



Bank Director Workshop

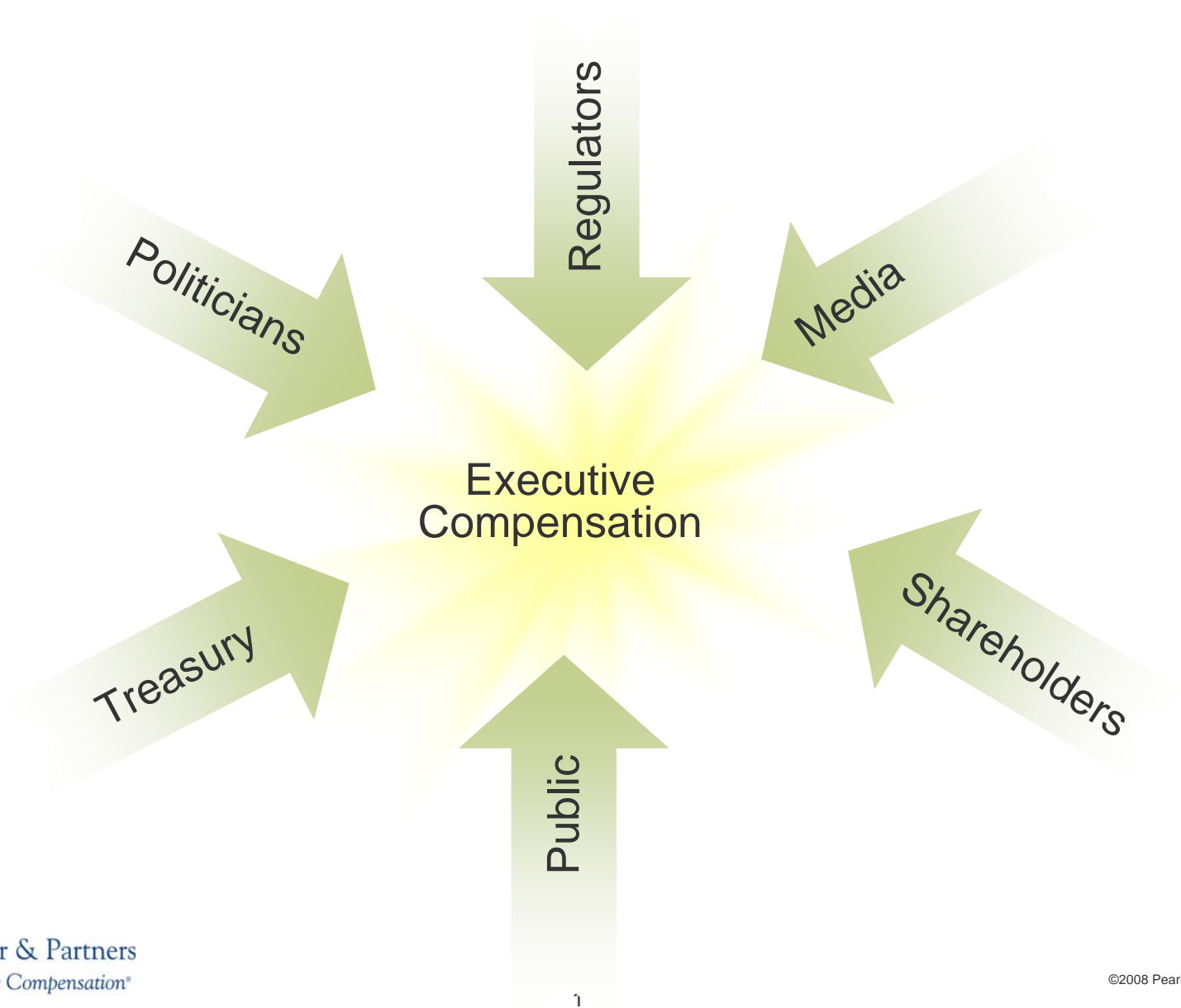
Executive Compensation

- Best Practices That Address Today's Environment
And Beyond-

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Today's Executive Compensation Influences





Banks Today Need to Focus on:

Doing the “Right Thing”...

In an Environment of Uncertainty...

Under Increased Scrutiny...

And Where Optics Matter More Than Ever

■ The Future Requires that Banks:

- **Build Strong Corporate Governance Practices**
- **Respond to Regulatory and Shareholder Requirements**
- **Define “New” Strategies for Attracting, Retaining and Motivating Executives**

A Quick Check List of Issues and Actions Bank Boards Should Be Considering Now....

■ Build Strong Corporate Governance Practices

- **Evaluate the Effectiveness of Your Board's Governance Practices**
 - Structure (e.g. charter, roles, independence)
 - Processes (meeting procedures, decision processes, healthy tension)
 - Knowledge (education, support)
 - Communication (internal, external)
- **Evaluate the Effectiveness of Your Compensation Committee**
- **Develop Succession Plans – Executive and Board**
- **Review/Update Contracts/Documentation**
- **Review/Update Disclosure/CD&A/Proxy**
- **Pay Directors Appropriately For Their Role**

These actions are primarily the focus of the Compensation and/or Governance Committees

■ Respond to Regulatory/Shareholder Requirements

■ All Banks Should:

- Prepare for increased focus on compensation
- Consider changing landscape and emerging best practices – many will cascade to all banks/companies
- Examples:
 - » Incentive plan risk assessment
 - » Pay- performance alignment
 - » Longer-term “view” of sustained performance
 - » Clawbacks, holding periods
 - » Contracts/severance/termination benefits

■ TARP Participants Should:

