Blogs
November 10, 2022
The SEC’s New Pay-for-Performance Rules: 3 Things to Do Now

Remember that "no surprises" is a good policy in dealing with your board and CEO—and a little work now on your disclosures now may save you from some big headaches come January and February.

Here are a few things you can be doing now to get ahead of the crush and avoid surprises:

1. **Preview with the Compensation Committee.** Although the Compensation Committee does not need to formally certify its review of the new pay-for-performance disclosure like it does with CD&A, you will want to preview the major decisions points with them well in advance of filing your proxy to avoid any surprises and second guessing—and to allow you to start working on the disclosures.

What topics are probably the most important to link compensation to performance that should be discussed with the Compensation Committee? That would be these three new items:

- The most important financial measure that you will select to link compensation to performance (the "Company Selected Measure");
- The peer group that you will select, whether it be your CD&A peers or your performance graph peers; and
- The 3-to-7 financial performance measures that you will select to accompany the new P4P table.

2. **Work Up a Preliminary Draft Now.** Many companies are taking a rough first crack at their pay-for-performance disclosure now, well before a full draft of the proxy will be drummed up. While you won't have all the data for 2022 yet, an early draft will identify interpretive questions. And it will provide you with some practice calculating the "Executive Compensation Actually Paid" (which isn't what it sounds like), as well as provide you with a rough sense of how the CEO pay lines up with performance.

While there may be reasons to do otherwise, we expect most companies will stick to the bare bones SEC disclosure requirements and not add extraneous narrative or data in year 1.

3. **Identify the Third-Party Assistance You Will Need.** In addition to outside counsel and your compensation consultant, you may need to hire an actuary to help come up with pension values. Or you may need additional internal resources to prepare the new P4P table.

We have found that many companies have interpretive questions once they dig into their preparation. Your band of advisors may be able to give some level of comfort as to whether your approach makes sense and passes regulatory muster.

We don't yet have a good sense of whether—or how much—proxy advisors and investors will care about the information that comes out of this new disclosure. Companies already disclose a lot about their executive compensation programs and whether this additional pay-for-performance disclosure changes how readers of proxy statements vote remains to be seen.

Authors

Explore more in

Corporate Governance