

## Evaluating Performance Goals and Incentive Compensation in Light of COVID-19

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Boards and compensation committees will be reevaluating their incentive compensation arrangements in light of the COVID-19 pandemic and the resulting market uncertainty. Both long-term and short-term incentive plans can lose motivational and retention value if the performance goals are unachievable or if they do not align with market reality.

- Companies that have not yet established performance goals for their 2020 equity and bonus awards should carefully consider market conditions and shareholder perception before establishing goals, focusing on motivating their executives with pay for performance that aligns with shareholders' interests, while giving the company flexibility to navigate through uncharted territory. To the extent possible, companies should also consider delaying the issuance of incentive compensation awards until there is more stability in the business and in the financial markets.
- Companies that have already established goals for their 2020 awards (or that are evaluating the continued effectiveness of performance goals for prior year awards that remain outstanding) should proceed with caution before adjusting outstanding awards by (i) ensuring that the modifications are permitted or otherwise compliant with applicable plan documents; (ii) considering the financial and accounting impact of making such modifications; (iii) if the company is publicly-traded, considering any securities disclosure requirements and, if applicable, the impact the modifications may have with respect to institutional investors and proxy advisors such as ISS and Glass Lewis; and (iv) if the company has grandfathered awards under Section 162(m) of the Internal Revenue Code, considering the consequences of any modifications of such awards.

Whether planning for upcoming incentive compensation awards or modifying existing incentive compensation awards, companies should consider including flexibility within such awards to make further adjustments for business changes. While companies will need to make decisions as appropriate for their individual circumstances, they should be mindful of the messaging that such actions send to other stakeholders, including the company's employees and external parties such as investors and proxy advisors. It will be prudent to provide robust disclosures and conduct outreach as necessary to demonstrate that, even during these uncertain times, the incentive compensation aligns with the long-term goals of the company.