Key Takeaways

Proxy Season Recap: Scrutinizing 2024 to Improve 2025

At our Comp Talk for Public Companies session on August 28, 2024 – **Proxy Season Recap: Scrutinizing 2024 to Improve 2025** – Cooley partners Michael Bergmann, Sarah Sellers and Ali Murata discussed recent trends in compensation-related disclosure, voting results, and other lessons learned from the 2024 proxy season. Cooley associate Megan Drill has summarized some of the session's key takeaways below.

Support for say-on-pay proposals has remained relatively stable compared to 2023, with slight increases for Russell 3000 and S&P 500 companies. While 2024 saw less opposition from ISS, problematic pay practices continue to carry significant weight in say-on-pay evaluations – and may result in adverse vote recommendations from ISS and Glass Lewis. The panelists highlighted severance where it is unclear that the separation was an involuntary termination of service, long- and short-term compensation with a single performance metric, and continued Securities and Exchange Commission (SEC) scrutiny of perquisites disclosure (which also may implicate related-party transaction disclosure). Problematic pay practices may result in negative recommendations from ISS and Glass Lewis for multiple say-on-pay cycles.

Companies should note that many say-on-pay failures follow a strong passing vote, and best practices include a stockholder outreach program that is not limited to peak proxy season. Environmental, social and governance (ESG) metrics in compensation programs have attracted particular stockholder scrutiny, and so ESG experts should be involved in the stockholder engagement program as appropriate.

Stockholder proposals show ESG on the decline, increased support for governance and an array of changes for compensation proposals. Stockholder proposals increased overall for 2024. With respect to ESG proposals, average support for environmental and social continues to decline, and the number of anti-ESG proposals continues to rise, though support for these anti-ESG proposals continues to fall. Support for governance proposals in 2024 increased to 36% from 29% in 2023. The number of severance proposals decreased from 2023, while clawback proposals have increased, and a significant number of proposals covered director pay. Additionally, support for severance and clawback proposals was lower than in 2023. To prepare for stockholder requests, make sure your team is aligned on process, reach out to your advisers immediately in the event of a request, engage with major stockholders, and monitor and evaluate your governance practices, board composition, and board effectiveness and accountability.

Russell 3000 equity plan proposals received slightly higher levels of support despite more ISS adverse vote recommendations. Companies should note that it is much more difficult for an equity plan proposal to pass if advisory firms are recommending against the proposal. While the vast majority of equity plan proposals do pass, the panelists emphasized that this is because most proposals are designed to receive a favorable recommendation and pass, a process that requires significant effort and can involve making concessions on key plan provisions. Companies should work closely with their advisers on carefully crafting equity plan proposals.

There were no significant pay-versus-performance developments. 2024 was the second year public companies were required to provide disclosures under Item 402(v) of Regulation S-K showing the relationship between "compensation actually paid" to executives and the company's financial performance. Consistent with 2023, preparing the disclosures involved substantial efforts, but the resulting disclosures do not seem to have had any notable impact on say-on-pay proposal outcomes. Most companies used the same company-selected measure, the same peer group or index for total shareholder return (TSR) comparisons, and the same number of important financial metrics as in 2023. The pace of SEC comment letters seems to have slowed for now.

Most S&P 500 companies have adopted expanded clawback policies. There is no one-size-fits-all approach to clawback policies, and companies should continue to evaluate whether their clawback policy (or policies) is appropriate or needs to be revisited.

Director compensation remains relatively stable, but directors are held accountable for an expanding list of topics. Director pay has remained fairly stable with some modest increases. The panelists highlighted that process and disclosure are key components in connection with director compensation. Given the growing complexity of the director compensation landscape, it is crucial for companies to regularly reevaluate and closely monitor their director compensation programs and ensure that a rigorous process for setting director compensation is in place. Companies also should consider enhanced proxy disclosure, and monitor director pay against any director compensation limits. Some common issues impacting director elections include a classified board, board diversity, board oversight of environmental and social matters, overboarding, and responsiveness.

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