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ADVISOR BLOG

The SEC Just Kicked CD&A Drafting Season into High Gear

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With the SEC finally adopting its pay-versus-performance disclosure requirements on August 25, 2022, like it or not, proxy drafting season has been kicked into high gear. Usually at this time of year, we know that the next proxy season is on our heels, but calendars are filled with so many competing year-end priorities, it's easy to put CD&A planning on the back burner.

This is especially true if your organization has not had, or does not anticipate, any significant issues or pushback from its investors or the proxy advisory firms with respect to executive pay. **This year will be different.**

Given the new rules, this year's CD&A drafting lift will be heavier than it's been in quite some time—and it's not just about added analysis and required tables. Narrative message strategy and content development will also demand critical levels of attention. How will the new pay-versus-performance table reflect on the "traditional" narrative? Does it tell a consistent story? What are the most important points to get across for the data in the table to be viewed in the appropriate context? How will key messages get integrated throughout the CD&A? Yeah, it's a lot.

On top of this, all the "business as usual" narrative still needs to be reviewed and updated. This means that even the organizations with the best say-on-pay results must invest time in planning earlier than typically expected. Has your company been through any business and/or leadership transitions? Has your organization grown or changed so it is no longer able to provide scaled-back disclosures as either a "small reporting" or "emerging growth" company? Are there material changes to the compensation program that need to be explained or does the narrative need to be more reader-friendly?

No matter the scenario, waiting until December or January to start the CD&A drafting process is a risky strategy. And of course, organizations grappling with more significant issues, like decreasing say-on-pay results, activist investors, special awards, etc., now have even steeper mountains to climb.

Maybe the silver lining is that there is still some runway to get organized before the end of the year. To help in that regard, here are some practical project management steps your organization can take in the short term to make the drafting and review process easier to manage in the long term:

Establish your CD&A team.

Who will have responsibility for primary drafting? Who are the other stakeholders that will be involved in the development process (e.g., legal reviews, investor relations, senior management, the compensation committee, compensation consultants, etc.)?

Assign someone to conduct an editorial audit of last year's CD&A narrative to accomplish three key things:

1. **Flag content that must be updated**. Focus on content connected to business performance/results, leadership achievements, shareholder engagement, and of course, plan designs and pay decisions.
2. **Raise questions/open issues.** Inevitably this type of review will raise some questions or issues that need to be addressed. What are the new challenges, including pay-versus-performance disclosure, that require explanation? Issues might include workforce staffing/retention, supply chain disruptions, stock market volatility, and many other current business pressures. What are the key messages to highlight? Are there other new themes that should be considered (for example, ESG, DE&I, etc.)? Pro tip: revisit your proxy advisory reports and any investor feedback collected following your say-on-pay vote. Make sure to address any concerns that may have been raised.
3. **Identify areas for improvement.** Every CD&A has some editorial "low-hanging fruit." Can certain content be streamlined? Are there opportunities to be more visual?

Review editorial audit findings with the CD&A team.

Discuss suggested revisions to help ensure that everyone on the team is on the same page, especially if significant changes are on the table. Also, ask yourselves if/when it makes the most sense to socialize ideas with other key stakeholders who will be part of the review process later.

Assign someone to develop the first working draft.

Of course, there will be gaps in the content for items such as year-end performance results and payout decisions. The final NEOs for disclosure may also still be pending, and that is okay. After conducting the editorial audit, there will be enough information to develop a solid first working draft well before the end of the year.

Employ the 80/20 rule.

Continue to refine the working draft with the CD&A team through the end of the year, so by the first quarter, at least 80% of the draft is complete. This will allow the team to focus on the remaining critical messages that must be integrated into the disclosure once year-end performance results and pay decisions have been finalized. These messages are often the most challenging to develop and most time-consuming to get approved.

About the Author

Sharon Podstupka is a principal in the New York office of Pearl Meyer. She is a trusted advisor to boards and executive management teams in the areas of executive and broad-based employee compensation communication and change management. With over 25 years of consulting experience, she is one of the original pioneers of executive compensation disclosure best practices and has proven success in creating effective strategies and delivering content in challenging business environments and under intense scrutiny from investors and proxy advisory firms. Sharon has extensive experience in a broad range of industries, including financial services, manufacturing, oil and energy, retail, biopharma/biotech, and health care.

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 Atlanta, Boston, Charlotte, Chicago, Houston, London, Los Angeles, New York, and San Jose.

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