

Client Briefing

Non-Employee Director Compensation: How Much Is Too Much?

EXEQUITY

Independent Board and
Management Advisors

Several years ago, ISS announced it would start looking at companies who paid what ISS deems to be “excessive compensation” to their non-employee directors (NEDs). Where ISS finds a recurring pattern of excessive NED pay magnitude in two or more years without a compelling rationale, ISS may recommend against those board of directors’ members responsible for approving/setting NED pay. 2018 was the first proxy season that ISS applied this policy.

The question for many companies is what does ISS consider to be “excessive compensation” for NEDs? ISS issued FAQs on its U.S. Compensation Policies addressing this question.¹

Excessive Director Pay

ISS specified in its FAQs what it will look at when deciding whether NED pay is “excessive.” ISS will review NED pay on an individual NED basis and calculate its statistics concerning outliers in a similar fashion using the totals shown in director compensation tables included in proxy statements. ISS indicated that NED pay may vary by company size and industry. ISS indicated that when it analyzed NED pay, it was looking for cases of extreme outliers with little to no rationale provided in their proxy statements. Further, ISS stated that to determine outliers, it will compare individual NED pay to the median of all NED pay at companies in the same index and industry. ISS is looking to identify a pattern of extreme outliers. According to ISS, these outliers historically have represented pay figures above the top 5% of all comparable NED pay.

Exequity thought it might help companies to know the level of NED pay that would be deemed by ISS to constitute the top 5% of NED pay. So, we compiled statistics setting forth the median and 95th percentile of director pay at S&P 500 and Russell 3000 companies (excluding the S&P 500) in total and by industry group for 2017 (i.e., data from 2018 proxy statements) using Standard & Poor’s Capital IQ.

¹ See ISS’ U.S. Compensation Policies: Frequently Asked Questions, Updated December 14, 2017, Question 67, *How does ISS identify “excessive” levels of non-employee director pay and what impact will it have on the analysis?*

Exequity's figures should be viewed as guidelines. If you come within 10% of the 95th percentile, you should be cautious about further NED pay increases and about NED pay disclosures. In such cases, it may make sense to ensure your proxy statement clearly provides a rationale for the level of director pay to ensure your company does not run afoul of this ISS policy.

Aggregate 2017 Figures	S&P 500	Russell 3000 (Excluding S&P 500)
Median	\$282,300	\$176,100
95th Percentile	\$465,000	\$357,800

NED Pay—Medians and 95th Percentiles

The tables below provide the median and 95th percentile NED pay figures for the S&P 500 companies and Russell 3000 (excluding the S&P 500) using Standard & Poor's Capital IQ, rounded to the nearest \$100. As mentioned above, if a company's NED pay is within 10% of the 95th percentile, it will be advisable to evaluate whether to address this ISS policy in the next proxy.

S&P 500

GICS Code	Group	2017 Median	2017 95 th Percentile
10	Energy	\$310,600	\$442,800
15	Materials	\$261,400	\$333,500
20	Industrials	\$277,500	\$399,000
25	Consumer Discretionary	\$266,500	\$399,600
30	Consumer Staples	\$279,000	\$398,300
35	Healthcare	\$318,500	\$703,600
40	Financials	\$265,400	\$457,400
45	Information Technology	\$324,800	\$517,200
50	Telecommunications Services	\$321,500	\$403,500
55	Utilities	\$261,900	\$330,100
60	Real Estate	\$243,200	\$362,900
S&P 500 (Aggregate)		\$282,300	\$465,000

Russell 3000 (Excluding S&P 500)

GICS Code	Group	2017 Median	2017 95 th Percentile
1010	Energy	\$218,800	\$442,000
1510	Materials	\$200,600	\$296,400
2010	Capital Goods	\$192,800	\$289,500
2020	Commercial and Professional Services	\$190,300	\$307,600
2030	Transportation	\$180,200	\$307,200
2510	Automobiles and Components	\$205,000	\$350,000
2520	Consumer Durables and Apparel	\$179,100	\$325,900
2530	Consumer Services	\$177,500	\$363,400
2540	Media	\$188,500	\$411,500
2550	Retailing	\$194,200	\$333,300
3010	Food and Staples Retailing	\$192,200	\$344,000
3020	Food, Beverage and Tobacco	\$161,800	\$293,200
3030	Household and Personal Products	\$155,600	\$292,700
3510	Healthcare Equipment and Services	\$195,000	\$355,100
3520	Pharmaceuticals, Biotechnology and Life Sciences	\$184,100	\$542,200
4010	Banks	\$75,300	\$252,800
4020	Diversified Financials	\$186,900	\$345,100
4030	Insurance	\$179,400	\$386,900
4510	Software and Services	\$217,100	\$400,000
4520	Technology Hardware and Equipment	\$205,000	\$354,900
4530	Semiconductors and Semiconductor Equipment	\$215,000	\$478,200
5010	Telecommunication Services	\$181,800	\$470,000
5510	Utilities	\$177,600	\$319,700
6010	Real Estate	\$168,700	\$308,800
Russell 3000 (Excluding S&P 500; Aggregate)		\$176,100	\$357,800

Conclusion

While this policy, by definition, is likely to impact less than 5% of all companies, it is important for companies to test their NED pay against the 95th percentiles presented in the tables provided based on their index and industry. If a company's NED pay for its industry falls within 10% of the 95th percentile of NED pay, the company should carefully evaluate the ISS policy and determine whether its next proxy statement should include more detail on the rationale for its level of NED pay.



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