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October 6, 2025

Re: Executive Compensation Roundtable
File No. 4-855

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

Dear Ms. Countryman:

This letter is submitted on behalf of the Committee on Federal Regulation of Securities of the American Bar Association, Section of Business Law (the "Committee"), in response to the request by the Securities and Exchange Commission (the "Commission") for comments following the Roundtable on Executive Compensation Disclosure Requirements held on June 26, 2025 (the "2025 Roundtable").

The views expressed herein are being presented on behalf of the Committee. They have not been reviewed or approved by the House of Delegates or Board of Governors of the ABA and should be construed as representing the policy of the ABA. In addition, this letter does not represent the official position of the ABA Business Law Section, nor does it necessarily reflect the views of all members of the Committee, the drafting committee, or their respective firms or clients.

Overview

We welcome and support the Commission's decision to seek public comments on its rules addressing the disclosure requirements for executive and director compensation and related matters. We concur with the Commission's view that, while the current disclosure rules, introduced via a new disclosure framework in 1992[1] and, subsequently, substantially amended in 2006,[2] have worked relatively well over the past 19 years, over time they have become too long and opaque. It is also questionable whether the requirements lead to disclosure that results in information needed by today's investors to make informed investment

[1] *See* Executive Compensation Disclosure, Release Nos. 33-6962, 34-31327, IC-19032 (Oct. 16, 1992) [57 Fed. Reg. 48,126 (Oct. 21, 1992)], *available at* https://archives.federalregister.gov/issue_slice/1992/10/21/48122-48159.pdf#page=5, *as modified*, Executive Compensation Disclosure: Correction, Release Nos. 33-6966, 34-31420, IC-19085 (Nov. 9, 1992) [57 Fed. Reg. 53,985 (Nov. 9, 1992)] [hereinafter the "1992 Release], *available at* https://archives.federalregister.gov/issue_slice/1992/11/16/53984-53996.pdf#page=2.

[2] *See* Executive Compensation and Related Person Disclosure, Release Nos. 33-8732A, 34-54302A, IC-27444A (Aug. 29, 2006) [71 Fed. Reg. 53,158 (Sept. 8, 2006)] [hereinafter the "Adopting Release"], *available at* http://www.sec.gov/rules/final/2006/33-8732a.pdf.

and voting decisions, while at the same time imposing compliance burdens on registrants that are both time-consuming and unduly expensive.[3]

Consequently, we believe it is appropriate to revisit the current disclosure requirements and the policy decisions underlying them to evaluate whether they adequately address the reasonable needs and expectations of investors, evolving strategies in compensation design and implementation, and the ongoing refinement of corporate governance standards and practices relating to executive pay.[4]

As we stated at the time of the last major review of the then-current executive compensation disclosure requirements,[5] executive compensation decisions are governed by state laws addressing the duties and responsibilities of directors and executive officers, corporate governance listing standards adopted by the national securities exchanges, and, to a lesser extent, federal tax law, applicable accounting standards, and other regulatory requirements. Since then, the growth and influence of proxy advisory firms, global asset managers, and public and private pension funds, the rise of activist investors, and the sophistication of individual market participants have transformed the stakeholder landscape in ways that simply could not have been anticipated two decades ago.

We believe the Commission's role and objective should be to support adequate disclosure for investors of the material decisions and resulting payments that are made by registrants to their executive officers, and of the context in which those decisions and payments occur. We further believe the disclosure requirements should also, to the greatest extent possible, not operate in a manner that impinges on or improperly influences the processes relating to those compensation decisions. The requirements must balance the need for transparency to investors with the need for a business to attract, incentivize, retain, develop, promote, transition, and – when necessary – discharge the managers of the business.[6]

As noted by Chairman Atkins at the 2025 Roundtable:

> 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.
>
> Today's roundtable is one of the first steps in considering whether the current executive compensation disclosure requirements achieve these objectives, and if not, how the rules should be amended.[7]

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[3] *See* Opening Remarks by Chairman Paul Atkins to the 2025 Roundtable, *available at* https://www.sec.gov/newsroom/speeches-statements/remarks-atkins-executive-compensation-roundtable-062625.

[4] We note that, based on the stated importance of this information to investors, executive compensation disclosure has been required under the federal securities laws since 1933 and subject to specific requirements applicable to proxy statements since 1938. *See* Adopting Release, note 2 above, at Section II.

[5] *See letter from* American Bar Association, Committee on Federal Regulation of Securities ("ABA"), *available at* https://www.sec.gov/files/rules/proposed/s70306/djohnson051506.pdf.

[6] *See* note 3 above.

[7] *See* note 3 above.

Consistent with this directive, our goal with this letter is to share our experience and insights when assisting registrants with the current executive compensation disclosure requirements. As all interested parties are aware, establishing a reasonable balance given the foregoing objectives is a complex task. This task has been made more challenging in recent years by several factors – the most significant of which will be addressed below.

As the Commission well understands, it is impossible to draft a coherent set of requirements that will accommodate the breadth of issues that arise in determining executive pay and encompass every possible form or variation of compensation arrangement while achieving the goal of comparability in presentation. Consequently, in some instances, our recommendations present alternative approaches for revising a current disclosure requirement to advance what we believe reflects a reasonable framework within which the appropriate disclosure can be drafted. We recognize that the ultimate decision concerning whether and, if so, how to address each requirement may come down to a policy choice. Finally, we also provide recommendations intended to resolve or clarify various technical issues we have encountered in advising clients.

Principal Comments

We respectfully request that the Commission consider the principal substantive and organizational recommendations summarized below. These and other comments are discussed in more detail in the following sections of this letter.

1. We believe **the Compensation Discussion and Analysis should continue to be a "principles-based" disclosure**, providing a clear[8] explanation of a registrant's material decisions and resulting payments in compensating its named executive officers. To reflect the current needs and expectations of investors, we recommend that the list of material elements that must be described in the Compensation Discussion and Analysis,[9] as well as the examples of material information that may need to be disclosed,[10] be updated as necessary to reflect the realities of today's business environment. In addition, we recommend that certain aspects of the requirement be clarified to address specific disclosure challenges resulting from the common understanding of their current application.

2. We recommend that the named executive officer group be **reduced to a registrant's principal executive officer** (and any individuals acting in a similar capacity during the last completed fiscal year) **and a more limited number of other executive officers** who were serving at the end of the last completed fiscal year. We further recommend the requirement to include up to **two individuals (other than the principal executive officer and principal financial officer) for whom disclosure would have been provided** as part of the named executive officer group but for the fact the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year **be revised to limit its application to a single individual**.

3. To promote a better understanding of how and why compensation decisions are made, we recommend **the Summary Compensation Table be revised and reorganized** to present

[8] As set forth in the Adopting Release, this disclosure would continue to be guided by the Commission's plain-English principles. *See* Exchange Act Rules 13a-20(a)(10) and 15d-20 (a)(10) [17 C.F.R. 240.13a-20(a)(10) and 240.15d-20 (a)(10)].
[9] Item 402(b)(1) of Regulation S-K.
[10] Item 402(b)(2) of Regulation S-K.

compensation information in a manner consistent with how a registrant's board of directors and compensation committee makes decisions, focusing primarily on each element of the target total direct compensation opportunity received by or granted to the registrant's named executive officers, as well as a summary of the total compensation earned by such individuals from their cash compensation opportunities, equity award opportunities , and other compensation items received.

4. We recommend **the two-step analysis for determining whether an item is a perquisite or other personal benefit be clarified** to address specific disclosure challenges resulting from its current application to various items which benefit both an executive officer and the registrant. In addition, we recommend **the current disclosure thresholds for reportable perquisites be increased and indexed** to annual cost-of-living index adjustments. Finally, we recommend corporate expenditures related to **personal security be exempted from perquisite status**.

5. We recommend **the Grants of Plan-Based Awards Table, the Outstanding Equity Awards at Fiscal Year-End Table, and the Option Exercises and Stock Vested Table be removed** from Item 402 of Regulation S-K **and replaced by a single table that tracks the life cycle of long-term cash-based and equity-based incentive awards** (both those granted during the last completed fiscal year or in a prior fiscal year that remain outstanding as of the beginning of the last completed fiscal year) and which provides prescribed information about these incentive awards on an award-by-award basis.

6. We recommend **the Pension Benefits Table and the Nonqualified Deferred Compensation Table be removed** from Item 402 of Regulation S-K.

7. We recommend **the requirement to provide an estimate of the payments and benefits that would be provided to each named executive officer pursuant to each termination of employment or change in control event be removed** from Item 402 of Regulation S-K **and that the remaining required disclosure** regarding payments in connection with any termination of employment or change in control event, to the extent material, **be shifted to the Compensation Discussion and Analysis**. In addition, we recommend that **any amounts actually paid** to a named executive officer in connection with a termination of employment or change in control event continue to **be disclosed in the "All Other Compensation" column of the revised and reorganized Summary Compensation Table**.

8. We recommend **the Director Compensation Table be removed** from Item 402 of Regulation S-K **and instead the required disclosure** in both Items 402(k) and 402(r) of Regulation S-K **be limited to a narrative discussion of the material information** necessary to an understanding of the relevant plan or policy for compensating the members of a registrant's board of directors.

9. Notwithstanding the Commission's limited ability to address either investor or registrant concerns about the utility of **the required pay-versus-performance disclosure, the required pay ratio disclosure,** and **the required clawback disclosure,** we recommend **certain enumerated revisions to each of these rules** to simplify compliance by registrants.

Detailed Comments

PART 1 Item 402 of Regulation S-K

I. Compensation Discussion and Analysis ("CD&A")

A. The length and perceived complexity of the CD&A results from the scope of its practical functionality rather than any gradual erosion of its underlying "principles-based" tenets or nature or a failure to prioritize the disclosure of material information.

The CD&A may be considered the defining enhancement of the 2006 amendments. Conceived as a means for providing context to understanding the information presented in the required tables, the CD&A functions as the primary platform registrants use to explain the process for determining executive compensation and the factors influencing the resulting pay decisions, as well as clarifying and expanding on the accompanying tabular disclosure. As discussed below, we believe the pivotal role of the CD&A in registrants' disclosures of their executive compensation programs has evolved over the years well beyond its original purpose.

In our experience, the fundamental value of a "principles-based" CD&A is its flexibility.[11] In the initial years following its introduction, as compensation strategies began to change and incentive compensation designs evolved, we found this to be true. With long-term incentive awards typically comprising the largest portion of executive officers' target total direct compensation ("TDC") opportunities, this flexibility has been critical to ensuring that the material aspects of these arrangements[12] are thoroughly described and discussed.

In recent years, however, a range of factors, including the increasing sophistication of incentive compensation design,[13] have dramatically contributed to the length and perceived complexity of the CD&A as registrants seek to satisfy the needs and expectations of investors and various other stakeholders. This is particularly true as the current tabular formats and requirements have proven often unsuitable for fully reporting various performance-based incentive award types.

In addition, several new – and unanticipated – factors have taken the CD&A well beyond its intended purpose. These factors include the increasing involvement of stakeholders with sometimes overlapping, but more often conflicting, interests in corporate governance and compensation-related matters. In our experience, the factors that have altered how most registrants view and use the CD&A include:

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[11] As the Commission anticipated, the CD&A effectively elicits meaningful disclosure, even as new forms of compensation develop over time. *See* Adopting Release, note 2 above, at Section II.B.1.

[12] Typically, this information includes, depending on the facts and circumstances, some combination of detail describing basic plan and award features (including payout opportunities), performance metrics along with their rationale, design, and target levels, and payout formulas and inputs, actual performance results, and award outcomes, complemented by a contextual discussion of a registrant's pay philosophy, behavioral, financial, operational, and strategic objectives, and capital utilization management (that is, "burn rate," "overhang," etc.).

[13] This increased sophistication includes, among other things, the evaluation of individual performance in short-term incentive award decisions and the finer calibration of performance metrics and targets in long-term incentive awards.

- Say-on-Pay Vote – The requirement for registrants to conduct a periodic shareholder advisory vote on the compensation of their named executive officers (the "Say-on-Pay" vote)[14] added an additional purpose to the CD&A – to serve as the *de facto* "supporting statement" for the Say-on-Pay proposal. This has dramatically influenced the CD&A's orientation and content.

- Impact of Proxy Advisory Firms – The role of proxy advisory firms, namely Institutional Shareholder Services, Inc. and Glass Lewis & Co., Inc., as advisors to the institutional investor community directly contributes to the content and, as a result, the length of the CD&A. Through their voting recommendations, these firms' proxy voting policies drive to a substantial degree the topics registrants are expected to address in their CD&A, including responsiveness to Say-on-Pay vote outcomes, incentive plan design, structure, and quantum, executive post-employment arrangements, and a range of governance-related matters. We have observed that registrants ignore these expectations at their peril, often opting for redundancy over materiality.

- Stakeholder Needs – While the overarching audience for the required executive compensation disclosure continues to be shareholders, the interests and expectations of other stakeholders, including employees, the media, customers, suppliers and vendors, creditors, governmental entities, and the general public, in this information continue to grow and mature. Registrants are very attuned to the needs of these audiences, many of which are reflected in their executive compensation disclosure – the most accessible of which is the CD&A. Several of the techniques currently employed to meet their needs, such as business and financial thumbnail sketches, an executive summary, a list of "best practice" policies, and the extensive use of graphics and color, are direct responses to these audiences.[15]

While we acknowledge the criticisms concerning the "loss of focus" and attendant length and complexity of the CD&A,[16] we believe the "principles-based" orientation continues to be the best choice for ensuring investors and other stakeholders are receiving the material information necessary to understand each registrant's pay actions and decisions. For these reasons, we recommend that the CD&A continue to require a "principles-based" discussion and analysis of named executive officer compensation, subject to the following specific recommendations intended to address the issues that make the current disclosure challenging for many stakeholders:

- to minimize the pattern of duplicative disclosure often resulting in the CD&A and then again in the disclosure required by Item 402(e) of Regulation S-K as well as the footnotes to the Summary Compensation Table and the Grants of Plan-Based

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[14] *See* Exchange Act Rule 14a-21(b) [17 C.F.R. 240.14a-21(b)].

