Executive Compensation

Practical Pointers

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What Loss of Emerging Growth Company Status Means for Executive Compensation

Business Point

It is never too early for an emerging growth company (EGC) to begin thinking about the enhanced compensation disclosure that comes with the loss of EGC status. The post-EGC status disclosure requirements can be onerous and daunting in comparison to what EGC status requires and can potentially impact the structure and philosophy of the company's executive compensation program. Some EGCs may have arrangements that could draw scrutiny by ISS or activist or institutional shareholders that might be adjusted prior to loss of EGC status.

The sooner the impact of the loss of EGC status and how to cope with it becomes a priority for the board and management, the more likely the company is to be able to transition smoothly into the full reporting regime that will apply.

Technical Points

Under the Jumpstart Our Business Startup Act of 2012 (JOBS Act), an EGC is generally defined as a company with less than $1 billion in annual gross revenue (as adjusted for inflation). If the company remains an EGC until completion of its IPO, it can retain EGC status until the earliest of: (i) the end of the fiscal year containing the fifth anniversary of the IPO; (ii) the end of the fiscal year in which its annual gross revenue is at $1 billion (as adjusted for inflation); (iii) the issuance by the company of more than $1 billion in nonconvertible debt over a 36-month period; or (iv) the date on which the company qualifies as a "large accelerated filer" (generally meaning the company has "public float" (outstanding equity in the company held by parties not associated with the company) of at least $700 million.

Once the EGC status expires, the company will have to start making many new or enhanced disclosures regarding its executive compensation, including:

- Disclosure regarding the CEO, CFO and the next three highest paid executives (EGC status required disclosure for only the CEO and the next two highest paid executives);
- A full Compensation Discussion & Analysis (CD&A) section, which can be quite lengthy;
- Summary compensation table for prior three years, including pension plan information (EGC status required only prior two years and no pension plan information);
- Option exercise and equity vesting table providing information on amounts with respect to each during the immediately preceding fiscal year;
- Grant of plan-based awards table providing information on all equity and other awards granted during the immediately preceding fiscal year;

- Discussion of the value of payments upon a change in control of the company or termination of each executive's employment with the company;
- Table for pension and nonqualified deferred compensation arrangements;
- Say-on-pay shareholder votes;
- Say-on-frequency shareholder; and
- CEO pay ratio disclosure.

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