provide the most significant benefits to us. In considering candidates for the Board, the Governance/Nominating Committee and the Board consider the entirety of each candidate’s credentials in the context of these standards. With respect to the nomination of continuing directors for re-election, the individual’s contributions to the Board are also considered. In addition to the qualities and skills of the directors that are referred to under “Consideration of Director Nominees by the Board,” certain individual qualifications and skills of our directors that contribute to the Board’s effectiveness as a whole and the qualities that make the individuals suitable to serve on our Board are described in the following paragraphs.

Name	Age	Position with the Company
Justin Barnes ¹	53	Director
F. Peter Cuneo	74	Executive Chairman of the Board and Interim Chief Executive Officer
Drew Cohen ^{1,2}	50	Lead Director
Mark Friedman ^{2,3}	54	Director
Sue Gove ^{2,3}	60	Director
James Marcum ^{1,2}	59	Director

(1) Member of the Governance/Nominating Committee.

(2) Member of the Audit Committee of the Board (the “Audit Committee”).

(3) Member of the Compensation Committee of the Board (the “Compensation Committee”).

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JUSTIN BARNES

Director Since 2018

Age 53

Justin Barnes, 53, has served as Chairman of IBSL Consultancy Limited since 2012, previously served as Head of Brands at Sports Direct from 2006 to 2008, and previously worked with Sports Direct as a consultant for a number of years. Mr. Barnes is also a chartered trademark attorney and has significant experience in the field of intellectual property law. The Board of Directors believes that Mr. Barnes, with his extensive background and significant experience in brand management, retail, wholesale distribution, licensing and intellectual property law, adds key experience and viewpoints to our Board of Directors.

F. PETER CUNEO

Director Since 2006

Age 74

Executive Chairman and Interim Chief Executive Officer

F. Peter Cuneo has served as our Executive Chairman of the Board of Directors since December 2017 and from April 2016 until December 2016. Since August 2015, and while not serving as Executive Chairman, Mr. Cuneo has served as our Chairman of the Board. He also served as our Interim Chief Executive Officer from August 2015 until April 2016 and again since June 15, 2018. Mr. Cuneo has served on our Board of Directors since October 2006. From June 2004 through December 2009, Mr. Cuneo served as the Vice Chairman of the board of directors of Marvel Entertainment, Inc. ("Marvel Entertainment"), a publicly traded entertainment company active in motion pictures, television, publishing, licensing and toys, and prior thereto, he served as the President and Chief Executive Officer of Marvel Entertainment from July 1999 to December 2002. Mr. Cuneo has also served as the Chairman of Cuneo & Co., L.L.C., a private investment firm, since July 1997 and previously served on the board of directors of WaterPik Technologies, Inc., a New York Stock Exchange company engaged in designing, manufacturing and marketing health care products, swimming pool products and water-heating systems, prior to its sale in 2006. From October 2004 to December 2005, he served on the board of directors of Majesco Entertainment Company, a provider of video game products primarily for the family-oriented, mass-market consumer. Mr. Cuneo received a Bachelor of Science degree from Alfred University in 1967 and currently serves as the Chairman of the Alfred University Board of Trustees. Mr. Cuneo received a Masters degree in business administration from Harvard Business School in 1973. The Board of Directors believes that Mr. Cuneo, with his extensive business and financial background and significant experience as an executive of Marvel Entertainment, an owner and licensor of iconic intellectual property, contributes important expertise to our Board of Directors.

DREW COHEN

Director Since 2004

Age 50

Lead Director

Drew Cohen has served on our Board of Directors since April 2004. From August 2015 until April 2016, and since September 2016, Mr. Cohen has served as our Lead Director. Since 2007, he has been the President of Music Theatre International (“MTI”) and currently serves as its Chief Executive Officer and President. MTI represents the dramatic performing rights of classic properties, such as “West Side Story” and “Fiddler on the Roof,” and licenses over 50,000 performances a year around the world. Before joining MTI in September 2002, Mr. Cohen was, from July 2001, the director of investments for Big Wave NV, an investment management company, and, prior to that, General Manager for GlassNote Records, an independent record company. Mr. Cohen received a Bachelor of Science degree from Tufts University in 1990, his Juris Doctor degree from Fordham Law School in 1993, and a Master’s degree in business administration from Harvard Business School in 2001. The Board believes that Mr. Cohen’s legal and business background, and experience as an executive in an industry heavily involved in the licensing business, make him well suited to serve on our Board.