[15] We note that many registrants "layer" (which may involve a degree of repetition) their CD&As to tailor information to make it understandable to various audiences.

[16] Today, it is common to hear that the CD&A is "too lengthy," "too confusing and/or difficult to parse," "too laden with immaterial information," and "generally unreadable." Certainly, these views were echoed by numerous participants at the 2025 Roundtable and in many of the comment letters submitted in response to Chairman Atkins' request. *See*, for example, remarks by Roland Schustereder, Global Head of Total Rewards, ExxonMobil, to the 2025 Roundtable and remarks by Drew Hambly, Investment Director, Stewardship, California Public Employee's Retirement System, to the 2025 Roundtable. *See also*, for example, comment letters of Charles Crain, Managing Vice President, Policy, National Association of Manufacturers (Aug. 6, 2025), *available at* https://www.sec.gov/comments/4-855/4855-636727-1893534.pdf and Mike McCauley, Senior Officer, Investment Programs and Governance, State Board of Administration of Florida (Aug. 21, 2025), *available at* https://www.sec.gov/comments/4-855/4855-641487-1919034.pdf.

Awards Table,[17] remove Item 402(e) of Regulation S-K and, in its place, re-emphasize that the CD&A, given its "principles-based" flexibility, should focus not only on the material principles underlying, and the most important factors to the analysis of, the registrant's executive compensation policies and decisions, but also on all information material to an understanding of these policies and decisions for the last completed fiscal year, including,[18] but not limited to, any incentive awards granted during the last completed fiscal year, as well as each outstanding arrangement providing for payments in connection with any termination of employment or change in control of the registrant in effect on the last day of the last completed fiscal year; and

- revise the Instructions to Item 402(b) of Regulation S-K to allow registrants to satisfy one or more of the required disclosures that typically remain unchanged year-over-year by providing access to such information via a hyperlink to the registrant's corporate website; provided, however, that in the event of a material amendment or modification to any such items during the last completed fiscal year, disclosure of such change(s) must be included in the next appropriate filing containing required Item 402 disclosure.

We believe these revisions would have an immediate impact on the effectiveness of the CD&A by reducing the amount of descriptive information which some investors consider to be largely standardized, repetitive, and "boilerplate." Registrants would retain the ability to use a single narrative discussion to describe, discuss, and analyze their executive compensation program as they preferred. Alternatively, they could "compartmentalize" their disclosure, with the CD&A concentrating on the context for and specific factors considered for the actions taken and decisions made during the last completed fiscal year, and other locations (either in their proxy statement or corporate website) used to provide descriptions of the corporate governance and contractual framework for these actions and decisions. Where the terms of any program, plan, or arrangement underlying this framework were materially amended or modified, a registrant would be required to describe and explain these changes in its CD&A.

We further believe providing registrants with express permission to place outside the CD&A some or all of the information that may be important to segments of the stakeholder audience, but which may not change in any material way year-over-year, would greatly reduce the repetition that is common in many CD&As.

B. <u>The CD&A requirements for the disclosure of metrics, associated target levels, and other relevant information concerning payouts of performance-based incentive awards and actions taken after the end of a registrant's fiscal year end should be revisited and revised.</u>

In our experience, the current CD&A requirements for the disclosure of metrics, associated target levels, and other relevant information concerning payouts of performance-based incentive awards are a source of confusion and misunderstanding, often resulting in differing interpretations and,

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[17] Item 402(d) of Regulation S-K.

[18] In the case of incentive awards granted during the last completed fiscal year, we believe, to the extent material to an understanding of such awards, this information also would include the terms of the incentive plan or arrangement, whether or not written, pursuant to which such awards were granted.

invariably, inconsistent disclosure among registrants with relatively similar executive compensation programs.

We believe any evaluation of the CD&A should consider how registrants interpret and apply the current disclosure requirements[19] to the performance-based incentive awards granted by the board or compensation committee. When balancing the materiality of this information to investors against its confidentiality or sensitivity, today registrants are guided by the applicable instruction for this requirement[20] and the relevant Commission Staff guidance.[21] Typically, this results in the disclosure of the selected corporate performance metric or metrics and, in the case of awards based on past performance (most often, short-term incentive awards and long-term incentive awards for which the entire performance period has been completed), the associated target levels. In contrast, it is common for registrants to refrain from disclosing forward-looking metrics and target levels based on a "competitive harm" analysis.[22]

In our experience, this "competitive harm" exception is unclear and often not well understood, thereby making its application challenging.[23] Further, registrants are often unsure as to how to satisfy the exception's associated requirement to discuss "how difficult it will be for the executive or how likely it will be for the registrant to achieve the undisclosed target levels or other factors."[24] In many instances, registrants are either unable to provide this disclosure or employ rote statements that do not offer any useful insights for evaluating the rigor of the omitted target levels.

We recommend Instruction 4 to Item 402(b) of Regulation S-K be revised to clarify that when a registrant's board or compensation committee has determined, in good faith, that the disclosure of specific performance targets and/or other specific factors would result in competitive harm to the registrant (rather than the standard applicable to confidential treatment requests), such information need not be disclosed. We also recommend that Instruction 4 be revised to clarify that the competitive harm exception may apply to any incentive award, whether an "in-flight" award (that is, an award for which the performance period either has not been completed or has not commenced) or an award for which the performance period has been completed. Further, we recommend the requirement to discuss the difficulty associated with achieving the undisclosed performance targets or other factors be clarified or removed.

Finally, in our experience, too often registrants face challenges in evaluating whether a post-fiscal year end decision or event involving their executive compensation program (for example, a design change to a plan or award type) may affect a fair understanding of their named executive officers'

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[19] Item 402(b)(1)(v) and 402(b)(2)(vi) of Regulation S-K.

[20] Instruction 4 to Item 402(b) of Regulation S-K, which permits the exclusion of target levels with respect to specific quantitative or qualitative performance-related factors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information if such disclosure would result in competitive harm to a registrant.

[21] See Commission Staff Compliance and Disclosure Interpretation Question No. 110.04 (July 3, 2008) and Question No. 118.07 (Mar. 4, 2011), *available at* https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/regulation-s-k.

[22] We note that at least one of the major proxy advisory firms has revised its proxy voting policies to place greater emphasis on the disclosure of forward-looking goals when conducting its pay-for-performance evaluation. *See* Institutional Shareholder Services, Inc., United States – Executive Compensation Policies – Frequently Asked Questions (Dec. 13, 2024), Question No. 34, *available at* https://www.issgovernance.com/file/policy/active/americas/US-Compensation-Policies-FAQ.pdf?v=2024.12.1.

[23] As provided in Instruction 4 to Item 402(b) of Regulation S-K, the standard to use when determining whether disclosure would cause competitive harm for the registrant is the same standard that would apply when a registrant requests confidential treatment of confidential trade secrets or confidential commercial or financial information pursuant to Securities Act Rule 406 (17 CFR 230.406) and Exchange Act Rule 24b-2 [17 CFR 240.24b-2], each of which incorporates the criteria for non-disclosure when relying upon Exemption 4 of the Freedom of Information Act [5 U.S.C. § 552(b)(4)].

[24] Instruction 4 to Item 402(b) of Regulation S-K, last sentence.

compensation for the last completed fiscal year. In these situations, frequently the safer course of action may be to disclose the decision or event, even if it does not directly relate to the last completed fiscal year and even though it may carry the attendant risk of unnecessarily drawing the attention and resulting criticism of a proxy advisory firm or other third party. We also note that the current disclosure requirements for current reports on Form 8-K provide an alternate and often more appropriate means of reporting the decision or event.[25] Further, even though the information in the CD&A is intended to address the compensation action and decisions of the last completed fiscal year, in our experience, the current disclosure requirement means disclosure of a post-fiscal year end decision or event, even if it does not directly relate to the last completed fiscal year, may lead to proxy advisory firm scrutiny and criticism during two successive compensation and Say-on-Pay cycles.

Accordingly, we recommend Instruction 2 to Item 402(b) of Regulation S-K be revised to clarify that registrants may, but are not required to, discuss in the CD&A actions that were taken after the last completed fiscal year's end even if arguably such actions involve specific decisions that were made or steps that were taken that could contextualize an understanding of its named executive officers' compensation for the last fiscal year. Of course, if actions taken after the last completed fiscal year's end are actions directly related to the prior fiscal year's compensation actions or decisions (for example, certifying performance results), such actions would continue to be required disclosure in the CD&A.

Alternatively, if it is not receptive to the foregoing recommendation, we request the Commission consider providing either some examples or direct the Commission Staff to provide guidance as to the factors that may affect a "fair understanding" of a registrant's named executive officers compensation for the last completed fiscal year.[26]

C. Named Executive Officers ("NEOs").

We believe that an additional contributing factor to the length and perceived complexity of the CD&A, as well as the overall executive compensation disclosure, is the number of individuals whose compensation is required to be reported and analyzed. While the primary NEO group consists of five individuals – a registrant's principal executive officer ("PEO), principal financial officer ("PFO"), and three most highly compensated executive officers (other than its PEO and PFO) who were serving as executive officers at the end of the last completed fiscal year,[27] in our experience, many registrants find that, in any given year, the composition of their NEO group changes due to one-time events, fluctuations in compensation, or executive turnover and/or consists of more than five individuals.[28] These realities, compounded by the significant and sustained increase in executive turnover in recent years, has raised the compliance burden for registrants that must ensure that both their narrative and tabular disclosures reflect the required information for these constant changes.

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[25] *See* Item 5.02(e) of Form 8-K [17 C.F.R. 249.308].

[26] In our experience, the examples provided in Instruction 2 to Item 402(b) of Regulation S-K and the current interpretive guidance (see Commission Staff Compliance and Disclosure Interpretation Question 118.07 (Mar. 4, 2011), *available at* https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/regulation-s-k) offer limited insight into how post-fiscal year end compensation decisions and events should be analyzed.

[27] Item 402(a)(3)(i) – (iii) of Regulation S-K.

[28] This latter result stems from the requirement to treat up to two additional individuals for whom disclosure would have been provided but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year as named executive officers. Item 402(a)(iv) of Regulation S-K.

Moreover, we believe that, with the exception of the PEO, the volume of detailed information presented in the CD&A and the accompanying tabular disclosure about the remaining NEOs is often immaterial to investors and, if anything, tends to obscure the information that they genuinely seek. Given the variability in status of the most highly compensated executive officers among registrants (a by-product of variations in both compensation practices and executive officer determinations[29]), such information is of little value to investors, but requires the expenditure of significant resources by registrants, which we believe represents an unreasonable tradeoff.

Consequently, we recommend the size of the NEO group be revised to consist of a registrant's PEO (and any individuals acting in a similar capacity during the last completed fiscal year), regardless of compensation level, and its two most highly compensated executive officers (other than its PEO) who were serving as executive officers at the end of the last completed fiscal year.[30] We believe reducing the size of the group would not unduly limit investors' ability to understand differences in a registrant's compensation philosophy between its most senior leader and the rest of the executive team, as well as its attention to pay parity among its executive officers. Nor would it necessarily complicate the board's or compensation committee's decision-making by reducing insights into competitive market practices. Further, we believe that it would be a useful step toward reducing the compliance burden registrants face in determining their most highly compensated executive officers; namely, the technical requirements which often compel them to closely track throughout the fiscal year the total compensation of numerous executive officers, particularly as it involves the third most highly compensated executive officer position.[31]

Alternatively, if the Commission is receptive to the foregoing recommendation to decrease the size of the primary NEO group, but not its proposed composition, we recommend that the NEO group consist of a registrant's PEO and PFO (and any individuals acting in similar capacities during the last completed fiscal year), regardless of compensation level, and its most highly compensated executive officer (other than its PEO and PFO) who was serving as an executive officer at the end of the last completed fiscal year. We note that, in a survey of its members, the Society for Corporate Governance reported that a significant majority supported the extension of the executive compensation disclosure requirements to the PFO for emerging growth companies and smaller reporting companies for a consistent disclosure requirement irrespective of the registrant's filing status.[32]

We further recommend the current requirement to include up to two individuals (other than the PEO and PFO) for whom disclosure would have been provided as part of the NEO group but for the fact the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year be revised to limit its application to a single individual. In our view, this

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[29] See Exchange Act Rule 3b-7 [17 C.F.R. 240.3b-7].

[30] We recognize that changing the size and composition of the NEO group may well necessitate the reevaluation and/or revision of other disclosure requirements that use the named executive officer group as a basis for the required disclosure (for example, Item 402(v) of Regulation S-K) and Item 5.02(b) of Form 8-K [17 C.F.R. 249.308]).

[31] We note that this revision would conform the size and identities of the NEO group with the current treatment for emerging growth companies and smaller reporting companies. Item 402(m)(2) of Regulation S-K.

