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**Executive Compensation and Securities Regulation & Corporate Governance Update**

September 19, 2024

# Key U.S. Executive Compensation Takeaways from the ISS 2024 U.S. Proxy Season Review

On September 5, 2024, Institutional Shareholder Services (ISS) released its 2024 Proxy Season Review:  United States – Executive Compensation. The below chart summarizes our observations of the 2024 data and key takeaways as we look to the 2025 proxy season. While these trends are positive for issuers overall, they underscore that issuers, their boards, compensation committees, and management should continue to take an active role in compensation programs, disclosure, and shareholder engagement practices.

| Observations | Key Takeaways |
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| **Increased shareholder support for say-on-pay and equity plan proposals.** Median say-on-pay support levels rebounded after steadily declining since 2017, though median say-on-pay support did not quite reach 95% (hovering at 94.9%, well below the highs of 2015-2017). Instances of low (less than 70%) say-on-pay support and failed say-on-pay votes each also decreased to 5.1% and 1%, respectively in 2024.<br><br>Likewise, after declining in 2022 and 2023, equity plan support improved in 2024 and | ISS notes that this is the lowest proxy season say-on-pay failure rate ever observed. We attribute this positive trend to continued transparency in compensation program disclosures and increased attention on shareholder engagement efforts.<br><br>Issuers should continue to address in their disclosures (1) how their compensation practices affect shareholder dilution and reflect and respond to broader market conditions, including inflationary pressures and economic volatility, and (2) how these factors impact their |

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| equity plan failure rates normalized at just under 1% (down from 1.6% in 2023). | approach to designing and administering their compensation programs. |
| **Continued positive correlation between pay-for-performance quantitative screen and ISS say-on-pay vote recommendation.** Unsurprisingly, higher quantitative screen concern levels correlated to a higher likelihood of an "against" recommendation, with over half of issuers flagged with a "high" concern level receiving "against" recommendations. | Interestingly, the 3% of issuers with a "low" concern level that received "against" recommendations generally were cited for problematic contractual provisions, non-CEO executive pay, insufficient board responsiveness, or severance payouts. |
| **Rising CEO pay.** After dipping slightly in 2023, median CEO pay in the S&P 500 reached its highest level since say-on-pay votes began over a decade ago – $15.6 million. The Russell 3000 (excluding the S&P 500) median CEO pay also trended up slightly to $5.3 million, but was still below the high-water mark set in 2021. | ISS notes that the record low say-on-pay failure rates combined with the record high S&P CEO median pay level suggest that investors are considering factors beyond pay magnitude in their voting decisions. Consistent with ISS's proxy voting guidelines, many large investors' say-on-pay votes can be swayed by problematic pay practices (such as one-time awards or application of discretion in pay decisions) without clear disclosure of a compelling rationale. |
| **Compensation plan design continues to favor formulaic and performance-based compensation.** Annual and long-term incentive awards trended towards non-discretionary and performance-based design, respectively. | ISS's focus on formulaic performance-based compensation, including the impact of ISS's pay-for-performance quantitative screen noted above, continues to correlate with the say-on-pay vote recommendation. |
| **Specific sectors and the Russell 3000 continue to use discretionary compensation.** While discretionary compensation across all sectors and indices has generally declined or remained steady year-over-year, financial sector CEOs and a higher percentage of Russell 3000 (excluding S&P 500) CEOs continued to receive discretionary bonuses. | Discretionary compensation may still have specific appropriate use cases, though issuers should consider clearly disclosing the business or sector-specific rationale when deploying discretionary compensation. Based on these trends, benchmarking against sector-specific peers may also be helpful. |
| **Higher perquisite numbers driven by aircraft perks and security costs.** Median values of CEO "all other compensation" reported in 2024 climbed markedly in the S&P 500, particularly in the upper percentiles of perquisite values. | The ISS report noted that increases in CEO "all other compensation" levels appeared to be primarily driven by larger corporate aircraft perks and security costs. And at the same time, issuers have seen an enhanced focus by the SEC and IRS on reporting and disclosure of these benefits. |
| **Equity plan design trends include continuing rise of evergreen provisions, use** | The prevalence of evergreen provisions is likely attributable in part to the repeal of Section |

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| **of discretion to accelerate vesting, and no minimum vesting requirement.** While "problematic" provisions like repricings or cash buyouts of equity awards without shareholder approval, and liberal change in control vesting provisions continued to decline overall, evergreen provisions in equity plans continued a steady rise and were observed in over 15% of 2024 plans up for approval. Issuers seeking plan approval in 2024 continued to eschew limitations on flexibility to accelerate vesting and set vesting schedules. | 162(m) of the Internal Revenue Code in 2017 and an increase in SPAC/de-SPAC transactions since 2021. Favoring the ability to set and adjust vesting schedules is unsurprising as issuers balance the need for flexibility in equity plan administration. |
| **No surprises in pay-versus-performance disclosure**. Consistent with 2023, most industries used earnings as their most important performance metric and technology, media and telecom looked to revenue. Compensation actually paid (CAP) trended upwards in most industries. | The overall increase in CAP is not surprising given its correlation to increases in stock prices and the year-over-year performance of the relevant industries from fiscal year 2022 to fiscal year 2023. |
| **Modest increases in CEO pay ratio.** Median CEO pay ratio in the S&P 500 saw a small increase year-over-year while the other indices (S&P 400, S&P 600, and remaining Russell 3000) remained steady. | Consistent with the trends in CEO pay levels, the median CEO pay-to-median employee ratios in the S&P 500, S&P 400, S&P 600 and remaining Russell 3000 were 189, 111, 73, and 45, respectively. |
| **Say-on-golden parachute failure rate increased.** In 2024, proposals seeking advisory approval of compensation payable in connection with a change of control dipped below 80% average support for the first time since 2017, and the failure rate for these proposals hit an all-time-high of 17%. | Say-on-golden parachute support/failure rates have generally correlated to changes in median golden parachute value, which increased 35% year-over-year from 2023 to 2024. |

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Gibson Dunn's lawyers are available to assist with any questions you may have regarding these issues. To learn more about these developments, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Executive

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