

New Compensatory Thought from ISS 2025 (an Annual Program)

Presentation for:

Executive Compensation Webinar Series
January 9, 2025

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- Questions during this presentation
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 - If time permits, your questions will be answered at the end of this presentation. And if there is insufficient time, the speaker will respond to you via e-mail after this presentation

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About Anthony “Tony” Eppert



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- 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

Upcoming 2025 Webinars

- 2025 webinars:
 - PubCo Considerations when Adopting a New Equity Incentive Plan (2/13/25)
 - Aggregator Entity – Design Choices – Profits Interest Awards (3/13/25)
 - Ideas to Increase the Life Expectancy of an Equity Plan’s Share Reserve (4/10/25)
 - Designing Change-in-Control Bonus Plans or Management Carveouts (5/8/25)
 - ABCs of Total Shareholder Return (TSRs) Awards (6/12/25)
 - Pros and Cons of Various Fringe Benefits to Offer Executives (7/10/25)
 - Anatomy of ISS (8/14/25)
 - Preparing for Proxy Season: Start Now (Annual Program) (9/11/25)
 - Non-Employee Director Compensation (10/9/25)
 - Pros, Cons and Contrasting Secular Trusts and Rabbi Trusts (11/13/25)
 - Year-End Review of Any Missed Executive Compensation Items (12/11/25)

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

Our Compensation Practice – What Sets Us Apart

- Compensation issues are complex, especially for publicly-traded companies, 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

2024 Proxy Season Recap

- Say-on-pay failure rates were the lowest in many years
- Shareholder support rates for say-on-pay was:
 - Approximately 90% for S&P 500 issuers
 - Approximately 98% for Russell 3000 issuers, with 94% of the issuers receiving more than 70% support
- Shareholder support for equity compensation plans was:
 - Approximately 92% for S&P 500 issuers
 - Approximately 88% for Russell 3000 issuers
- Issuers receive a FOR recommendation from ISS on their say-on-pay as follows:
 - 92% of S&P 500 issuers
 - 88% of Russell 3000 issuers

2024 Proxy Season Recap (cont.)

- Noteworthy is that an issuer with less than a 70% pass rate is expected by ISS to disclose in the next proxy:
 - Efforts that the Board took with respect to shareholder engagement,
 - The specific feedback the issuer received from dissenting shareholders, and
 - What actions or changes the issuer made to its pay programs and practices to address concerns of its shareholders

- ISS will recommend an Against vote on the issuer’s say-on-pay proposal if any of the following are present:
 - Significant misalignment between CEO pay and issuer performance;
 - Problematic pay practices exist such as excessive change-in-control pay; or
 - Board’s responsiveness to shareholders is poor

- And too, statistics support that an “Against” recommendation from ISS creates a drop in the pass rate by approximately 20% or more

Timing of Stock Option Awards

- For the 2025 proxy season, issuers with a fiscal year ending December 31st must provide tabular disclosure with respect to stock options and SARs if such award was granted to an NEO within the time frame of 4 business days before and 1 business day after the filing of Form 10-Q, Form 10-K or Form 8-K
- However, such tabular disclosure is only required if the foregoing Form 10-Q, Form 10-K or Form 8-K discloses material non-public information
- Such tabular disclosure must include:
 - The grant date,
 - The number of shares subject to the award,
 - The exercise price,
 - The grant date fair value of such award, and
 - Any percentage change in the closing stock price from one trading day prior to and one trading day following the disclosure of such material non-public information
- Narrative disclosure must also describe the issuer's policies and practices on the timing of stock option and SAR grants relative to material non-public information

ISS Changes

- ISS published its proxy voting policy updates for annual meetings to be held on or after February 1, 2025
 - Such was published by ISS on December 17, 2024
 - There are NO executive compensation U.S. policy changes
 - However, certain supporting policy documents had minor changes that will be addressed within this slide deck

ISS Changes (cont.)

- Some of the changes to the underlying policies include:
 - Effective February 1, 2025, proxy research reports for issuers who had two or more CEOs within the 3-year measurement period will NOT display realizable pay charts
 - A proposed benchmark policy change, released by ISS in November 2024, indicates that ISS might soften on their negative stance towards issuers that have time-based vesting equity awards constituting more than 50% of their annual NEO grants
 - A new FAQ was added to affirm that ISS has a negative view towards modifications of outstanding incentive awards (i.e., according to the FAQ, issuers need to disclose the rationale for the change and that such change does not work to end-round pay-for-performance)
 - Proxy research reports will provide credit for a “robust” clawback policy ONLY IF the clawback policy covers all time-based equity awards in addition to performance-based equity awards
 - The Value-Adjusted Burn rate Benchmarks under the Employee Plan Scorecard were updated for 2025
 - ISS clarified that it does not endorse or prefer a Total Shareholder Return formula or any other metric

Non-Competition Agreements

- Currently, the Federal Trade Commission's ban on non-competes is enjoined and cannot be enforced due to a federal court in Texas that issued a nationwide injunction
 - Thus, the FTC is prohibited from enforcing the rule
- What to do?
 - California currently prohibits non-competes except in the narrow situation where the individual of a target corporation is deemed to be selling the goodwill of the business
 - Consider the use of economic forfeiture provisions instead of true non-compete provisions. Thus, the individual can compete, but the cost of that competition is that the individual loses his or her equity award
 - Do not forget that a traditional non-compete, where enforcement includes enjoining the offending behavior, can be used as a technique to mitigate any “parachute payment” under Section 280G

ISO Exercises and ESPP Share Transfers

- Reminder that companies must furnish Forms 3921 and 3922 to participants no later than January 31, 2025 if:
 - An incentive stock option (ISO) was exercised in 2024, or
 - Shares were acquired under an ESPP

- In addition
 - The company must file Forms 3921 and 3922 with the IRS no later than February 28, 2025 (if paper file) or March 31, 2025 (if electronically filed)

Don't Forget Next Month's Webinar

- Title:
 - PubCo Considerations When Adopting a New Equity Incentive Plan

- When:
 - 10:00 am to 11:00 am Central
 - February 13, 2025