[32] See comment letter of Paul F. Washington, President and Chief Executive Officer, and Emerald P. Greywoode, Vice President, Policy Engagement & Advocacy, Society for Corporate Governance (Aug. 27, 2025), *available at* https://www.sec.gov/comments/4-855/4855-644367-1928454.pdf.

change would further reduce the length and attendant complexity of the CD&A and associated tabular disclosure, as well as registrants' compliance burden.[33]

Further, if the Commission is receptive to revising the Summary Compensation Table in form and/or content (for example, as discussed in Section II below), we recommend the current instruction for determining a registrant's most highly compensated executive officers be revised to reflect the appropriate changes in the Summary Compensation Table. As noted in Section II below, our recommendation is that the determination of the most highly compensated executive officers be based on the concept of the "total direct compensation opportunity" for the last completed fiscal year. Not only would this revision be consistent with one of the recommended approaches for presenting the required information in a revised Summary Compensation Table, we believe it would effectively eliminate the impact of one-time compensatory events which, in many instances, often result in short-term variations in the identities of these individuals.

II. Summary Compensation Table ("SCT")

A. <u>The current requirements for the SCT fail to present an understandable picture of the total direct compensation opportunities received and the amounts actually earned by a registrant's NEOs during a covered fiscal year given the timing, methodology, and materiality differences of the compensation elements being reported.</u>

For over 30 years, the SCT has served as the centerpiece of the Exchange Act's tabular disclosure requirements for presenting executive compensation information with the dual objectives of providing meaningful disclosure and allowing for comparability between registrants and within an organization. Introduced in 1992, the SCT was conceived as the linchpin of the Commission's revised executive compensation disclosure requirements. As widely recognized and endorsed at the time, the SCT was intended to provide an easily understood overview of executive compensation in a single location within a registrant's definitive proxy statement. Through this objective, formatted presentation of compensation information, readers would be able to understand clearly the compensation of a registrant's senior executive officers, identify trends in their compensation arrangements, and compare such trends with those disclosed by other registrants.[34]

In 2006, as part of the Commission's first major revision to its executive compensation disclosure requirements following 1992, the then-required compensation tables were reorganized.[35] As part of these changes, the SCT was amended to:

- add a column disclosing a figure representing the "total compensation" of each NEO for each covered fiscal year;

[33] We further note that, registrants are required to disclose material payments to departing NEOs pursuant to Item 5.02(b) and (e) of Form 8-K [17 C.F.R. 249.308]. Accordingly, the reduction to a single individual of the former executive officers who would be part of the NEO group would not deprive investors of material information about the severance and other payments made to this individual in connection with a termination of employment or other departure if they otherwise would have been determined to be an NEO.
[34] *See* 1992 Release, note 1 above, at Section II.B.
[35] Concurrently, the CD&A was introduced to serve as an overview providing narrative disclosure intended to put into perspective for investors the information presented in the SCT and accompanying tabular and other disclosure by providing material information about the compensation objectives and policies for the NEOs. *See* Adopting Release, note 2 above, at Section II.C.1.

- replace the numerical disclosure of the equity securities or units subject to long-term incentive compensation opportunities[36] with the grant date fair value (as determined pursuant to the applicable accounting standards) for such awards;

- introduce the disclosure of the dollar value of all amounts earned during each covered fiscal year pursuant to "non-equity incentive plans";[37]

- add a column disclosing the annual change in the actuarial present value of a NEO's accumulated benefit under all defined benefit and actuarial pension plans and above-market or preferential earnings on nonqualified deferred compensation;

- clarify the purpose and requirements for the "All Other Compensation" column; and

- modify the captions and layout of the table.

Over time, the ever-evolving complexity of executive compensation design (including the shift from stock options to performance-based cash and equity awards[38]), the increased media scrutiny of executive pay, the growing influence of proxy advisory firms, the enactment of additional executive compensation-related provisions as part of the Dodd-Frank Act[39] (particularly the Say-on-Pay vote requirement),[40] and advances in technology (including the growth of the internet and advances in machine readability of data) began to expose the limitations of the SCT. These limitations include a fundamental misimpression of the nuanced nature of the SCT's "Total" column, the challenges in unraveling the complexities of the applicable accounting requirements as the basis for assigning a dollar value to long-term incentive compensation awards, the timing of when awards are reported based on whether they are considered "equity incentive plan" or "non-equity incentive plan" awards, and, for registrants still maintaining such plans, the outsized impact of changes in interest rates and/or actuarial assumptions on defined benefit and actuarial pension plan benefit values.

Citing its rigid structure and the ever-increasing difficulty in fitting long-term incentive award designs into a prescribed format, critics question the ability of the SCT to facilitate the "clearer and more logical picture of total compensation" contemplated upon adoption. This is particularly true in the case of the "total compensation" amount reported in the SCT. Absent an informed (and often nuanced) understanding of the disclosure requirements, this figure is difficult, if not impossible, to

[36] Under the 1992 version of the SCT, equity awards were reported as "long-term compensation" as follows: (1) the dollar value (net of any consideration paid by the NEO) of any award of restricted stock, including share units, (2) the sum of the number of stock options granted, with or without tandem SARs, and the number of freestanding SARs, and (3) the dollar value of all payouts pursuant to LTIPs (defined as ". . . any plan providing compensation intended to serve as incentive for performance to occur over a period longer than one fiscal year, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other measure, but excluding restricted stock, stock option and SAR plans"). *See* former Item 402(a)(6)(iii) and (b)(2)(iv)(A) – (C) of Regulation S-K. Instruction 1 to former Item 402(b)(2)(iv) of Regulation S-K provided that "[a]wards of restricted stock that are subject to performance-based conditions to vesting, in addition to lapse of time and/or continued service with the registrant or a subsidiary, may be reported as LTIP awards pursuant to [the Long-Term Incentive Plans – Awards in Last Fiscal Year Table"] instead of in [the "Long Term Compensation – Awards – Restricted Stock Awards" column of the SCT]. If this approach is selected, once the restricted stock vests, it must be reported as an LTIP payout in [the "Long Term Compensation – Payouts – LTIP Payouts" column of the SCT].
[37] To address the potentially "anomalous" reporting treatment of different types of incentive awards, the Commission adopted separate definitions of an "equity incentive plan" and a "non-equity incentive plan." Item 402(a)(6)(iii) of Regulation S-K.
[38] *See* Norges Bank Investment Management, "Time to rethink performance shares?" Harvard Law School Forum on Corporate Governance (Aug. 28, 2024); *available at* https://corpgov.law.harvard.edu/2024/08/28/time-to-rethink-performance-shares/.
[39] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 123 Stat. 1376 (July 21, 2010) [hereinafter "Dodd-Frank Act"], *available at* https://www.congress.gov/bill/111th-congress/house-bill/4173/text.
[40] *See* Exchange Act Rule 14a-21(a) [17 C.F.R. 240.14a-21(a)].

parse. The following factors are among the most significant contributing to the current dilemma with the SCT:

- differences in the timing of the reporting of cash and equity-based compensation – cash (base salary and annual short-term non-equity incentive compensation) is reported in the fiscal year for which earned while equity (stock awards and option awards, whether service-based or performance-based) is reported in the fiscal year granted or modified. This dichotomy is exacerbated where incentive compensation is payable in a combination of cash and equity or where a cash-based award is linked to the value of the registrant's equity securities, either based on stock price or total stockholder return ("TSR");

- the inclusion in "total compensation" of items that are earned (such as base salary, short-term cash incentives, and long-term cash incentives) and amounts that represent potential compensation that may be earned and/or received at a future date (such as the grant date fair value of stock awards and option awards);

- the inclusion in "total compensation" of items that are not representative of target TDC[41] (such as post-employment compensation received, employer contributions to Section 401(k) retirement savings plans, and perquisites);[42]

- the absence of a single accepted methodology for measuring the grant date value of equity awards;

- the reliance on financial accounting standards[43] to both compute the grant date value of equity awards and the timing for the reporting of the resulting amount. These amounts and the timing of the related disclosure are wholly dependent upon the form, design, and features of each award type, which may vary widely among registrants and within the same company; and

- the distinction drawn between (i) short-term incentives (both cash and non-cash) that are not tied to the achievement of pre-established performance targets, the outcome of which is substantially uncertain at the time of grant and (ii) short-term incentives that are subject to such conditions and where the target is communicated to the NEO in advance.

We believe the current disclosure requirements obscure a clear understanding of the actual amounts that a registrant's NEOs have earned and been paid on a year-to-year basis and further may obscure the board's or compensation committee's intent and decisions in establishing the target TDC opportunity for a registrant's NEOs. In our experience, the challenges created by the current disclosure requirements have contributed to a level of confusion and misunderstanding

[41] The sum of annual base salary, target annual short-term incentive opportunity, and target long-term incentive opportunity.

[42] Further, the SCT's requirement to report the aggregate change in the actuarial present value of a NEO's accumulated benefit under all defined benefit and actuarial pension plans may introduce misleading volatility to the SCT requiring lengthy additional disclosure of information that may be beyond a registrant' control.

[43] *See* Financial Accounting Standard Board Accounting Standard Codification Topic 718, *Stock-Based Compensation*, *available at* https://www.fasb.org/page/ShowPdf?path=ASU_2021-07.pdf&title=Accounting%20Standards%20Update%202021-07%E2%80%94Compensation%E2%80%94Stock%20Compensation%20(Topic%20718):%20Determining%20the%20Cur.

that is not effectively alleviated through the CD&A or the narrative disclosure required to accompany the SCT and the Grants of Plan-Based Awards Table.[44]

B. The SCT should be revised to provide simplified tabular disclosure primarily focused on the annual TDC opportunity provided to a registrant's NEOs and the annual total compensation earned by such NEOs.

For the reasons described above, we believe the current SCT disclosure requirements do not enable registrants to accurately and concisely report their executive compensation actions and decisions in a manner that reflects how these decisions are made. Nor do we believe they provide a clear depiction of the correlation between compensation outcomes – that is, the amounts actually earned over time compared to the annual target opportunities.

Consequently, we recommend the SCT be revised to provide a simplified tabular structure focusing on the annual TDC opportunities provided to a registrant's NEOs and the annual total compensation earned by such NEOs.[45] As discussed in Section IV.A below, we further recommend the revised SCT be accompanied by a second table which reports important information with respect to the life cycle of long-term incentive awards taking place over the last completed fiscal year. We believe these tabular disclosures, in combination, will offer readers a clearer understanding of a registrant's compensation actions, decisions, and outcomes.

An example of this recommended revised SCT is provided with this letter as Exhibit A.

As proposed, the revised SCT would contain two distinct sections – the first section, entitled "Direct Compensation Opportunity," would report the base salary approved, target cash-based incentive opportunities awarded, and target equity-based incentive opportunities granted to each of the registrant's NEOs for the last completed fiscal year. The second section, entitled "Compensation Earned," would report the base salary earned, amounts earned for the last completed fiscal year pursuant to target cash-based incentive opportunities previously reported, amounts earned and/or vested during the last completed fiscal year pursuant to long-term incentive opportunities granted in the last completed fiscal year and all prior fiscal years, and information on additional compensation elements provided to the NEOs for the last completed fiscal year that typically are not representative of TDC (such as post-employment compensation received, employer contributions to Section 401(k) retirement savings plans, and perquisites).

The four tabular columns comprising the "Direct Compensation Opportunity" section would be as follows:

[44] Item 402(e) of Regulation S-K.

[45] We note that, generally, this recommendation proposes (i) a re-formatting of most of the current information required in the SCT, (ii) the removal of the "Change in Pension Value and Nonqualified Deferred Compensation Earnings" column (column (h), (iii), as explained in the text, the introduction of three new columns (for "Salary," "Target Cash-Based Incentive Compensation," and "Equity Compensation Earned"), and (iv) the introduction of two new "total" columns: "Total Direct Compensation Opportunity" and "Total Compensation Earned." We believe the annual change in the value of defined benefit pension plans is not truly annual compensation being awarded, earned, or paid during the last completed fiscal year and, as recommended, the reporting of above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified would simply be shifted to the "All Other Compensation" column of the revised Summary Compensation Table.

- Salary – This column would include the dollar value of base salary (cash and non-cash) approved for the NEO for the covered fiscal year (column (c)).[46]

- Target Cash-Based Incentive Compensation – This column would include the sum of (i) the dollar value of all bonus opportunities received by a NEO for the covered fiscal year (including "signing" and retention bonus opportunities and/or payments) and (ii) the dollar value of the target amount of all awards granted under non-equity incentive plans (as defined in Item 402(a)(6)(iii) of Regulation S-K) for services to be performed during the covered fiscal year received by the NEO (column (d)), accompanied by a footnote separately reporting the amounts represented by each of clauses (i) and (ii).

  We believe there is ample justification for combining these two compensation items which are currently reportable separately. In our experience, the distinction registrants are required to make between items that are considered "bonuses" and "non-equity incentive plan compensation" is sometimes difficult to understand and, occasionally, misapplied. Further, we believe this distinction is irrelevant for the majority of short-term cash-based incentive award opportunities granted to executives, which are either payable pursuant to (i) a pre-established formula and/or individual performance, (ii) the discretion of the board or compensation committee based, in whole or in part, on a quantitative and/or qualitative assessment of corporate and/or individual performance, or (iii) a combination of some or all of the foregoing considerations. Finally, currently long-term cash-based non-equity incentive awards are not reportable in the SCT unless and until amounts are actually earned pursuant to such awards (which may be several years after the award opportunity is approved).[47] Thus, our recommendation would provide readers with a more complete picture of each NEO's target TDC opportunity as determined by the registrant's board or compensation committee.

