

Facebook Settles Lawsuit Regarding Non-Employee Director Compensation

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Facebook has announced [its settlement](#) of a lawsuit filed in June 2014, alleging that its board of directors breached their fiduciary duties and unjustly enriched themselves and wasted corporate assets through the compensation paid to the non-employee directors. To date, we have discussed this case [here](#), [here](#) and [here](#).

As a refresher of the background facts, in 2013, Facebook's Compensation & Governance Committee recommended that the board approve non-employee director compensation that the plaintiff alleged in the complaint was higher than that of its peers.

The board's decision to approve the compensation of the non-employee directors was governed by the entire fairness review as a self-dealing transaction. After the filing of the lawsuit, Mark Zuckerberg, who controlled over 61% of the voting power, approved the compensation in a deposition and with an affidavit. Facebook argued that these actions were enough to ratify the compensation by stockholders and thereby shift the standard of review to the business judgment presumption. However, last October, the Delaware Court of Chancery held that Zuckerberg's informal ratification did not afford the interested board's decision the benefit of the business judgment rule.

Facebook settled the lawsuit in a settlement dated January 22, 2016. In exchange for a release of all related claims and their dismissal with prejudice, and without admitting any fault, wrongdoing or liability, Facebook agreed to the following:

- The board will amend the Compensation & Governance Committee charter to provide that the committee will be responsible for:
 - Conducting an annual review of all compensation, including cash and equity-based compensation, paid to non-employee directors;
 - Engaging in an independent compensation consultant to advise in connection with this review, including with respect to (x) the amount and type of compensation to be paid for the following year and (y) comparative data deemed appropriate by the consultant; and
 - Recommending to the board, on the basis of its review, whether to make any prospective changes payable to the non-employee directors;
- The board will annually review non-employee director compensation, including the recommendation from the Compensation & Governance Committee; and
- At its 2016 stockholders meeting, Facebook will include separate proposals for stockholder approval of the following items (with the non-employee directors abstaining from voting in their capacity as stockholders):
 - The 2013 non-employee director grants (which were the target of the lawsuit in the first instance); and
 - Facebook's non-employee director annual compensation program (equity and cash).

Please do not hesitate to reach out to your regular Davis Polk contact to review your own circumstances.

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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