

Sampling of Current Compensation Committee Questions Relating to Executive Pay Levels & Pay for Performance

1. How independent should the Compensation Committee's outside advisors be?

Should the Compensation Committee use a new independent compensation consultant and/or independent outside legal counsel at least on “bigger ticket” items (e.g., new CEO or other NEO employment agreements or major new stock-based incentive awards) instead of, or in addition to, the current outside consultants and outside counsel -- particularly if the current advisors are doing, or are part of larger organizations doing, substantial amounts of other work directly for management (vs. the Compensation Committee)?

- ▶ Perceived value of fresh, independent look and absence of any potential conflicts of interest as the primary rationales for one or more new independent Committee-only advisors
- ▶ Perceived value of historical perspective, familiarity with company-specific and/or industry-specific issues and/or practices, and known track record in advising the Committee as examples of the justifications given for sticking (in whole or in part) with a trusted existing advisor, whether or not other work happens to be performed by such advisor or an affiliate
- ▶ Potential optics issue/risk if a problem develops later and advisors were not sufficiently independent
- ▶ Different committees taking different approaches in 2004
- ▶ Potential impact of pending Delaware case involving Disney Compensation Committee and Ovitz compensation and severance package if decision goes against the Board

2. How comprehensive and up-to-date is the “tally” provided to the Compensation Committee regarding the cash-based and equity-based compensation, deferred compensation, retirement plan benefits, and other benefits/perks of the executive officers in question¹? How detailed does it need to be?

In the wake of recent developments, a number of Compensation Committees have re-evaluated, or are in the process of re-evaluating, the level and scope of data needed for purposes of their reviews, and the nature and depth of the overall review process that they use. In this regard, a variety of questions can arise regarding the scope of the “tally” to be provided regarding current compensation, including, e.g.:

¹For purposes of this discussion, it is assumed that the compensation committee's mandate includes reviewing and approving the cash-based, equity-based and other compensation for, and principal benefits provided to, all executive officers.

- ▶ Should the cash compensation portion of that “tally” provide, for each executive in question, a recent history of prior base salary increases and of prior target and actual bonus payouts?
- ▶ In addition to identifying the current spread values of all outstanding vested options/SARs and all unvested options/SARs, and summarizing the total values realized on any recent option/SAR exercises (data similar to that shown in proxy statement tables), should the stock option / SAR portion of that “tally”, for each executive in question, also, e.g.:
 - ▶ project the potential future spread values of any unvested options/SARs as of their scheduled vesting dates (based, e.g., on realistic representative future price points); and
 - ▶ summarize the net shares (if any) retained on recent stock option / SAR exercises (e.g., on exercises over the trailing 2-3 years)?
- ▶ In addition to quantifying and valuing any unvested awards still outstanding as of the review date, should the restricted stock / RSU grant portion of that “tally” also summarize, for each executive in question, the values on the vesting date of any such awards that had previously vested over, e.g., the last 2-3 years, and the net shares (if any) retained with respect to such vested shares or units after the payment of any taxes?
- ▶ In addition to projecting the size of the next LTIP payout (if feasible), does that “tally” also include a full status update on all LTIP cycles in progress in terms of the target, maximum and likely payouts for such cycles, as well as a recap of recent LTIP payouts?
- ▶ Does the “tally” include an update on the extent of executive officer compliance with any applicable stock ownership guidelines and/or grant-by-grant net share retention requirements taking into account any stock options exercised, any restricted stock awards vesting, and any RSU or LTIP awards paid out in the last x months/years?
- ▶ Does the “tally” include a summary of any current accrued tax-qualified and non-qualified supplemental (SERP) defined benefit plan benefits, any current accrued tax-qualified and non-qualified supplemental defined contribution plan account balances, and any other accrued deferred compensation (principal and earnings)? What kind of future accrual/payout projections (if any) are provided?
- ▶ Does the “tally” include data showing, by individual, by category and/or on an overall basis, how the executive compensation packages in question compare to those of peer company executives, taking into account relative financial, stock price and strategic performance at the Company vs. among the peers?