  In the case of bonus awards approved in the cover fiscal year, the aggregate dollar value of all such bonuses would be combined with the aggregate target dollar value of all cash-based non-equity incentive awards (both long-term and short-term) to be reported in this column with respect to the covered fiscal year, accompanied by a footnote separately reporting each bonus award and the aggregate amounts represented by such cash-based non-equity incentive awards.

  In the case of long-term cash-based non-equity incentive awards for services approved in the covered fiscal year, the aggregate target dollar value of all such awards would be combined with the aggregate target dollar value of all short-term cash-based non-equity incentive awards to be reported in this column with respect to the covered fiscal year, accompanied by a footnote separately reporting the aggregate amounts represented by such long-term and short-term cash-based non-

[46] In our experience, the disclosure of base salary varies under current practice. Some registrants report each NEO's base salary rate as approved for the last completed fiscal year, while others report the base salary actually earned. For purposes of our proposed revisions to the SCT, we have attempted to differentiate between the base salary to be reported in the Direct Compensation Opportunity section (the "opportunity") and the base salary to be reported in the Compensation Earned section (the "amount earned"). We recognize in most instances the incremental difference between these two amounts will be nominal.
[47] Until such time, a long-term cash-based non-equity incentive plan award is reported only in the Grants of Plan-Based Awards Table (Item 402(b)(2)(iii) of Regulation S-K) and, if material, in the CD&A (Item 402(b)(1) of Regulation S-K).

equity incentive awards and, in the case of any long-term cash-based non-equity incentive award, also reporting the threshold, target, and maximum amounts that could be earned pursuant to such award and the applicable performance period.

- Stock Awards – As under current Item 402(c)(2)(v) of Regulation S-K, this column would include for all awards of stock received by the NEO during the covered fiscal year, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (e)).

  For each performance-based stock award, the threshold, target, and maximum amounts that could be earned with respect to such award, as well as the applicable performance period, would be reportable in a footnote to the column.

- Option Awards – As under current Item 402(c)(2)(vi) of Regulation S-K, this column would include for all awards of options, with or without tandem stock appreciation rights (including awards that subsequently have been transferred), received by the NEO during the covered fiscal year, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (f)).

  For each performance-based option award, the threshold, target, and maximum amounts that could be earned with respect to such award, as well as the applicable performance period, with respect to such award would be reportable in a footnote to the column.

  With respect to the "Stock Awards" and "Option Awards" columns (columns (e) and (f)), the amount reportable would remain subject to the Instructions to Item 402(c)(v) and (vi) of Regulation S-K, including the instruction for the reporting of the incremental fair value stemming from any award modification or amendment during the covered fiscal year, accompanied by a footnote quantifying on an award-by-award basis in the applicable column the amount of such incremental fair value.[48]

- Total Direct Compensation Opportunity – This column would include the dollar value of the target TDC opportunity of the NEO for the covered fiscal year and would consist of the sum of all the amounts reported in columns (c) through (f) (column (g)).

The five tabular columns comprising the "Compensation Earned" section would be as follows:

- Salary Earned – As under current Item 402(c)(2)(iii) of Regulation S-K, this column would include the dollar value of base salary (cash and non-cash) actually earned by the NEO during the covered fiscal year (column (h)).[49]

[48] To the extent this amount includes the incremental fair value, computed in accordance with financial accounting standards, of any stock or option awards that were materially modified or amended during the last completed fiscal year, we recommend, to the extent a registrant believes the inclusion of such amount in the "Total TDC Opportunity" column would obscure the intent of the board or compensation committee, the TDC opportunity be provided in a footnote to this column explaining the reason(s) for such belief.
[49] See note 46 above.

- Cash-Based Incentive Compensation Earned – As under current Items 402(c)(2)(iv) and 402(c)(2)(vii) of Regulation S-K, this column would include the sum of (i) the dollar value of all bonuses (cash and non-cash) earned by the NEO for the covered fiscal year (including "signing" and retention bonus payments) and (ii) the dollar value of all earnings for services performed during the covered fiscal year or prior fiscal years pursuant to all awards granted under non-equity incentive plans (as defined in Item 402(a)(6)(iii) of Regulation S-K (and all earnings on any such awards) (column (i)), accompanied by a footnote separately reporting the amounts represented by each of clauses (i) and (ii).

  As in the "Direct Compensation Opportunity" section, the aggregate dollar value of all bonuses earned and/or received during the covered fiscal year would be combined with the aggregate earnings for the covered fiscal year of all cash-based non-equity incentive awards (both long-term and short-term) for services pursuant to such awards (without regard to the fiscal year in which the services were performed unless such earnings have been previously reported) would be combined with the aggregate earnings for such fiscal year for services performed pursuant to all cash-based nonequity incentive plan awards (both long-term and short-term) to be reported in this column with respect to the covered fiscal year, accompanied by a footnote separately reporting each bonus award and the aggregate earnings represented by such cash-based non-equity incentive awards.
  As in the "Direct Compensation Opportunity" section, the aggregate dollar value of all earnings for the covered fiscal year for services performed pursuant to long-term cash-based non-equity incentive awards (without regard to the fiscal year in which services were performed unless such earnings have been previously reported) would be combined with the aggregate dollar value of all earnings for services performed during the covered fiscal year pursuant to short-term cash-based non-equity incentive awards to be reported in this column with respect to the covered fiscal year, accompanied by a footnote separately reporting the aggregate amounts represented by such long-term and short-term cash-based non-equity incentive awards.

- Equity Compensation Earned – This column would include for stock awards and option awards that were granted to the NEO either (i) in the covered fiscal year and for which all applicable requirements to earn such awards and/or vesting conditions were satisfied during the covered fiscal year or (ii) in any fiscal year preceding the covered fiscal year and for which all applicable requirements to earn such awards and/or vesting conditions were satisfied during the covered fiscal year, the aggregate fair value computed in accordance with FASB ASC Topic 718 as of the date all such applicable requirements to earn such award and /or vesting conditions were satisfied (column (j)).

- All Other Compensation – As under current Item 402(c)(2)(ix) of Regulation S-K, this column would include all other compensation received by the NEO for the covered fiscal year that a registrant could not properly report in columns (h) through (j) of the table (column (k)).

We recommend for purposes of this column the compensation items listed in current Item 402(c)(2)(ix)(A) through (G) of Regulation S-K be maintained in their present form except as follows:

- Item 402(c)(2)(ix)(A) of Regulation S-K requiring the reporting of perquisites and other personal benefits would be revised as appropriate or necessary to reflect the Commission's decision with respect to the appropriate treatment for such items; and

- a new item would be added requiring the reporting of above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified as under current Item 402(c)(2)(vii)(B) of Regulation S-K. [50]

▪ Total Compensation Earned – This column would include the dollar value of the total compensation earned by the NEO for the covered fiscal year and would consist of the sum of all the amounts reported in columns (h) through (k) (column (l)).[51]

III. Perquisites

As practitioners advising clients on their disclosure obligations with respect to items and arrangements considered to be perquisites and other personal benefits, we welcomed the 2006 interpretive guidance to assist in (i) identifying items as perquisites (using a consistent analytical framework)[52] and (ii) determining the reporting treatment of such items (an instruction addressing the disclosure threshold, the nature of disclosure if the threshold is met or exceeded, the reporting treatment for perquisites exceeding the greater of $25,000 or 10% of total perquisites, the periods for which identification and quantification apply, the applicable methodology for valuing perquisites and when this methodology must be described, and the reporting treatment of any associated tax payments).[53]

As discussed below, we believe the current reporting requirements for perquisites are too granular and subject to unreasonably low annual disclosure thresholds. Consequently, we believe that the current guidance for identifying and reporting perquisites should be revised to reflect the practicalities of today's business environment.

A. The current interpretive guidance for determining whether an item or arrangement is a perquisite or other personal benefit potentially subject to disclosure should be revised to reflect a more flexible "primary purpose" test.

While the Commission reasonably declined to define the term "perquisite" or establish a "bright-line" test for perquisite identification, the two-step analysis articulated in the 2006 interpretive

[50] This recommendation assumes the removal of the "Change in Pension Value and Nonqualified Deferred Compensation Earnings" column of the SCT as reflected in our recommended revisions to the SCT.
[51] To the extent this amount includes the incremental fair value, computed in accordance with financial accounting standards, of any stock awards or option awards that were materially modified or amended during the last completed fiscal year, we recommend, to the extent a registrant believes that the inclusion of such amount in the "Total Compensation Earned" column (column (l)) would obscure the actual total compensation earned for the last completed fiscal year, the amount the board or compensation committee believes represents such amount may be provided in footnote to this column explaining the reason(s) for such belief.
[52] *See* Adopting Release, note 2 above, at Section II.C.1.e.i.
[53] Instruction 4 to Item 402(c)(2)(ix).

guidance has become the foundation upon which registrants rely in making this determination.[54] As commonly understood, this analysis first examines an item's relationship to the performance of an executive's duties (the "integrally and directly related" test) and then the degree to which the item confers a benefit to the executive that has a personal aspect, without regard to whether it may be provided for some business reason or for the registrant's convenience, unless it is generally available to all employees (to whom it may be lawfully provided) on a nondiscriminatory basis (or is not fully reimbursed by the executive) (the "nondiscriminatory basis" test).[55] In all cases, however, the ultimate determination of whether a particular item is a perquisite continues to depend on the specific facts and circumstances of the item being evaluated.

Even though the Commission cautioned that the two-step analysis is just "among the factors" to be considered in identifying an item as a perquisite, in our experience and in response to ongoing enforcement activity,[56] most registrants and their advisors use this analysis as the fundamental basis for evaluating an item's reporting status. Consequently, we believe that the two-step analytical framework warrants a fresh look.

In our experience, by stating that the "integrally and directly related" test is to be narrowly applied, the test effectively captures some items that may be immaterial in amount or significance. In addition, different registrants applying this test may arrive at different outcomes for the same or similar items, inhibiting an investor's ability to compare the compensation paid as well as the compensation philosophy of and decisions made among registrants.

Moreover, even though the "nondiscriminatory basis" test is to be applied broadly, in our experience this test also creates challenges. For example, the presence of a personal benefit may mean that an item is to be treated as a perquisite even though it is provided for a legitimate business reason or a registrant's convenience, unless it is generally available on a nondiscriminatory basis to all employees. Combined with the $10,000 annual disclosure threshold, this often results in the treatment of numerous items as potentially reportable perquisites, even though the item's purpose or benefit is ultimately intended to facilitate the discharge of an executive's responsibilities and is neither necessary, cost-effective, or practical for the registrant to provide on an organization-wide basis. As discussed in the next section, a current example of such an item involves executive security arrangements.

In our experience, the current two-step analysis requires registrants to devote substantial time and resources to identify and track a wide range of items, analyze their nature to determine whether they satisfy perquisite status, and then apply an imprecise standard based on the incremental cost to the registrant to determine their reportable value. And, as we have seen in too many instances, this effort often results in items that have a legitimate business purpose being characterized as perquisites simply because they may provide an incidental or secondary benefit that reflects a corporate or personal convenience.

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[54] *See In the Matter of The Dow Chemical Company*, Rel. No. 83581, File No. 3-18570 (July 2, 2018), *available at* https://www.sec.gov/enforcement-litigation/administrative-proceedings/34-83581-s#:~:text=ADMINISTRATIVE%20PROCEEDING&text=The%20SEC's%20order%20finds%20that,Moessner.

[55] *See* Adopting Release, note 2 above, at Section II.C.1.e.i. *See also* Governance and Compliance Considerations for Executive Officer Security Arrangements, Covington Alert (Jan. 6, 2025), *available at* https://www.cov.com/en/news-and-insights/insights/2025/01/governance-and-compliance-considerations-for-executive-officer-security-arrangements.

[56] *See*, for example, *In the Matter of The Dow Chemical Company*, note 55 above.

For the following reasons we believe a reevaluation of the 2006 interpretive guidance is warranted to develop a more pragmatic and flexible analytical framework. First, we believe the common understanding under the 2006 guidance that, to avoid perquisite status, an item must be directly tied to the performance of an executive's responsibilities frequently leads to the overly conservative application of the "integrally and directly related" test. Second, we believe that the "nondiscriminatory basis" test overlooks the workplace reality that differentiates between employee needs on the basis of their role and responsibilities. The evolving profile of employee populations resulting from globalization and advances in technology have increased the complexity of the analysis to whether a benefit is sufficiently widespread to satisfy the "nondiscriminatory basis" test.[57] As a result, in our experience, the conclusions frequently resulting from the 2006 interpretive guidance often confound the reasonable expectations of executives, subject registrants to burdensome monitoring and data gathering tasks, and frustrate the true objectives of the disclosure requirement.

Although the 2006 interpretive guidance specifically identifies several potentially disclosable perquisites,[58] it poses difficulties in how it should be applied to numerous items and arrangements where classification is not straightforward, particularly as recent developments (for example, the elimination of physical corporate headquarters, the growth in home (remote) offices, and the prevalence of "hybrid" working arrangements), advances in executive compensation design and strategy, regulatory changes, and unanticipated social and other developments (for example, the global pandemic, advances in technology, the evolution of corporate governance policies and practices, and growing executive security concerns) alter the responsibilities of executives in the context of the needs and expectations of the capital markets.

Accordingly, we recommend the 2006 interpretive guidance be revised to exclude from perquisite status items the primary purpose of which is to serve a legitimate business objective. Specifically, we recommend the Commission provide guidance that makes clear that an item that confers a personal benefit that is incidental or secondary in nature is not a perquisite, and, therefore, subject to reporting, if a registrant concludes that the item primarily fulfills a legitimate business purpose. This could, for example, cause a registrant to conclude that the item reasonably fulfills a business purpose if the principal reason for providing the item is in furtherance of an executive's ability to perform the role and responsibilities of their position. As under the current interpretive standard, this approach would be based on a reasonable analysis of all the relevant facts and circumstances.

