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Preparing for Proxy Season: Start Now

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Presentation by:
Anthony J. Eppert
AnthonyEppert@Hunton.com
512.542.5013

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- Questions during this presentation
  - We encourage questions (even though your audio lines are muted)
  - To submit a question, use the Q&A icon on your Zoom tool bar to submit a question
  - 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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Anthony Eppert, Partner
Hunton Andrews Kurth LLP
Tel: +1.713.220.4276
Email: AnthonyEppert@Hunton.com

- 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

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- 2025 webinars:
  - 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.hunton.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 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.)

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- 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

2025 Proxy Season

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- According to an ISS report issued on September 2, 2025:
  - Median say-on-pay support levels decreased from 94.9% in 2024 to 94.5% in 2025
  - Say-on-pay failure rates remained low at 1.2% in 2025
  - Median S&P 500 CEO pay was at a historic high the second year in a row
    - Median S&P 500 CEO pay was at $16.9mm ($15.6mm in 2024)
    - Median Russell 3000 CEO pay was at $5.7mm (tying historic high in 2021)
  - Over the past 3 years, there has been a significant upward trend in the value and prevalence of security perquisites
  - The median support level for equity plans decreased slightly (but still shareholder support at 90%'ish levels) and the failure rate remained low (none failed in the S&P 500 and approximately 2 failed in the Russell 3000)
  - The number of compensation-related shareholder proposals declined, and none of such proposals received majority support (relevant because immediate prior proxy seasons were seeing growth with such proposals)

- Diversity, Equity and Inclusion
  - Many issuers scaled back their disclosures relating to DEI initiatives
  - Many of those issuers who still provide DEI disclosure changed the wording from "DEI" to concepts such as "inclusion"
  - ISS announced that gender, race and ethnic diversity are no longer considered when making voting recommendations for directors

Perquisites or Perks

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- Perquisites
  - Disclosure relating to personal security benefits and private aircraft usage continues to rise
  - Noteworthy is that disclosure relating to private aircraft usage has, over the last few years, moved from a luxury item to a personal security benefit
  - Important to remember is that tax and SEC disclosure are separate concepts and sometimes inconsistent concepts. For example, even if a perquisite is a necessary business expense for tax purposes, its incremental value might be required to be disclosed in the All Other Compensation column of the Summary Compensation Table

- As background, the general rule is that:
  - No disclosure is required if the aggregate value of all perks provided to an NEO is less than $10,000
  - If the aggregate value of perks provided to an NEO is greater than $10,000:
    - The value of all perks must be disclosed in the table;
    - Each type of perk must be identified by type in a footnote (general categories such as travel and entertainment are not sufficient);
    - The value of any perk that exceeds the greater of $25,000 or 10% of the aggregate value of all perks must be quantified and disclosed in a footnote;
    - The value of a perk is based upon its incremental cost;
    - If footnote quantification is required, the methodology to compute the aggregate incremental cost should be included in a footnote; and
    - The requirement for identification and quantification applies only to the last fiscal year

Perquisites or Perks: Examples

- Car Allowance
- Car Insurance
- Club Dues
- Club Initiation Fee
- Commission for Sale of Home
- Commuting Expenses
- Computer Equipment
- Corporate Residence
- Costs Associated with Expatriate Work Assignment
- Currency Exchange Arrangements
- Discounts on Company's Products/Services Not Generally Available to All Employees
- Excess Liability Insurance
- Executive Office Benefits
- Financial Consulting/Planning Services
- Gas Allowance
- Goods and Services Differential (For Foreign Service)
- Home Office Costs
- Home Security
- Housing Allowance
- Legal Expenses
- Life Insurance Premiums
- Living Expenses
- Long Term Disability Insurance
- Medical and Dental Claims/Premiums
- Parking Fees
- Payments for Staying in Personal Residence while on Business Travel
- Personal Liability Insurance
- Personal Travel on Corporate Aircraft
- Personal Use of Company-Provided Administrative Support
- Physical Exam/Voluntary Health Screening
- Relocation Allowance
- School Tuition
- Secured Parking
- Security Concerning Fraudulent Data Access
- Spouse/Family Member Tag-Along on Business Travel
- Spouse Attendance at Company Events
- Stipend for Effective Company Representation in the Community
- Supplemental Accidental Death and Dismemberment Insurance
- Tax Equalization Payments
- Tax Gross-Ups
- Tax Return Preparation
- Telephone Services
- Trips Awarded to Top Sales Performers
- Use of Company Products and Services
- Use of Corporate Travel Agency for Personal Travel
- Use of Executive Dining Room
- Wellness Reimbursement (For Fitness Related Activities)
- Wireless Network for Computer Use

