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Settlement of Director Pay Lawsuit Provides Best Practices Framework

A recent settlement of a shareholder lawsuit alleging excessive compensation to non-employee directors provides a framework for best practices related to director pay.

Last month, the Delaware Chancery Court approved a settlement of *Calma v. Templeton*, a derivative lawsuit that claimed the Board of Directors of Citrix Systems, Inc. engaged in self-dealing by approving its own equity pay in accordance with Citrix's omnibus plan (refer to our Client Update dated May 22, 2015 for further information on this case).

Under the terms of the settlement, Citrix has agreed to implement and maintain the following corporate governance reforms for at least five years.

- **Limits on Annual Equity Compensation Grants for Non-Employee Directors**. Citrix agreed to amend its omnibus plan (i.e., equity plan) to (1) provide that the annual equity compensation granted to each non-employee director may not have a value that exceeds $795,000 as of the grant date ("Annual Limit"), (2) specify the types of annual equity grants available to non-employee directors and (3) describe the vesting, exercisability and settlement of those grants. The Annual Limit is over 3 times the grant date value of annual equity awards Citrix currently grants to non-employee directors.
- **Shareholder Approval of Plan Amendments**. Citrix agreed to seek shareholder approval of the above amendments to its omnibus plan at its 2017 annual meeting.
- **Enhanced Disclosures on Director Compensation Practices**. Commencing in 2017, Citrix agreed to provide enhanced proxy disclosures on its director compensation practices, including: (1) a description of the compensation philosophy and rationale underlying its non-employee director compensation; (2) the process by which decisions were made concerning non-employee director compensation, including the role and analysis of the independent compensation consultant retained by the Compensation Committee and (3) the specific annual awards of non-employee director compensation in that particular year.
- **Designated Compensation Committee Responsibilities**. Citrix agreed to amend the Company's Compensation Committee Charter to provide that the Compensation Committee will be required to:

  — Conduct an annual review and assessment of all compensation, including cash and equity-based compensation, paid to the non-employee directors;

  — Engage an independent compensation consultant annually to advise the Committee with regard to the cash and equity-based compensation of non-employee directors to be awarded, including with respect to (1) the amount and type of compensation to be paid and (2) comparative data deemed appropriate by such consultant, and

— Recommend to the Board of Directors on the basis of its annual review and assessment the compensation to be awarded to non-employee directors.

Citrix also agreed to pay $425,000 in legal fees and expenses to plaintiffs' counsel.

Meridian Comment. Citrix's settlement of the director pay lawsuit provides a framework for companies to consider when evaluating their director pay practices and processes. Many public companies have already adopted annual limits on director equity grants and have historically assessed the appropriateness of director pay levels through the use of outside consultants. Given the increased spotlight on director pay, we recommend that companies consider expanding their proxy disclosure to provide more transparency around director pay philosophy and decision-making on setting director pay levels.

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The ***Client Update*** is prepared by Meridian Compensation Partners' Technical Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-235-3605 or dkalfen@meridiancp.com.