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Performance-Based Pay Under the Microscope: What It Means for Your CD&A



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Proxy season is in full swing, and Institutional Shareholder Services (ISS) is sharpening its focus on executive compensation disclosures, particularly around performance-based equity incentives. This raises the stakes for CD&A drafting, with increased emphasis on transparency and design rigor.

ISS has placed heightened scrutiny on performance-vesting equity awards, particularly for companies that receive a high concern on its quantitative pay-for-performance test. Effective for meetings on or after February 1, 2025, ISS will be focusing on whether such companies failed to disclose forward-looking goals. While many companies reasonably cite "competitive harm" or the risk of signaling financial expectations as reasons to withhold forward-looking performance goals, ISS has emphasized that a lack of transparency can exacerbate shareholder dissatisfaction and lead to negative say-on-pay outcomes.

How Much is Too Much: Balancing Justification with Transparency

Historically, it has not been common practice for companies to disclose the forward-looking goals in their performance equity programs. However, given ISS' heightened focus on transparency, compensation committees—especially those at companies flagged with a high (or even medium) concern on ISS's quantitative pay-for-performance test— now face increased pressure to evaluate whether to disclose forward-looking goals.

Committees must carefully weigh the potential consequences of withholding such goals (e.g., increased scrutiny from ISS, negative say-on-pay outcomes, or erosion of shareholder trust) and how justifications like "competitive harm" may be perceived by key stakeholders. While the pros of keeping forward-looking goals close to the vest will likely outweigh the cons for most committees, it is essential to approach this decision thoughtfully, addressing key questions to ensure a defensible and balanced outcome:

- *Can we justify the potential risks of disclosing our goals?* Providing specific evidence of how sharing forward-looking goals could create risks (e.g., revealing proprietary

strategies, signaling competitive positioning, setting speculative market expectations) helps reinforce the rationale for withholding details.
- *Is the omitted information material to investors?* Committees should evaluate whether withheld details could significantly influence investor decision-making. Material omissions may draw scrutiny or raise concerns among stakeholders.
- *Can we offer meaningful context without revealing sensitive details?* Exploring ways to provide insights—such as explaining the rationale for selecting metrics and setting goals —while protecting competitive information can help balance transparency and confidentiality.

Taking Action Now

Regardless of whether forward-looking goals are disclosed, it will be critical to ensure that your CD&A narrative effectively addresses the committee's approach to ensuring long-term performance-based incentive plan metrics and goals are rigorous and aligned with investor expectations. Committees should ask themselves the following as they review working drafts:

- *Are the performance metrics clearly articulated?* The draft should include an explanation of how metrics align with the company's strategy and address investor expectations, while balancing transparency and competitive concerns.
- *Have we demonstrated the rigor of the committee's process?* The draft should highlight information about the committee's deliberations—including how forward-looking metrics were evaluated or stress-tested—to reinforce the robustness of the decision-making process.
- *Is the narrative clear and easy to follow?* The draft should avoid unnecessary complexity, presenting information in a way that is straightforward and accessible to readers.
- *Does the disclosure address potential shareholder concerns?* The draft should appropriately emphasize the rationale for goal-setting, metric changes, or limited disclosures to help preempt questions or criticism and align with transparency expectations.

By thoughtfully addressing the decision to disclose or withhold forward-looking goals, committees can ensure the CD&A narrative strikes the right balance between transparency and competitive protection. A well-considered approach will ensure compliance with regulatory requirements, support clear communication with proxy advisors and shareholders, and strengthen the company's executive compensation narrative.

About the Author

Sharon brings 25+ years guiding executive and broad-based pay communications and disclosure, helping boards and management manage change and respond to investor and proxy advisor scrutiny.

About Pearl Meyer

Pearl Meyer is the leading advisor to boards and senior management helping organizations build, develop, and reward great leadership teams that drive long-term success. Our strategy-driven compensation and leadership consulting services act as powerful catalysts for value creation and competitive advantage by addressing the critical links between people and outcomes. Our clients stand at the forefront of their industries and range from emerging high-growth, not-for-profit, and private organizations to the Fortune 500.