

Special Committee Compensation in Strategic and M&A Situations

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It is not uncommon for boards to appoint a special committee to address unique situations facing the company such as a strategic review or possible M&A transaction. Due to the workload and time commitment associated with serving on a special committee, directors typically receive supplemental compensation for this work. In our experience, boards can struggle with determining the appropriate quantum and structure of pay for special committee members. This article provides general guidelines to assist boards in making decisions pertaining to special committee compensation.

When to set pay, and under what circumstances?

Boards should consider whether the nature and magnitude of the situation warrants the establishment of a special committee, and if so, whether members of the committee should receive supplemental compensation. If it is determined that special committee members should receive additional compensation for this work, this pay should be set in advance of, and not be dependent on, the outcome of a possible future event. Compensation contingent on the completion of a deal may call into question the independence of directors on the special committee.

How much to pay?

The quantum of special committee compensation can be challenging to set due to the unique circumstances that surround every situation and transaction. We do, however, recommend that boards adhere to general guidelines. Boards should consider the organization's existing board pay levels and practices when determining the quantum of pay for a special committee. The nature and length of a special committee's mandate relative to regular board service should also be considered in setting the compensation amount. Compensation should not be 'excessive' or structured in a way that undermines the independence of special committee members. As a starting point, the board could examine compensation paid to members of existing standing committees (e.g., the board's Audit Committee).

How to structure pay?

Special committee compensation can consist of cash under a flat fee structure, per-meeting fee, or a combination of both. Flat fees can be paid quarterly or monthly. In cases where the work of a special committee extends beyond the originally anticipated scope, a flat fee structure may not adequately compensate committee members. To address this, some companies adopt a flat fee in conjunction with a meeting fee that 'kicks in' when the number of meetings exceeds a predetermined threshold. In addition to a flat fee and/or meeting fee, committee members should be reimbursed for reasonable expenses incurred in connection with the discharging of their duties.

While special committee compensation may not always be publicly disclosed by issuers due to their subsequent privatization and the absence of any future disclosure requirements, boards can review special committee compensation arrangements in the market to understand the context of what other companies have done under similar circumstances.

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Hugessen Consulting is an independent consulting firm dedicated to meeting the executive and director compensation consulting requirements of boards. With offices in Toronto and Calgary, the firm's mission is to be the leading provider of advice on executive compensation, director compensation, performance measurement and assessment, and related governance to the compensation committees of companies in Canada and the U.S.

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