

# JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114.1190

TELEPHONE: +1.216.586.3939 • JONESDAY.COM

August 18, 2025

Re: Executive Compensation Roundtable (File No. 4-855)

Ms. Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Dear Ms. Countryman:

We are making this submission to the Securities and Exchange Commission (the “SEC”) in response to the SEC’s request for comment on the executive compensation disclosure rules. We appreciate the opportunity to provide our perspective on areas where we believe the rules could be improved and simplified.

In his remarks at the Executive Compensation Roundtable, Chairman Atkins made the following statement regarding the executive compensation disclosure requirements (emphasis added):

*Our rules must be grounded in achieving the Commission’s three-part mission: investor protection, fair, orderly and efficient markets, and capital formation. These rules should be **cost-effective for companies to comply with and provide material information to investors in plain English**. Most importantly, the information required to be disclosed should be material to the company and understandable to the Supreme Court’s objective reasonable investor.*

As lawyers who draft, review and comment on executive compensation disclosures for many companies each year, it is our view that the rules currently are overly complex, expensive to comply with, and, in certain cases, do not achieve the stated goal of providing investors with only material information. This letter focuses on practical suggestions for streamlining the executive compensation requirements that we believe would benefit both investors and issuers.

## 1. Reduction in Number of NEOs.

Current disclosure rules for most companies require information presented in the Compensation Discussion and Analysis, as well as the compensation tables, to cover compensation for each named executive officer, which is currently defined to include each person who served as the company’s principal executive officer or principal financial officer during the applicable fiscal year, the three most highly compensated executive officers (other than the principal executive officer(s) and principal financial officer(s)) who were serving as executive officers at the end of the fiscal year, and up to two additional individuals who would have been among those other most highly compensated executive officers but were no longer serving as executive officers as of the end of the fiscal year.

Given that institutional investors are most focused on chief executive officer pay and each additional named executive officer required to be included in the proxy statement adds significant time and cost to the preparation of the relevant disclosures in the proxy, we recommend scaling back the number of named executive officers to each person who served as the principal executive officer during the applicable fiscal year, the two most highly compensated executive officers (other than the principal executive officer(s)) serving as of the end of the fiscal year, and up to one former executive officer who would have been among those other most highly compensated executive officers if such person had been serving in an executive officer position at the end of the fiscal year. We recommend that this revised definition of named executive officers be applicable across the board to all issuers (including smaller reporting companies and emerging growth companies).

## 2. Summary Compensation Table.

Of all of the compensation tables, the Summary Compensation Table is the most often cited and useful in providing an overview of all material compensation elements in one place. Given the focus on information presented in this table, we recommend several changes, as noted below.

*Valuation of Equity Awards.* Current rules require equity awards that were granted in a fiscal year to be reported in the Summary Compensation Table for such fiscal year based on their aggregate grant date fair value for accounting purposes. Equity awards are typically subject to vesting terms tied to continued employment and/or performance metrics, so even though the full grant date fair value is currently required to be reported in the Summary Compensation Table, this represents only a potential amount that may be earned; the named executive officer may not actually ever realize any value with respect to these awards if those conditions are not met. Furthermore, if and when value is ultimately realized with respect to these equity awards, such value will be based on the company's share price at the time the award vests, which could differ significantly from the share price at grant. In our view, the grant date fair value approach for reporting equity awards is misaligned with the approach taken with respect to other elements of compensation reported in the Summary Compensation Table, which are generally based on amounts actually earned for the relevant fiscal year. Further, compensation committees of boards of directors do not typically focus on the grant date fair value of share-based awards when they approve such awards but rather approve an intrinsic dollar value with the number of shares subject to the awards determined by dividing the dollar value by the closing market price per share of the award on the grant date (or another similar mechanism, such as an average of recent stock prices).

To create greater alignment with the processes actually used by compensation committees to approve share-based awards and to simplify and clarify disclosure around equity awards, we recommend revising the rules to require issuers to report the value of equity awards that vested in the applicable fiscal year in the Summary Compensation Table for such year (plus any dividends or dividend equivalents earned on such awards) using the intrinsic value of such awards on the applicable vesting date. With respect to such intrinsic value of vested option awards, we recommend requiring the "in-the-money" value of options that vested in the fiscal year to be reported in the Summary Compensation Table, and if any options are exercised in a fiscal year, the number and value of shares received upon exercise could be included in a footnote. This would better align with the other amounts reported in this table as it would show values that were actually earned or vested (i.e., more likely to be paid to or realized by the named executive officer). It would also, in our view, eliminate the need for both (a) the separate "Option Exercises and Stock Vested" table and (b) the "Pay Versus Performance" table and related disclosure

(provided that information about the issuer's total shareholder return is also presented in the Summary Compensation Table); see below for further recommendations on the Pay Versus Performance disclosure requirements.

*Elimination of Change in Pension Value and Nonqualified Deferred Compensation Earnings Column.* The Summary Compensation Table is currently required to include a column reporting the increase in the actuarial present value of the executive's accumulated benefit under all defined benefit and actuarial pension plans and any above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified. In our experience, investors are not focused on amounts reported in this column. Defined benefit pension plans are also less common today than they were when these rules were adopted, and to the extent an issuer does have executives with ongoing pension plan benefits, relevant information about those arrangements will be disclosed in the "Pension Benefits" table. There is also a separate "Nonqualified Deferred Compensation Table" requirement where earnings under these deferred compensation plans are required to be reported. Given that this information is generally not pertinent to investors and is accessible elsewhere in the proxy disclosure, we believe eliminating it from the Summary Compensation Table is warranted.

