



Comp Committee Members: Ready, Set, Go

Article of the Week

Comp Committee Members: Ready, Set, Go: Ten action items for the compensation committee to take today to prepare for the SEC's proposed changes to executive compensation disclosure.

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Although the SEC has not yet implemented the proposed changes to executive compensation and related party transaction disclosure, companies must be ready to take action today to ensure compliance. The following 10 points, and accompanying actions required, will help your company prepare to comply with the proposed regulations and identify "problem areas" early.

1. Tally Up the Total Compensation of Senior Executives

The proposed rules will force companies to identify, quantify, and disclose the total compensation package for the most highly compensated executives using "one number" representing cash, equity, and perquisite/benefit compensation. This differs substantially from existing rules which determine the most highly compensated executives using only cash compensation figures. Using a tally sheet, you can determine which executives are the most highly compensated executives under the SEC's new methodology.

Action Required: Prepare tally sheets and model out over a multi-year timeframe under various performance scenarios.

2. Track the Compensation Levels of a Sufficient Number of Executives and High-Level Employees

In the near future, you may have to disclose the compensation for more than the current obligatory five most highly compensated executives. Be sure that you can collect the compensation data for senior executives as well as nonexecutive employees who are compensated more than the least-paid "Top 5" executives, such as highly compensated sales employees.

Action Required: Develop tally sheets for the top 10 to 15 most highly compensated individuals in the company.

3. Clearly Define and Learn the Compensation Program of Your Company

The proposed changes will require a new Compensation Discussion & Analysis (CDA) section in addition to the tabular disclosure of executive compensation. The CDA will include information about the objectives of the compensation program, what the program is designed to reward and not reward, and more specific information about compensation elements. Ensure that your company's compensation program is comprehensible, defensible, and accessible.

Action Required: Determine, in advance, how your executive compensation story is likely to “play” once disclosed.

4. Learn to Speak “Plain English”

One of the primary reasons the SEC is implementing these changes is to reduce the meaningless jargon that clogs many proxy reports and other SEC disclosures. The proposed rules require companies to clearly and plainly disclose information so that it is accessible and meaningful to the investors and public. Review the SEC’s Handbook of Plain English to ensure that your reporting will be understandable and concise.

Action Required: Prepare for new required disclosure significantly in advance. If you do not feel totally comfortable about fully transparent disclosure written in “Plain English,” explore the reasons why and consider making changes.

5. Establish the Role of Executives and Directors in Determining Executive Compensation

Executives often make recommendations and decisions about the future of compensation programs in their companies. The proposed rules may require the disclosure of any involvement by executives in these decisions. Companies must therefore know the exact role executives play in these decisions, and must decide whether such involvement will continue in the future.

Action Required: Ensure that you have an executive compensation process that truly works and meets the demands of an ever changing environment.

6. Establish the Role of Compensation Consultants In Determining Executive Compensation

Compensation consultants are often an integral part in the determination of executive compensation. You should know the exact role the consultant plays as well as the interactions between executives and the consultants. Know the nature and the scope of the consultant’s assignments, including their involvement in, and fees paid from, other services provided to the company.

Action Required: Determine if your compensation consultant is truly independent.

7. Quantify Executive Perquisite and Post-Employment Compensation

In the future, perks, deferred compensation, and the potential compensation for executives in the event of retirement, termination, and change in control, will need to be clearly defined in reports. Make certain that you can explain, quantify and defend each portion of the executive compensation package.

Action Required: Determine the value of retirement, severance, and change-in-control agreements. Determine what executive benefits and perquisites are truly necessary (and why) and ensure a high comfort level with what will be disclosed.

8. Track All Related Party Transactions

The proposed changes may require you to report a more comprehensive list of related party transactions, including pledging shares as collateral, indebtedness, and other transactions.

Action Required: Determine, in advance, any increased disclosure that may be necessary and

assess the implications.

9. Review Director Independence Definitions

The rules for determining Director independence may change significantly. Ensure that your company has a clear idea of the independence of your directors, and be prepared to review any relations Directors have with your company and/or management.

Action Required: Review all Director relationships and ensure that the Compensation Committee is truly independent.

10. Review and Revise Disclosure Controls and Procedures

Review who will collect, aggregate, and analyze the information required for disclosure. The new reporting requirements will involve a greater level of vigilance and data collection. This is connected to the certifications that CEO's and CFO's must provide with respect to Section 302 of Sarbanes-Oxley.

Action Required: Decide now how your company will handle the new reporting requirements so that you can proactively comply with the proposed changes and deliver quality disclosure to your investors.

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