MARK FRIEDMAN

Director Since 2006

Age 54

Mark Friedman has served on our Board of Directors since October 2006. Mr. Friedman has been a Managing Partner at The Retail Tracker, an investment advisory and consulting firm since May 2006. From 1996 to 2006, Mr. Friedman was with Merrill Lynch, serving in various capacities, including group head of its U.S. equity research retail team where he specialized in analyzing and evaluating specialty retailers in the apparel, accessory and home goods segments. Prior to joining Merrill Lynch, Mr. Friedman specialized in similar areas for Lehman Brothers Inc. and Goldman, Sachs & Co. Mr. Friedman has been ranked on the Institutional Investor All-American Research Team as one of the top-rated sector analysts. He received a Bachelor of Business Administration degree from the University of Michigan in 1986 and a Master’s degree in business administration from The Wharton School, University of Pennsylvania in 1990. The Board of Directors believes that Mr. Friedman, with his extensive business background and investment banking experience, adds key experience and viewpoints to our Board of Directors.

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SUE GOVE

Director since 2014

Age 60

Sue Gove has served on our Board of Directors since October 2014. Ms. Gove has been the President of Excelsior Advisors, LLC since May 2014 and has also been retained as a Senior Advisor at Alvarez & Marsal. Ms. Gove had served as the President of Golf Smith International Holdings, Inc. from February 2012 through April 2014 and as Chief Executive Officer from October 2012 through April 2014. Previously, she was Chief Operating Officer of Golfsmith International Holdings, Inc. from September 2008 through October 2012, Executive Vice President from September 2008 through February 2012 and Chief Financial Officer from March 2009 through July 2012. Ms. Gove previously had been a self-employed consultant from April 2006 until September 2008, serving clients in specialty retail and private equity. She was Executive Vice President and Chief Operating Officer of Zale Corporation from 2002 to March 2006 and a director of Zale Corporation from 2004 to 2006. She was Executive Vice President, Chief Financial Officer of Zale Corporation from 1998 to 2002 and remained in the position of Chief Financial Officer until 2003. Ms. Gove served as a director of AutoZone, Inc. from 2005 to 2017, and has served as a director of Logitech International since September 2015 and a director of Tailored Brands, Inc. since August 2017. Ms. Gove received a Bachelor of Business Administration degree from the University of Texas at Austin. The Board believes that Ms. Gove's financial background and extensive experience in executive management positions with leading retailers adds key insight and knowledge to our Board.

JAMES A. MARCUM

Director since 2007

Age 59

James A. Marcum has served on our Board of Directors since October 2007. Since January 2016, Mr. Marcum has served as a Senior Operating Partner for an affiliate of Apollo Global Management Holdings, LLC. Prior to that, Mr. Marcum served as an Operating Partner and Operating Executive of Tri-Artisan Capital Partners, LLC, a merchant banking firm, positions he held from December 2014 to January 2016. From August 2013 to December 2014, Mr. Marcum served as Chief Executive Officer, President and Director of Heartland Automotive Services, Inc., the nation's largest franchisee of Jiffy Lubes. From February 2010 through December 31, 2012, Mr. Marcum served as the Chief Executive Officer, President and Director of Central Parking Corporation, a nationwide provider of professional parking management. From September 2008 to January 2010, Mr. Marcum served as Vice Chairman, Acting President and Chief Executive Officer of Circuit City Stores, Inc., a specialty retailer of consumer electronics where Mr. Marcum had also served as a member of the board of directors since June 2008. Circuit City Stores, Inc. filed for bankruptcy in November 2008. Prior to Circuit City Stores Inc., Mr. Marcum served in several other notable board capacities and senior executive roles, including roles as Lead Director, CEO, COO and CFO for a variety of nationwide specialty retailers, both public and private. He received a Bachelor of Science degree from Southern Connecticut State University in accounting and economics in 1980. The Board of Directors believes that Mr. Marcum's contributions to the Board of Directors are well served by his extensive business background and his

experience as a corporate executive of national retail establishments.

Agreement with Sports Direct

On July 25, 2018, the Company entered into a cooperation agreement (the “Agreement”) with Sports Direct, which beneficially owned 5,664,115 shares of Common Stock on such date. The following summary does not purport to be complete and is qualified in its entirety by reference to the Agreement, a copy of which is attached as Exhibit 10.1 to the Company’s Current Report on Form 8-K filed with the SEC on July 27, 2018.