*Categorization and Valuation of Perquisites.* We generally recommend that the SEC revisit the rules regarding the categorization and valuation of perquisites and propose changes to simplify the rules, including by providing additional guidance and clarity on what constitutes a perquisite for these purposes. We note in particular that the processes used by our clients for valuing certain commonly provided benefits – such as personal use of corporate aircraft – are time intensive and not necessarily consistent across issuers. Clearer guidance in this area would allow for more consistent and understandable disclosure for investors and simplify the calculation for issuers.

### **3. Nonqualified Deferred Compensation Table.**

Instructions to the Nonqualified Deferred Compensation Table currently require companies to provide a footnote quantifying the extent to which (a) amounts reported in the contributions and earnings columns are reported as compensation in the company's Summary Compensation Table and (b) amounts reported in the aggregate balance at last fiscal year end column were reported as compensation in the company's Summary Compensation Table for previous years. This footnote disclosure is duplicative of information included in the Summary Compensation Table and marginally useful to investors; also, regarding the aggregate balance column, very few companies understand exactly how to calculate these required amounts. We believe that this footnote requirement should be eliminated.

### **4. Potential Payments Disclosure.**

Current disclosure rules require both qualitative and quantitative descriptions of the benefits payable upon any termination of a named executive officer's employment or a change in control of the company. While we believe quantification of certain benefits – such as those payable upon a change in control of the issuer or involuntary termination of employment – are useful to investors, we would recommend requiring quantification only in these scenarios and not all hypothetical termination scenarios (e.g., eliminate the requirement to quantify amounts that would be received upon the named executive officer's death, disability or retirement unless such event actually occurred during the fiscal year or prior to filing the proxy statement). Further, if a named executive officer terminates employment for any reason prior to the

filing of the proxy statement, we believe the issuer should be required to describe and quantify only the amounts actually paid to such officer in connection with the termination (rather than quantification of hypothetical amounts as of the last business day of the fiscal year even in some situations where the individual has since departed and those amounts do not represent what was actually earned or paid in connection with the termination).

#### 5. Pay Versus Performance Disclosure.

The new pay versus performance disclosure requirements have added significant inefficient time and expense to the preparation of the proxy statement, and, in our view, these disclosures are not corresponding helpful in a significant way to investors. Many of our clients have outsourced these calculations to external accounting/advisory firms because they do not have the time or resources internally to calculate the “compensation actually paid” figure, particularly if their equity grant practices include several types of awards that require different valuation methodologies. Preparing the detailed footnote disclosures regarding the calculation of “compensation actually paid” are also cumbersome and arduous tasks that consume significant time and resources of our clients. We generally find these rules to be extremely administratively burdensome for our clients with limited utility for investors. As such, we recommend a significant overhaul to these disclosure requirements and, as described below, consolidating the minimum required information under Dodd-Frank (as defined below) into the Summary Compensation Table for a more streamlined and wholistic view of pay in relation to the key indicator of performance for investors, stock price.

While we recognize that a pay versus performance disclosure is mandated under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), we believe that a much simpler rule could be adopted. Dodd-Frank provides the following:

*The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.*

It is our view that the SEC could adopt a rule that would comply with the above mandate by revising the Summary Compensation Table as follows: (1) to require that equity awards be reported based on their intrinsic value as of the applicable vesting date (including any dividends or dividend equivalents paid on such awards) and (2) to require that the Summary Compensation Table also include information about the issuer’s total shareholder return for each applicable fiscal year (an element of financial performance of the issuer). This change would be beneficial to investors in that it would present the key information clearly in one place (the Summary Compensation Table) and would be beneficial to issuers in that it would mostly eliminate one of the most resource intensive and arduous tables currently required under the rules. In our view, if the foregoing changes were made to the Summary Compensation Table requirements, then the Summary Compensation Table disclosure would satisfy the mandate under Dodd-Frank, and the Pay

Versus Performance disclosure in its current form could be eliminated entirely (including the table, reconciliation footnotes to the table, relationship disclosures and tabular list).

**6. Clawback Policies.**

We believe that there are several changes that would make the existing clawback rules more practical. The current rules require the clawback of incentive compensation based on stock price or total shareholder return even where the amount of erroneously awarded compensation cannot be computed directly from the information in an accounting restatement, which requires the company to make a reasonable estimate about the amount to clawback. We would recommend eliminating this requirement so that recoupment is only required with respect to incentive compensation based on pure mathematical calculations that can be made directly from the financial statements. Further, the rules require recoupment in the event of “little r” accounting restatements; we recommend eliminating this requirement and only requiring recoupment in the event of material errors. The rules also currently require the clawback to be calculated on a pre-tax basis; we would recommend revising this to account for taxes paid by the executives.

If you have any questions or would like to discuss any of these recommendations further, please feel free to contact any of the following attorneys:

Stephen Coolbaugh  
Erik Lundgren  
Amy Pandit  
Katherine Thrapp  
Justin Walters

Sincerely,

Jones Day