

SEC Division of Corporation Finance Chief on Rule Changes that Could Improve Executive Compensation Disclosure

November 19, 2015 | Client Update | 2-minute read

In a [speech](#) focused on executive compensation disclosure, Keith Higgins raised a number of possible rule changes that he believes could make executive compensation more useful to investors. In light of the fact that the Commission recently issued a concept release about the audit committee report, and the audit committee report is the model for the compensation committee report, he questioned whether the compensation committee report should be revised to require more insight into the information the committee used and the factors it considered in evaluating executive compensation.

Some might be inclined to point out that information about the thinking behind the decisions made by compensation committees is already available in CD&As, another area he covers in his speech. Item 402 contains a list of 22 items to be discussed, 15 of which were designed to serve as examples. Higgins wondered whether companies nonetheless believe that they must cover all of them, so that it has become a “checklist” approach. In light of say-on-pay adoption and the prevalence of executive summaries, Higgins states that perhaps those summaries more effectively convey what the CD&A was originally designed to elicit.

As for the tables, Higgins notes the arbitrary timing difference in when cash and equity awards may be disclosed, and asks whether it is a “problem worth fixing.” While investors say that they want proxy statements to be less than half their current average length, they are also likely to be wary of eliminating required information. Higgins suggests possible alternatives, including providing the tables (other than the summary compensation table) in the 10-K, as exhibits that are only filed or posted on a company’s web site. As he indicated, there have been concerns raised about ensuring that disclosure controls and procedures and officer certifications would apply to website information if the SEC moves any mandated disclosure there.

He also suggests that companies are including too much information in compliance with the Item 10 requirement to “briefly” describe material features of an equity plan seeking shareholder approval, and questions whether the Commission should provide guidance or require a particular format that better summarizes the key features.

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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