ABC's in Drafting CD&A Disclosure (Part I of II)

Presentation for:
Executive Compensation Webinar Series
February 13, 2020

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  - No attorney-client relationship is created due to your attending this presentation or due to your receipt of program materials

About Anthony "Tony" Eppert

- Tony practices in the areas of executive compensation and employee benefits
- Before entering private practice, Tony:
  - Served as a judicial clerk to the Hon. Richard F. Suhrheinrich of the United States Court of Appeals for the Sixth Circuit
  - Obtained his LL.M. (Taxation) from New York University
  - Obtained his J.D. (Tax Concentration) from Michigan State University College of Law
    - Editor-in-Chief, Journal of Medicine and Law
    - President, Tax and Estate Planning Society

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Upcoming 2018 and 2019 Webinars

- 2020 webinars:
  - ABC's in Drafting Proxy Tabular Disclosure (Part II of II) (03/12/2020)
  - Compensation Design: How to Maximize Compensatory Deductions (04/09/2020)
  - Administrative Perspective on Granting Compensatory Equity: A Checklist of Action Items (05/14/2020)
  - Compensatory Ideas in a Partnership Structure (06/11/2020)
  - Public Companies and ESOPs: Check Yes or No (07/09/2020)
  - Compensation Committee Governance (08/13/2020)
  - Preparing for Proxy Season: Start Now (Annual Program) (09/10/2020)
  - How to Design Effective Total Shareholder Return Awards (10/08/2020)
  - Building a Compensatory Peer Group: A Step-by-Step Approach (11/12/2020)
  - Employment Taxes: The 101 Course (12/10/2020)

- Sign up here: https://www.huntonak.com/en/insights/executive-compensation-webinar-schedule.html

Our Compensation Practice – What Sets Us Apart

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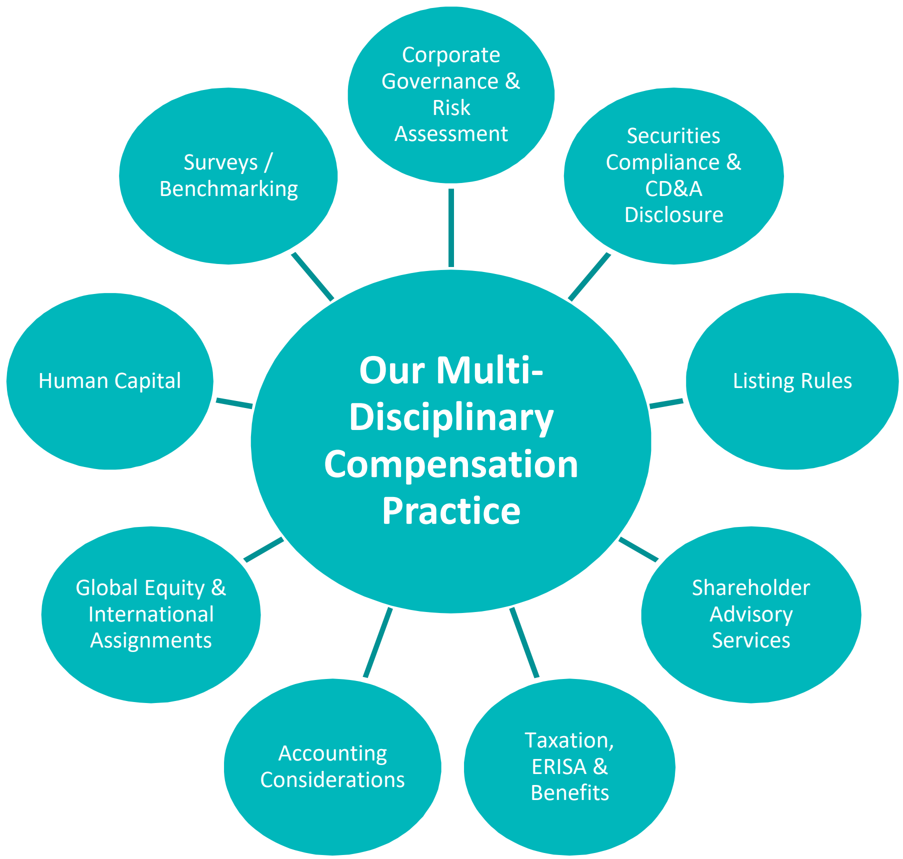
- Compensation issues are complex, especially for publicly-traded issuers, and involve substantive areas of:
  - Tax,
  - Securities,
  - Accounting,
  - Governance,
  - Surveys, and
  - Human resources

