



Preparing for Proxy Season: Start Now

Presentation for:
Hunton's Executive Compensation Webinar Series
September 10, 2026

HUNTON

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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



Anthony Eppert, Partner
Hunton Andrews Kurth LLP

Tel: +1.512.542.5013

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 2026 Webinars

- 2026 webinars:
 - Carrot and the Stick: Delving Into Various Stick-Related Retention Ideas (10/8/26)
 - Form 4 Training Course (11/12/26)
 - Compensation: Year-End Review of 2026 Items (12/10/26)

Sign up here: <https://www.hunton.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

2026 Proxy Season Recap

- According to an ISS report issued on September 2, 2026:
 - Median say-on-pay support levels increased from 94.9% in 2024, to 94.5% in 2025, to 95.4% in 2026
 - Say-on-pay failure rates remained at an all-time low of just 0.8% (compared to 1.2% in 2025)
 - Median S&P 500 CEO pay was at a historic high the third year in a row
 - Median S&P 500 CEO pay was \$17.2mm (\$16.9mm in 2025 and \$15.5mm in 2024)
 - Median Russell 3000 CEO pay was \$5.9mm (\$5.7mm in 2025)
 - The median support level for equity plans increased slightly over 2025 levels, and the failure rate ticked downwards
 - The number of compensation-related shareholder proposals declined sharply from 46 in 2025 to only 8 in 2026

SEC Proposed Rules to Lessen Disclosure Requirements

- On August 26, 2026, the SEC submitted “Executive Compensation Disclosure Reform” as a rule proposal to the White House’s Office of Information and Regulatory Affairs
 - The OIRA has 90 days to consider the SEC’s proposal, and once cleared, the SEC could schedule an open meeting to vote, or approve the rule making without the need for an open meeting
- As background, on May 19, 2026, the SEC published a proposed rule that, if adopted, would provide non-accelerated filers with scaled disclosure obligations otherwise only applicable to smaller reporting companies and emerging growth companies
 - If adopted, such would significantly reduce the quantity and breadth of executive compensation disclosures

SEC Proposed Rules to Lessen Disclosure Requirements (cont.)

- Quick background:
 - Comment period for the public expired on or before July 20, 2026
 - The term “public float” is the total market value of an issuer’s common stock
 - The SEC estimates that non-accelerated filers would approximate 81% of public companies that would be able to take advantage of these new rules
 - The SEC estimates that accelerated filers would represent approximately 93% of the public float
 - A large accelerated filer is an issuer who has been public for at least 5 years and has at least \$2bb in public float (increased from \$750mm) for two consecutive years
 - All other public companies would be considered non-accelerated filers
 - Currently, emerging growth companies and smaller reporting companies are subject to scaled compensation disclosure requirements

SEC Proposed Rules to Lessen Disclosure Requirements (cont.)

- If adopted in current form, the proposed rule would allow non-accelerated filers the following (assuming the non-accelerated filer has a proposed float of less than \$2bb):
 - Disclose only 3 NEOs instead of 5 NEOs,
 - Only required to disclose 2 years of compensation data (instead of 3 years),
 - The CD&A would not be required,
 - Say-on-pay vote and the vote with respect to the frequency of say-on-pay would not be required,
 - None of the following tables would be required:
 - Grants of Plan-Based Awards table,
 - Options Exercised and Stock Vested table,
 - Pension Benefits table,
 - Non-qualified deferred compensation table,
 - Non-accelerated filers would be exempt from pay ratio disclosure
 - No pay v. performance disclosure
 - No compensation committee report
- In that SEC disclosure often shapes compensation design, and assuming the foregoing becomes effective, issuers should have enhanced abilities to shape compensation designs that attract and retain key executives

Possible Future Outlook If SEC Proposed Rules Become Final

- If the SEC proposed rules become final, likely impact on compensation design includes:
 - Increased company-specific compensation designs (less mass uniformity with other companies)
 - Less emphasis on designing compensatory programs to court proxy advisor preferences
 - Increased use of discretion and non-financial metrics within incentive arrangements
 - Less complex performance metrics (e.g., relative TSR) and increased use of time-based incentives
 - Business needs will dictate compensation design (as opposed to disclosure dictating compensation design)
- Voluntarily retain say-on-pay?
 - Should be considered with the pros and cons weighted
 - One benefit of annual say-on-pay is that it normalizes voting behaviors relating to compensation because the vote is viewed as more routine (as opposed to special), and too, shareholder dissatisfaction can be taken out on the say-on-pay vote (as opposed to the re-election of the Compensation Committee or Board members)

Revisit Compensation Committee Charters

- What is the authority of the Compensation Committee, and has any of such authority been delegated? For example:
 - Absent a valid delegation, only the Board of Directors has the authority to effectuate grants of equity
 - Such delegation is typically contained within the Compensation Committee Charter, thus providing the Compensation Committee with the requisite authority
- And too, does the Compensation Committee Charter allow for an additional downward delegation? For example, downward delegations to an executive officer could be helpful in non-executive officer new-hire situations where, to attract the prospective employee, reaction time on behalf of the issuer must be quick