Pursuant to the Agreement, the Company agreed that the Board would (i)(x) appoint Mr. Barnes, an individual designated by Sports Direct (the “Initial Investor Director”), as a director of the Company to serve until the Annual Meeting and (y) designate James Marcum as an additional director identified by Sports Direct (the “Additional Investor Director” and, together with the Initial Investor Director, the “Investor Directors”); and (ii) the Board would nominate each of the Investor Directors on its slate of nominees for election as directors of the Company at the Annual Meeting. Under the terms of the Agreement, the Company further agreed that its slate of nominees for election as directors of the Company at the Annual Meeting would consist of not more than six (6) director nominees, including the Initial Investor Director, the Additional Investor Director, F. Peter Cuneo, Sue Gove, Mark Friedman and Drew Cohen; provided that, notwithstanding the foregoing, the Company’s slate of nominees for election as directors of the Company at the Annual Meeting may consist of seven (7) director nominees if the Company’s permanent Chief Executive Officer is identified and appointed prior to the mailing date of the Company’s proxy statement for the Annual Meeting. The Company also agreed to use its reasonable best efforts to (i) hold the Annual Meeting no later than October 1, 2018 and (ii) hold the Company’s 2019 annual meeting of stockholders (the “2019 Annual Meeting”) prior to May 31, 2019.

Under the terms of the Agreement, the Company also agreed that (i) the Board would appoint the Initial Investor Director to each of the Governance/Nominating Committee and the ad hoc CEO Search Committee of the Board (the “Search Committee”) and (ii) the Additional Investor Director would continue to serve as a member of the Audit Committee. Pursuant to the Agreement, the Company also agreed that, in connection with the Board’s identification and appointment of a permanent Chief Executive Officer of the Company, (A) the Initial Investor Director will have a reasonable opportunity to participate as a member of the Search Committee and to interview any candidate being seriously considered by the Board for appointment as the Company’s permanent Chief Executive Officer, (B) the Search Committee will not make a determination or recommendation to the Board with respect to the appointment of the Company’s permanent Chief Executive Officer and the Company will not take any action or enter into any agreement to appoint the Company’s permanent Chief Executive Officer prior to the date that is the later of sixty (60) days from the date of the Agreement and five (5) days after the Annual Meeting, unless the Search Committee makes a unanimous recommendation to the Board regarding appointment of the Company’s permanent Chief Executive Officer prior to such date, and (C) the Board will consider in good faith the views of each of the Investor Directors regarding the skill sets and qualifications required of the Company’s permanent Chief Executive Officer.

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Additionally, the Company agreed to establish, and did establish, a non-Board steering committee (the “Steering Committee”) to undertake an operational review of the Company’s business. The Steering Committee, which will remain in effect during the Standstill Period (and, if determined by the Board, thereafter), will initially consist of each of the Investor Directors, Messrs. Friedman and Cuneo, Ms. Gove and the Company’s new permanent Chief Executive Officer, once identified and appointed. Pursuant to its charter, the Steering Committee will have authority to make recommendations to the full Board regarding actions related to certain operational matters to be considered in furtherance of the Steering Committee’s purpose, which the Board will have the sole right to review and approve or reject.

The Company has also agreed that during the Standstill Period, for so long as Sports Direct beneficially owns at least four percent (4.0%) of the then-outstanding Common Stock (the “Minimum Ownership Threshold”), Sports Direct will have the right to designate one (1) individual (who resides in the United States of America) as a non-voting observer (the “SDI Adviser”) to attend any meetings of the Board, any of its committees or the Steering Committee, subject to certain exceptions.

