

## Memorandum

### 2025 Compensation Season: What Public Companies and Their Compensation Committees Should Keep in Mind Heading Into the New Year

January 6, 2025

As we head into 2025, the public company compensation disclosure and decision-making process landscape looks much the same as it has in recent years, but there are new disclosure obligations, an evolving discussion on the analysis of executive perks, and updated proxy advisor policies to keep in mind. Further, with a new administration in Washington, 2025 is a year to watch for meaningful changes in regulatory approach to topics as varied as DEI, restrictive covenants, and employee incentive offerings.

#### Key Takeaways

- *Establish, maintain, and be prepared to demonstrate a good process for setting compensation with an eye toward shareholder and regulatory scrutiny.*
- *Align pay for performance with an appropriate mix of time- and performance-vesting awards and consider the inclusion of performance metrics that assess relative performance against peers.*

#### New Equity Grant Practices Disclosure

Item 402(x) under Regulation S-K adds [new narrative and tabular disclosure requirements](#) regarding stock options, stock appreciation rights (SARs) and similar instruments granted in close proximity to the release of material non-public information (MNPI) and any policies and practices relating to such awards. The required disclosure under Item 402(x) is effective for the first filing that covers the first full fiscal year beginning on or after April 1, 2023 (or October 1, 2023 for smaller reporting companies). Item 402(x) does not apply to restricted stock or restricted stock unit awards. As such, companies that do not grant or have policies regarding options, SARs or similar instruments will not be required to include this new disclosure, although it may be helpful to affirmatively disclose that no such policy exists.

Companies that grant options, SARs or similar instruments are required to include narrative disclosure with respect to: (1) how the board (or compensation committee) determines when to grant such awards and any policies and practices related to that timing in relation to the disclosure of MNPI; (2) whether the company has timed MNPI disclosure for purposes of affecting the value of executive compensation; and (3) whether and how

the board or compensation committee takes MNPI into account when determining the timing and terms of awards. In addition, Item 402(x) requires tabular disclosure of any stock options, SARs or similar instruments granted to named executive officers (NEOs) during the period that begins four business days prior to, and ends one business day following, the filing of a periodic or current report containing MNPI. This new disclosure needs iXBRL tagging.

## Proxy Advisory Voting Policy Updates

**Clawback Policies Must Cover Time-Vesting Awards to be Viewed as “Robust” by ISS.** While Dodd-Frank and stock exchange listing standards only require issuers to adopt clawback policies covering certain performance-based compensation, clawback policies that do not cover time-vesting equity awards will not be viewed as “robust” by ISS, according to a [FAQ update](#). Clawback policies that cover both time- and performance-vesting awards have historically earned points under ISS’ Equity Plan Scorecard (EPSC), while those that did not had a neutral impact. This update may signal that the failure to maintain a “robust” clawback policy would negatively impact EPSC scores and say-on-pay recommendations in the future.

**ISS Updates FAQs and Continues to Favor the Use of Performance-Vesting Equity Awards.** On December 13, 2024, ISS [released](#) new FAQs on its U.S. executive compensation policies. Updates include revisions to realizable pay computations, evaluation of performance metrics, and changes to in-progress incentive programs. Most significantly, ISS has introduced new adaptations to its qualitative review of performance-vesting equity (with respect to both design and disclosure, including the disclosure of forward-looking goals) that can impact say-on-pay recommendations, particularly for companies with qualitative pay-for-performance disconnects. As previewed by ISS in November 2024, its 2025 voting policies will continue to favor a pay mix weighted toward performance-vesting awards over time-vesting awards. A potential policy update remains under consideration for 2026 (or later) regarding the evaluation of equity pay mix for regular-cycle time-vesting awards. No substantial changes were made by ISS to its EPSC or U.S. equity compensation plan FAQs for this year’s season.

**Glass Lewis Emphasizes the Importance of Clear Disclosure in the Exercise of Discretion for the Treatment of Unvested Awards Upon a Change-in-Control.** The updated say-on-pay voting guidelines in Glass Lewis’ [2025 Benchmark Voting Guidelines](#) state that, with respect to change-in-control provisions that allow compensation committee discretion over the treatment of unvested awards, Glass Lewis expects companies to provide clear disclosure regarding the rationale for the committee’s decision should a change in control occur.

