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The Corporate & Securities Law Advisor

VOLUME 40, NUMBER 3, MARCH 2026

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EXECUTIVE PAY

Public Companies and Their Compensation Committees Should Keep in Mind

By Gillian Emmett Moldowan, David Rubinsky, Gregory Grogan, Jana Hymowitz, Gary Tashjian, Matthew Behrens, and Courtney Thomson

As we head into 2026, meaningful updates to proxy advisor firm pay-for-performance methodologies are top of mind. Further, 2026 is a year to watch for Securities and Exchange Commission (SEC) rulemaking that could streamline (or even entirely revamp) the executive compensation disclosure rules.

Proxy Advisory Voting Policy Updates

Glass Lewis and ISS Extend Quantitative Pay-for-Performance Evaluation Timelines

In August and November 2025, respectively, Glass Lewis announced a comprehensive overhaul of its pay-for-performance methodology (effective for the 2026 proxy season) and ISS published its updated benchmark policy guidelines for the 2026 proxy season.

According to these updates, Glass Lewis and ISS will now consider long-term alignment over a five-year period in their respective quantitative pay-for-performance screens, instead of a three-year period. ISS will also review the pay multiple of a Chief Executive Officer (CEO) versus the peer group median over both one-year and three-year periods, as opposed to only the most recent one-year period. These expanded timelines are intended to better

reflect sustained performance trends and reduce the impact of one-time events and short-term market movements.

Glass Lewis's Updated Pay-for-Performance Methodology

Glass Lewis's updated pay-for-performance methodology replaces the prior letter grade system with a multi-factor scoring model designed to provide greater comparability and transparency. Under the revised framework, Glass Lewis evaluates CEO and other named executive officer (NEO) pay alignment using multiple quantitative tests measured over the expanded five-year lookback period described above.

These tests compare executive pay to company performance using peer groups constructed by Glass Lewis based on broad industry and market criteria, rather than those selected by the company. In addition, even when a company achieves a satisfactory score on these quantitative tests, the presence of structural or design concerns (for example, one-time awards, short vesting periods, insufficient disclosure of performance goals) may reduce the company's overall pay-for-performance score.

ISS Increases Flexibility in Evaluation of Equity Pay Mix for Long-Term Time-Vesting Awards

ISS's updated benchmarking policy guidelines introduce some flexibility in its qualitative pay-for-performance review by recognizing time-based equity awards with extended vesting or meaningful post-vesting holding requirements as supportive of long-term alignment. Under ISS's 2026 benchmarking policy, time-based awards can constitute a majority, or even all, of an executive's equity pay mix

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if they are sufficiently long-term and aligned with shareholder interests.

This represents a shift from prior years, when heavy reliance on time-vesting awards was more likely to draw concern absent strong performance-based elements in the overall compensation mix. ISS also clarified that it may consider realized pay outcomes in addition to granted and realizable pay, which would allow ISS to evaluate how incentive program structures ultimately function over time.

ISS Revises Policy on Problematic Non-Employee Director Compensation

ISS's updated benchmarking policy guidelines expand the circumstances in which ISS may issue recommendations "against" members of a compensation committee (or any other committee responsible for approving director pay). Under its revised policy, ISS may identify a "pattern" of problematic director pay if excessive or atypical non-employee director compensation occurs for two or more consecutive or non-consecutive years.

ISS also may issue an adverse recommendation in the first year if a company awards director compensation that is egregiously high or inappropriate (for example, performance awards, retirement benefits, problematic perquisites).

SEC Guidance on Schedule 13D and 13G Filings for Institutional Investors May Have Chilling Effect on Investors' Engagement with Issuers; ISS Adapts with More Flexible Approach to Evaluating Companies' Demonstration of Responsiveness to Low Say-on-Pay Support

On February 11, 2025, SEC's Division of Corporate Finance (Staff) issued updated and new Compliance and Disclosure Interpretations addressing beneficial ownership reporting on Schedules 13D and 13G, respectively. These updates expand the nature and scope of activities that the Staff views as "influencing control of the issuer."