B. <u>The disclosure thresholds for reporting perquisites should be increased and the attendant Instruction related to perquisite reporting should be revised.</u>

In conjunction with revising the 2006 interpretive guidance for analyzing an item or arrangement's perquisite status, we also recommend revising Item 402(c)(2)(ix)(A) of Regulation S-K to increase the annual disclosure threshold from $10,000 to a prescribed higher level (for example, $100,000). Further, we recommend revising the applicable Instruction to Item 402(c)(2)(ix) to:

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[57] As the Commission noted when adopting the current two-prong standard, "[a] company may reasonably conclude that an item is generally available to all employees on a non-discriminatory basis if it is available to those employees to whom it lawfully may be provided. For this purpose, a company may recognize jurisdictionally based legal restrictions (such as for foreign employees) or the employees' 'accredited investor' status." *See* Adopting Release, note 2 above, at Section II.C.1.e.i.

[58] Whether or not the current interpretive guidance is revised, we recommend the Commission update, as appropriate, the lists contained in the Adopting Release of items "typically" considered or not considered to be a perquisite or other personal benefit to reflect the practicalities of today's business environment. *See* Adopting Release, note 2 above, at Section II.C.1.a.i.

- exempt from disclosure any item with a specified *de minimis* value (for example, an aggregate increment cost of less than $1,000);[59]

- on a prospective basis, index the applicable thresholds to annual cost-of-living index adjustments;

- remove the second sentence of the Instruction: "If the total value of all perquisites and personal benefits is $10,000 or more for any named executive officer, then each perquisite or personal benefit, regardless of its amount, must be identified by type.";

- revise the third sentence of the Instruction as follows: "If perquisites and personal benefits are required to be reported for a named executive officer pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that officer must be identified by type."[60];

- revise the fourth sentence of the Instruction as follows: "The requirement for identification applies only to compensation for the last fiscal year.";

- remove the sixth sentence of the Instruction: "With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost"[61]; and

- revise the seventh sentence of the Instruction to change "$10,000" to an increased threshold amount (for example, $100,000).

Finally, we recommend revising the Commission Staff guidance[62] addressing the reporting of perquisites to (i) rescind the requirement, where the annual disclosure threshold is otherwise satisfied or exceeded, to disclose by type items which would otherwise be considered perquisites even where the registrant incurs no aggregate incremental cost for such item and (ii) revise the guidance providing that an item that would otherwise be characterized as a perquisite for which an executive has "fully reimbursed" the registrant for its aggregate incremental cost need not be treated as a reportable perquisite to clarify the meaning of "fully reimbursed" in the context of items that may have both a business and personal aspect (for example, a private club membership).

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[59] In other words, items with an aggregate incremental value of less than $1,000 would not be considered perquisites or other personal benefits for purposes of Item 402(c)(2)(ix)(A) of Regulation S-K and would not be counted towards the revised and indexed annual disclosure threshold.
[60] This revision would remove the requirement for the quantification and disclosure of the value of each perquisite that exceeds the applicable disclosure threshold.
[61] This revision would remove the requirement for describing the methodology for any perquisite for which footnote quantification is required.
[62] *See* Commission Staff Compliance and Disclosure Interpretation Question No. 119.07 (July 3, 2008), *available at* https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/regulation-s-k.

Simplifying the disclosure requirements for perquisite reporting would be a positive step in refocusing attention on the more significant aspects of a registrant's compensation arrangements for its executives.[63]

C. Corporate expenditures for executive security are ordinary and necessary business expenses and should be exempt from perquisite status.

Among the most difficult items to analyze under the 2006 interpretive guidance on perquisites are corporate expenditures to ensure the personal safety of a registrant's chief executive officer and other key executives. These expenditures can encompass various arrangements, including the use of corporate aircraft or other transportation, home security systems, and cybersecurity safeguards.[64] These arrangements, particularly in recent years, have been a focal point and reflect the increasing public profile and role played by registrants' executives, current social, economic, and political events, and the increase in responsibilities and expectations for corporate executives that have changed these roles into "24/7" positions.

The series of recent tragic events have underscored the ever-present concern about significant threats to and the ongoing safety of executives. These developments have dovetailed with the overlapping interests of shareholders to ensure the safety of one of their most valuable assets – their executive leadership team.

In addition, the recent global pandemic introduced a new variable into the corporate environment that accelerated into the need for and acceptance of a flexible business environment, where, as a result of technological advances, executives can now effectively work from anywhere. Further, heightened sensitivity to the need for data protection and privacy procedures, including communications encryption, information access restrictions, cybersecurity training, or other risk mitigation practices, have led registrants to develop, adopt, and maintain comprehensive security measures encompassing all facets of their business, including their executives' online presence. Consequently, we believe the increasing threats posed by bad actors seeking to exploit system vulnerabilities has elevated the need for enhanced cybersecurity protection for executives to a level that is comparable to their personal safety.

As registrants have sought to respond to these developments, the inherent limitations of the 2006 interpretive guidance's treatment of executive security have become more acute:

> . . . , business purpose or convenience does not affect the characterization of an item as a perquisite or personal benefit where it is not integrally and directly related to the performance by the executive of his or her job. Therefore, for example, a company's decision to provide an item of personal benefit for security purposes does not affect its

[63] We note that these revisions would harmonize the reporting treatment of perquisites and other personal benefits between accelerated filers and smaller reporting companies. *Compare* Item 402(c)(2)(ix)(A) and Instruction 4 to Item 402(c)(2)(ix) of Regulation S-K with Item 402(n)(2)(ix) (A) of Regulation S-K.

[64] Generally, currently the following arrangements are considered perquisites subject to potential reporting: use of a registrant aircraft or vehicle for commuting purposes or for the executive's personal travel or travel by the executive's family members, notwithstanding registrant policy, providing security (such as bodyguards, chauffeurs, or other security services) for personal or family travel, home security arrangements, and, increasingly, cybersecurity and protections against other digital risks. *See* SEC Disclosure and Taxation of Executive Security Benefits: Legal Requirements and Key Considerations, Morgan Lewis (Jan. 23, 2025), *available at* https://www.morganlewis.com/pubs/2025/01/sec-disclosure-and-taxation-of-executive-security-benefits-legal-requirements-and-key-considerations.

characterization as a perquisite or personal benefit. A company policy that for security purposes an executive (or an executive and his or her family) must use company aircraft or other company means of travel for personal travel, or must use company or company-provided property for vacations, does not affect the conclusion that the item provided is a perquisite or personal benefit.[65]

We note an earlier commenter which, in response to Chairman Atkins' request for views on whether the application of the 2006 interpretive guidance has affected evaluations relating to executive security costs, succinctly stated, ". . . this is an opportunity for the Commission to modernize its approach to the treatment of personal security and executive travel expenses in light of today's workplace realities."[66] We agree. We also note that several participants at the 2025 Roundtable expressed views supporting the exclusion of executive security-related costs from perquisite status.[67]

We recommend the 2006 interpretive guidance's treatment of executive security arrangements be revised to exempt executive security-related costs[68] from perquisite status if a registrant's board of directors has determined, in "good faith," that the costs, including all costs associated with the use of corporate aircraft and other corporate transportation for both business and personal travel by an executive officer and their family, is necessary to provide "reasonable security precautions"[69] for the executive officer and their family.[70]

Alternatively, if it is not receptive to the scope of the foregoing recommendation, we recommend that the Commission consider such an exemption subject to the requirement to disclose the aggregate incremental cost of the personal use of corporate aircraft and other corporate transportation where such cost during the last completed fiscal year exceeded a prescribed threshold (for example, $2 million).

We are aware that, should the Commission decide to exempt executive security from perquisite status, there is likely to be support for some level of disclosure that a registrant is incurring security costs for some or all of its executives. We believe the recommended exemption be conditioned on a registrant affirmatively disclosing that it incurred security-related costs attributable to one or more NEOs and their family during the last completed fiscal year. We recommend, given changing views on such expenditures as well as potential security concerns associated with detailed disclosure requirements, this narrative be limited to the existence of the security services, if material, and the reason(s) for providing such services and that such disclosure be provided in the CD&A.[71] As registrants continue to reassess their security protocols and increase the measures they take to protect their executives and broader workforce, it is imperative that any required disclosure

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[65] *See* Adopting Release, note 2 above, at Section II.C.1.e.i.
[66] *See* comment letter of Jennifer Broder and Peter Chan, Baker McKenzie (June 26, 2025), *available at* https://www.sec.gov/comments/4-855/4855-617167-1810434.pdf.
[67] *See*, for example, remarks by Bob McCormick, Executive Director, Council of Institutional Investors, and remarks by Ola Peter Krohn Gjessing, Lead Investment Stewardship Manager, Norges Bank Investment Management, to the 2025 Roundtable.
[68] We believe these costs should cover the provision of security services at all registrant facilities as well as to and from business-related meetings, including board meetings which serve a registrant-related purpose.
[69] We believe that any exemption for executive security costs should expressly note that "reasonable security precautions" may, but are not required to, include reasonable precautions taken to mitigate cybersecurity risks (including unauthorized surveillance devices).
[70] For purposes of either of these recommendations, subjective determinations involving the terms "good faith" and "reasonable security precautions" would be based on an analysis of all the relevant facts and circumstances.
[71] Item 402(b)(1)(iii) of Regulation S-K.

requirement balance the need to inform investors about their security practices with maintaining privacy about the programs themselves.[72]

D. Certain other corporate expenditures are ordinary and necessary business expenses and should be exempt from perquisite status.

For the reasons discussed above, including, in particular, the growth in home (remote) offices, and the prevalence of "hybrid" working arrangements, we recommend extending the Commission Staff guidance concerning whether certain items and arrangements provided to executives as a result of the then-ongoing global pandemic are perquisites potentially subject to reporting[73] to provide that the aggregate incremental costs associated with items such as travel between an executive's approved work location and a registrant's corporate headquarters are not "commuting" costs and, thus, exempt from perquisite status. We further recommend that expenditures associated with paying for or reimbursing physical examinations for executives be exempt from perquisite status. Given the demands placed on today's executives, ensuring the health of a registrant's executives is both a necessary and sensible precaution for these key employees.

IV. Incentive Award-Related Tables

A. The Grants of Plan-Based Awards Table, the Outstanding Equity Awards at Fiscal Year-End Table, and the Option Exercises and Stock Vested Table should be replaced by a single table reporting the "life cycle" activity of long-term cash-based and equity-based incentive awards over the last completed fiscal year.

The introduction of the Grants of Plan-Based Awards Table, the Outstanding Equity Awards at Fiscal Year-End Table, and the Option Exercises and Stock Vested Table as part of the 2006 amendments reflect a thoughtful and creative approach for tracking the life cycle of long-term incentive awards[74] following their grant (and reporting in the SCT).[75]

However, the challenges in developing a comprehensive reporting system for long-term incentive awards sufficiently flexible to encapsulate the complexities associated with awards that may be either short-term or long-term, payable in cash or equity, and service-based or performance-based are substantial and evolving executive compensation strategies have taken their toll on these

[72] *See* After Gunman Hits Manhattan Office, Security Disclosure Comes into Focus, agendanews.com (Aug. 15. 2025), *available at* https://www.agendanews.com/c/4948544/679814/after_gunman_hits_manhattan_office_security_disclosure_comes_into_focus?referrer_module=emailMorningNews&module_order=1&code=YldKdmNtZGxjMEJqYjIxd1pXNXphV0V1WTI5dExDQXhNVFkzTkRreUxDQXhOekkxTWprNE5qWTM.

[73] *See* Commission Staff Compliance and Disclosure Interpretation No. 219.05 (Sept. 21, 2020), *available at* https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/regulation-s-k.

[74] We recognize Item 402(d)(2)(iii) of Regulation S-K requires the reporting of the dollar value of the estimated future payout upon satisfaction of the conditions in question under *all* non-equity incentive plan awards granted in the last completed fiscal year not just long-term awards, but consider the three enumerated tables, in the aggregate, to focus largely on long-term cash-based and equity incentive awards.

[75] The Commission candidly acknowledged the challenges inherent in the then-new tables: ". . . by more clearly organizing the compensation tables to explain how the elements relate to each other, we may in some situations be requiring disclosure of both amounts earned (or potentially earned) and amounts subsequently paid out. This approach raises the possible perception of "double counting" some elements of compensation in multiple tables. However, a particular item of compensation only appears once in the Summary Compensation Table. In order to explain the item of compensation, it may also appear in one or more of the other tables. We believe the possible perception of double disclosure is outweighed by the clearer and more complete picture the disclosure in the additional tables will provide to investors. We strongly encourage companies to use the narrative following the tables (and where appropriate the Compensation Discussion and Analysis) to explain how disclosures relate to each other in their particular circumstances." *See* Adopting Release, note 2 *supra*, at Section II.C.

tables' dual objectives of providing material information to investors that is not overly complex while not being unduly burdensome to registrants. In recent years, these challenges have been compounded by new and innovative designs for equity incentive awards – which typically represent the majority of NEOs' target TDC opportunities.

Recognizing that no disclosure format can be perfect,[76] we believe that the information relating to a long-term incentive award's design, purpose, and outcome is more effectively presented by a single table that unifies the most important data from the three current tables to provide an annual overview, on an award-by-award basis, of each NEO's outstanding long-term incentive awards from the time of grant through eventual disposition. We believe such a table, as supplemented by the CD&A, will provide a clearer understanding of the effectiveness of a registrant's executive compensation program and its primary tool – long-term incentive compensation opportunities – in actual practice.

