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A Quick Glance at the Radar for Compensation Committees

Greg Stoeckel

MANAGING DIRECTOR

A successful navigation of the executive compensation landscape requires that you periodically scan the radar to make sure you're on track and avoiding obstacles. As a compensation committee member, below are a few new developments you should have on your radar this spring and summer.

Pay vs. Performance Disclosure Requirement

Although the new disclosure requirement is not expected to have much impact for most companies, there is some headline risk for companies with either relatively high compensation actually paid (CAP) figures or apparent disconnects between CAP and company performance. Committee members should have visibility into any potential concerns, both externally and internally, especially as they relate to the new CAP figures and how they differ from the already disclosed summary compensation table total figures.

10b5-1 Trading Plan Rules

The new rules will require executives and companies to update their policies and practices. Most notable are the requirements to have a 90-day "cooling-off period" before trades can be executed under a plan, a prohibition on overlapping plans (in most cases), and the need to not only enter into these plans in good faith but to operate them in good faith. However, there is also a new disclosure table for companies that grant stock options within four business days before or one business day after the release of material non-public information. This potentially affects a large group of companies that specifically grant equity following release of the 10-K. Committee members should be aware of the 10b5-1 Trading Plans in place for executives, the company's insider-trading policy, and the company's grant-timing policy to determine if any changes should be adopted in response to the new rules.

Compensation Clawback Rules

The new rules that will be applicable next year require that almost all public companies revisit their clawback policies to do the following:

- incorporate the specified triggering events (i.e., "Big R" and "little r" restatements),
- eliminate the limitation that the policy only applies in instances where there is executive fraud or misconduct, and
- specify that the clawback is mandatory as opposed to voluntary (with limited exceptions).

Committee members should be aware of these policy changes, ensure that the company's policy is updated to comply with the new rules, and develop an approach for how the clawback process would be led and administered if triggered.

Potential Challenge to Noncompete Agreements

Although unlikely to materialize any time soon, the US Federal Trade Commission proposed rules in favor of a national ban on any new noncompete clauses and enforcement of any existing noncompete agreements. There are no exceptions to the proposed rules, so this would impact virtually all executive-level employment contracts, severance agreements, change-in-control agreements, and in some cases equity award agreements that contain restrictive covenants. Committee members should be aware of the various agreements that contain noncompete provisions, but no further action is likely warranted unless and until the proposal advances.

Expanding Committee Responsibilities

Many compensation committees are changing their names and adding chartered responsibilities related to the broader oversight of human capital. In some cases, this brings topics such as diversity, inclusion, and pay equity into the purview of the committee. Related to pay equity is the topic of pay transparency, with several states passing laws requiring companies to disclose salary ranges on job postings and with job candidates. Committee members should understand these new laws and how the company is complying with the new requirements.

With the full radar in view, compensation committees can set their flight plan for the next few months to ensure that these items are addressed in a timely fashion and with minimal turbulence.

About the Author

Greg Stoeckel is a managing director and consulting team leader at Pearl Meyer. In his management role, he oversees a team of senior compensation consultants in the execution of the firm's growth strategy and in the development of consultants at various stages in their careers. In his consulting role, Greg is a senior advisor to compensation committees and executives on all aspects of executive and non-employee director compensation.