- Historically, compensation issues were addressed using multiple service providers, including:
  - Tax lawyers,
  - Securities/corporate lawyers,
  - Labor & employment lawyers,
  - Accountants, and
  - Survey consultants

Our Compensation Practice – What Sets Us Apart (cont.)

- The members of our Compensation Practice Group are multi-disciplinary within the various substantive areas of compensation. As multi-disciplinary practitioners, we take a holistic and full-service approach to compensation matters that considers all substantive areas of compensation



Our Compensation Practice – What Sets Us Apart (cont.)

- Our Compensation Practice Group provides a variety of multi-disciplinary services within the field of compensation, including:

Traditional Consulting Services

- Surveys
- Peer group analyses/benchmarking
- Assess competitive markets
- Pay-for-performance analyses
- Advise on say-on-pay issues
- Pay ratio
- 280G golden parachute mitigation

Corporate Governance

- Implement "best practices"
- Advise Compensation Committee
- Risk assessments
- Grant practices & delegations
- Clawback policies
- Stock ownership guidelines
- Dodd-Frank

Securities/Disclosure

- Section 16 issues & compliance
- 10b5-1 trading plans
- Compliance with listing rules
- CD&A disclosure and related optics
- Sarbanes Oxley compliance
- Perquisite design/related disclosure
- Shareholder advisory services
- Activist shareholders
- Form 4s, S-8s & Form 8-Ks
- Proxy disclosures

Design/Draft Plan

- Equity incentive plans
- Synthetic equity plans
- Long-term incentive plans
- Partnership profits interests
- Partnership blocker entities
- Executive contracts
- Severance arrangements
- Deferred compensation plans
- Change-in-control plans/bonuses
- Employee stock purchase plans
- Employee stock ownership plans

Traditional Compensation Planning

- Section 83
- Section 409A
- Section 280G golden parachutes
- Deductibility under Section 162(m)
- ERISA, 401(k), pension plans
- Fringe benefit plans/arrangements
- Deferred compensation & SERPs
- Employment taxes
- Health & welfare plans, 125 plans

International Tax Planning

- Internationally mobile employees
- Expatriate packages
- Secondment agreements
- Global equity plans
- Analysis of applicable treaties
- Recharge agreements
- Data privacy

Purpose of this Presentation

- The purpose of this presentation is to discuss drafting points with respect to the Compensation, Discussion and Analysis (the "CD&A") of an issuer's proxy statement

- To that end, this presentation covers:
  - Legal requirements for a typical CD&A disclosure;
  - Drafting pointers in order to comply with demands from institutional shareholder advisory services;
  - Overall best practices from a shareholder disclosure perspective and to court the say-on-pay vote; and
  - Examples

Background

- Item 402 of Regulation S-K was revised by the SEC in 2006
- Purpose of the revision was to require that issuers provide a “principles-based” discussion of their compensation programs, intended to highlight an issuer’s rationale for making compensatory actions and decisions

Disclosure Requirements of 402(b) of Reg S-K

- Item 402(b)(1) requires a discussion of all material elements of an issuer's compensation of its NEOs, including:
  - The objectives of the compensation program;
  - What the program is designed to award;
  - The compensatory elements;
  - Why the issuer pays each element;
  - How the issuer determines the amount for each element of pay;
  - How the compensatory elements and the issuer's decisions with respect to such fit within the issuer's overall compensation philosophy and objectives; and
  - Whether the issuer took into account the results of the recent say-on-pay vote, and if yes, how

Disclosure Requirements of 402(b) of Reg. S-K (cont.)