3. Is the Committee looking at an appropriate peer group (or groups)?

- ▶ Value of, and need for, periodic review and reassessment of the composition of the peer group(s) being used, taking into account, among other things:
 - ▶ industry, size (based on market cap, revenues, etc.), business orientation, organizational style and other similarities and differences between company and various potential comparators;
 - ▶ relative financial and non-financial performance of the company (and its senior executives) vs. comparators (and their senior executives) currently and over last 2-3 years; and
 - ▶ any major changes in, and developments regarding, the Company's business focus and its longer-term strategic goals.

4. Is the Committee looking at a full set of peer group data points?

For example ...

- ▶ Does the peer group data on annual bonuses look at target award opportunities as well as actual payouts?
- ▶ Has the data on comparator company bonuses, option grants, and restricted stock and RSU awards been weighted or otherwise adjusted to take into account relative annual and longer-term financial and strategic performance and any special circumstances at those companies?
- ▶ Have the recent Form 10Q, Form 8K and Form 4 filings for comparators being fully reviewed to identify what current-year data is available regarding new and amended employment agreements, new equity-based grants, stock option exercises, restricted stock vesting, stock sales, etc., in addition to the data already shown in the comparator companies' most recent proxy statements?
 - ▶ Note impact of new Form 8K disclosure requirements scheduled to take effect in August 2004.

5. How good an understanding does the Committee have regarding the primary interactions between annual salary, bonus and other compensation decisions and the affected executives' severance, deferred compensation and retirement benefit rights?

- ▶ Has the Committee been provided with sufficient information regarding the impact of any recent or proposed large cash (and, if applicable, non-cash) compensation actions (e.g., large salary increase or large bonus) on the executive's severance rights and supplemental retirement benefits?

6. Has the Committee conducted a recent review of senior executives' employment and severance agreements, equity-based awards, LTIP awards, SERP and tax-qualified retirement benefits, deferred compensation arrangements, perks, etc. to project the estimated total amounts payable by the Company to each senior executive in the event of a termination by the Company without "Cause" or by the executive for "Good Reason" (if applicable) before or after a "Change of Control", based on different stock price and other scenarios?

- ▶ Has the Committee been provided with a summary of the severance and other amounts that currently would be payable to the key executives in question as of the review date in the event of a termination by the Company without "Cause" or by the executive for "Good Reason", before or after a "Change of Control"? Does that summary include any severance, and the value of any already vested stock options (or SARs), the value of any unvested stock options (or SARs), any restricted stock / RSU awards, or any LTIP awards if and to the extent the vesting of such items would be accelerated by such termination? Does it also include the value of any current and projected tax-qualified and non-qualified retirement plan benefits and account balances, any other deferred compensation, and any perk and other benefits?
- ▶ Does that review include a summary of the applicable definitions for the events triggering severance (e.g., termination by the Company without "Cause" and, if applicable, termination by the executive for "Good Reason"). Have those definitions been updated to address issues raised by some recent scandals and other developments?

For example, can the Board suspend (without triggering any "Good Reason" rights) an executive for a limited period of time while an active investigation of alleged misconduct is in progress, and how is a failure to cooperate with an internal Company investigation regarding alleged misconduct handled?

7. If applicable, has the Committee considered whether, and under what circumstances, the applicable plan and award documents should be revised to permit the Committee to retroactively adjust/clawback annual bonus and/or LTIP awards to take into account any subsequent adverse restatement(s) of financial results for the bonus year in question, or one or more of the LTIP years in question?

8. If applicable, has the Committee commissioned a review of how well the Company tracks and values the different types of non-financial performance (if any) used as a basis for annual bonus awards to key executives?

9. Has the Committee commissioned, or being advised of the results of, a periodic independent review of the quality of the Company's proxy, 10K and 8K disclosures with respect to executive compensation?