**Evaluation of Executive Compensation Programs Remains Case-by-Case for Glass Lewis.** Glass Lewis’ updated say-on-pay voting guidelines emphasize that Glass Lewis reviews all factors relating to executive compensation on a case-by-case basis. Except for egregious decisions and practices, Glass Lewis indicates that no single factor will lead to an unfavorable say-on-pay recommendation. The updated guidelines add adjustments to performance results that lead to problematic pay practices as a negative factor, whereas post-vesting holding periods on equity awards are a new positive factor. The updated guidelines also note that smaller reporting

companies subject to scaled disclosure requirements should ensure that their proxy disclosures contain sufficient information to support informed shareholder voting.

## Other Key Reminders

**Focus on Compensation Committee Process When Setting Compensation.** Good process in the boardroom with an eye toward withstanding shareholder and regulatory scrutiny is critical. When setting compensation, be mindful of the independence of those making compensation decisions. Compensation committee members should exercise their duty of care and make sure they are fully informed and understand the terms of compensation arrangements. Independent compensation consultants and outside counsel should be engaged to provide robust peer data on award quantum and design and to help prepare accurate and complete disclosure to shareholders. Compensation benchmarking disclosures continue to be subject to heightened scrutiny.

**Demonstrate Responsiveness to Low Say-on-Pay Support.** Companies that received low say-on-pay support (*i.e.*, less than 80%) in the most recent say-on-pay vote should focus on including fulsome disclosure of shareholder outreach efforts, shareholder feedback received, and changes made to the executive compensation program in response to such feedback. Inadequate responsiveness may result in negative voting recommendations against the compensation committee members and, in exceptional cases, the full board.

**Ensure Compliance with Pay Versus Performance Disclosure Rules.** Review Pay Versus Performance disclosure to ensure compliance with disclosure requirements. Recurring compliance issues identified by the Securities and Exchange Commission (SEC) in 2023 and 2024 comment letters and 2023 [CD&Is](#) include: (1) failure to include footnote disclosure of all adjustments to determine compensation actually paid (CAP); (2) mistakes or lack of clarity in CAP calculations; (3) failure to describe how a non-GAAP measure used as the Company-Selected Measure is calculated from audited financial statements; (4) use of the wrong index for peer group total shareholder return (TSR); (5) use of a net income amount other than the GAAP net income amount presented in the audited financials; and (6) failure to iXBRL tag the disclosure.

**Confirm Whether a Say-on-Pay Frequency Vote Is Required This Year.** Confirm whether a say-on-pay frequency proposal is required in this year's proxy. Public companies are generally required to hold a non-binding, advisory say-on-pay frequency vote at least every six years, requesting stockholder advice as to whether say-on-pay votes should be held annually, biennially, or triennially.

**Prepare for the 2027 Expansion of “Covered Employees” Under IRC Section 162(m).** Beginning with the first taxable year following December 31, 2026, the definition of “covered employees” subject to the \$1 million compensation deduction limit under Section 162(m) of the Internal Revenue Code, as amended by the [American Rescue Plan Act of 2021](#), will include the five highest compensated employees (not limited to executive officers) in addition to those currently required to be covered employees (*i.e.*, current and former NEOs). These five additional employees will not be subject to the “*once a covered employee, always a covered employee*” rule.

**Be Aware of Upcoming Changes in Accounting Rules.** The Financial Accounting Standards Board (FASB) finalized its [updated accounting standard](#) regarding expense disaggregation (requiring public companies to break out certain expense line items in their financial statements, including employee compensation expenses), and it is set to take effect in 2027. The change is anticipated to impact the tracking and reporting of employee compensation.

**Check Compensation-Related Exhibit Links.** The SEC posted a [reminder](#) in June 2024 for companies to check for, and fix, broken links in existing EDGAR filings, and to ensure that links are working properly before submitting filings with EDGAR.