Accordingly, we recommend[77] the current three-table approach be replaced with a single table listing, as of the end of the last completed fiscal year, each NEO's outstanding long-term cash-based and equity incentive awards as of the beginning of the last completed fiscal year and providing information concerning such awards' fair value measured as of four key dates – the last day of the fiscal year immediately preceding the last completed fiscal year, the date of grant (for awards granted during the last completed fiscal year), the vesting or settlement date (for awards that vest and/or are earned and settled during the last completed fiscal year), and the last day of the last completed fiscal year. Using this format, we believe investors will be able to track each incentive award on a year-to-year basis to ascertain the relationship between the compensation opportunity and the compensation outcome.

We believe the proposed table offers the following benefits:

- Provide ability to better evaluate pay decisions of the board or compensation committee by tracking target long-term incentive award opportunities (as reported in the SCT) with each actual award outcome (or status) on an annual basis.

- Provide, in the case of performance-based long-term incentive awards, enhanced transparency as to the correlation between actual registrant performance and the amounts earned.

[76] We note at least four other commenters have proposed similar tabular disclosure to replace the current incentive award-related tables. *See* comment letters of Jon Burg, FGE, CEP, Managing Partner, Terry Adamson, NDEF, FGE, CEP, Partner, Daniel Coleman, CPA, CEP, Partner, Robyn Shutak, NDEF, FGE, CEP, Partner, Elizabeth Stoudt, NDEF, FGE, CEP, Partner, Michelle Tomasetti, FGE, CEP, Partner, Deidre Salisbury, CEP, Partner and Tom Yarnall, CFA, ECA, Director, Infinite Equity (July 11, 2025), *available at* https://www.sec.gov/comments/4-855/4855-623947-1837554.pdf, Takis Makridis, CEO, Therese Sebastian, Managing Director, and David Outlaw, Managing Director, Equity Methods, LLC (Aug. 12, 2025), *available at* https://www.sec.gov/comments/4-855/4855-638467-1904274.pdf, Heather Marshall, Senior Director and Steve Seelig, Senior Director, Towers Watson (Aug. 21, 2025), *available at* https://www.sec.gov/comments/4-855/4855-641247-1918514.pdf, and Sullivan & Cromwell LLP (September 30, 2025), *available at* https://www.sec.gov/comments/4-855/4855-665527-1989614.pdf. These proposals, as well our recommended tabular disclosure, illustrate the range of subject matter and related data that may be of use to investors, but each of which, in their own ways, will impact registrant compliance requirements differently.
[77] We further recommend the instructions for each of these tables (in particular, Instructions 2 through 8 of Item 402(d), Instructions 2 through 5 of Item 402(f)(2), and the Instruction to Item 402(g)(2) of Regulation S-K) be revised as necessary to effectuate the objectives of the proposed new table.

- Provide practical means to assess the effectiveness of a registrant's compensation philosophy.

- Provide information on the effect of registrant performance and stock price fluctuations on a NEO's potential wealth to be derived from their target long-term incentive compensation opportunities.

- "Bookends" the amounts reported in the revised SCT.

In our experience, investors seldom view the three current tables to hold information material to their investment and voting decisions and, in many instances, find the amounts presented to require a sophisticated or expert understanding of complex rules and standards, confusing, and, at times, inconsistent with information provided elsewhere in the same or different Commission filings. In fact, various commenters have called for the simplification of this information through the introduction of a single, comprehensive table.[78]

An example of this recommended table is provided with this letter as Exhibit B.

As proposed, the table would contain five distinct sections:[79]

- the first section would report for each "Incentive Award"[80] and "Equity Award"[81] included in the table, on an award-by-award basis, the award type and grant date;

  In the case of Incentive Awards and Equity Awards subject to performance-based vesting requirements, either in whole or in part, this column would be accompanied by a footnote disclosing the material conditions of such award or providing a cross-reference to the location of such information elsewhere in the registrant's definitive proxy statement.

- the second section would report, on an award-by-award basis, the Cash Payout and fair value for each Incentive Award and the number and fair value of unearned or unvested shares or units for each Equity Award held by the NEO as of the last day of the fiscal year immediately preceding the last completed fiscal year;

[78] See comment letters of Velika Talyarkhan, Director, Engagement, and Ellie Higgins, Assistant Manager, Engagement, EOS at Federated Hermes Limited (June 24, 2025), *available at* https://www.sec.gov/comments/4-855/4855-616227-1808194.pdf, Davis Polk & Wardwell (July 31, 2025), *available at* https://www.sec.gov/comments/4-855/4855-635027-1882894.pdf, Ani Huang, CEO, Center On Executive Compensation (July 31, 2025), *available at* https://www.sec.gov/comments/4-855/4855-635147-1884055.pdf, Takis Makridis, CEO, Therese Sebastian, Managing Director, and David Outlaw, Managing Director, Equity Methods, LLC (Aug. 12, 2025), *available at* https://www.sec.gov/comments/4-855/4855-638467-1904274.pdf, Heather Marshall, Senior Director and Steve Seelig, Senior Director, Towers Watson (Aug. 21, 2015), *available at* https://www.sec.gov/comments/4-855/4855-641247-1918514.pdf, and Sullivan & Cromwell LLP (September 30, 2025), *available at* https://www.sec.gov/comments/4-855/4855-665527-1989614.pdf.

[79] Thereby providing investors and other stakeholders with a complete list of the equity awards held by each NEO as of the beginning of the last completed fiscal year and all subsequent activity (if any) with respect to such awards, as well as the equity awards granted to them during the last completed fiscal year.

[80] For purposes of the recommended "Incentive and Equity Award Activity Table," as well as for simplicity, hereinafter we refer to (i) non-equity incentive plan awards (as defined in Item 402(a)(6)(iii) of Regulation S-K) as "Incentive Awards" and (ii) the dollar value of the estimated future payout upon satisfaction of the conditions in question under Incentive Awards as the "Cash Payout" in this letter.

[81] For purposes of the recommended "Incentive and Equity Award Activity Table," as well as for simplicity, hereinafter we refer to equity incentive plan awards (as defined in Item 402(a)(6)(iii) of Regulation S-K), stock awards, and option awards as "Equity Awards" in this letter.

- the third section would report, on an award-by-award basis, the target Cash Payout and grant date fair value for each Incentive Award and the number and grant date fair value of the target number of shares or units for each Equity Award granted to the NEO during the last completed fiscal year;

- the fourth section would report, on an award-by-award basis, the actual Cash Payout and fair value for each Incentive Award and the number and fair value of the shares or units for each Equity Award that was earned and settled and/or vested,[82] either in whole or in part, during the last completed fiscal year; and

- the fifth section would report, on an award-by-award basis, the Cash Payout and fair value for each Incentive Award and the number and fair value of unearned or unvested shares or units for each Equity Award held by the NEO as of the last day of the last completed fiscal year.

  With respect to the reporting of all Incentive Awards and Equity Awards in the table, we recommend the applicable instructions to the Grants of Plan-Based Awards Table, the Outstanding Equity Awards at Fiscal Year-End Table, and the Option Exercises and Stock Vested Table be revised and incorporated into the recommended table to ensure that the reporting of such awards remains consistent with the current reporting requirements of material information pursuant to such tables. For example, in the event an Equity Award is subsequently modified or amended during a covered fiscal year (whether granted in a previous fiscal year or during the last completed fiscal year), the fair value of the award (as well as the number of shares or units affected by the modification or amendment) would be reportable in the “Granted During Last Completed Fiscal Year” column reflecting the incremental fair value stemming from such modification or amendment, accompanied by a footnote to the applicable column, identifying such amount as incremental additional fair value for a previously granted Equity Award.

  Further, with respect to the reporting of Incentive Awards in the table, we recommend:

  - the required information, to the extent applicable, be provided as a dollar amount (rather than a number of shares or units); and

  - if, during the last completed fiscal year, an NEO was either granted or held an Incentive Award, separate, adjoining columns following column (e), (g), (i), and (k) be added (as applicable) to report the Cash Payouts relating to such award.[83]

The two tabular columns comprising the “Award Type and Grant Date” section would be as follows:

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[82] For purposes of this table, the term “vested” would encompass service-based awards for which the time-determined vesting requirements had been satisfied and performance-based awards for which the performance period had been completed and the awards settled in a manner consistent with the applicable disclosure requirements of Item 402(v) of Regulation S-K.
[83] For purposes of simplicity, the following column-by-column description of the information to be reported assumes the information pertains to an Equity Award. Where a NEO is granted an Incentive Award or holds an Incentive Award as of the beginning of the last completed fiscal year, as recommended in the body of this letter, additional columns would be added to the table entitled “Cash Payout” for each applicable section.

- Award Type – This column would identify whether the award represents an Incentive Award or, in the case of an Equity Award, an equity incentive plan award, stock award, or option award and, by footnote or otherwise, whether such award is subject to time-based or performance-based vesting or settlement conditions (column (c)); and

- Grant Date – This column would report the grant date of the award (column (d)).[84]

The two tabular columns comprising the "Outstanding at Beginning of Last Completed Fiscal Year" section would be as follows:

- Number of Unearned or Unvested Shares/ Units – This column would include the number of shares or units subject to each outstanding Equity Award held by the NEO that remained unearned and/or unvested as of the beginning of the last completed fiscal year (column (e)); and

- Fair Value of Unearned or Unvested Shares or Units – This column would include the fair value of the number of shares or units subject to each outstanding Equity Award held by the NEO that remained unearned and/or unvested as of the beginning of the last completed fiscal year (column (f)).

The two tabular columns comprising the "Granted During Last Completed Fiscal Year" section would be as follows:

- Number of Shares/ Units Granted – This column would include the number of shares or units subject to each Equity Award granted to the NEO during the last completed fiscal year (column (g)); and

- Fair Value of Shares/ Units Granted – This column would include the grant date fair value of the number of shares or units subject to each Equity Award granted to the NEO during the last completed fiscal year (column (h)).

The two tabular columns comprising the "Earned or Vested During Last Completed Fiscal Year" section would be as follows:

- Number of Earned or Vested Shares/ Units – This column would include the number of shares or units subject to each outstanding Equity Award held by the NEO that were earned and/or vested (if any) during the last completed fiscal year (column (i)); and

- Fair Value of Earned or Vested Shares/ Units – This column would include the fair value of the number of shares or units subject to each outstanding Equity Award held by the NEO that were earned and/or vested (if any) during the last completed fiscal year (column (j)).

[84] If such grant date is different than the date on which the board or compensation committee took action or was deemed to take action to grant such award, we recommend a separate, adjoining column be added between columns (d) and (e) showing such date. See Item 402(d)(2)(ii) of Regulation S-K.

The two tabular columns comprising the "Outstanding at End of Last Completed Fiscal Year" section would be as follows:

- Number of Unearned or Unvested Shares/ Units – This column would include the number of shares or units subject to each outstanding Equity Award held by the NEO that remained unearned and/or unvested (if any) as of the end of the last completed fiscal year (column (k)); and

- Fair Value of Unearned or Unvested Shares/ Units – This column would include the fair value of the number of shares or units subject to each outstanding Equity Award held by the NEO that remained unearned or unvested (if any) as of the end of the last completed fiscal year (column (l)).

We recognize, by selecting a methodology that calculates a long-term cash-based or equity-based award's "fair value" rather than its "intrinsic value" for this tabular disclosure, investors will not receive information on either an award's "unrealized" appreciation (for example, when a stock option vests) or "realized" appreciation (for example, when a stock option is exercised). However, in formulating this recommendation, we have opted for relative simplicity rather than financial precision to minimize investor confusion and maintain consistency with the overall revised version of Item 402 of Regulation S-K that we envision. We also note that the information to be presented provides sufficient data for investors and other readers to determine the "intrinsic value" of earned and/or vested Equity Awards. As we have noted previously in this letter, we appreciate the complexities (and veritable impossibility) associated with developing a single reporting format that accommodates the principal long-term cash-based and equity-based award vehicles currently in use and, at the same time, provides the full range of information that users of the Commission's executive compensation disclosure may seek.

V. Post-Employment-Related Disclosure

A. The Pension Benefits Table and the Nonqualified Deferred Compensation Table should be removed from Item 402 of Regulation S-K.

To provide a clearer picture of executive compensation, the 2006 amendments made significant revisions to the Commission's requirements regarding post-employment compensation to provide additional information about potential future compensation.[85] This enhanced disclosure was intended to apprise investors of the potentially significant commitment of corporate resources and to round out the presentation of overall compensation.[86]

In our experience, the number of registrants providing post-employment benefits to their employees, including their executives, through defined benefit pension plans is relatively small;

[85] *See* Adopting Release, note 2 above, at Section II.C.5.
[86] The amendments replaced the former pension plan table, alternative plan disclosure, and some of the other narrative descriptions with a table regarding defined benefit pension plans and enhanced narrative disclosure. *See* former Item 402(f) of Regulation S-K; *see also* 1992 Release, note 1 *supra*, at Section II.E. The amendments also added a new table and narrative disclosure to report information regarding nonqualified defined contribution plans and other deferred compensation. Previously, information about such plans was limited to the disclosure of the compensation when earned and only the above-market or preferential earnings on nonqualified deferred compensation. *See* Instruction 3 to former Item 402(b)(2)(iii)(C) of Regulation S-K; *see also* 1992 Release, note 1 above, at Section II.B.2.c.

especially when compared to the number of plans that existed in 2006.[87] Further, we have not seen such plans generate concerns from investors or typically factor into a registrant's compensation-setting process. In addition, the voting policy guidelines of the major proxy advisory firms do not address defined benefit pension plans, suggesting that such plans are not a significant factor in either their executive and equity compensation or corporate governance-related analyses. Finally, the design of such plans is generally adequately regulated under the applicable provisions of the Internal Revenue Code.[88] Consequently, we recommend the Pension Plan Table be removed from Item 402 of Regulation S-K. We believe the limited value of information disclosed about such plans does not justify the time and expense required to provide this disclosure.[89]

Alternatively, if the Commission is not receptive to the foregoing recommendation, we recommend the disclosure requirements for any nonqualified defined benefit plan be no greater than the disclosure requirements ultimately imposed regarding payments to a NEO following or in connection with any termination of employment or a change in control of a registrant as discussed in Section V.B below, as, in our view, these arrangements are the practical equivalent of a severance benefit.

