T-Mail

Navigating the Executive Benefits Landscape
with The Todd Organization

Making the Case for Executive Benefits in Proxy Season

Proxy season is approaching and once again companies will be facing scrutiny on their executive compensation practices.

In most situations, companies can make a powerful case that all of their non-qualified benefit plans are shareholder friendly. By being prepared to discuss these plans accordingly, companies can better navigate through the increasing challenges of proxy season.

Shareholder-Friendly Executive Benefits

A central way in which non-qualified retirement plans are shareholder friendly is that executives can lose these benefits if the company performs poorly. By definition, non-qualified benefit plans must be subject to a substantial risk of forfeiture.

In the event of bankruptcy, this means the executives become general, unsecured creditors for the full amount of the promised benefits.

> ***Because of this risk, which continues while executives are being paid in retirement, non-qualified plans help ensure that executives will run companies for the long-term, avoiding reckless risks.***

Expanding the Proxy Discussion

In the proxy, companies generally provide an overview and description of their plan(s), the formula for calculating benefits, payout alternatives, and vesting provisions.

However, the risk factor is largely, if not completely, ignored.

It is important to address the risk factor with both supplemental executive retirement plans (SERPs), where the company sets aside funds for the executive, and with non-qualified 401(k) plans, where an executive defers money from salary or bonus. In both types of plans, all of the promised benefits are at risk until fully paid out.

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One way to address the risk factor for all non-qualified benefit plans is to add language similar to the following:

"All of the Company's non-qualified benefit plans are considered 'unfunded' contractual obligations of the Company. They are considered general contractual obligations of the Company and are subject to the claims of the Company's creditors. In the event that the Company becomes insolvent, the participants will be unsecured general creditors of the Company. This status with respect to these benefits aligns the interests of the participants with the long-term interests of the Company and its shareholders."

When companies fail to fully and accurately describe their executive benefits practices in proxies, they do a disservice to executives, leaving them subject to unfair criticism, while also providing incomplete information to shareholders.

Whether it is in the proxy, discussions with investors, or even the media, companies may want to stress these points to show the shareholder friendly nature of executive benefit plans.

There will be even more impetus to do this in the coming years. Companies will be required to disclose the CEO's pay ratio to the median compensation of its employees, beginning with fiscal year 2017. The Securities and Exchange Commission is evaluating other proxy provisions pertaining to pay for performance and hedging disclosure.

Today, and going forward, it is important for companies to discuss the shareholder friendly nature of executive benefits in both their proxies and other communications. For additional information about these issues, please contact your Todd consultant.

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