- Item 402(b)(2) provides examples of how to comply with the requirements of Item 402(b)(1), including:
  - What is the issuer’s policy with respect to allocating between long-term and short-term compensation;
  - What is the issuer’s policy with respect to allocating between cash and non-cash compensation, including a description of the issuer’s policy with respect to allocating between different forms of non-cash compensation;
  - With respect to long-term compensation, the issuer’s rationale for allocating compensation to different types of awards;
  - How the issuer made the determination of “when” awards should be granted;
  - What specific items of corporate performance are taken into account when the issuer sets compensation policies and makes compensation decisions;
  - How certain forms of compensation are structured and implemented to reflect the issuer’s performance, and whether the Compensation Committee retains any discretion;
  - How awards are structured to reflect an individual’s performance;
  - Whether clawback or recoupment policies exist, and if yes, how are such structured;
  - With respect to compensation that is materially altered, all factors and decisions made by the issuer in support of such change
  - [Continued on next slide]

Disclosure Requirements of 402(b) of Reg. S-K (cont.)

- [Continued from prior slide]
  - Whether wealth accumulation is considered by the issuer in making current compensation decisions;
  - Tax and accounting impact on the forms of compensation being disclosed;
  - Whether the issuer has any stock ownership policies or anti-hedging policies;
  - Whether the issuer engages in benchmarking, and if yes, then identify the peer group, the benchmark, and the component elements; and
  - The role of executive officers in setting compensation or engaging in its process

Certain Issues: Compensation Philosophy

- An issuer’s compensation philosophy is the starting point of every CD&A. Such includes:
  - Elements of compensation,
  - Weight of each element on compensation,
  - Target compensation levels,
  - Choice of equity vehicles,
  - Division of time-based v. performance-based compensation,
  - Use and composition of any peer group,
  - Benchmarking targets (if applicable), and
  - Link between pay and performance
    - Metrics used for short-term and long-term incentive opportunities,
    - Relation of such metrics to the issuer’s strategy and operating plan,
    - The rigor of the chosen performance metrics and relation to any payout, and
    - Actual achievement of performance metrics

Certain Issues: Year Disclosed

- An issuer is not required to discuss compensation (or performance levels) to be paid in the current year or in a future year
- Such disclosure is only required to the extent the compensation "awarded to, earned by, or paid to the" NEO is material to an investor's understanding of the compensation disclosed for the prior fiscal year
- However, there are instances where such disclosure could be a good practice. For example, the issuer might want to show that it acted on poor performance for the prior fiscal year (*e.g.*, adjust or freeze base salaries, reduce the amount of equity grants, change performance metrics, etc.)
  - Caution: that once an issuer begin making such disclosures, it will likely be expected by investors in future years

Certain Issues: Performance Targets

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- With respect to the reported fiscal year, performance metrics and target levels must be disclosed, and too, the issuer must disclose the extent to which the targets were achieved
- However, performance targets may be omitted if:
  - The performance targets are <u>not</u> material in the context of the issuer's compensation policy and decisions, or
  - If performance targets <u>are</u> a material element to the issuer's compensation policies or decisions, then the issuer may omit the target if the target involves confidential trade secrets AND their disclosure would result in "competitive harm" (a very high standard)
- Keep in mind that a distinction applies with respect to disclosing performance target levels for the current or future fiscal years
  - Most issuers omit disclosing performance target levels on the basis that such is not material to an investor's understanding of the prior fiscal year

Examples: Executive Summary

- An executive summary highlights key topics (*e.g.*, pay for performance, and pay alignment with performance of the issuer)
  - Goal is that shareholders will at least read the summary
  - Issuer should highlight any changes made to prior practices
  - Other topics to consider include:
    - Financials of the issuer relative to pay practices,
    - Compensation highlights,
    - Total shareholder return, and
    - Response to say-on-pay vote and shareholder outreach

- An executive summary highlights key topics (*e.g.*, pay for performance, and pay alignment with performance of the issuer)

