

Recent Developments in Executive Compensation Litigation

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In the current environment and in the wake of Dodd-Frank mandated rules requiring shareholder advisory votes on executive compensation, shareholder-plaintiffs have more aggressively challenged executive compensation decisions. In recent months, an active plaintiffs' bar has filed a series of cases, which generally fall into three broad categories: (1) "say-on-pay" litigation, (2) litigation relating to annual proxy disclosure, particularly equity compensation plan and say-on-pay proposals; and (3) litigation relating to Section 162(m) of the Internal Revenue Code. While most of these challenges have failed on substantive or procedural grounds or both, some have been more successful, and the plaintiffs' strategies continue to evolve. Notably, even unsuccessful claims can result in costly disruptions and/or reputational harm, especially where injunctions against annual shareholder meetings are threatened. This memorandum presents an overview of the legal standards generally applicable to executive compensation litigation, describes select recent cases and suggests a number of ways that companies may be able to minimize the risk of being subject to these claims or improve the chances of more efficiently rebuffing claims.

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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