

Talking to Tapestry's Compensation Committee Leadership Network

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Davis Polk partner Ed FitzGerald and I spoke in December with Tapestry's Compensation Committee Leadership Network (CCLN) on forthcoming SEC executive compensation rules, as summarized in this [Tapestry Viewpoints](#). The CCLN brings together a select group of compensation committee chairs from prominent companies to discuss ways to improve the performance of their companies and communicate effectively with shareholders through their compensation committee work.

The discussion included the Dodd-Frank clawback provisions, which as enacted do not consider fault to be a trigger, unlike the most common clawback policies that have already been adopted by companies. The vast majority of those require some form of misconduct. Just as disturbing, the language in the rules does not provide for compensation committee discretion, which would present significant implementation challenges.

The pay for performance disclosure rules focus on compensation "actually paid" and do not define financial performance. At the moment, there is no market standard that companies have embraced regarding possible alternative disclosures of pay that may meet the requirements, such as realized or realizable pay, and establishing a single model will be challenging for the SEC.

We also discussed with the CCLN members the one rule that has been proposed: the disclosure of CEO and median employee pay ratio. Some CCLN members are already concerned that constituents such as the company's workforce will be highly sensitive about the amount of the median employee pay.

Another topic at the meeting included a discussion of the evolution of CD&A with Wendy Fried from Addison. CD&A has become more meaningful owing to investor focus on the disclosure for purposes of casting say-on-pay votes. CCLN members indicate that it is hard to please all the audiences equally well, since some want brief documents and others preferred more detailed reports about the decisions made by the committee, and some drafters are primarily concerned with minimizing compliance and litigation risks. CCLN members are also aware that, while the main focus is often on investors, employee reactions should also be considered.

Consistent messaging regarding the company has become key, and investor relations may even become involved in CD&A. It may take six months or more to complete the section. Compensation committee members are participating earlier and at a deeper level.

The members also addressed CEO succession planning with Jane Stevenson from Korn Ferry. Succession planning can start with a discussion of future strategy and consideration of candidates who are suitable to lead the future of the company. There is a need to develop a deep bench by putting executives in situations that allow them to broaden their skills and to give them opportunities such as board-buddy opportunities, where senior executives can get together with directors regularly.

More information about the CCLN can be found [here](#).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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