

The Compensation Committee Agenda: Focusing on the Fall

A Compensation Committee Series Webinar

Presented by NACD and Pearl Meyer

August 8, 2023

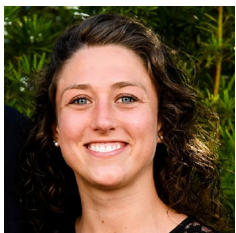
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Housekeeping



- Submit a question and receive your answer directly from the presenters, either during today's webinar or as a follow-up. You will also be opted-in to receive future executive compensation thought leadership from Pearl Meyer.
- Presentation slides are available today at www.pearlmeyster.com/four-for-fall and within the webinar console.
- The replay will be available early next week at www.nacdonline.org/webinars and www.pearlmeyster.com/four-for-fall.

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Agenda: Four for the Fall



1. Rethinking the approach to the annual compensation committee calendar
2. Turning the corner with non-financial metrics
3. Examining your compensation philosophy in the context of new regulations
4. Evaluating your management team's effectiveness and leadership in a “new normal” work culture

Rethinking the Compensation Committee Calendar



- Traditionally, the compensation committee's calendar focused predominantly on executive compensation matters, aligned with the committee's charter
- More recently, the compensation committee has become involved in broader human capital topics, including leadership development, succession, D&I and pay equity
- The name of the committee is often changed to reflect its broader remit, and the charter has been amended to add new responsibilities
- As committees reshape their annual calendars to include broader human capital topics, one potential pitfall is to relegate those new items to one meeting per year

Rethinking the Compensation Committee Calendar



- The committee's broader responsibilities can be included at each meeting
- As is the approach with compensation, there should be a build to year-end decisions
- At each meeting, allow time for an update on important human capital topics
- Additional agenda items requires greater efficiency at meetings - consider greater use of pre-reads with discussion only

Annual Compensation and Leadership Committee Calendar (Illustrative)



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Turning the Corner: Non-Financial Metrics Mature



- We can't dispute the merits of non-financial metrics as tools to support the evolution and long-term strategy of an organization
- However, these metrics must be specific, measurable, and based on milestones that promote achievement of a long-range business goal (e.g., transformation, expansion, workforce development, etc.)
- The key is narrowing the field: what specifically can have the most impact for your company in three, five, ten years or more?
- If these metrics belong in the executive incentive plan, are the milestones within management's purview?

Narrow the View on What Matters Most: Case Study



- A leading waste management company has implemented an aggressive, multiyear sustainability scorecard that includes various factors: workplace safety, talent management, giving back to the communities in which they operate, and taking a lead on reducing climate impact. The scorecard reflects a baseline measure for each of the goals, which are tracked annually and expected to demonstrate ongoing progress toward aggressive, long-term goals for 2030.
- Taking a step further, the board has selected three key metrics from the scorecard to factor directly into the executive compensation plan. Progress toward these goals can be accurately measured over time—a critical point for any effective incentive plan. Further, they are directly tied to the business strategy, are in line with investors’ expectations, can be influenced by the executive team, and are consistent with the practices of the company’s peer group.



The New Regulatory Landscape



Pay vs. Performance (PvP)

Long-delayed implementation of Dodd-Frank pay vs. performance provision

- 3-yr disclosure phases to 5-yr disclosure over time
- Compensation Actually Paid (CAP) disclosure
- Total Shareholder Return compared to “peers”
- Company net income plus 1 additional financial metric

Clawback Policies

Clawback policies that comply with specified SEC and Exchange requirements must be in place by 12/1/23

- Mandatory clawback of incentive payments for “Big R” and “little r” restatements
- 3-year lookback applies to current and former executives
- Misconduct not required and can be dropped for a compliant policy (but many may opt to retain)

Rule 10b5-1 Trading Plans

The final SEC Rule 10b5-1 trading plan rules were effective on April 1, 2023

- 90-day lag between adoption and first trade
- No “overlapping” orders
- Option grant timing

