Investors Need Better Information About Exec Compensation

by Mark Van Clieaf

Restoring Investor Confidence Some companies still use only boilerplate disclosures about compensation policies in their proxy statements at a time when executive compensation and pay for performance is under increased examination.

With heightened scrutiny of executive compensation, investor relations officers, CFOs and Boards need to make sure proxy statements are not just boilerplate statements. To begin with, they need to ensure that what is disclosed about compensation policy in the proxy statement is consistent with what is recorded in the board minutes for the compensation committee. If this is not consistent, companies could be on their way to court.

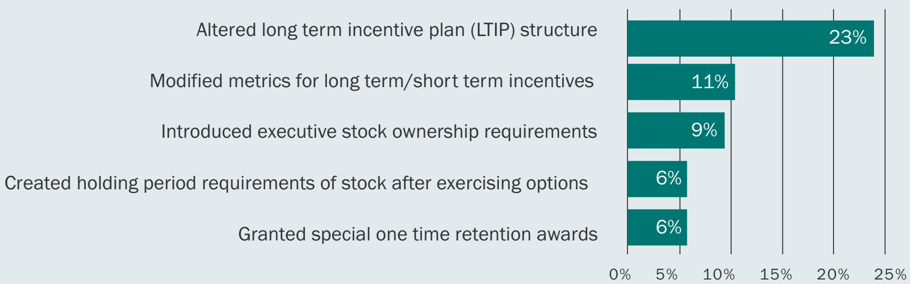
Large Companies Lead With More Disclosure

A number of the largest companies are taking the lead in offering more disclosure. Recent analysis by Equilar of the top 100 companies in the S&P 100 index shows that there is an increasing level of disclosure among these corporations. The accompanying chart shows the top five compensation policy changes for these companies from 2002 to 2003.

Equilar's data also suggests that 40% to 50% of the top 100 U.S. companies (based on the compensation committee letter disclosed in the proxy) made NO material change in their compensation policy disclosures in a year when this was in the spotlight.

For companies that showed no change in compensation, we can only wonder to what extent the information shared in their proxy statements is boilerplate disclosure versus a true reflection of how executive compensation decisions are made.

What Companies Are Changing in Compensation Policies



** Note: % totals more than 50% as some companies made more than one change*

Source: Equilar Inc.

An Invitation to Plaintiffs

E. Norman Veasey, Chief Justice of Delaware's Supreme Court, has all but issued an invitation to plaintiffs to file a lawsuit on this point of compensation policy disclosure.

In a recent panel discussion for *Harvard Business Review*, he said, "If directors claim to be independent by saying for example that they base decisions on some performance measure, and don't do so – or if they are disingenuous or dishonest about it – it seems to me that the courts in some circumstances could treat their behavior as a breach of fiduciary duty of good faith."

Make Pay for Performance Clear to Investors

If the top three levels of the organization have the same short-term metrics and the same short-term time horizon for planning and decision-making, then what value does the CEO add that is different from his or her direct reports? This situation calls into question whether the CEO is being held accountable for the right work or whether the CEO is being overpaid for the work he or she is doing.

To create true pay for performance that drives longer-term sustainable value and appropriate disclosure for shareholders, companies must align the following: accountability structure, performance metrics, time period for measurement, and compensation.

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