- Examples to include with an executive summary are:
  - Financial and operational results for the issuer's last completed fiscal year, with a focused alignment between the issuer's performance and the pay of the NEOs;
  - Key actions taken with respect to the compensation of the issuer's NEOs for the last completed fiscal year;
  - A summary of any changes to the issuer's compensation governance, policies and practices, if any; and
  - The "What We Do" and "What We Don't Do" bullet or checklist

Examples: "What We Do" & "What We Don't Do"

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PAY PRACTICES

What We Do Have:	What We Don't Have:
• **Clawback policy** in addition to Sarbanes-Oxley requirements	• **Employment agreements***
• **Forfeiture provisions** which the Committee can utilize in the event of adverse risk outcomes to cancel all or part of outstanding, unvested stock awards	• **Excise tax gross-up payments** for change of control agreements entered into after 2008, and Comerica will not include this provision in future agreements
• **Carefully-considered risk management process**, including the use of compensation that vests over multiple time periods based on a variety of performance metrics	• **Modified single-trigger severance** for change of control agreements entered into after 2008, and Comerica will not include this provision in future agreements
• **Robust stock ownership guidelines** for senior executives and the Board of Directors. The CEO is expected to own 6X his salary, the President 4X and the other NEOs 3X; directors have a 5,000-share holding expectation	• **Repricing or replacing of underwater stock options** or SARs without shareholder approval
• **Post vesting holding requirement** for directors. Vested restricted stock units are settled in Comerica Common Stock on the first anniversary of the director's separation of service from the Board	• **Perquisites**, which were eliminated for executive officers in 2010
• **Minimum vesting requirement** for at least 95% of equity incentive plan awards	• **Pledging or hedging** shares by employees or directors is prohibited
• **Independent compensation consultant** who works solely for the Committee and performs no other work for Comerica • **Negative discretion** which the Committee can utilize in determining incentive funding or award determinations	• **Non-independent directors on the compensation committee**: the entire Committee meets SEC and NYSE independence requirements

Examples: Compensation Components

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Primary Compensation Elements for 2018

The table below sets forth the primary elements of our executive compensation programs. In 2017, the Compensation Committee decided to terminate the LTPA program, which concluded at the end of 2018.

Compensation Profile

2018 COMPENSATION FRAMEWORK: PRIMARY ELEMENTS

	Salary	Bonus	PSUs	Options	RSUs	LTPAs
Who receives	All named executives				All named executives except CEO	LTPA program terminated in 2018 No payout for final performance period (2016-2018)
When granted	Reviewed every 24 months	Annually in February or March for prior year	Generally annually in the first quarter of each year			
Form of delivery	Cash		Equity			
Type of performance	Short-term emphasis		Long-term emphasis			
Performance period	Ongoing	1 year	3 years + 1 year additional holding period	Generally 3-year vesting period		
How payout is determined	Committee judgment	Formulaic & committee judgment	Formulaic; committee verifies performance before payout	Formulaic; depends on stock price on exercise/vest date		
Most recent performance measures	N/A	EPS and Free Cash Flow (Corporate execs) Earnings and Free Cash Flow (Business execs)	GE TSR v. S&P 500	Stock price appreciation		
What is incentivized	**Attract and retain top talent**	**Deliver on annual investor framework**	**Outperform peers**	**Increase stock price**	**Balance against excessive risk taking**	

Examples: Performance Disclosure

(in $ millions, other than per share amounts)	Bonus Pool Performance Metrics		Threshold (50%)	Target (100%)	Maximum (150%)	Weighting	Result	Bonus Pool Funding
GE Corporate (Culp, Miller, Flannery and Holston)	Earnings Per Share*	$0.65	$1.00	$1.04	$1.07	50%	Missed	0% (Adjusted per below)
	Free Cash Flow*	$4,515	$6,000	$6,400	$7,000	50%	Missed	
Aviation (Joyce)	Earnings*	$6,163	$6,010	$6,130	$6,250	50%	Above Target	138%
	Free Cash Flow*	$4,230	$2,705	$2,905	$3,130	50%	Above Maximum	
Healthcare (Murphy)	Earnings*	$3,451	$3,220	$3,320	$3,420	50%	Above Maximum	150%
	Free Cash Flow*	$3,018	$2,360	$2,535	$2,685	50%	Above Maximum	

* Non-GAAP financial measures. For information on how these metrics are calculated, see "Explanation of Non-GAAP Financial Measures and Performance Metrics" on page 52.

