

Jaime L. Klima
General Counsel
New York Stock Exchange
11 Wall Street
New York, NY 10005
T: 212.656.2006
jaime.klima@nyse.com



June 25, 2025

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Number 4-855: Executive Compensation Roundtable - June 26, 2025

Dear Ms. Countryman:

The NYSE Institute (the "Institute") appreciates the opportunity to share its views on the topics to be discussed at the Securities and Exchange Commission's (the "Commission") upcoming Executive Compensation Roundtable. Launched in 2022, the Institute's mission is to advocate for the more than 2,400 public companies listed on NYSE exchanges and promote the long-term strength of U.S. capital markets. In advancing these goals, the Institute is guided by its Advisory Board, a committee of C-suite executives representing many of the largest and most well-known public companies listed on the New York Stock Exchange. Collectively, the Institute and its Advisory Board aim to give voice to the issues facing public companies and the real-world impact of the current regulatory regime.

The Institute is encouraged that the Commission is initiating a necessary dialogue on the topic of executive compensation disclosures, which were substantially revamped nearly twenty years ago and have continued to expand in recent years. We agree with Chairman Atkins' statement on the importance of undertaking retrospective reviews of Commission rules to ensure that they achieve the intended benefits, remain cost-effective, and advance a sensible disclosure scheme that is consistent with the Commission's mission.¹ Members of the Institute's Advisory Board represent a broad range of industries and business lines, but despite the different sectors in which they operate, share a common belief that Commission rulemaking in recent years — covering topics from cybersecurity to executive compensation — has resulted in ballooning corporate disclosure that often (i) overloads investors with immaterial information, (ii) saddles public companies with unnecessarily burdensome costs, and (iii)

¹ See "Statement on the Upcoming Executive Compensation Roundtable," Paul S. Atkins, Chairman of the Commission, May 16, 2025, available at <https://www.sec.gov/newsroom/speeches-statements/statement-upcoming-executive-compensation-roundtable>.

weighs on the competitiveness of the U.S. capital markets. With that perspective, we offer the following comments for consideration at the Executive Compensation Roundtable.²

1. Materiality Must Be the Governing Principle Underlying All Corporate Disclosure, Including Executive Compensation

As the Commission considers amendments to its disclosure rules, materiality must be the benchmark against which any obligation is measured. With respect to corporate disclosure, the Commission has previously stated that “a matter is ‘material’ if there is a substantial likelihood that a reasonable person would consider it important.”³ Similarly, the United States Supreme Court has held that information is material if there is “a substantial likelihood that the ... fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”⁴ Unfortunately, many Commission rulemakings in recent years, including those related to executive compensation, have strayed from the long-established standard of materiality under the federal securities laws and instead impose obligations to report non-material information that risks the kind of “avalanche of information” that Justice Marshall warned against.⁵

When revisiting the disclosure rules on executive compensation, we urge the Commission to consider whether many current metrics reported pursuant to Item 402 of Regulation S-K are truly material to the investing public. In particular, we believe that disclosures relating to (i) pay versus performance, (ii) CEO pay ratio, (iii) perquisites, and (iv) say-on-pay are difficult to digest and do not reflect the actual nuances of an issuer’s business and compensation practices and may inadvertently create misimpressions that are counterproductive to effective disclosure. The unfortunate consequence of these disclosure mandates is that information material to investors can be lost in page after page of heavily footnoted tables. Simplifying executive compensation disclosures would serve twin goals of enhancing the effectiveness of disclosure most useful to investors and relieving public companies of unnecessary burdens that can make the U.S. capital markets less attractive.

a. Pay versus Performance Disclosure is Overly Granular and May Not Correlate to Actual Compensation for a Given Year

In 2022, the Commission adopted Item 402(v) of Regulation S-K to implement Section 953(a) of the Dodd-Frank Act⁶. This rule, addressing “Pay versus Performance,” obligates public companies to disclose

² The comments provided herein are the result of a collaborative effort among members of the NYSE Institute Advisory Board. While reflective of the general views of the Advisory Board, not every member may be supportive of each comment.

³ See Securities and Exchange Commission Staff Accounting Bulletin: No. 99 - Materiality, Release No. SAB 99, August 12, 1999, 17 CFR Part 211.

⁴ *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 449 (1976). See also *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988).

⁵ See, *Id.*, (“...if the standard of materiality is unnecessarily low, not only may the corporation and its management be subjected to liability for insignificant omissions or misstatements, but also management’s fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information — a result that is hardly conducive to informed decisionmaking.”) See also The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release Nos. 33-11275 and 34-99678, File No. S7-10-22, May 28, 2024; Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release Nos. 33-11216 and 34-97989, File No. S7-09-22, September 5, 2023); Conflict Minerals, Release No. 34-67716, File No. S7-40-10, November 13, 2012.

