

HUNTON

New Compensatory Thoughts: ISS, Glass Lewis and a Reshaping Storm

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Executive Compensation Webinar Series
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 - We encourage questions (even though your audio lines are muted)
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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

- 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 2025 Webinars

- 2026 webinars:
 - Compensation Considerations Leading to an IPO (2/12/26)
 - Current 280G Mitigation Techniques (3/12/26)
 - Design Considerations for C-Suite Executive Contracts (4/9/26)
 - Governance: How to Properly Hire and Terminate an Executive Officer (5/14/26)
 - Selling an ESOP-Owned Company: A List of Business and Legal Issues (6/11/26)
 - Designing Employee Stock Purchase Plans (7/9/26)
 - Hot Compensation Topics (8/13/26)
 - Preparing for Proxy Season: Start Now (an Annual Program) (9/10/26)
 - 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

Recap: 2025 Proxy Season

- 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 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 receive 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 by ISS when making voting recommendations for directors

Recap: ISS Influence – Generally

- 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
- Does ISS have influence? Answer: Absolutely
 - Statistically, an "Against" recommendation from ISS causes a drop in the pass rate by approximately 20% or more
 - Keep in mind that ISS influence is greater if the issuer has a high percentage of its shares held in street name. As background:
 - With respect to shares in street name, brokers are not permitted to vote on non-routine matters (e.g., say-on-pay) without voting instructions from the beneficial owners
 - Without a shareholder communication initiative by the issuer, beneficial owners typically do not provide voting instructions to brokers
 - Thus, if broker votes don't vote, then they are counted as an "against" vote in the denominator but not included in the numerator when calculating the pass percentage, making it harder to pass the proposal, resulting in artificially increasing the voting influence of ISS

Recap: ISS Influence – Generally (cont.)

- Keep in mind that an issuer with less than a 70% pass rate is expected by ISS to disclose in the next proxy statement:
 - Efforts that the Board took with respect to shareholder engagement,
 - ~~The specific feedback the issuer received from dissenting shareholders,~~ [See below slide where this requirement changed for annual meetings on or after February 1, 2026] and
 - What actions or changes the issuer made to its pay programs and practices to address concerns of its shareholders

Regulating Proxy Advisory Firms

- In June 2025, Texas Governor Greg Abbott signed into law SB 2337, which imposed some new requirements on proxy advisory firms (*e.g.*, ISS)
 - Intended to be effective September 1, 2025
 - SB 2337 would require proxy advisory firms to make certain disclosures whenever such proxy advisory firm makes recommendations for “non-financial reasons” (*e.g.*, environmental, social, governance, etc.)
 - SB 2337 would also require proxy advisory firms to make certain disclosures when they provide advice to one client that is conflicting with advice provided to another client
 - Foregoing is applicable for issuers headquartered or domiciled in Texas
- ISS and Glass Lewis each filed lawsuits, alleging (combined allegations set forth below):
 - Violation of First Amendment (*i.e.*, compelling speech),
 - Unconstitutionally vague,
 - ERISA preemption, and
 - Other Constitutional allegations
- After a hearing, Judge Albright of the U.S. District Court for the Western District of Texas entered preliminary injunctions on August 29, 2025
- Trial is scheduled on or around February 2, 2026

Regulating Proxy Advisory Firms (cont.)

- On December 11, 2025, President Trump issued an Executive Order with the goal of limiting the influence of proxy advisory firms such as ISS and Glass Lewis [Found here: [Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors – The White House](#)]
- The allegations contained in the Order include:
 - ISS and Glass Lewis are foreign owned,
 - The two control more than 90% of the proxy advisor market,
 - Use their power to advance politically-motivated agendas (e.g., DEI, ESG) unrelated to investor returns, and
 - The practices of ISS and Glass Lewis raise concerns about conflicts of interests and quality of their recommendations
- As a result, the Order provides that the U.S. must increase its oversight to restore public confidence and promote accountability, transparency and competition. To that end, the Order mandates:
 - The SEC to review all rules and guidance relating to proxy advisors,
 - The SEC to enforce anti-fraud provisions with respect to material misstatements or omissions contained within proxy advisors' voting recommendations,
 - The SEC to assess whether proxy advisors must register as RIAs,
 - The SEC to require increased transparency on recommendations, methodology and conflicts of interest, and
 - The FTC to investigate whether proxy advisors engage in unfair competition or deceptive practices violating anti-trust laws

Resurgence of Time-Based Awards? Death to TSR?

- In July 2025, ISS released a survey that addressed, among other items, time-based vesting schedules v. performance-based vesting schedules
- Essentially, ISS was polling to determine whether it makes sense to replace all or some of performance-based shares with time-based shares
- ISS incorporated this thinking in their Executive Compensation Policies FAQs (updated December 9, 2025), beginning with annual meetings on or after February 1, 2026, that is, if an equity pay mix consists entirely of time-based vesting awards, then that by itself will not raise qualitative evaluation concerns so long as the time horizon is at least five years in the following vesting/retention combinations:
 - A 3-year vesting schedule, plus at least 2-year post-vesting retention requirement;
 - A 4-year vesting schedule, plus at least a 1-year post-vesting retention requirement; or
 - A 5-year vesting period with NO retention requirement

However, the foregoing does not apply to special or one-time equity awards

- Thus, will issuers soon be able to focus on equity incentives that are simple and easy to explain, while providing executives with straight line of sight as to the business goals? For example:
 - Eliminate a TSR award in favor of a line-of-sight time-based vesting award that vests ratably over a 5-year period?

Revised ISS Benchmark Voting Policies

- Effective for meetings on or after February 1, 2026, ISS revised/updated its benchmark proxy voting policies. Notable changes include:
- Evaluation of pay for performance is now over a longer term
 - As to the quantitative analysis of pay for performance (where ISS assesses the alignment of a CEO's pay to the issuer's financial performance and the issuer's relative TSR)
 - Alignment was assessed over a 3-year period
 - Now alignment assessed over a 5-year period
 - The equity pay mix in pay-for-performance qualitative reviews will now recognize time-based equity awards if the vesting schedule demonstrates a long-term focus
- Responsiveness to a say-on-pay vote that is less than 70%
 - If an issuer receives less than 70% support for its say-on-pay vote, then the issuer must disclose in the next proxy statement any feedback from shareholders, disclose its outreach attempts and any compensatory changes resulting from such
 - Under the new update, the issuer no longer has to disclose any feedback from shareholders

Revised ISS Benchmark Voting Policies (cont.)

- Problematic non-employee director pay
 - If the issuer has highly problematic director pay and no compelling rationale, then ISS could issue an adverse recommendation immediately against the reelection of the directors most responsible
- The equity plan scorecard was revised as follows:
 - The Plan Features pillar of the scorecard was revised to include favorable points where the plan incorporates cash-denominated award limits for non-employee directors (only applicable to S&P 500 and Russell 3000 EPSC models)
 - Additionally, ISS was concerned that a passing score could be achieved under the EPSC even though the plan received a poor Plan Features score (*e.g.*, less than 7 points). As a result:
 - A new overriding factor applies. An equity plan proposal will receive an Against recommendation if the Plan Features pillar of EPSC has a lack of positive features (as indicated by receiving a Plan Features pillar score of less than 7 points)

Don't Forget Next Month's Webinar

- Title:
 - Compensation Considerations Leading to an IPO
- When:
 - 10:00 am to 11:00 am Central
 - February 12, 2026