Delegation of Authority

- Assuming a downward delegation from the Compensation Committee to an executive is permitted within the Charter, then consider that (for Delaware issuers):
 - Delegations must comply with applicable state law (e.g., DGCL 152(b) and 157(c))
 - Delegations of authority to grant equity should be governed by a written equity grant policy (the “**Policy**”) that was approved by the Compensation Committee and/or the Board
 - The Policy should include a reporting mechanism to the Compensation Committee of all equity grants. To avoid “date of grant” issues, the Policy should clearly state that only a “reporting” to the compensation committee is required (i.e., no ratification or approval by the Compensation Committee is required)
 - Award agreements that were pre-approved by the Board or the Compensation Committee should be attached as exhibits to the Policy (i.e., to address minimum vesting schedules, whether par value is required, etc.)
 - The Policy should specify the total number of awards (individually and collectively) that may be made pursuant to the delegation
 - The Policy should specify the time period within which shares can be issued pursuant to the delegation AND the time period within which the Policy is effective
 - The Policy should specify whether any minimum consideration is required (e.g., par value – a remnant carryover of past practices)
 - Delegations should exclude the ability to make grants to those who are Section 16 insiders as of the date of grant
 - Compliance with Rule 16b-3 requires the full board of directors or a committee of 2 or more non-employee directors to approve, in advance, all grants to Section 16 insiders

Delegations of Authority (cont.)

- Our thoughts:
 - Delegations of authority can simplify the process of granting equity in situations where non-executive officers are being hired (*i.e.*, quick reaction)
 - Delegations of authority should be effectuated pursuant to a written document (*i.e.*, a policy) that addresses many of the points on the prior Slides
 - Verify that the Charter of the Compensation Committee allows for a downward delegation of authority to grant equity
 - An amendment to the equity incentive plan might be needed if the terms of such plan provide that only the Compensation Committee has the authority to effectuate grants. Any such amendment would not likely require shareholder approval (*i.e.*, the amendment is not likely to be a “material revision” under NYSE and NASDAQ listing rules), but this issue should be vetted
 - To this point, review the administrative powers section of the equity plan and determine whether, within the plan document, the issuer reserved the right to delegate its authority

Confirm Readiness for Expansion of Covered Employees

- Effective for the taxable year beginning after December 31, 2026, the American Rescue Plan Act, signed into law by then President Joe Biden on March 11, 2021, expanded the term “covered employee” for purpose of the \$1mm deduction limit per calendar year
- Previously, covered employees subject to the \$1mm deduction limitation were the Named Executive Officers (“**NEOs**”) under the SEC rules, which only applies to publicly-traded corporations and includes:
 - The principal executive officer (e.g., CEO),
 - The principal financial officer (e.g., CFO),
 - The three other highest-compensated executive officers, and
 - Anyone who had previously been included pursuant to the foregoing (such being the “once a covered employee, always a covered employee” rule)
- Under the revised rule, the term “covered employee” includes the foregoing NEOs, PLUS the next 5 highest compensated employees
 - However, the “once a covered employee, always a covered employee” rule does NOT apply to these new employees
 - Thus, those subject to deductibility limitations (i.e., those outside the NEOs) could change from year to year
 - NEOs are determined with reference to compensation under SEC rules and the next 5 compensated employees would be determined with respect to compensation that gives rise to a compensatory deduction (i.e., Box 1 of W-2)

Confirm Readiness for Expansion of Covered Employees (cont.)

- Why does this matter and action items to consider?
 - The 5 additional employees that become covered employees are not subject to the “once a covered employee, always a covered employee” rule – and too – such employees subject to the \$1mm limitation are determined on an annual basis
 - Therefore, designing payments to coincide when the rule is not applicable, or to a time when the individual is no longer subject to the limitation, could be a strategy to consider. For example:
 - Consider implementing consultancy arrangements in the context of termination of employment of any of the foregoing employees, so as to allow continued vesting throughout the consultancy, thus spreading the compensation expense for accounting purposes but also allowing for more deductibility of compensation (as opposed to accelerated vesting)
 - Consider deferred compensation as a solution to protect the deductibility of compensation paid to the expanded class (*i.e.*, remember this expanded class is not subject to the once/always rule, and therefore, compensation paid when no longer employed would be deductible)
 - Identify who is likely to be an additional covered employee
 - Model the lost deductions, and in connection, review vesting, payment and deferral timing
 - Consider the interaction with controlled-group compensation
 - Verify that loss of deductions for tax purposes remain informative to, but do not drive, compensation decisions

Non-Competition Clauses/Agreements

- The FTC's proposed ban on non-competes was abandoned during the latter part of 2025, however, the FTC continues with targeted enforcement actions
- Some states prohibit non-competes, such as (though even in these states, non-competes are generally permissible in the context of change in control where the obligor under the non-compete is selling the goodwill of the business to which the non-compete relates, and too, some of these states have exemptions for certain executives):
 - California,
 - Minnesota,
 - North Dakota,
 - Oklahoma,
 - Washington (most banned effective June 30, 2027), and
 - Wyoming

Non-Competition Clauses/Agreements

- A number of states have legislation pending that, if enacted, would prohibit or severely restrict non-competes, such as:
 - Illinois,
 - Indiana,
 - Maryland,
 - New York,
 - Ohio,
 - Rhode Island, and
 - Utah
- Employers should continually monitor the geographic footprint of its workers relative to states that ban or are highly dis-favorable to non-competes
- Additionally, employers should continue to refine:
 - Confidentiality agreements,
 - Non-solicitation agreements,
 - Invention assignment agreements,
 - Use of economic forfeiture agreements, and
 - Choice of law and venue selection provisions

Don't Forget Next Month's Webinar

- Title:
 - Carrot and the Stick: Delving Into Various Stick-Related Retention Ideas

- When:
 - 10:00 am to 11:00 am Central
 - October 8, 2026