⁶ Pub. L. 111-203, 124 Stat. 1376 (2010).

the relationship between (i) executive compensation actually paid to their named executive officers and (ii) the company's overall financial performance. Intended to "provide investors with more transparent, readily comparable, and understandable disclosure of a registrant's executive compensation,"⁷ Item 402(v) betrays its objective by requiring a complex tabular presentation of compensation metrics that is ultimately of little utility to investors. The substantial effort — in time, expense, and employee resources — needed to prepare Pay versus Performance disclosure has not translated to more meaningful engagement with shareholders. Rather, the Advisory Board's collective experience indicates that shareholders focus less on the granular detail of Pay versus Performance and more on the high-level Summary Compensation Table required by Item 402(c) of Regulation S-K.

However, even Summary Compensation Table disclosure has its challenges. Equity awards are a core component of executive compensation for nearly all public companies, but the current disclosure requirements do not accommodate how equity compensation works in practice. For example, equity awards are typically granted early in a fiscal year as part of total compensation for the prior year's performance and are subject to a multi-year vesting schedule. In a Summary Compensation Table,⁸ the award's fair value will be reported as compensation for a given year when it is actually linked to employment during a prior period. To explain this misalignment, issuers are forced to include additional footnotes or reconciliation tables to their already dense disclosure.

Similarly, when performance milestones are not achieved or the price of underlying equity changes over a multi-year vesting schedule, the grant date value of an equity award may have little correlation to ultimate compensation received by the executive. The Commission's Pay versus Performance⁹ disclosure endeavors to resolve this disconnect by introducing the concept of "Compensation Actually Paid" as a retrospective update to previously reported Summary Compensation. Unfortunately, the accounting adjustments required to compute Compensation Actually Paid — including the need to track accrued dividends and obtain subsequent valuations — are exceedingly onerous and the resulting amounts may not live up to their name.¹⁰ Companies are often forced to engage third-party compensation consultants to assist in these calculations, further illustrating how the measure of Compensation Actually Paid is divorced from Compensation Committee consideration. And, based on shareholder outreach, there is little evidence that investors consider these disclosures useful in assessing a company's executive compensation practices.

Shareholders may reasonably find financial information about compensation paid to a company's most senior executive officers important. But, in the experience of the Advisory Board, the current volume and form of mandated reporting far exceeds what most investors desire or even find useful. Allowing for principles-based reporting to explain (i) compensation philosophy and (ii) the link between pay and performance will do more to inform investors than the needlessly complicated, often misleading, disclosures currently required.

⁷ See Pay versus Performance, Release No. 34-95607, File No. S7-07-15, October 11, 2022.

⁸ Item 402(c) of Regulation S-K.

⁹ Item 402(v) of Regulation S-K.

¹⁰ For example, issuers are required to include fluctuations in the value of outstanding equity awards as Compensation Actually Paid. However, these fluctuations do not represent realized pay since an executive may forfeit the award and never receive any benefit notwithstanding what is reported in the table.

The Institute encourages the Commission to simplify its executive compensation rules by (i) amending Item 402(c) such that the Summary Compensation Table reports actual compensation received in a given year and (ii) allowing issuers to use this metric of actual compensation received as the basis for its Pay versus Performance disclosure, without applying the needlessly complicated adjustments currently required.

b. CEO Pay Ratio Disclosure Can Be Misconstrued and Adversely Impacts Certain Sectors

Mandated CEO Pay Ratio¹¹ disclosure should be reconsidered because its effect on certain sectors results in distorted data and leads to problematic comparisons among companies. Though simple in its presentation, the underlying analysis needed to generate CEO Pay Ratio disclosure does not equate to measurable benefit to investors. Notably, when adopting its CEO Pay Ratio rule in 2015¹², the Commission highlighted that “Congress did not expressly state the specific objectives or intended benefits of [CEO Pay Ratio disclosure], and the legislative history of the Dodd-Frank Act also does not expressly state the Congressional purpose underlying [the disclosure].”¹³ Nearly a decade after adoption, we believe that CEO Pay Ratio disclosures in their current form do not promote the SEC’s mission.

Among the most troublesome aspects of the CEO Pay Ratio rule is the manner in which its requirements detrimentally affect companies operating in certain sectors. For example, whereas a technology company heavily reliant on highly-skilled employees will likely have a lower compensation ratio between its CEO and median employee, the corresponding ratio of a manufacturer that employs part-time, seasonal, or temporary workers may be much higher. The divergent ratios offer little insight on a company’s actual compensation philosophy and almost certainly do not reflect how a company values its CEO or its employees. Instead, CEO Pay Ratios attract outsized media attention and may also subject issuers to punishing tax regimes.¹⁴

Given their potential to be misconstrued, the Institute recommends that the Commission reassess what form and type of pay ratio disclosure may actually benefit shareholders.¹⁵

c. Perquisite Disclosure Is Not Appropriately Calibrated for Current Circumstances

Perquisite reporting rules are too granular, subject to unreasonably low thresholds, and risk disclosure of sensitive information. Prior to adoption of the 2006 amendments¹⁶, the rules governing perquisite disclosure were more grounded in common sense. Previously, disclosure of perquisites was generally required only when the aggregate amount of such compensation exceeded \$50,000.¹⁷ Now, disclosure

¹¹ Item 402(u) of Regulation S-K.