Examples: Performance Disclosure (cont.)

2016 PSU Grants

2016 PSUs CANCELLED. PSUs typically have a three-year performance period and pay out in stock, based upon the achievement of certain performance metrics. In February 2019, the Compensation Committee determined that the company did not meet the total cash or the industrial profit margin targets for the PSUs, which were set in 2016 at the beginning of the three-year performance period. As a result, the awards were forfeited. The value forfeited by the named executives was $0.7 million, based on the closing price of GE stock of $10.04 on February 14, 2019, the date the committee made its determination.

PERFORMANCE GOAL[1]	Performance Period	Weighting		Threshold	Target	Percent Payout
Total cash generation[2]	2016-2018	50%	$57 billion	$70 billion	$85 billion	0%
Adjusted GE Industrial profit margin[3]	2018	50%	9%	15%	16%	0%
Relative TSR	2016-2018	+/- 25% adjustment				

Examples: Role of Consultant

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Role of the Compensation Committee:

The Committee is responsible for overseeing the development and administration of our compensation programs, is comprised of independent directors, and reviews and approves all aspects of our executive compensation programs.

To aid the Committee in satisfying its responsibilities, the Committee retained Frederic W. Cook & Co. Inc., ("FW Cook") in June of 2013 to act as its independent consultant. FW Cook reports directly to the Committee and performs no other work for Comerica. As part of its annual review of FW Cook in 2018, the Committee analyzed if hiring FW Cook would raise a conflict of interest. The Committee performed this analysis by taking into consideration the following factors:

- Any other services provided to Comerica by FW Cook
- The amount of fees FW Cook received from Comerica as a percentage of FW Cook's total revenue
- Policies and procedures FW Cook utilizes to prevent conflicts of interest
- Any business or personal relationship of the individual compensation advisor of FW Cook with any member of the Committee or an executive officer of Comerica
- Any Comerica stock owned by FW Cook or the Committee's individual advisor
- Any business or personal relationship of FW Cook with an executive officer of Comerica

With respect to the Committee's evaluation of FW Cook's independence, Comerica did not pay any fees to FW Cook in 2018 other than in connection with work performed for the Committee. During the analysis, FW's primary representative to the Committee indicated that fees paid annually to FW Cook by Comerica are less than 1% of FW Cook's annual consolidated total revenue. He also discussed with the Committee various policies developed by FW Cook to safeguard the independence of the compensation advice it provides; indicated that he has no personal or business relationship with Committee members or executive officers at Comerica; indicated that he is not aware of any personal or business relationship between Comerica's executive officers and FW Cook; and indicated that neither he nor his immediate family members own any Comerica shares. The Committee determined, based on its analysis of the above factors that the work of FW Cook and the individual compensation advisors employed by FW Cook as compensation consultants to the Committee has not presented any conflict of interest.

Examples: Role of Consultant (cont.)

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Role of the Independent Compensation Consultant:

- Attends Committee meetings
- Provides independent advice to the Committee on current trends and best practices in compensation design and program alternatives and advises on plans or practices that may improve effectiveness
- Furnishes the Committee with peer compensation data on the NEOs and non-employee directors to provide independent recommendation on compensation
- Reviews the Compensation Discussion and Analysis section of the proxy statement
- Evaluates the programs in light of regulatory expectations and provides feedback to the Committee
- Helps the Committee ensure programs align executives with shareholders' interests

The compensation consultant does not separately meet with the CEO or discuss with the CEO any aspect of his compensation.

The Committee may consult with its independent compensation consultant as described above; however, the Committee uses its own judgment in making final decisions regarding the compensation paid to our executive officers.

