Pearl Meyer

Ask the Expert.

A Repeal of Dodd Frank? What it Might Mean for Compensation

Deb Lifshey, *Managing Director*

The following is based on an interview published in the May edition of workspan *magazine.*

Q. In light of the new administration and its expressed views on regulation, do you expect any of the Dodd-Frank executive compensation rules to change?

A: I suspect those regulations that have not been finalized (seven years later!) will either be modified or delayed. I don't see the pay-versus-performance or clawback rules going into effect as currently proposed. The most controversial compensation rule—the CEO Pay Ratio—seemed to be a high risk candidate for extinction earlier this year when the SEC requested yet additional comment on hardships caused by the rule. However, with only six months before the rule is to go into effect, there's been no action. Proxies based on this year's compensation are going to require the disclosure unless something happens very quickly in Congress. At this point in time, I would very strongly encourage companies to prepare for this disclosure if they haven't already started.

There are some compensation regulations under Dodd-Frank that are unlikely to change much. Regulations that are well ingrained into the landscape and/or have been finalized for many years—say-on-pay, say-on-frequency, hedging/pledging, or the compensation committee independence rules—are not at risk of repeal or change. Even if these concepts were no longer codified, they are now so embedded in corporate governance standards that repeal of the law wouldn't have much of an impact on actual practices. The fact is, law or no law, these rules have created open and frequent shareholder dialogs, which is beneficial.

Q. Outside of Dodd-Frank, what is the biggest unknown right now relating to executive compensation rules?

A: Changes to the tax code could significantly impact how we structure compensation. For example, if the 162(m) exemption for performance-based awards were no longer in effect, we could see a rise in guaranteed compensation and a shift away from the vehicles of performance-based pay although the tax benefits of doing so may be outweighed by institutional investor preference for performance vehicles. Similarly, a repeal of the alternative minimum tax could result in a renewed interest in granting incentive stock options.

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Q. Is there any regulation that you think would be beneficial for your clients?

A: Believe it or not, yes! We are curious to see whether or not this administration addresses some of the inherent conflicts that have grown in the proxy advisory services industry. The time is ripe for enhanced disclosure in this area. These firms are entrenched in the business of reviewing governance, but now are also deeply involved on the consulting side. Many of our clients strongly believe the firms have overstepped their bounds and should be subject to oversight. Even without regulation, however, we've seen many compensation committees pushing back on the one-size-fits-all mentality that emerged as a result of Dodd-Frank and proxy advisor influence. We think boards understand that at the end of the day compensation must be aligned with long-term company strategy—period.

About Deb Lifshey

Deborah Lifshey is a managing director in the New York office, where she specializes in advising clients on compensation matters from a legal perspective including securities disclosure, taxation and corporate governance issues, negotiation contracts, and reasonableness opinion letters. She is a graduate of the Industrial and Labor Relations School at Cornell University and the University of Florida College of Law, and served as a federal clerk for the Honorable Judge Susan H. Black on the Eleventh Circuit Court of Appeals. Prior to joining Pearl Meyer, Ms. Lifshey practiced at Fried, Frank, Harris, Shriver & Jacobson, where she specialized in executive compensation, ERISA matters, and corporate transactions, and at Holland and Knight, where she specialized in employment litigation matters.

About Pearl Meyer

Pearl Meyer is the leading advisor to boards and senior management on the alignment of executive compensation with business and leadership strategy, making pay programs a powerful catalyst for value creation and competitive advantage. Pearl Meyer's global clients stand at the forefront of their industries and range from emerging high-growth, not-for-profit, and private companies to the Fortune 500 and FTSE 350. The firm has offices in New York, Atlanta, Boston, Charlotte, Chicago, Houston, London, Los Angeles, and San Francisco.

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