Perquisites or Perks

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- Issuers should assess whether sufficient control measures exist, especially since the scope of "what is a perk" is broad and the dollar limitations for disclosure are extremely low

- Consider the following:
  - Those individuals preparing compensation disclosure should be familiar with the rules
  - Develop steps to find and track perks (*e.g.*, review and revise D&O questionnaires)
  - Review reimbursement policies and procedures with SEC disclosure standards in mind
  - Provide additional training on identifying perks, calculating aggregate incremental cost, tracking perks, and disclosing the same
  - Consider whether reimbursements should be subject to a pre-clearance procedure before an officer or director can be reimbursed for an item that could arguably be a perk

ISS Influence

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- If an issuer receives less than a 70% pass rate, then ISS will perform a qualitative review (at the next annual meeting) of the issuer's responsiveness to shareholder opposition, and if such responsiveness is lacking, then ISS might recommend an Against on the reelection of the Compensation Committee members. To that point, responsiveness includes:
  - 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

- And too, statistics support that an "Against" recommendation from ISS creates a drop in the pass rate by approximately 25%

- As a reminder, 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;
  - "Significant" problematic pay practices exist such as excessive change-in-control pay or severance pay, repricing of options, tax gross-ups or perquisites; or
  - Board's responsiveness to shareholders is poor

ISS Influence: Problematic Pay Practices

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- There are numerous problematic pay practices that ISS will evaluate on a case-by-case basis to determine whether such are contrary to a performance-based pay philosophy, including:
  - Multi-year guarantees of pay,
  - Excessive new-hire packages,
  - Incentives that motivate excessive risk-taking (discussed on next slide),
  - Abnormally large bonus payouts without performance linkage or proper disclosure,
  - Egregious pension/supplemental executive retirement plan payouts,
  - Excessive or extraordinary perquisites,
  - Excessive severance and/or change-in-control provisions (*e.g.*, single triggers, new or materially amended agreements containing excise tax gross-ups, etc.),
  - Excessive reimbursement of income taxes,
  - Dividends or dividend equivalents paid on unvested performance shares or units,
  - Internal pay disparity (*i.e.*, excessive differential between CEO total pay and that of the next highest paid NEO), and
  - Repricings without prior shareholder approval

ISS Influence: "Significant" Problematic Pay Practices

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- Additionally, there are certain problematic pay practices that are deemed "significant," the presence of which will likely result in an adverse recommendation from ISS, such being:
  - Repricing without shareholder approval,
  - Excessive perquisites or tax gross-ups,
  - New or extended executive agreements that provide for:
    - Change-in-control payments exceeding 3x base + average/target/most recent bonus,
    - Single trigger or modified single trigger change-in-control severance payments without a substantial diminution of duties,
    - Excise tax gross-ups for change-in-control payments,
    - "Good Reason" termination definitions that are not conducive to an adverse constructive discharge theory and present windfall risk. [Note: Definitions that are triggered by the failure of an acquiring entity to assume the agreement in question no longer trigger the problematic pay practices policy.]
    - Multi-year guaranteed awards or increases that are not at risk due to rigorous performance conditions, and
    - Liberal change-in-control definition combined with any single trigger change-in-control benefits
  - Insufficient executive compensation disclosure by externally-managed issuers, such that a reasonable assessment of the pay programs and practices for such externally-managed issuers is not possible
  - Severance payments made when termination is not clearly disclosed as involuntary,
  - Any other provision or practice deemed to be egregious and presents a significant risk to investors