**Consider Personal Security Arrangements.** Recent events have reinvigorated the conversation around personal security for executives and prompted a call to the SEC and proxy advisory firms to re-evaluate their positions on personal security expenditures and related disclosure. While companies and executives often view security outside the workplace as necessary to an executive's ability to do the executive's job, the SEC has expressly indicated security is not considered "integrally and directly" related to an executive's position where security is provided at a personal residence or during personal travel, and ISS has often questioned the costs of personal security arrangements, claiming that such costs are "excessive." Enforcement actions by the SEC (including this [order](#) from December 2024) continue to emphasize the difference between expenses that serve a business purpose and expenses that are integrally and directly related to the performance of an executive's duties. The discussion also extends to tax policy and the implications for assessment of fringe benefits under Section 132 of the Internal Revenue Code. Increased consideration in the board room of personal security needs may see more companies providing security even if it gives rise to disclosure and should prompt a renewed look at what is in fact required to do the job of a public company executive in today's political climate.

**Monitor Executive Equity Holdings for HSR Compliance.** Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), acquisitions of company voting securities by the company's executive officers and directors (including routine acquisitions under compensation plans) that result in the person owning securities valued in excess of certain thresholds are subject to filing obligations and waiting periods before executing the intended acquisition. Missing these filing obligations can result in meaningful monetary penalties. The initial filing threshold was \$119.5 million for 2024 but will be subject to an annual adjustment in early 2025.

### What to Watch for in the New Administration

- **DEI Evolution.** *Litigation targeting DEI programs is likely to increase with the new administration. Certain companies have preemptively scaled back their DEI initiatives, and there have been noticeable changes in DEI disclosure approach.*
- **Revival of Proposed Revisions to Form S-8 Registration Statements.** *The SEC may revive its 2020 proposed revisions to Form S-8 regarding equity awards to “platform workers,” allowing companies to more easily grant equity awards pursuant to a Form S-8 to workers providing bona fide services available through a company’s technology-based marketplace platform or system.*
- **Restrictive Covenants.** *The Federal Trade Commission (FTC) is currently pursuing an appeal to a Texas district court’s decision to block the FTC’s nationwide non-compete ban. The appeal is likely to be dropped under the Trump administration, which is expected to replace Lina Khan as Chair of the FTC.*
- **Crypto.** *An interest in crypto-based incentives may see a resurgence in a friendly regulatory environment.*
- **SEC Rulemaking.** *Anticipated new human capital management disclosure rules have already been delayed [on the SEC agenda](#) to October 2025 and are likely to be further stalled or set aside. Rules regulating to incentive-based compensation at financial institutions under Dodd-Frank are also unlikely to move forward.*

For further information regarding this publication, please contact one of the following authors:

NEW YORK CITY

---

**Gillian Emmett Moldowan**  
+1-212-455-7716  
[gillian.moldowan@stblaw.com](mailto:gillian.moldowan@stblaw.com)

**Jamin R. Koslowe**  
+1-212-455-3514  
[jkoslowe@stblaw.com](mailto:jkoslowe@stblaw.com)

**David E. Rubinsky**  
+1-212-455-2493  
[drubinsky@stblaw.com](mailto:drubinsky@stblaw.com)

**Ryan D. Stott**  
+1-212-455-6761  
[ryan.stott@stblaw.com](mailto:ryan.stott@stblaw.com)

**Gary Tashjian**  
+1-212-455-3162  
[gary.tashjian@stblaw.com](mailto:gary.tashjian@stblaw.com)

PALO ALTO

---

**Tristan Brown**  
+1-650-251-5140  
[tbrown@stblaw.com](mailto:tbrown@stblaw.com)

**Harry N. Hudesman**  
+1-650-251-5264  
[harry.hudesman@stblaw.com](mailto:harry.hudesman@stblaw.com)

HOUSTON

---

**Kristy L. Fields**  
+1-713-423-8597  
[kristy.fields@stblaw.com](mailto:kristy.fields@stblaw.com)

LOS ANGELES

---

**Courtney A. Thomson**  
+1-310-407-6921  
[courtney.thomson@stblaw.com](mailto:courtney.thomson@stblaw.com)

---

*The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, [www.simpsonthacher.com](http://www.simpsonthacher.com).*