

Compensation Philosophy

Panelists

Joe Mallin presented his views as compensation professional advising boards for more than 20 years. "Executive compensation can predict the future more clearly than in years past. Deals that are done have an impact on future compensation. If we get compensation under control, companies can have more of an impact on success of a company going forward."

Past attempts to control executive pay have not been overly successful [FAS 123R, Section 162(m)] due to the complexity of the subject and the unintended consequences.

Joe summarized the Bank Bailout Bill Executive Pay Limits as set forth in TARP I

- If a bank takes money from government must deal with government.
- The new bill only pertains to 5 named executives.
- The \$500K pay cap on deductible compensation makes the cost to do business higher.
- No carve-out for performance-based pay
- Limitations on severance pay
- Elimination of "risky" incentives

He pointed out that the Auto Bailout Bill had Additional Executive Compensation Limitations:

- Auto companies are treated as "systemically significant failing institutions" or SSFI - most restrictive definition in bank bailout bill
- No severance
- No bonuses to top 25 executives
- No corporate planes, but was removed in conference as senators in impacted states lobbied against it [Iowa (Cessna) and Georgia (Gulf Stream)]
- Unintended consequences: Management who have the skills that are transferable may leave - a retention issue?

The Future of Executive Compensation:

- The bank/auto bailout bill could extend to all companies
- Revival and implementation of "say-on-pay"
 - Proposal on proxy approving executive pay
 - Barack Obama, lead sponsor, supporter of bill. Bill will become law of land next month or so, implemented 2010
 - Non-binding, but RiskMetrics Group/ISS will be involved in every board meeting
 - Severance pay will be redefined as pay for failure

Other Future Changes in Executive Pay:

- Continued restraint in equity incentives (no more big payouts as seen in the past)

Dr Michael Wood succinctly put it "Things ain't like they used to be and they never were" *Yogi Berra*.

Behavior of a few is not indicative of overwhelming business community. Take a subdued approach to executive compensation for the future. Goal should resonate with shareholders values. Goal should reflect previous made decisions about pre-decided compensation.

Options: Accounting rules for options have changed, have big impact on dilution. Some view options as more leveraged award. Options as sole compensation and then the options not having any value is the worst-case scenario. Many options now are under water. May push inappropriate risk taking.

CIC agreements can cause executives to seek loss of control; not in shareholders' best interest.

Joe Viviano "In years past it was all 'years of the audit' lately it's been all 'compensation'. By 2010 it will be all risk and compensation."

Top Issues that face shareholders:

- Say-on-pay
 - Reality is if the shareholders are happy, they are happy; if they are not, they are not
- Severance agreements and gross up's
 - My major peeve: e.g. An executive gets fired and walks away with a total package based on future performance. This is not right to the people that stay and get nothing.

- Examples like above have forced companies to get into the nitty-gritty of severance plans (company contrived by and for management). Need to review and correct all the words necessary.
- Suggestion - no one gets anything until it's earned. Pro-rated when an employee starts at the company and if earned they can get it. Example: Cadbury - 2 year agreement made it so lucrative for employees in England that it would have been silly for them to agree to move to Hershey. Only 3 directors out of 325 employees moved to Hershey.
- Look at the words. All written for employee, don't necessarily change. Review, how long should it last? What kind of safety should he have or need.
- Metrics
 - Total integrity in package
 - Most companies start with consultant. Make the consultant get to the point.
 - Start with a peer group. Put together a reasonable peer group.
 - Not saying management is overpaid just make sure that the total package has integrity.

Q&A:

Comment: We just went through a full compensation review. Never went through severance agreement now I think we will.

Q: Option program is going to become very important in terms of receiving objectives - is that where we're going?

A: (JM) Options do have a place at the table. Not like in the past but, still a place. (MM) Options are not passé. Options are still a legitimate compensation tool especially in smaller companies. (JM) Options are coming under attack now. 10 years worth of options can be under water now. But, shareholders would say that options reacted exactly as they should have. (JV) Performance is not in a box. Has to be subjective evaluation at end of the year. Used to get really concerned, but now see it is part of his job.

Q: Trying to find out various companies peer groups - difficult/easy to determine?

A: (MM) Now with CDMA's, easier to find for listed companies- not a black box. But still tough for private companies. (JM) Peer groups are fundamentally hard to do. Some are easy such as banks and pharmacy.

Q: Examples of companies putting Risky Transactions in their proxy?

A: (JM) Becton Dickinson outside of bank/auto industry.

Q: We've gone from options as a % of compensation incentive stock options (ISO's) then go to RSU's - will companies go back to ISO's but price them more accurately?

A: As an executive, I would want ISO's (more tax effective). Options priced low or as RSU tell what the executives think of the future of a company.

Q: Re-pricing or buying out of the options or is there a grant restriction in place?

A: ISS has a standard. Exchange of the options would be equal to the value - using Black Sholes or some valuation metric.

Upcoming Programs

<p>February 26, 2009 Enterprise Risk Management What about the Non-financial Risks Facing Today's Company?</p> <p>PANELISTS: <u>Liana O'Drobinak</u>, Vice President - South Region, <i>Jefferson Wells</i> <u>Tom Casey</u>, Director, <i>TRC Companies, Inc. (NYSE)</i>; <i>Oberg Industries, Inc.</i>; <i>Bloodhound Investment Research, Inc.</i> <u>Bill Pruitt</u>, President, <i>NACD Florida</i>; Director, <i>MAKO Surgical (NASDAQ)</i>, <i>PBSJ Corporation</i></p>	<p>March 26, 2009 Non-profit Boards Now is the Time for Best Practice Non-profit Directorship</p> <p>PANELISTS: <u>Gerald M. Czarnecki</u>, Chairman, <i>NACD Florida</i>; Chairman & CEO, <i>National Leadership Institute</i>; Active Director on numerous boards <u>Dolph von Arx</u>, retired Chairman & CEO of <i>Planters Lifesavers Co</i>; Active Director <u>Andrew McElwaine</u>, President and CEO of the <i>Conservancy of Southwest Florida</i></p>
---	---

2009 NACD Florida Sponsors



Contact Information: Linda L Thayer, Executive Director, NACD Florida; 954-296-7358; Linda@nacdf.org

Note: Views and advise expressed at the monthly meetings of the NACD Florida Chapter and reported in the session highlights do not necessarily represent those of the NACD and should not be construed as legal or professional advise.