- Understand new - and emerging - restrictions (see Appendix)
- Implement new structure for affected executives - understand impact and potential internal equity considerations
- Provide a plan for sunset/transition process (when pay back funds and released of restrictions)

■ Public Banks Should:

- Audit your CD&A/Proxy Tables (they are key going forward)
- Understand shareholder advisory firms’ influence (e.g. RMG, Glass Lewis)
- Analyze your pay practices in light of shareholder requirements (ahead of annual meetings)
- Understand “Say on Pay” and its implications
- Ensure strong shareholder communications
- Understand potential media/public perception/optics

■ Develop New Strategies to Attract, Retain & Motivate

- Clearly define/update your compensation philosophy – “roadmap”
- Explore new “tools”, “policies” and approaches to best meet today’s changing needs
- Review and select the right performance metrics
- Update your STI and LTI plans as appropriate
- Focus on long-term, sustained performance
- Test your pay-performance alignment
- Review severance/CIC/termination arrangements
- Address “special” situations (as appropriate)
 - M&A and CIC arrangements
 - Retirement
 - Retention
 - Promotion
 - New Hire

**Today’s Environment Requires
More Attention to these Issues**

■ In Summary – A Director’s Role is Getting Tougher

- **Ensure good governance practices and policies**
- **Pay attention to documentation and/or disclosure**
- **Ensure executive compensation programs are “balanced” and in aggregate consider:**
 - Short and long-term performance
 - Company and individual performance
 - External (i.e. market) and internal perspective
 - Absolute and relative measures
 - The “right” amount of risk taking
- **Consider perspectives of multiple constituencies**
- **Design plans that support your business strategy and philosophy**
- **Don’t just follow the herd – market practice is not best practice**
- **Don’t let plan designs/constraints deter you from doing the right thing**
- **Good business judgment is key**

Current Restrictions on Executive Compensation for CPP Participants

■ The Environment – Unprecedented and Unnerving

- **Since Fall of 2008 – chaos in executive compensation legislation**
 - October, 2008 - Emergency Economic Stimulus Act
 - » Introduces Capital Purchase Program
 - » Four significant new restrictions on executive compensation
 - February 4, 2009 - Treasury Guidance – President Obama and Secretary Geithner announce three new programs – Never Adopted
 - February 17, 2009 - American Recovery and Reinvestment Act signed by President Obama
 - » Introduces significant retroactive restrictions on CPP participants.
 - » Applies RETROACTIVELY
 - February 26, 2009, SEC supports Senator Dodd’s proposal that Say on Pay be effective for all filings retroactive to February 17th
 - March 2009, in response to AIG bonuses, House and Senate seek excise tax for bonuses paid (different proposals but far reaching impact)
 - March 2009, Obama Administration and/or Treasury expected to release additional compensation guidelines

Overview of ARRA Executive Compensation Restrictions (for CPP Participants)

Below we summarize the executive compensation provisions updated on February 17, 2008 when President Obama signed the American Recovery and Reinvestment Act (ARRA). These provisions extend the original four requirements identified at the time most banks accepted funds from the Capital Purchase Program (CPP). The provisions are effective until the participant repays all funds to the government. The restrictions and requirements include:

- Prohibition of incentives tied to unnecessary and excessive risks that threaten the value of the institution. Banks must complete a risk assessment process within 90 days of receiving financial assistance.
 - In addition, there is a requirement for the Compensation Committee of the Board (comprised entirely of independent directors) to meet at least semiannually to discuss and evaluate employee compensation plans in light of an assessment of any risk posed to the institution.

Overview of ARRA Executive Compensation Restrictions (for CPP Participants)

- A provision for the recovery (i.e. claw back provision) of any bonus, retention award or incentive compensation paid to a CEO and any of the next 20 most highly compensated employees (i.e. 25 in total) that was based on financial statements or other performance criteria deemed materially inaccurate.
- A prohibition on making any golden parachute payment to a CEO or any of the next five most highly compensated employees (i.e. top 10) during the period of time the institution receives financial assistance.
 - A golden parachute payment is defined as any payment for departure from a company for any reason, except for payments for services performance or benefits accrued.
- Reduced deductibility of compensation under Code Section 162(m) to \$500,000 (from \$1,000,000) without performance exceptions.

Overview of ARRA Executive Compensation Restrictions (for CPP Participants)

- Prohibition of paying or accruing any bonus, retention award or incentive compensation during the period in which the Bank receives assistance under the TARP. Different applications depending on funds taken:
 - < \$25m in funds: applies to only the most highly compensated employee
 - \$25m - \$250m in funds: applies to at least the 5 most highly compensated employees.
 - \$250m - \$500m in funds: applies to the senior executives and at least the next 10 most highly compensated employees
 - > \$500m in funds: applies to the senior executive officers and at least the 20 next most highly compensated employees.
- The only exception is for a payment of long-term restricted stock provided 1) the stock does not fully vest during the period funds are owed to Treasury, 2) has a value no greater than 1/3 of the total amount of “annual compensation”, and 3) complies with any other terms and conditions the Treasury may determine is in the public interest. Note: This prohibition does not exclude payment of any bonus required to be paid pursuant to a written employment contract executed on or before February 11, 2009.

Overview of ARRA Executive Compensation Restrictions (for CPP Participants)

- The Board must have a company-wide policy regarding excessive or luxury expenditures which may include entertainment or events, office or facility renovations, aviation or other transportation services or other activities or events that are not reasonable.
- The Company must provide an annual non binding shareholder approval of executive compensation (i.e. “say on pay”).
- Certification of compliance by the CEO and CFO (or equivalents) in SEC filings.

Stay Tuned ...More Change Likely To Come



THANK YOU

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