2013 Summit Round Table

EXECUTIVE COMPENSATION SURVEY

SUMMARY REPORT

Prepared Exclusively for Summit Round Table Participants by the California & Nevada Credit Union Leagues | **August 2013**

California CREDIT UNION LEAGUE

NEVADA CREDIT UNION LEAGUE

DOCUMENTING BOARD DUE DILIGENCE

James S. Patterson, Esq.

Background

Federal and state regulators continue to expect more and more from board members. On the federal side, NCUA Rule 701.4 raised the general financial literacy requirements. Then, earlier this year, the NCUA in Letter No: 13-CU-01 (providing the NCUA's supervisory focus for 2013) warned boards investing in "less established or complex products" that "examiners will verify whether your credit union has the appropriate expertise and risk-mitigation controls" to install such plans.

Are Compliance Manuals Enough?

During exams or other interactions with regulators, can board members simply hand the regulators a compliance manual and assure them that all is in order? Probably not. Examiners are asking more detailed questions of board members, and expect board members to understand why they established the plan and how it works. The board members need to understand the big picture. A compliance manual is a great resource for providing information about the plan, but the directors need to "own" the basic purpose and design of the plan so they can discuss the plan basics with little assistance from other design materials. They need to be able to "tell the story" of why the plan is in place.

Documenting the Due Diligence Process

Following are some questions that could be answered by a board to document its due diligence process, with some comments in brackets. Many of the questions are self-explanatory and straight forward. Even if boards are doing the type of due diligence described below, recording the information in one place will be helpful as board members change, or for quick reference as regulators ask questions about the plan by phone or from across the table.

Name of Plan: [Supplemental Executive Retirement Plan, etc.]

Who should participate in the plan? [Names, titles, seniority, etc.]

What are the plan objectives? [Retain talent, show employees' value, reward performance, etc.]

What are the levels of benefits? [Fixed amount, percentage of base salary, etc.]

When do participants become entitled to receive the benefits? [Cliff vesting, disability, termination without cause, etc.]

Will the plan be informally funded, and if so, with what type of investment? [Institutional Insurance, etc.]

What is the accounting / P&L impact?

Number of times the board met with the compensation consultant:

Which products did the compensation consultant recommend the board consider?

Discuss the process of the board tailoring the recommendations to fit its needs: [A description of the process, probably a few sentences]

Summary of key discussions between the board and the compensation consultant:

Did the board create a subcommittee to address this benefit issue?

What alternatives did the board consider?

Rationale for choosing the plan recommended by the compensation consultant: [Efficient use of resources, matching of objectives to design, etc.]

What funding issues did the board address? [Creditworthiness of insurance carriers, required financial outlay by the credit union, concentration, etc.]

D**id the board review its Investment Policy to determine whether the Policy needs to be amended to allow the proposed investments?**

What is the process for adding new participants in the future? [Designation by the board, participation standards, etc.]

Conclusion

The list of questions above is not exhaustive, but it is a good start. Regulators will respond well to boards that take the time to use and document due diligence as they establish executive benefit plans for their key employees. The regulators will not expect that the board members or executives understand every nuance of how the plan works – they understand that is the role of the compensation consultant. They will expect, however, that board members have a good general understanding of the plan, and that the board exercised due diligence in installing the plan.

Jim is a partner with Sherman & Patterson, Ltd., a law firm focusing on executive compensation in credit unions and other tax-exempt entities. Jim frequently interacts with NCUA and state credit union regulators regarding the implementation and funding of executive and director benefits, keeping clients compliant with applicable regulations.