To Watch: Proxy Advisory Firms and Texas

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- Governor Greg Abbott signed into law Senate Bill 2337 which would impose new regulations on proxy advisory firms such as ISS and Glass Lewis
  - Intended to become effective September 1, 2025

- As a gross over-simplification, this new law requires proxy advisory firms to make certain disclosures about their voting recommendations any time they make recommendations based upon non-financial reasons (*e.g.*, environmental, social or governance, etc.) or the proxy advisory firm makes conflicting recommendations to multiple clients

- Glass Lewis and ISS separately filed a complaint in court seeking to enjoin SB 2337 on the basis that:
  - SB 2337 violates the First Amendment prohibition on content and viewpoint discrimination, and
  - Is unconstitutionally vague

- A trial on the merits is schedule for early 2026

Smoothing for Volatility

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- Dollar-denominated grants are most common
  - The award is first denominated as a dollar amount (e.g., 35% of Base Salary)
  - Then converted into shares using a formula depending upon type of equity. Typically:
    - Dollar-denominated stock options are converted using a Black-Scholes formula, and
    - Full value awards are converted using fair market value

- If the issuer has volatile stock price, then consider whether to smooth volatility by converting dollar-denominated grants into shares using a trailing average stock price (*e.g*., 6 months trailing average, 1-year trailing average, etc.)

- Caveat on smoothing, stock options and exercise price
  - Smoothing is permitted for determining the number of shares that should be subject to a stock option
  - However, once such number of shares are determined, the exercise price cannot be based on anything longer than a 30-day average (and most issuers use fair market value as of the day of grant or the closing price of the day prior)

Time-Based Vesting Awards Resurging?

- Some investors perceive performance-based vesting metrics within equity awards to be confusing, complex and costly to administer (*e.g.*, TSR awards, especially relative TSR awards)
  - These investors are advocating more time-base vesting of equity awards combined with either long vesting schedules or post-vest stock holding requirements

- Pursuant to a July 2025 survey, ISS is looking into whether U.S. markets should move away from primarily focusing on performance-based vesting requirements and instead focus on time-based vesting requirements combined with long time horizons or post-vest holding periods

- Specifically, ISS is exploring with U.S. markets should have the following time-based vesting schedules:
  - 3-year vesting period plus a 2-year post-vest holding period;
  - 4-year vesting period plus a 1-year post-vest holding period; or
  - 5-year vesting period with no required post-vest holding period

Time-Based Vesting Awards Resurging? (cont.)

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- If stock options return as a prevalent practice, then remember to consider use of a stock-price forfeiture provision
  - To learn more, go to https://www.hunton.com/executive-compensation-academy-past-presentations
  - Scroll down to "Ideas to Increase the Life Expectancy of an Equity Plan's Share Reserve"
  - Download presentation and discussion is on Page 3 entitled "Idea No. 2 – Implement Stock Price Forfeitures"

Non-Competition Agreements

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- As background, in early 2024 the Federal Trade Commission ("FTC") adopted a rule that would effectively ban non-competition agreements, with such ban applying nationwide

- Certain employers challenged the legality of the ban, and a lower court agreed to enjoin the FTC's ability to rollout the ban
  - FTC appealed and on September 5, 2024, the FTC announced that it was withdrawing its appeal

- However, on September 10, 2025 (yesterday!!), the FTC sent letters to several large health care employers and staffing firms urging them to conduct comprehensive reviews of their non-compete and restrictive covenants agreements to ensure compliance with applicable laws
  - "Enforcement against unreasonable noncompete agreements remains a top priority for the Federal Trade Commission" stated Kelse Moen, Deputy Director of the Bureau of Competition and co-chair of the agency's Joint Labor Task Force

- Takeaway is that the status quo prior to the 2024 FTC rule remains, that is, non-competes are governed by state law. That said, issuers should consider their usage of non-compete provisions, including:
  - Who are governed by such and are such limited to executives and key employees,
  - Legal consideration supporting such,
  - Consequences for violating the non-compete

Don’t Forget Next Month’s Webinar

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- Title:
  - Non-Employee Director Compensation
- When:
  - 10:00 am to 11:00 am Central
  - October 9, 2025