Expanding Pay Transparency Laws

Currently covers approx. 25% of US employees

- Implementation has been at the state/municipality level
- Requirements and penalties vary by jurisdiction

Potential Non-Compete Ban

The FTC issued notice of proposed rulemaking to ban non-competes in January 2023

- The vote on the final version is expected in April of 2024
- In June of 2023, NY passed non-competes legislation banning almost all non-competes in the state
- NY joins many other states that have already have a full or partial ban on non-competes

Regulatory Considerations for Committees



What	So What	Now What
PvP Disclosure	<ul style="list-style-type: none"> Many companies taking a “compliance issue” approach First year of implementation was challenging, future years should be easier 	<ul style="list-style-type: none"> Will ISS or GL use/include CAP results in their SOP analyses? What analyses can help committees in compensation planning? E.g., can CAP “replace” realizable pay?
Clawbacks	<ul style="list-style-type: none"> Most companies need to revise existing clawbacks to be mandatory in the event of financial restatements 	<ul style="list-style-type: none"> SEC rule “requires” companies to include impact on stock price - how? How should companies address bad behavior and reputational harm clawbacks?
10b5-1 Plans	<ul style="list-style-type: none"> New restrictions make 10b5-1 plans less flexible for insiders and require more disclosure 	<ul style="list-style-type: none"> Companies that remove requirements for insiders to use 10b5-1 plans need to strengthen other safeguards
Transparency Laws	<ul style="list-style-type: none"> Most rules require pay range disclosure in job postings and/or require employers to provide info upon employee request 	<ul style="list-style-type: none"> As rules become more prevalent, should the company adopt a “universal” policy?
Non-Compete Ban	<ul style="list-style-type: none"> Proposed regulatory ban would be very expansive: non-compete, non-solicitation, garden leave, clawbacks for competing, etc. 	<ul style="list-style-type: none"> How many of the company’s current programs/practices would be impacted?

Management Team Effectiveness



- In the “new normal” work culture, how is your team doing?
 - Q2 survey data indicate 65% of executives surveyed believe they’ve found a good balance in work location policy that satisfies a majority (both executives and the workforce) *and* meets the organizations needs
 - 9% believe they need to be providing more flexibility
 - 26% believe they need to increase the in-office presence
- It is the rare exception not to be affected by this new work culture in some way
- Likely issues your management team has faced or is still facing:
 - Post-pandemic work context and fall-out
 - The great resignation, retention of top talent
 - Continued supply chain issues
 - Entry of “Generation Z” into the workforce
 - The heavy lift of building an inclusive, positive, winning work culture
- The best managers have seen the need to modify their leadership style and learn new skills to be highly effective in the current working world

Help Management Think About A New Leadership Approach



- What should they be thinking about now as leaders?
 - 24% of Q2 survey respondents say their leadership style has not changed at all as a result of remote work and 57% say it has only changed slightly
- Building connection and relationships across the organization in order to preserve and grow the culture, and retain the best performers
 - Creating the context to connect in a hybrid world
 - 24% of survey respondents say their organization has provided additional management training for executives
 - Noting that diverse cultures that are not inclusive don't reap the benefits of diversity
- Re-thinking work locations and structure
 - When and how teams get together
 - Structuring the time when they are together in the right way
 - Q2 survey shows 71% of the respondents have no specific requirements about how the day is structured when they meet in-office
- Addressing talent risk by understanding and acting on potential risks to the leadership talent bench
 - Retention plans
 - Development plans
 - Ensuring successors for the future
- Focusing on agility
 - A combination of processes and agile culture help withstand current and future pressures on the organization

Questions

Use the “Ask the Experts” box in your webinar console to submit a question for the presenters.

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December 12, 2023

And join us at NACD Summit on Sunday, October 8th between 1:30 pm and 5:00 pm for
the Strategic Compensation Committee Workshop

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