Examples: Benchmarking

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PEER GROUP AND BENCHMARKING

The Committee utilized the following peer group to evaluate and understand market pay levels and practices among similarly situated financial institutions. To determine the peer group, the top 50 U.S. financial institutions based on asset size were reviewed using a variety of financial metrics (assets, revenue, net income, and market capitalization), business models, geographic locations and competition for talent. The same peer group is used in making financial comparisons for purposes of investor presentations. FW Cook provides feedback on the construct of the peer group.

2018 Peer Group

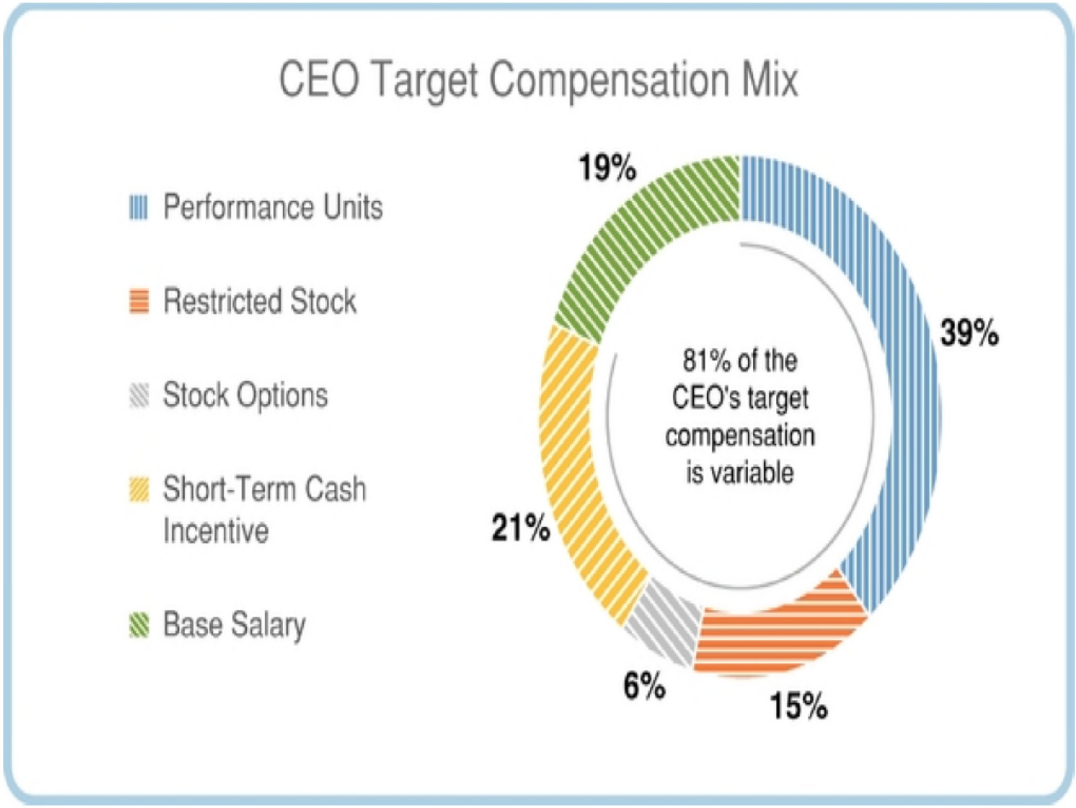
- BB&T Corporation
- BOK Financial Corp.
- Cullen/Frost Bankers Inc.
- Fifth Third Bancorp
- First Horizon National Corp.
- Huntington Bancshares Inc.
- KeyCorp
- M&T Bank Corp.
- Regions Financial Corp.
- SunTrust Banks, Inc.
- Zions Bancorporation

Examples: Pay Mix Allocation

PAY MIX ALLOCATION

Our pay mix allocation is heavily weighted towards variable compensation or "pay for performance." Placing more emphasis on pay for performance helps to incentivize and reward long-term value creation, which aligns with shareholder interests.

Our executives' total compensation is comprised of three primary elements: base salary, a short-term incentive and long-term incentives. The long-term incentives consist of stock options, RSUs and SELTPP units. The emphasis on variable compensation is illustrated below.