With respect to the Nonqualified Deferred Compensation Table, we believe this table also should be removed from Item 402 of Regulation S-K. Much of the information provided in this table is repetitive of information either available elsewhere or which may be provided in response to an adjacent disclosure requirement.[90] Further, the dollar amount of the total balance of a NEO's account of the end of the registrant's last fiscal year reflects executive officers' individual investment decisions (which are immaterial to investors) rather than a compensatory decision of the registrant's board or compensation committee.

B. The disclosure required by Item 402(j) of Regulation S-K regarding payments to a NEO following or in connection with any termination of employment or a change in control of the registrant should be removed from Item 402 of Regulation S-K.

The second part of the 2006 amendment's attention to post-employment compensation-related disclosure involved plans and arrangements, as well as the related potential payments under them,

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[87] We understand that today a majority of such plans tend to be supplemental executive retirement plans ("SERPs"). Inasmuch as the disclosure required by Item 402(h) of Regulation S-K applies to both tax-qualified defined benefit pension plans and nonqualified defined benefit pension plans, this includes a SERP that is simply a "mirror" plan (as described in note 89 below) of a registrant's tax-qualified defined benefit pension plan.

[88] *See* I.R.C. Sec. 401(a) [26 U.S.C. § 401(a)]. Such plans are both broad-based and prohibited from discriminating in favor of highly compensated employees, such as executive officers. We believe that where any such nonqualified plan is a "mirror" plan (that is, a plan that reflects the design of the corresponding tax-qualified plan except for the compensation and benefit limitations required by I.R.C. Sec. 401(a)(17) and 415 [26 U.S.C. §§ 401(a)(17) and 415]), the utility of the required disclosure is no more consequential than in the case of a tax-qualified plan.

[89] To the extent that a nonqualified defined benefit pension plan differs materially from the corresponding defined benefit pension plan, such plan can be viewed as providing a benefit that is more in the nature of a "severance" benefit than a "retirement" benefit. We believe that information with respect to such plans is more appropriately addressed as part of a registrant's required disclosure with respect to compensation arrangements triggered by a termination of employment or a change in control of the registrant.

[90] The dollar amount of aggregate executive contributions during the registrant's last completed fiscal year is available in the SCT as deferred salary, bonus or non-equity incentive plan compensation, and/or as a stock award or option award, as applicable (Instruction 4 to Item 402(c) of Regulation S-K) as common practice is to attach a footnote to the appropriate column disclosing the reported amount that has been deferred. Registrant contributions during the last fiscal year are reportable in the "All Other Compensation" column of the SCT (Item 402(c)(2)(ix)(E) of Regulation S-K). However, we are aware the aggregate cash earnings on compensation that is deferred on a basis that is not tax-qualified, including earnings on nonqualified defined contribution plans is reportable only if the amounts are above-market or preferential (Item 402(c)(2)(viii)(B) of Regulation S-K). Should the Commission conclude the disclosure of such information continues to be potentially material to investors, we recommend consideration of the inclusion of such information in the "All Other Compensation" column of the revised Summary Compensation Table.

that obligated a registrant to provide payments and benefits to its NEOs in connection with certain specified terminations of employment or a change-in-control of the registrant. Prior to these amendments, disclosure of termination provisions was limited[91] to a narrative description of a registrant's termination of employment and change-of-control plans or arrangements with any NEO (including any payments to be received), subject to a disclosure threshold of $100,000.

Expressing a concern that the then-current disclosure requirement did not in many cases capture material information regarding these plans and potential payments under them, the Commission expanded the required disclosure significantly to cover both written or unwritten arrangements providing for payments at, following, or in connection with the resignation, severance, retirement, or other termination (including constructive termination) of a NEO, a change in a NEOs responsibilities, or a change-in-control of the registrant.[92]

Presented solely as a narrative disclosure requirement focusing on the individual arrangements of each NEO, the information to be reported may be (and often is) quite detailed.[93] Consequently, for the first time, the Commission required registrants to quantify the estimated payments and benefits to be provided pursuant to each triggering event. While this disclosure may be provided in either narrative or tabular form, given the number and variety of events that may trigger payments and benefits pursuant to these arrangements, as well as the size of the estimated amounts involved, in our experience most registrants satisfy this disclosure requirement in tabular form.

We believe the preparation of these estimates consumes substantial resources, often requiring third-party experts to be engaged to perform complicated calculations. If the NEO is located outside the United States, the process may be even more challenging (for example, requiring a registrant to, among other things, obtain applicable documents, possibly translate such documents, and understand local practices and legal requirements or engage expert assistance). Further, we have not seen this disclosure generate concern from investors or typically factor into a registrant's compensation-setting process.

Instead, as a practical matter, we have seen the proxy voting guidelines of the major proxy advisory firms establish the *de facto* standard as to when such plans or arrangements will be considered reasonable and most registrants tailor their plans and arrangements to avoid the various "egregious" features that the proxy advisory firms will identify, highlight, and routinely criticize.[94] As a result, most institutional shareholders and other sophisticated investors rarely scrutinize these plans and arrangements unless and until an actual triggering event has or is about to occur. Further, in situations where shareholders are being asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all of the assets of the registrant, the Commission's rules require the registrant to conduct a separate shareholder advisory vote to

[91] *See* 1992 Release, note 1 above, at Section II.G.
[92] Item 402(j) of Regulation S-K.
[93] Among other things, a registrant is required to disclose for each arrangement the event(s) triggering payment or benefits, how the payment and benefit levels are determined, any material conditions or obligations applicable to the receipt of such payments and benefits, and any other material factors necessary to understand the arrangement.
[94] For example, Institutional Shareholder Services, Inc. considers an excise tax "gross up" provision in a new or amended executive employment agreement to be an "egregious" pay practice. *See* ISS United States Executive Compensation Policies – Frequently-Asked Questions, Question No. 48 (Dec. 13, 2024), *available at* https://www.issgovernance.com/file/policy/active/americas/US-Compensation-Policies-FAQ.pdf.

approve any compensation plan or arrangement from the payment of which is triggered by the proposed transaction.[95]

Because we do not believe this disclosure provides material information that informs investors' investment and voting decisions, yet represents a substantial compliance burden for registrants, we recommend the disclosure be removed from Item 402 of Regulation S-K.[96] In the absence of a specific disclosure requirement, we recommend that a description of the terms and conditions of the NEOs' post-employment compensation plans and arrangements be permitted to be disclosed, if material, in the CD&A as part of the requirement to describe each element of compensation.

Alternatively, if the Commission is not receptive to the foregoing recommendation and elects to retain the disclosure requirement for potential payments upon a termination of employment or a change-in-control of the registrant, we recommend the disclosure requirement be limited to a narrative description of the material elements of the NEOs' post-employment compensation plans and arrangements and the requirement to quantify the estimated payments and benefits under such plans and arrangements be removed.[97]

VI. Director Compensation

A. The tabular disclosure regarding the compensation of members of a registrant's board of directors should be removed from Item 402(k) of Regulation S-K and the required disclosure should be limited to a narrative discussion of material information necessary to an understanding of the registrant's director compensation policy.

The Commission's 2006 amendments expanded the scope of the required disclosure concerning the compensation paid to, earned by, or awarded to the members of a registrant's board.[98] Responding to the perceived complexity of the evolving compensation packages,[99] this disclosure requirement includes tabular disclosure (consisting of items comparable to those required by the SCT),[100] as well as additional narrative information of material information necessary to understand the required table.[101]

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[95] *See* Exchange Act Rule 14a-21(c) [15 C.F.R. 240.24a-21(c)]. We note that this shareholder advisory vote requirement identifies the separate disclosure requirements of Item 402(t) of Regulation S-K, which disclose the actual amounts that will be paid upon the completion of the transaction rather than an estimate of such amounts which may have been calculated up to 18 months ago.

[96] Notwithstanding this recommendation, we believe the amounts actually paid to a former executive officer who continues to qualify as an NEO in connection with a termination of employment or a change in control should continue to be reportable in the "All Other Compensation" column of the revised SCT.

[97] Further, in this instance, consistent with our recommendation in Section V.A above that the Pension Benefits Table be removed from Item 402 of Regulation S-K, we believe if a nonqualified defined benefit pension plan provides for a benefit greater than the benefit available pursuant to the formula under the nondiscriminatory defined benefit pension plan without the application of the compensation and benefit limitations as required by I.R.C. Sec. 415 [26 U.S.C. § 415], then such benefit is in the nature of a "severance" benefit and should be subject to disclosure pursuant to Item 402(j) of Regulation S-K (or any revised disclosure requirement concerning potential payments upon termination or a change in control).

[98] Prior to the 2006 amendments, the only information required under then-Item 402 of Regulation S-K concerning the compensation of the members of the board of directors was a narrative discussion of any standard or non-standard compensation arrangement, naming each director thus compensated and stating the specific amounts paid. *See* former Item 402(g) of Regulation S-K; *see also* 1992 Release, note 1 above, at Section 2.F.

[99] *See* Adopting Release, note 2 above, at Section II.C.9. The approach adopted by the Commission was based on, but not identical to, its 1995 proposal concerning director compensation. *See* Streamlining and Consolidation of Executive and Director Compensation Disclosure, Release No. 33-7184 (Aug. 6, 1995) [60 Fed. Reg. 35,633 (July 10, 1995)], at Section I.B., *available a*t https://www.sec.gov/files/rules/proposed/33-7184.txt.

[100] Item 402(k)(1) of Regulation S-K. This disclosure may exclude any director who is also a named executive officer whose compensation for service as a director is fully reflected in the Summary Compensation Table. Item 402(k)(2)(i) of Regulation S-K.

[101] Item 402(k)(3) of Regulation S-K.

Having developed a clear understanding of how investors evaluate and use compensation information and advised registrants on the disclosure of their compensation plans and arrangements for their non-employee directors, we are of the view that the required Director Compensation Table, while providing an individual depiction of each director's compensation for the last completed fiscal year, is not a source of material information for investors yet involves a time-consuming and expensive compliance undertaking for registrants. Consequently, we recommend any required disclosure of director compensation be limited to (i) a narrative discussion of a registrant's compensation plan or policy, (ii) the aggregate amount of compensation for the members of the registrant's board for the last completed fiscal year (and any limit the registrant places on annual director compensation), (iii) any individual compensation arrangements that vary from such plan or policy, and (iv) any other material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the members of its board.

Alternatively, if the Commission is not receptive to the foregoing recommendation and elects to retain the Director Compensation Table, we expect it will maintain its present format, subject to revision to conform to any applicable revisions made to the SCT or its replacement.[102] Further, in this event, we recommend the table be simplified by (i) removing the "Non-Equity Incentive Plan Compensation" column[103] and (ii) updating the disclosure threshold[104] for perquisites and other personal benefits to conform to any revised threshold applicable to NEOs.

PART 2 Rules Promulgated Under Dodd-Frank Act

I. Frequency of Say-on-Pay Vote

A. <u>The requirement to conduct a "Say-on-Frequency" vote should be revised to limit its application to registrants that have elected to hold the "Say-on-Pay" vote either every two or three years.</u>

In implementing the directives of Section 14A of the Exchange Act,[105] the Commission adopted a series of rules calling for shareholder advisory votes on executive compensation matters, including a so-called "frequency vote"; that is, a non-binding shareholder advisory vote on the frequency with which a registrant must conduct a Say-on-Pay vote.[106]

While, initially, the boards of directors of most registrants elected, either of their own initiative or as the expressed preference of shareholders following a frequency vote, to hold the Say-on-Pay vote annually, a significant number of registrants opted to conduct the Say-on-Pay vote on a periodic (biannual or triennial) basis. Today, however, very few registrants hold the required Say-on-Pay vote other than on an annual basis. In our experience, once a registrant has determined to hold its Say-on-Pay vote annually, the requirement for a frequency vote is largely moot and becomes an unnecessary (and potentially overlooked) technical compliance requirement. Accordingly, we recommend this requirement be revised to limit its application solely to registrants that have opted

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[102] In addition, we expect that conforming revisions will be made to the Instruction to Item 402(k) of Regulation S-K to update each specific reference to reflect the revisions, if any, to the provisions cited in the instruction. Instruction to Item 402(k) of Regulation S-K.
[103] Item 402(k)(2)(v) of Regulation S-K.
[104] Item 402(k)(2)(vii)(A) and Instruction 2 to Item 402(2)(vii) of Regulation S-K.
[105] *See* Section 951 of the Dodd-Frank Act, note 39 above.
[106] See Exchange Act Rule 14a-21(b) [17 C.F.R. 240.14a-21(b)].

to conduct either a biennial or triennial Say-on-Pay vote.

II. Pay-Versus-Performance

A. The pay-versus-performance disclosure requirements of Item 402(v) of Regulation S-K should be revised as described below.

