

Key takeaways

2025 Proxy Season Preview

At our Comp Talks session on January 15, 2025 – **2025 Proxy Season Preview** – Cooley partners Ali Murata and Brad Goldberg and Compensia principal Mark Borges discussed various hot-button topics in proxy disclosures leading into the 2025 proxy season. Below are some key takeaways summarized by Cooley associate Cara Buchicchio.

The 2025 proxy season is the first in which most companies will have to comply with the new Securities and Exchange Commission (SEC) disclosure requirement relating to option grant policies and risk of “spring-loaded” grants made shortly before the release of material nonpublic information (MNPI).

Section 402(x) of Regulation S-K requires narrative disclosure regarding how the board determines when to grant stock options or instruments with option-like features and whether and how it factors in MNPI. Tabular disclosure is required if any such awards were granted in the last completed fiscal year, if any such awards are granted to any named executive officer within four business days before or one business day after the filing of a Form 10-Q or Form 10-K, or if a filed or furnished Form 8-K contains MNPI. These new disclosure requirements will apply to the first proxy statement covering the full fiscal period that begins on or after April 1, 2023 (with a compliance deferral of six months for smaller reporting companies).

Clawbacks continue to be an area of focus for SEC staff and proxy advisory firms. SEC staff stated that whenever there is a “Big R” or “little r” restatement, a company is required to analyze whether those restatements would result in a recovery of incentive-based compensation. Even when there is no recovery required because a company does not have any incentive-based compensation, SEC staff expects to see a brief explanation of **why** the application of a recovery policy resulted in that conclusion. Both Institutional Shareholder Services (ISS) and Glass Lewis (GL) have issued guidance specifying a preference that clawback policies apply to time-based awards, in addition to awards that vest based on performance measures.

Be aware of updated guidance released by ISS and GL for the 2025 proxy season. On December 13, 2024, ISS published a new FAQ addressing the evaluation of performance-vesting awards, which notes that relevant considerations for the evaluation of performance equity programs may include, among other things, nondisclosure of forward-looking goals, poor disclosure of closing-cycle vesting results, and poor disclosure of the rationale for metric changes, metric adjustments or program design, and provides several examples of factors that may be used in evaluating incentive plan metrics. In updated GL guidance, which applies from January 2025, GL notes an expectation of enhanced disclosures in relation to the treatment of unvested equity awards in connection with a change of control. Additionally, GL’s revised guidance emphasizes its “holistic approach to analyzing executive compensation programs” and provides clarification on several other compensation-related guidelines.

Perk disclosures are in the limelight with continued SEC scrutiny and increased concerns regarding

executive security. The most recent enforcement action was announced on December 17, 2024, for a company's failure to disclose \$979,269 worth of perks and personal benefits provided to its CEO, including certain expenses associated with the CEO's authorized use of chartered aircraft for personal purposes. Additionally, the recent homicide of UnitedHealthcare CEO Brian Thompson has put a spotlight on executive security and prompted many companies to reassess how they are protecting their top executives. Notwithstanding current SEC guidance, companies may revisit whether personal security measures that are mandated pursuant to a company's security protocols should be treated as a perquisite for compensation disclosure purposes.

Companies should note several considerations related to pay-versus-performance (PvP) disclosure in advance of the final transition year for PvP compliance. SEC staff issued 32 PvP-related compliance and disclosure interpretations (C&DIs) which, when taken as a whole, demonstrate that PvP basically operates as a technical and nuanced accounting standard. In addition to the C&DIs, SEC staff also issued 27 comment letters (so far) that indicate they are actively reviewing PvP disclosures. With the amount of SEC guidance available continuing to grow and the number of PvP disclosure reference points increasing each year, investors who have been taking a wait-and-see approach until they obtain more data may soon have enough data to form policy positions, with five years of historical disclosure becoming available as 2025 proxies are filed.

[Alessandra Murata](#)
Partner
Palo Alto

[Brad Goldberg](#)
Partner
New York

[Cara Buchicchio](#)
Associate
New York

[Janice Chan](#)
Resource Attorney
New York