Examples: Perquisites Policy

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PERQUISITE POLICY

Effective June 30, 2010, Comerica eliminated all of its perquisite programs for executive officers. Additionally, Comerica has never allowed the personal use of corporate aircraft, except in the event of an emergency, in which case the executive is required to reimburse Comerica for the full incremental cost of such use.

Examples: Stock Ownership Guidelines

STOCK OWNERSHIP GUIDELINES

We have stock ownership guidelines that encourage senior officers, including the NEOs, to own a significant amount of Comerica stock. The stock ownership guidelines are a multiple of annual base salary. Senior officers have five years from the time they are named to a senior leadership position to achieve the targeted ownership levels. If, after five years, the individual does not meet the ownership guideline, he/she will be required to retain 50% of all after-tax shares from RSU vestings or stock option exercises.

Internal Grade Level	Salary Multiple
CEO	6X
President	4X
EVP (Level II)	3X
EVP (Level I)	2X
SVP	1X

Utilizing stock ownership guidelines helps to align leadership with shareholder interests and to reinforce focus on the long-term success of Comerica. For purposes of the stock ownership guidelines, stock ownership includes:

- Unvested shares of time-based RSAs or RSUs;
- All shares owned by the senior officer;
- Shares held in trust where the senior officer retains beneficial ownership; and
- Any shares accumulated through employee benefit plans, such as deemed investments in Comerica Common Stock under a deferred compensation plan.
- SELTPP shares are not counted towards ownership until they are vested and shares are distributed to the participants.

As of December 31, 2018, all active NEOs who have held their current title for at least five years have met their respective stock ownership guideline levels.

Examples: Clawback Policy

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CLAWBACK POLICIES

Comerica has the following clawback policies and provisions:

- **Recoupment policy** in response to the Dodd-Frank Wall Street Reform and Consumer Protection Act and shareholder feedback. The recoupment policy provides that in the event we are required to prepare an accounting restatement of our financial statements due to material noncompliance with any financial reporting requirement under the securities laws, the Board will require reimbursement or forfeiture of certain incentive-based compensation received by any current or former senior or executive officer during the three-year period preceding the date on which the accounting restatement is required. The clawback pertains to any excess income derived by a senior or executive officer based on materially inaccurate accounting statements.
- **Clawback provision of the Sarbanes Oxley Act of 2002**, which generally requires our Chief Executive Officer and Chief Financial Officer to reimburse us for any bonus or other incentive- or equity-based compensation and any profits on sales of Comerica stock that they receive within the 12-month period following the issuance of financial information if there is an accounting restatement because of material noncompliance, as a result of misconduct, with any financial reporting requirement under the federal securities laws.
- **Clawback provisions of our equity incentive plan**, which provide that the Committee has the express right to cancel an option, RSA or RSU grant if the Committee determines in good faith that the recipient has engaged in conduct harmful to Comerica, such as having: (i) committed a felony; (ii) committed fraud; (iii) embezzled; (iv) disclosed confidential information or trade secrets; (v) been terminated for cause; (vi) engaged in any activity in competition with our business or the business of any of our subsidiaries or affiliates; or (vii) engaged in conduct that adversely affected Comerica.
- **Forfeiture provisions** for our equity incentives to ensure they do not encourage excessive risk taking. The forfeiture provisions allow for the Committee to cancel all or a portion of any unvested awards (SELTPP units, stock options, RSUs or RSAs) if the participant fails to comply with Comerica policies or procedures, violates any law or regulations, engages in negligent or willful misconduct, engages in activity resulting in a significant or material Sarbanes-Oxley control deficiency or demonstrates poor risk management or lack of judgment in the discharge of Company duties, and such action demonstrates an inadequate sensitivity to the inherent risks of the participant's division and results in or is likely to result in a material impact (financial or reputational) to Comerica.

Don't Forget Next Month's Webinar

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- Title:
  - ABC's in Drafting Proxy Tabular Disclosure (Part II of II)
- When:
  - 10:00 am to 11:00 am Central
  - March 12, 2020