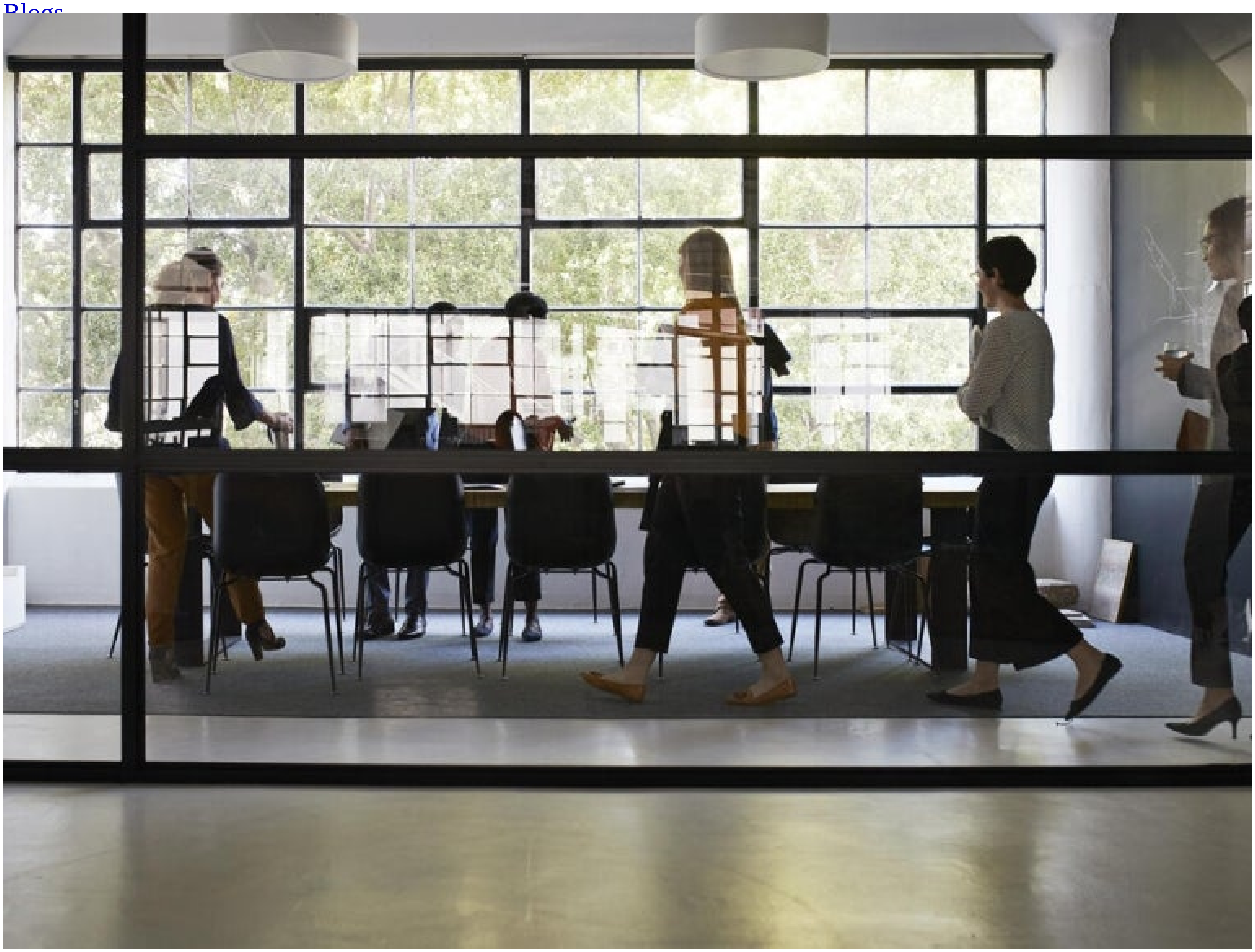

With the first proxy season behind us with the SEC's new "pay vs. performance" disclosure requirement, it's a good time to review what we saw as the primary trends – particularly with Corp Fin planning to comment upon these disclosures sometime later this year. Here are the top five trends that we saw:

1. Retention of consultants to determine CAP. Many companies hired outside consultants to determine the equity fair value and pension service cost adjustments required to calculate "compensation actually paid" (CAP) to the named executive officers (NEOs). Some companies wound up with negative CAP amounts in their pay versus performance table, particularly for 2022 due to stock price declines.

2. Pay versus Performance Table. Among S&P 500 companies,common "Company Selected Metrics" (CSMs) included:

- Profit measures, such as EPS, EBITDA, operating/pre-tax profit
- Revenue
- Return measures, including return-on-equity, return-on-assets, return-on-capital
- Others, such as cash flow

Most CSMs were non-GAAP and tended to be the most heavily weighted financial measure used in the company's annual or long-term equity incentive plan (and that was not otherwise required to be included in the table).

Peer group total shareholder return was typically based on the same industry index used in the Form 10-K stock performance graph rather than the CD&A peer group. This is not surprising given the additional disclosures that can be required when the CD&A peer group is used.

3. **List of 3-7 financial performance measures** (can be less than 3 if a company really has less than 3). Most companies used 3-5 financial performance measures, with a majority using 3 or more. While companies had discretion on how to present (e.g., a separate list for the CEO and another for the other NEOs, separate lists for each NEO or a single list applicable to all), a single list was the most common. Most measures were financial measures though nonfinancial measures are permitted under the SEC's rules.

4. **Clear description of relationship between CAP and company TSR, net income and CSM**. Companies can describe the relationship between (1) CAP and company performance and (2) company TSR and peer group TSR through graphs or narrative (or both). Most companies provided bar charts and/or line graphs, with a small minority providing narrative only. There generally was a correlation between CAP and TSR amounts.

5. **Location of disclosure.** The SEC's rules don't mandate a location, but companies typically placed the disclosure at the end of their compensation disclosures, normally after the CEO pay ratio disclosure.

Overall, the new "pay vs. performance" disclosure didn't impact the proxy season that much in the first year. ISS and Glass Lewis didn't include this new disclosure in their screening analytics but it might have been part of their qualitative evaluations. With a year of disclosures to consider, the level of scrutiny could change for their 2024 voting guidelines.

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