T-Mail

Navigating the Executive Benefits Landscape
with The Todd Organization

April 2011

Proxy Season Brings New Executive Pay Issues

As we enter annual meeting and proxy season, companies are addressing a host of issues stemming from last year's passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act and related rules adopted this January by the U.S. Securities and Exchange Commission. In fact, Dodd-Frank and the attention it is getting at proxy season provide another important reason for companies to make sure they regularly review their non-qualified retirement plans.

Dodd-Frank requires a mandatory "Say on Pay" vote at 2011 annual meetings. Though non-binding, the vote pertains to the approval of executive officers' compensation as disclosed in the proxy statement.

There must also be a vote taken on how frequently there will be future votes pertaining to executive compensation, with the options being every one, two, or three years. Following the frequency vote, a company must disclose on an SEC Form 8-K how often it will hold the say-on-pay vote.

As widely expected, investor activists are heavily pushing for the annual vote option. On January 31, a group of 39 institutional investors representing more than $830 billion in assets endorsed this policy, stating, "As investors with a deep concern about executive pay, we are appealing to Boards of Directors to recommend an annual advisory vote on executive compensation and to investors to vote for the annual choice."

The group includes the state pension funds of New York, California, and Connecticut; labor unions such as AFSCME, the Utility Workers Union of America, and Communications Workers of America; and investment firms and activists.

Another significant development is that Institutional Shareholder Services (ISS), the leading proxy advisory firm, has adopted a new, universal policy in favor of companies providing for annual say-on-pay proposals.

The pressure for annual votes is substantial and can be expected to grow. A wide array of opponents contends, however, that annual votes are not in shareholders' best interests.

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Edward Durkin, director of corporate affairs for the United Brotherhood of Carpenters and Joiners of America, whose pension fund has $45 billion in assets and invests in 3,600 companies, opposes annual voting and notes the practical difficulties. "We are a typical pension fund, and I'm telling you, you can't do thoughtful analysis of 3,600 plans on an annual basis. It's just not possible."

Many companies have recommended a three year "say on pay" vote. The length of the business cycle and the time it takes to research and bring new products to market are among the reasons companies believe a longer-term evaluation is more appropriate.

Some experts also believe that the push for annual reviews will place even greater emphasis on maximizing short-term profits and increasing risk taking, factors which helped spawned the financial crisis.

In this environment, it is more important than ever for companies to be able to demonstrate that their non-qualified retirement plans and other executive benefits are well designed, effective vehicles that help retain and attract quality executives who can maximize shareholder value. As deferred compensation plans can potentially be lost in the event of a company bankruptcy, this provides an important, inherent incentive for management to avoid excessive risk taking for short-term profits.

Plans can also be designed to provide direct incentives based on the actual performance of the company or a division. By helping companies cost effectively retain and attract quality executives and prudently incenting key executives, plans benefit both shareholders and plan participants.

The Todd Organization has numerous experts available to help companies review, evaluate, and implement optimal non-qualified retirement plans. For more information about these programs, please contact your Todd consultant.

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