The Agreement further provides that Sports Direct, during the period from the date of the Agreement until the earlier of (i) the date that is thirty (30) days prior to the deadline for the submission of stockholder nominations for directors for the 2019 Annual Meeting pursuant to the Company’s By-Laws, (ii) the date that is thirteen (13) months after the date of the Annual Meeting, (iii) the date of any breach by the Company in any material respect of its obligations under the Agreement (subject to a cure period and other exceptions) and (iv) upon written notice from Sports Direct to the Company following the announcement by the Company of a definitive agreement (or the intent to enter or seek to enter into a definitive agreement) with respect to any Extraordinary Transaction (as defined below) (the “Standstill Period”), will not, among other things, (i) acquire securities in the Company, which would result in Sports Direct having beneficial ownership interest of fifteen percent (15.0%) or more of the then-outstanding shares of Common Stock; (ii) engage in any short sale or other similar agreement; (iii) publicly propose or seek to effect (a) any tender or exchange offer for the Company’s securities or any merger, recapitalization, restructuring, extraordinary dividend, significant share repurchase, issuance of fifteen percent (15%) or more of the Company’s then-outstanding equity or similar transactions involving the Company (each, an “Extraordinary Transaction”) or (b) any acquisition, sale or disposition of a business or assets representing either (x) ten percent (10%) or more of the fair market value of assets of the Company or of the market capitalization of the Company or (y) twenty five percent (25%) or more of the Company’s revenues for the most recent twelve (12) month period (subject to certain exceptions described in the Agreement); (iv) make a stockholder proposal or seek any form of proxy with respect to the removal, election or appointment of any person to the Board; (v) deposit any Common Stock in any voting trust or similar arrangement with a third party; (vi) publicly seek additional representation on the Board or the removal of any member of the Board or encourage any person to submit nominees in furtherance of a contested election; or (vii) make any public disclosure regarding any plan that relates to the Board, the Company, its management or policies, any of its securities or assets or any of its businesses or strategy that would be inconsistent with the Agreement.

Additionally, if (A) either of the Investor Directors (or any replacement director therefor) is unable or unwilling to serve, resigns or is removed as a director of the Company or (B) Sports Direct notifies the Additional Investor Director and the Board that Sports Direct desires that the Additional Investor Director resign from the Board, in each case, prior to the expiration of the Standstill Period, and at such time Sports Direct beneficially owns at least the Minimum Ownership Threshold, then Sports Direct will be able to recommend a replacement director in accordance with the terms of the Agreement. Pursuant to the Agreement, Sports Direct has also agreed that both of the Investor Directors will resign from the Board and all applicable committees of the Board (subject to the Board accepting such

resignation), if (i) at any time Sports Direct's aggregate beneficial ownership of Common Stock is less than the Minimum Ownership Threshold or (ii) Sports Direct or any of its affiliates nominates one or more director candidates for election to the Board at the 2019 Annual Meeting.

Sports Direct has further agreed that it will vote all shares of Common Stock beneficially owned by Sports Direct (x) in favor of (i) the slate of directors recommended by the Board at the Annual Meeting and (ii) the Company's reverse stock split proposal and (y) in accordance with the Board's recommendation with respect to any other proposal presented at the Annual Meeting; provided, however, that if Institutional Shareholder Services Inc. ("ISS") issues a recommendation against the Board's position, Sports Direct will have the right to vote in accordance with such ISS recommendation.

Each of the parties to the Agreement also agreed to customary mutual non-disparagement obligations. The Company and Sports Direct also agreed to enter into a customary confidentiality agreement to permit the Initial Investor Director, directors who replace the Investor Directors (if applicable) and the SDI Adviser to share certain material, non-public information of the Company with Sports Direct, subject to the terms of such confidentiality agreement.

The Company further agreed to reimburse Sports Direct for all of its reasonable and documented out-of-pocket fees and expenses (including legal fees) incurred in connection with its director nominations, the Annual Meeting, the negotiation and execution of the Agreement, analysis of the corporate governance, debt, and executive compensation of the Company, and all related activities and matters, up to a maximum of \$475,000 in the aggregate.

Board Independence

Our Board of Directors has determined that Messrs. Barnes, Cohen, Friedman and Marcum and Ms. Gove are each an "independent director" under the applicable Marketplace Rules of The Nasdaq Global Market ("NASDAQ"). As more fully described below under "Corporate Governance," in connection with the August 2015 resignation of our former Chairman, President and Chief Executive Officer, Mr. Cuneo was appointed Interim Chief Executive Officer and Chairman of the Board. In connection with his appointment as Interim Chief Executive Officer, Mr. Cuneo resigned from his positions as chair of the Audit Committee and member of the Compensation Committee. Additionally, in connection with the foregoing the Board appointed Mr. Cohen as Lead Director of our Board. Mr. Cuneo became Executive Chairman of the Board on April 1, 2016, following the Company's entry into an employment agreement with John Haugh, as the Company's President effective February 23, 2016 and also as Chief Executive Officer effective