

- Beware of fixed-share grants. Today, most companies grant a dollar value of equity each year to directors. This approach makes it easy to manage total pay consistently year to year. Some companies grant a fixed number of shares — the value of which will vary depending on share price. The “noise” inherent with a fixed-share approach can draw external attention, particularly where strong price performance drives a significant uptick in the reported value of director grants. Again, director pay outliers are easy to identify.

- Establish a deferral mechanism to allow directors flexibility in managing their individual tax experience.

At the same time, maintain a healthy mix of cash and equity pay — no less than 40% cash for most — to avoid director stock sales to cover tax bills.

- Finally, you want to plan ahead for hazard pay. Too often boards find themselves paying in arrears for periods of extraordinary service (e.g., a major M&A transaction; a leadership change). The easy approach here is to stipulate that board and committee cash retainers cover a preset number of meetings each year. If a given year requires more, then per-meeting fees automatically kick in.

Tell your story

- For many companies, director pay disclosure is

compliance-oriented and intentionally bare bones. Today, you want to approach director pay disclosure much more akin to compensation discussion and analysis discourse of executive pay. In your public disclosure, be sure to make clear how you apply the rules above, from target-pay positioning through to the benchmarking approach, along with the “pay hygiene” features of your program.

Following these simple rules will help protect your board from external challenge. Director pay can be simple and safe. By establishing clear parameters for director pay, boards can proactively communicate

with the external audience the what, how, and why of director pay. And in doing so, boards can protect themselves from potential legal challenge — even where the business judgment rule has been softened by the Investors Bancorp decision. ■

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