¹² The CEO Pay Ratio rule was adopted to implement Section 953(b)(1) of the Dodd-Frank Act.

¹³ See Pay Ratio Disclosure, Securities and Exchange Commission Release Nos. 33-9877 and 34-75610, File No. S7-07-13, October 19, 2015.

¹⁴ See, for example, Portland, Oregon’s Pay Ratio Surtax, <https://www.portland.gov/policies/licensing-and-income-taxes/fees/lic-502-pay-ratio-surtax>. Notably, as recently as last year, Congress considered a similar measure: <https://www.congress.gov/bill/118th-congress/senate-bill/3620/text>.

¹⁵ For example, the Commission should consider whether the ratio of CEO compensation among peer companies may be more informative to investors.

¹⁶ See Executive Compensation and Related Person Disclosure, Securities and Exchange Commission Release Nos. 33-8732A and 34-54302A, File No. S7-03-06, November 7, 2006 (the “2006 Release”).

¹⁷ *Id.* at pg. 9.

obligations are triggered when the aggregate perquisite value is \$10,000, an 80% reduction in the reporting threshold.

Required reporting of de minimis perquisites clogs proxy statements with immaterial data and detracts from more significant information. As dollar amounts have been stagnant for nearly two decades, we recommend increasing the aggregated threshold for perquisite reporting to at least \$100,000, indexed to inflation on a going forward basis. Alternatively, the Commission should consider allowing for narrative disclosure of the general categories of provided perquisites, without mandating dollar specific reporting.

Reflected in its 2006 release, the Commission’s two-part analysis for perquisite disclosure is not always instructive in deciding whether perquisite disclosure is required.¹⁸ Over time, security and use of corporate aircraft — which were once executive perks — have become critical business expenses to protect executives in a heightened threat environment. Responding to the uncertainty around the level of required disclosure, companies err on the side of over-disclosure, even when doing so publicizes sensitive security measures that only serve to elevate the security risk to the executive. The Commission should clarify that personal security and use of corporate aircraft for executive officers are not reportable perquisites, regardless of their cost.

d. Say-on-Pay Votes have Little Utility to Companies or their Shareholders

Nonbinding “Say-on-Pay” advisory votes should be standardized to a single vote held once every three years. The value of Say-on-Pay votes — to investors and companies alike — does not warrant the effort necessary to poll shareholders on these matters. Under current rules, at least once every *three* years, issuers must seek a nonbinding vote of shareholders to approve the issuer’s compensation practices. At least once every *six* years, issuers must seek a second nonbinding vote to determine if shareholders would like to provide the first vote more frequently.

Companies must then disclose how their Compensation Committee considered the results of these multiple votes. However, because each vote is simply advisory in nature, issuer disclosure on the impact of a given result is predictably generic. Despite the original intent for Say-on-Pay votes to be a consultative tool to guide public company boards, proxy advisory firms often exploit pending votes to pressure companies into implementing compensation practices favored by those same firms.

Absent Congressional action to rescind its Say-on-Pay mandate, the Commission should standardize the frequency of required voting to a single vote held once every three years.

2. Clawback Rules Can Create Overly Punitive Outcomes

In 2023, each national securities exchange was directed by the Commission to adopt rules requiring listed companies to have policies governing the recovery of erroneously awarded compensation. Intended to protect against unjust enrichment in the event that an executive’s previously awarded compensation was based, in part, on financial statements subsequently recalled, the mandated “clawback” rules are challenging to administer and overly punitive. Determining the amount of

¹⁸ Determinations that an issue is “integrally and directly related to the performance of [an] executive’s duties” are subject to second-guessing, particularly if deemed to confer an “indirect benefit”. See the 2006 Release at pg. 74 for a description of the Commission’s guidance on evaluating perquisites.

incentive-based compensation that was erroneously awarded is often a difficult task.¹⁹ Further, the rules require that issuers calculate the amount of erroneously awarded compensation “subject to recovery without regard to any taxes paid.”²⁰ Consequently, an officer could be liable to return compensation and pay taxes on it at the same time.

Mandating recovery in all instances — regardless of a restatement’s materiality — limits a board’s discretion to assess varied circumstances on a case-by-case basis. The Institute suggests that the Commission invite Exchange rule proposals for the purpose of addressing these concerns.

Conclusion

The Institute appreciates the Commission’s focus on the challenges faced by public companies in the area of executive compensation disclosure. We are grateful for the opportunity to share our common concerns and hope the Commission will consider our recommendations as it contemplates further action. We stand ready to collaborate with the Commission as it pursues this important endeavor.

Respectfully submitted,



Jaime L. Klima

¹⁹ See, for example, Section 303A.14(c)(iii) of the NYSE Listed Company Manual. The amount of incentive-based compensation that must be subject to a clawback policy is the incentive-based compensation received that exceeds the incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts. This calculation can be particularly difficult with respect to awards granted based on total shareholder return, as it is not possible to determine a restatement’s impact on stock price.

²⁰ *Id.*