Pearl Meyer

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CD&A Pro Tips for the 2024 Proxy Season

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Ready or not, it's a new year, bringing along the promise of a fresh proxy season. It's time to roll up our sleeves and get another compensation discussion and analysis (CD&A) section of the proxy statement to the finish line.

If you're not already knee-deep in drafting mode, just the thought of starting can be daunting. And, even if you got a head start, there's probably some heavy lifting still on your to-do list. No matter where you are in the process, and no matter how many times you've been through it, crafting a clear and compliant CD&A can feel like putting together a 5,000 piece puzzle against a race clock. But there's no need to panic. Wherever you stand right now, consider January a critical checkpoint to make sure you and your team are on the right track by doing two key things.

Consider Recent Content Trends

The tone and style of CD&A writing continues to evolve. The key objective is to create clear, cohesive, compelling, and compliant narratives that drive ongoing support for executive compensation decisions, including more transparency in certain areas.

- *Leadership changes or transitions:* Clearly summarizing how pay was delivered to new hires, promoted individuals, and/or exiting executives can be as challenging as determining whose pay needs to be disclosed—especially if special awards were granted or unique severance payments were provided. Readers expect rationale for all of these things and want assurance that any leadership changes will benefit shareholders in the long run.

- *Business achievements—financial and non-financial:* This isn't just a formality; it sets the tone for your pay-for-performance story, intertwining year-end results with compensation decisions.

- *Good governance practices:* A "What We Do and What We Don't Do" checklist has become CD&A tablestakes, but that doesn't mean it should remain static—especially when complying with new rules. For example, with the SEC finally adopting the clawback rules of the Dodd-Frank Act, be clear about when the board adopted the new policy and briefly summarize its provisions. (Note that publicly listed companies are required to file their updated clawback polices as exhibits to their annual reports.)

- *Board responsiveness:* Demonstrating responsiveness to [a low say-on-pay vote](<80%) is non-negotiable. You must be crystal clear about several things: 1) to whom you reached out (% of shares outstanding); 2) with whom you actually met (% of shares outstanding); 3) the timing of your outreach efforts; 4) who participated in the meetings (e.g., directors, senior management); 5) what you heard (shareholder feedback); and 6) what you did (i.e., changes to respond to the feedback). Failing to include any one of these items in your disclosure heightens the risk of being perceived as unresponsive.

- *Shareholder engagement:* Even when say-on-pay support is strong, current expectations are that directors are keeping open dialogues with investors on various business matters, including executive compensation, and considering feedback on an ongoing basis. As an example, the recent push for companies to include strategic environmental, social, and governance (ESG) metrics in incentive plans has increased the need to explain how ESG performance aligns with compensation strategies and demonstrates commitments to culture and sustainability.

- *Goal-setting and performance metrics:* Scrutiny of performance goals and metrics has increased in recent years, making it even more important to explain how the board determined incentive plan performance targets—both financial and non-financial. For example, if financial performance targets were set lower than the prior year's actual results, rationale will be critical. If you have non-financial metrics and/or individual performance goals in your plans, be sure your narrative clearly explains your metrics and rationale for inclusion, how goals are set and assessed, actual performance results, and the impact on award payouts.

Make Sure You Have a CD&A Development Plan

Getting (and staying) organized with a disciplined process will help set you up for success.

- *Set ground rules:* Collaborate and engage with your team regularly. Meetings to discuss comments and decide on inclusions are not just procedural but instrumental in crafting a well-rounded CD&A and ensuring everyone is on the same page.

- *Stay ahead of the game:* Devote consistent time in the coming weeks for drafting and tracking how your narrative needs to evolve based on last-minute decisions. Being proactive will pay off during February and March crunch times.

- *Plan for next year:* Set a reminder for September to start chipping away at your CD&A draft in the fourth quarter of the year. This will help you and your team get clear and aligned on what needs to be updated (and avoid fire drills).

Navigating the CD&A drafting process is never easy. But, by combining strategic content considerations with a collaborative and disciplined process, your CD&A will become a critical source of transparency and trust.

About the Author

Sharon Podstupka is a managing director at Pearl Meyer. She is a trusted advisor to boards and executive management teams in the areas of executive and broad-based employee compensation communication and change management. With over 25 years of consulting experience, she is one of the original pioneers of executive compensation disclosure best practices and has proven success in creating effective strategies and delivering content in challenging business environments and under intense scrutiny from investors and proxy advisory firms. Sharon has extensive experience in a broad range of industries, including financial services, manufacturing, oil and energy, retail, biopharma/biotech, and healthcare.

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