



Annual Meeting 2011

DENVER  OCT 23-26

Where In-house Counsel Connect



Practical Considerations for Executive Compensation Disclosure

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Agenda

- Practical guidance – before you draft the proxy statement
- CD&A drafting tips
- Other compensation-related disclosures and considerations



Stay Up-to-Date

- Latest news and developments
 - Blogs (sign up for e-mail alerts or subscribe via RSS feeds)
 - Law firm memos
 - ACC roundtables
 - CLE presentations and calls
- Develop close connections with HR colleagues involved in the process
- Attend Compensation Committee meetings if possible
 - Alternatively, ask HR for copies of materials that can be shared and relate to the compensation program in general
 - Dialogue with Chair of Compensation Committee and consultants
- ISS/other best practice reports



Study Precedent

- Set up alerts (e-mail) for key SEC filings
- Prior year/early season proxy statements
 - Peer group
 - Companies viewed as having good disclosure
 - New disclosure requirements
- Shareholder recommendations/proposals
- Annual meeting transcripts/webcasts
 - How did it go at the last AGM and other companies' AGMs?
 - What type of compensation questions were asked?



Initial Legal and HR Coordination

- Who owns what and how are we working together?
- Time and responsibility schedule
 - Start early!
 - Clarify who does what and when
 - Project manager to oversee progress
- Excel spreadsheets that match proxy statement format
 - Avoid errors
 - Efficient way to confirm calculations
- Formal process for double and triple checking numbers
- Information/data gathering and backup process
 - Who keeps what and where will it be stored?



Effectively utilizing outside advisors

- Legal counsel
 - Early phone call or meeting to discuss high level issues or key changes
 - Guidance on new disclosure requirements
 - Help with compliance check
 - Developing responses to SEC comments
- Auditors
 - Go over timeline early – the audit often is going on at the same time
 - Review process (not an audit)
- Compensation consultants
 - Be sure to obtain a consent if they're mentioned!
- Actuaries
- Proxy solicitation firms



Proxy solicitation firms

- Communications/IR assistance
 - “Hot topics” such as “say on pay” in 2011
 - “Against” voting recommendations from ISS or others
 - Encouraging more shareholders to vote
- Trend information, news and insights



Avoid Comments and Mistakes

- Review the rules again/compliance checks
- Publicly available SEC comment letters
- SEC Compliance & Disclosure Interpretations (CDIs)



Speak with Internal Stakeholders

- Beyond HR.....obtaining feedback and communicating
- Investor Relations (IR) and Media Relations
 - Any recent shareholder, analyst or media considerations?
 - Prepare in advance for possible questions after filings
- Finance/Accounting
- Planning & Analysis
 - Performance target disclosure – are people aware what we may need to describe in the proxy statement?



Any new NEOs?

- Analyze beyond last year's "top 5"
 - Be sure to exclude pension value changes and certain nonqualified defined contribution earnings
 - Start early in case prior year disclosures are needed for someone new
 - Incentive awards/bonuses might not be determined until Q1 after year-end
 - Internal communications if there are actual or likely changes
- Consider whether any "partial year" executive officers might be NEOs
 - New hires/promotions
 - Retirements/terminations



Best Practices & Emerging Trends

- Plain English
- Summary/highlights section
- Tables, graphs, charts and bullet points
- Headings and sub-headings
- Emphasize important/material information
- Organize related topics and disclosures together
- Supplemental/voluntary disclosures can be helpful to tell the story
- Photos and biographies for NEOs
- Non-US considerations



Drafting the CD&A - Summary

- Overview of executive compensation program
- Principles-based disclosure
- “Pay for performance” alignment
- Link strategic objectives and the compensation program
- CEO compensation
- Highlights of results and actions taken in past year
- A picture is worth a thousand words
- Include meaningful analysis and avoid boilerplate
 - Focus on “how and why” in a concise, clear way



Compensation Elements

- Explain each pay mix component and why it's included
- “Pay for performance”
 - Variable vs. fixed
 - Short vs. long term
 - Cash vs. equity
- Perquisite trends and areas of shareholder focus



Performance Targets

- Metrics used – why and how measured
 - *Objective* - Financial/operating results for a business/the company
 - *Subjective* - Individual performance
- Discretion to modify awards
- Disclosure of actual performance vs. confidentiality concerns
 - “Competitive harm” analysis
- Difficulty of achieving the targets
- Historical performance period disclosure vs. future targets



Designing the Compensation Program

- Compensation Committee with input from
 - CEO
 - HR
 - External consultants
 - Shareholders
- “Work plan” disclosure
- Key decisions/changes made in the last year



Benchmarking

- Identifying potential peer companies
 - Annual revenues
 - Data availability (public vs. private)
 - Size of group
 - Competitors for business/executive talent
 - Consultants' advice and/or independent market studies
 - Frequency of peer group revisions
- Disclosure of the peer group and components used in comparison



Compensation Principles & Risks

- Material risks faced by the company
- Board/compensation committee's role in risk management oversight
- Clawback policy
- Hedging restrictions/insider trading policy
- Do programs encourage excessive risk taking?



Equity Ownership Requirements

- Mandatory vs. voluntary
- Usually based on multiple of base salary
- Senior management and/or directors
- Time period for compliance
- Exceptions for certain types of exercises and sales
- Holding requirements



Past vs. Current Year Disclosure

- CD&A generally focused on past year developments
- Disclosure of any key changes after year-end
 - New or modified plans or programs
 - Material changes to compensation
 - Would current year changes materially impact an understanding of past year discussion?



New 2012 Disclosures

- Internal pay equity disclosure
 - Median of total annual compensation for all employees of the company (other than CEO's)
 - Total annual CEO compensation
 - Ratio of the two amounts
- Pay for performance disclosure
 - Comparison of NEO compensation actually paid with total shareholder return
- Hedging by employees and directors
- Clawbacks
- SEC timeline for adoption – First half of 2012



Summary Compensation Table

- Double check NEO total compensation (vs. other eligible executive officers)
- Any former NEOs that need to be in the table?
- Base salary/incentive bonus earned vs. paid
- Perquisites – are they all covered? Include a table?
- Option fair value vs. Black Scholes differences
- Dividend equivalent units credited or paid
- Consider a “total realized” table that follows the SCT



Grant/Award-Related Tables

- Data and calculations primarily from HR
- Check that each grant is reflected
- Add explanations/notes as needed
- Actuaries involved in the pension-related tables
- Consult with Finance/Accounting department for consistency with audited financial statement footnotes



Employment Agreement Disclosure

- Narrative discussion of material terms of NEO arrangements
 - Can be written or unwritten
- Employment term
- Termination events triggering severance
- Severance period
- Benefits continuation
- Treatment of short and long-term awards
- Restrictive covenants
 - Non-solicit
 - Non-compete
 - Confidentiality and non-disparagement



Potential Termination Payments

- Describe key assumptions
- Tables provide a reader-friendly way to show the financial impact of each type of termination event
- Review plan terms, grant agreements, etc.
- Get help from others for the calculations



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Q&A