This guidance could deter otherwise passive investors from engaging with issuers on topics such as compensation so as not to risk becoming ineligible

to rely on Schedule 13G reporting and could require smaller social activist shareholders to become subject to Schedule 13D reporting. Due in part to the Staff's updated guidance, ISS's updated benchmarking policy guidelines adopt a more flexible standard for evaluating whether companies have been sufficiently responsive to low say-on-pay support (that is, below 70 percent).

ISS may consider a company's outreach efforts to be sufficiently responsive, even if the company's outreach efforts do not yield specific feedback, and will also evaluate a company's compensation actions taken in response to low say-on-pay support and its explanation of why those actions serve shareholders' long-term interests. Companies that received low say-on-pay support in their most recent say-on-pay vote should focus on including fulsome disclosure of shareholder outreach efforts, shareholder feedback received or not received, and changes made to the executive compensation program in response to such feedback.

Proposed SEC Rulemaking

On June 26, 2025, the SEC hosted a roundtable discussion on executive compensation disclosures with public company representatives, investors, and experts in connection with its first holistic assessment of the executive compensation disclosure rules in 20 years. A key piece of the discussion was focused on whether the benefits of certain disclosures are outweighed by the costs and burden of preparing those disclosures and if the current disclosure rules encourage overly lengthy and complex disclosures that obscure or go beyond information that is material to investors.

Responses to the SEC's solicitation of public comments on the executive compensation disclosure rules signal that upcoming rulemaking may address (1) streamlining and revamping the Summary Compensation Table and Compensation Discussion & Analysis disclosure, (2) updating the rules on perquisites disclosure (executive security arrangements in particular), and (3) improving the

Pay Versus Performance disclosure rules. Any rule-making could potentially be effective in time for the 2027 proxy season.

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 must exercise their duty of care and make sure they are fully informed and understand the terms of compensation arrangements.

Consideration should be given to engaging independent compensation consultants and outside counsel to provide robust peer data on award quantum and design and help prepare accurate and complete disclosure to shareholders. Delaware courts consistently have emphasized the importance of director independence and informed decision-making when compensation is challenged by plaintiffs.

Develop a Framework to Address the Impact of Tariffs on Performance Measurement

Proposed and potential tariffs may materially impact business performance in unpredictable ways, placing pressure on compensation committees to revisit existing performance metrics, which could in turn draw investor scrutiny. Developing a framework to assess continued applicability of performance metrics of existing awards, and goal-setting for future awards, ultimately will benefit management and investors.

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 generally are required to hold a non-binding, advisory say-on-pay frequency vote at least every six years, requesting shareholder 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)

For the company's first taxable year beginning after 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 (IRC), 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 (that is, current and former NEOs).

These five additional employees are not subject to the "once a covered employee, always a covered employee" rule. As a result, companies may want to consider whether significant compensation awards can be paid in 2026 rather than 2027.

Personal Security Arrangements

Personal security for executives continues to be a top-of-mind topic, and was a key discussion topic at the SEC's June 2025 roundtable discussion where panelists encouraged the SEC to reconsider its interpretation of bona fide personal security expenses as a perquisite, highlighting the tension between real-world risk management and the current framework for perquisites disclosure under Item 402 of Regulation S-K.

While companies often view security (including outside of the traditional workplace) as necessary to an executive's ability to do the executive's job and something that should not be considered a perquisite, the SEC has previously 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.

The general consensus is that this guidance is outdated and that new guidance in the near-term that revisits this position would be welcome. Despite this market perspective, treating security

as a perquisite has real world impact: 13 of the 40 S&P 500 companies that received negative ISS recommendations in the first half of 2025 were cited

as providing excessive security perquisites to their executives. Revised SEC perspective on this topic would be welcome.
