

Fall Executive Compensation Priorities

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As fall gets underway, executive compensation planning rises to the top of the priority list. Here are several priorities to consider:

1. Preparations for CEO pay ratio disclosures should be underway. We recommend that companies start planning proxy disclosures and how to manage the message to company employees.
2. Check equity plans and bonus plans to determine whether shareholder reapproval is necessary. Section 162(m) of the Internal Revenue Code (IRC) generally requires shareholder approval every five years for plans that authorize grants of “performance-based compensation.” If shareholder reapproval is necessary, start the process early. Institutional Shareholder Services Inc. (ISS) and other shareholder considerations make the process more time consuming than in the past. See our prior posts [Recommended Steps to Successful Equity Plan Approval, \(Part 1: Steps 1-8\)](#) and [\(Part 2: Steps 9-15\)](#); and [Proxy Reminders—Don’t Forget 162\(m\) Compliance!](#)
3. Review the performance metrics and targets used for 2017 annual and long-term grants to determine whether changes should be made for 2018 grants. ISS is scrutinizing performance goals for rigor.
4. Review peer groups and benchmarking for appropriate changes.
5. Now is the time for shareholder outreach. Plan outreach thoughtfully: who should attend, clear communication of important points, compliance with SEC rules, and implementation of shareholder input.
6. Consider whether to allow increased share withholding for taxes on equity awards. See our prior blog [Practical Considerations Relating to Share Withholding for Taxes](#), which outlines issues to be considered.
7. Nonqualified deferred compensation plans:
 - Review compliance with Section 409A of the IRC. Errors are significantly easier to correct if they are caught early.

- Ensure that “top hat” plans continue to be limited to a select group of management or highly compensated employees.

8. Review the annual bonus program to make sure the company has a clear annual bonus plan that addresses company discretion, when bonuses are paid, and employment requirements. A well-drafted bonus plan can minimize issues with bonus adjustments and terminating employees.

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