Scope of Executive Compensation & SEC Disclosure Rules

American Benefits Council
Executive Compensation Briefing Webinar Series
Sept. 22, 2014
About Our Panel

- Lynn Dudley of the American Benefits Council
- Erik Lundgren of Winston & Strawn
- Mark Poerio of Paul Hastings
- Brigen Winters of Groom Law Group
Washington Update

- Legislative Developments
  - Camp tax reform draft proposals
  - Potential revenue raisers?

- Regulatory Developments
  - SEC – Pay Ratio, Pay for Performance, Hedging, Clawback
  - Treasury – 162(m)(6), 409A, 457(f)

- IRS 409A Audit Program
What is Executive Compensation?

- Objectives
- Different types of compensation
- Performance-based pay
- Nonqualified deferred compensation
- SEC disclosure rules
## Historical Perspective

<table>
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<tr>
<th>Decade</th>
<th>Development</th>
<th>Securities</th>
<th>Governance</th>
<th>Tax</th>
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<td>1980s</td>
<td>Downturns and Abuses</td>
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<td>1990s</td>
<td>Bubbles in Business / Pay</td>
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<td>2000s</td>
<td>Burst and Governance</td>
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<td>2010s</td>
<td>Accountability</td>
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In-House Perspective

- Primary 2014 Concerns
  - Shareholders
  - Proxy advisors
  - Board members
- “New” Best Practices
- Expectations to bear in mind for 2015
Components of Executive Comp.

- SEC 2006 Overhaul of Disclosure Rules: “All means all”
- SEC Summary Comp. Table (WHAT and HOW MUCH)

<table>
<thead>
<tr>
<th>Name and Position</th>
<th>Year</th>
<th>Salary ($)</th>
<th>Bonus ($)</th>
<th>Stock Awards ($)</th>
<th>Option Awards ($)</th>
<th>Non-Equity Incentive Plan Comp.</th>
<th>Change in [NQ] ($)</th>
<th>All Other ($)</th>
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(h) Change in Pension Value and Nonqualified Deferred Compensation Earnings

- Compensation Discussion & Analysis (WHY)
Performance-Based Pay

- Meaning and Alternative Structures
  - Cash
  - Stock Awards
- Reasons for Increased Use
  - Shareholders and Proxy Advisors
  - Code §162(m) - discussion
Non-Qualified Plans

- Wide Variety
  - Common Names: SERPs, Deferred Compensation, Phantom Stock.
  - Defined Benefit or Defined Contribution . . . and 409A
- Differences from Tax-qualified Plans
- ERISA’s Top Hat Exemption, and Its Importance
  - Funding – General Assets vs. Rabbi Trusts
The Securities Act of 1934

DIRECTOR COMPENSATION

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<tr>
<th>Name</th>
<th>Fees Earned or paid in Cash ($)</th>
<th>Stock Awards ($)</th>
<th>Option Awards ($)</th>
<th>Non-Equity Incentive Plan Compensation</th>
<th>Changes in ...</th>
<th>All Other Compensation ($)</th>
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Other Issues

- Litigation re: executive compensation
- SEC enforcement efforts
- International developments
Conclusion

- Questions?

- Webinar #2 – Stock Awards
  Monday, Oct. 6 @ 2 p.m. ET