The Commission's rules implementing the statutory requirement of the Dodd-Frank Act[107] and, correspondingly, Section 14(i) of the Exchange Act[108] requiring registrants to disclose the relationship between the executive compensation actually paid to their NEOs and their financial performance, gave the Commission significant leeway to fashion a framework for this disclosure.[109] And while the Commission's initial proposal established the disclosure framework that is reflected in the current requirement,[110] developments in executive compensation practices[111] prompted a request for additional comments from the public,[112] ultimately leading to several additional disclosure requirements. These include the addition of two extra performance measures[113] against which, along with TSR, registrants are required to address the relationship between each such measure and "compensation actually paid" ("CAP") and a tabular list of the most important performance measures used by a registrant to link CAP during the fiscal year to the registrant's performance during the last completed fiscal year.[114]

In our experience advising clients on compliance with Item 402(v) of Regulation S-K, it is unclear whether the resulting disclosure has produced information that reliably informs investors' investment or voting decisions. The disclosure is lengthy, complex, and difficult to understand. These challenges are compounded by the pivotal role of CAP, a new and previously unfamiliar calculation of total compensation combining elements of both "realized" and "unrealized" pay that virtually all find difficult to understand and assess. Given the significant role that equity plays in executive compensation packages, stock price volatility has an outsize impact on the calculation of CAP, frequently leading to negative compensation amounts and contributing to the overall confusion resulting from this disclosure.

Further, the disclosure purports to "enhance" the then-current "detailed disclosure . . . regarding the relationship between pay and performance."[115] This latter disclosure, typically located in the CD&A, tends to focus more on the "pay-for-performance" character of a registrant's executive compensation philosophy and program, along with a narrative description or a graphic presentation

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[107] See Section 953(a) of the Dodd-Frank Act, note 39 above.
[108] 15 U.S.C. § 78n(i).
[109] *See* Pay Versus Performance, Release No. 34-95607 (Aug. 25, 2022) [87 Fed. Reg. 55,134 (Sept. 8, 2022)], at Section I.A. [hereinafter the "Pay Versus Performance Release"], *available at* https://www.sec.gov/files/rules/final/2022/34-95607.pdf: "As a part of the Dodd-Frank Act legislative process, in a 2010 report, the Senate Committee on Banking, Housing and Urban Affairs stated that the disclosure required under Section 14(i) 'may take many forms.'"
[110] Item 402(w) of Regulation S-K.
[111] For example, a marked increase in the prevalence of performance-based long-term incentive awards and a corresponding decrease in the use of stock options to compensate executive officers.
[112] *See* Reopening of Comment Period for Pay Versus Performance, Release No. 34-94074 (Jan. 27, 2022) [87 Fed. Reg. 5,751 (Feb. 2, 2022)], *available at* https://www.sec.gov/rules-regulations/2022/08/pay-versus-performance#34-94074proposed. *See also* Pay Versus Performance, Release No. 34-74835 (Apr. 29, 2015) [80 Fed. Reg. 26,330 (May 7, 2015)], *available at* https://www.sec.gov/rules-regulations/2022/08/pay-versus-performance#34-74835proposed.
[113] While three additional performance measures were proposed for comment – pre-tax net income, net income, and a company-selected measure – only the latter two were included in the final rule. Item 402(v)(2)(v) and (vi) of Regulation S-K.
[114] Item 402(v)(6) of Regulation S-K.
[115] *See* Pay Versus Performance Release, note 110 above, at Section I.A.

of the variable or “at-risk” percentage of each NEO’s annual target TDC pay mix. While the current pay versus performance disclosure can be viewed as an additional means of providing objective data to enable investors to make a direct comparison of NEO pay with a registrant’s performance, the absence of coordination between the two ostensibly overlapping requirements and the data-dense focus of the Item 402(v) disclosure have yet to achieve this goal. Finally, the frequent absence of any meaningful narrative accompaniment to the now standard practice of presenting the required “relationship” discussion in graphic form frustrates the coordination of these two disclosures and frequently leaves investors to draw their own conclusions as to the integrity of the pay and performance relationship.

We believe preparing the disclosure has been and continues to require registrants to expend considerable financial and staffing resources to collect the necessary data and calculate CAP and to produce the required relationship disclosure. To date, in our experience, unless a registrant has the requisite expertise on staff, both the initial and subsequent calculations, as well as the required “reconciliation” disclosure often require the engagement of third-party expertise.

We believe the current requirements of Item 402(v) are overly prescriptive and require the expenditure of considerable time and expense to produce a number that is not meaningful, much less material, to most investors. While we understand, given the statutory mandate of Section 954 of the Dodd-Frank Act, the Commission is limited in its ability to address either investor or registrant concerns about the utility of the pay versus performance disclosure, our recommendations are two-fold. First, we recommend the Commission petition Congress to repeal Section 954t to rescind this unnecessary disclosure requirement. In the interim, we believe there are a number of specific revisions that may be made to Item 402(v) that would ease the compliance burden while improving the quality of the information to be disclosed. Based on our experience advising clients on this disclosure, and operating within the scope of its statutory authority, we recommend the Commission consider the following three revisions.

1. The requirement to disclose the registrant’s net income and a “company selected measure” should be removed from Item 402(v) of Regulation S-K.

We recommend the requirement to disclose a registrant’s net income and a “company selected measure” (“CSM”) [116] be removed from Item 402(v). In our experience, few registrants use GAAP net income as a financial performance measure in their incentive programs. In addition, typically the selected CSM is one of the principal performance metrics used in connection with a registrant’s short-term or long-term incentive program and, accordingly, the relationship between that measure and the registrant’s related financial performance is addressed in detail in the CD&A. We do not believe that the inclusion of a CSM in this disclosure provides additional insights for investors.[117] This is often true where the CSM involves a non-GAAP financial performance measure. Finally, the process of selecting a single measure deemed to be the “most important” used by the registrant to link CAP to the registrant's NEOs for the most recently completed fiscal year to the registrant’s performance is not always obvious and can result in year-over-year changes (often unrelated to

[116] Item 402(v)(2)(v) and (vi) of Regulation S-K.
[117] We note a recent review of “pay-versus-performance” data required by Item 402(v) of Regulation S-K as reported by approximately 1,600 registrants in the Russell 3000 Index found that, overall, net income had limited predictive value relative to the total compensation reported in the SCT and CAP for such registrants’ principal executive officer or other named executive officers. *See* What Does Pay-Versus-Performance Data Actually Show? A Review of Pay-Versus-Performance Data from the Russell 3000 Index, Cozen, O’Connor (Sept. 22, 2025), *available at* https://prod.resource.cch.com/resource/scion/id/_1KuNFMtMw?cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah (subscription required).

program design) that necessitate revisions to the Pay-Versus-Performance Table and the accompanying relationship disclosure.

2. <u>The requirement to reconcile CAP to the total compensation reported for a registrant's NEOs in the SCT should be removed from Item 402(v) of Regulation S-K.</u>

We recommend the requirement to reconcile CAP to the total compensation reported for a registrant's NEOs in the SCT be removed from Item 402(v).[118] In our experience, satisfying this requirement consumes significant resources. The granular nature of this information, which is of little interest to investors, does not warrant the corresponding compliance burden.

Alternatively, if the Commission is not receptive to the foregoing recommendation, we recommend registrants be given the flexibility to provide this information on a corporate website accessible via a hyperlink provided as part of the disclosure.

3. <u>The requirement to provide a tabular list of financial performance measures, which in the registrant's assessment represent the most important financial performance measures used by the registrant to link CAP to the registrant's NEOs, for the most recently completed fiscal year should be removed from Item 402(v) of Regulation S-K.</u>

We recommend the requirement to provide a tabular list of at least three, and up to seven, financial performance measures, which in the registrant's assessment represent the most important financial performance measures used by the registrant to link CAP to the registrant's NEOs, for the most recently completed fiscal year be removed from Item 402(v).[119] In our experience, registrants often struggle with this requirement, both unsure of what needs to be disclosed and, in case of measures that are not commonly understood financial metrics, whether and, to what extent, they must explain the measures. In addition, for the reasons described in our recommendation above with respect to the removal of the CSM, we believe that this information is unnecessarily repetitive with similar information typically presented in the CD&A.

III. CEO Pay Ratio

A. <u>The CEO pay ratio disclosure requirements of Item 402(u) of Regulation S-K should be revised as described below.</u>

The Commission's rule implementing the statutory requirement for a registrant to disclose a ratio comparing the annual total compensation of all its employees (other than its PEO) and the annual total compensation of its PEO as mandated by the Dodd-Frank Act was narrowly prescribed. Unlike related provisions enacted as part of the Dodd-Frank Act, Section 953(b) directed the Commission to specifically amend Item 402 of Regulation S-K to reflect these requirements. Accordingly, we understand the Commission had minimal discretion to determine the scope of this directive, which efforts were largely limited to the mechanics necessary to identify a registrant's median employee.

Because Congress did not expressly state the specific objectives or intended benefits of Section 953(b) and, given that the legislative history of the Dodd-Frank Act did not expressly state the

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[118] Item 402(v)(3) of Regulation S-K.
[119] Item 402(v)(6) of Regulation S-K.

Congressional purpose underlying the provision, the Commission was required to determine its purpose based on its own analysis, supplemented by the comments received. Based on this analysis, the Commission stated its belief that Section 953(b) was intended to provide a company-specific metric that could assist shareholders in their evaluation of a registrant's executive compensation practices.[120] Therefore, the Commission endeavored to tailor Item 402(u) of Regulation S-K to meet that purpose while avoiding unnecessary costs.

In our experience advising clients on compliance with Item 402(u), the resulting disclosure does not appear to produce information that informs investors' investment or voting decisions. Moreover, preparing the disclosure requires registrants to expend considerable financial and staffing resources to collect and analyze the data necessary to identify a median employee for purposes of calculating the required ratio. In sum, the current requirements of Item 402(u) are overly prescriptive and require the expenditure of considerable time and expense to produce a number that is not meaningful, much less material, to most investors.

While we understand, given the statutory mandate of Section 953(b) of the Dodd-Frank Act, the Commission is limited in its ability to address either investor or registrant concerns about the utility of the CEO pay ratio disclosure. As in Section II.A above, our recommendations are two-fold. First, we recommend the Commission petition Congress to repeal Section 953(b) to rescind this unnecessary disclosure requirement. Second, until such time, if any, as Congress deems to address this matter, we believe the following three specific revisions be made to Item 402(u) which, based on our experience, would ease the compliance burden without materially affecting the information to be disclosed.

1. For purposes of the *de minimis* exemption from the definition of "employee" for "non-U.S. employees," the requirements for claiming the exemption should be revised to expand the circumstances in which a registrant may elect to exclude such employees from inclusion in the identification of the median employee.

We recommend the Commission exercise its statutory authority to further reduce registrant compliance costs by revising the group of employees from which the median employee is to be identified. We believe, based on anecdotal evidence, that limiting the employee pool to a registrant's U.S. employees as of the applicable "determination date"[121] would reduce this cost.

Alternatively, if it is not receptive to the foregoing recommendation, we recommend the Commission consider other alternatives to reduce this cost, including, but not limited to, revising the *de minimis* exception of Item 402(u) for non-U.S. employees[122] to expand the circumstances in which a registrant may elect to exclude such employees from inclusion in the identification of its median employee. We believe this expansion may take one of several forms, including: (i) increasing the current 5% exclusion limit; (ii) deleting the so-called "all or nothing" requirement (that is, the condition requiring a registrant that excludes any non-U.S. employees in a particular jurisdiction to exclude all non-U.S. employees in that jurisdiction, the total number of excluded employees being applied against the 5% exclusion limit); or (iii) excluding all jurisdictions in which a registrant has a nominal number of non-U.S. employees (for example, 10 or less). This latter

[120] *See* Pay Ratio Disclosure, Release No. 33-9877 (Aug. 5, 2015) [80 Fed. Reg. 50,103 (Aug. 18, 2015)]; *available at* http://www.sec.gov/rules/final/2015/33-9877.pdf.
[121] Instruction 1 to Item 402(u) of Regulation S-K.
[122] Item 402(u)(4)(ii) of Regulation S-K.

exclusion may be combined with the current (or a revised) version of the *de minimis* exception to generally limit the inclusion of non-U.S. employees to jurisdictions in which a registrant maintains a meaningful business presence.

2. For purposes of calculating the CEO pay ratio, the definition of "employee" should be revised to expressly incorporate the Commission's 2017 guidance clarifying the characterization of workers as employees or independent contractors.

We recommend the definition of "employee" be revised to memorialize in Item 402(u) itself the Commission's 2017 guidance[123] as to how registrants should analyze whether an individual who is a worker or contractor should be considered an "employee" or an "employee of the registrant" for purposes of the Item 402(u) analysis. We recommend this guidance be "codified" as part of rule text to provide greater clarity with respect to the characterization of workers as employees or independent contractors for purposes of calculating the required ratio.

3. The requirements (i) for selecting a "consistently applied compensation measure" for purposes of identifying the median employee and (ii) permitting a registrant to identify the median employee only once every three years without regard to change in its employee population or employee compensation arrangements should be revised to enhance their flexibility.

We recommend additional guidance be provided on the compensation measures that may be employed to constitute a "consistently applied compensation measure" ("CACM") for purposes of Item 402(u).[124] Notwithstanding the current Commission Staff guidance on the formulation of a CACM,[125] many registrants continue to struggle with developing a permissible CACM. Registrants with significant operations in non-U.S. jurisdictions and multiple payroll systems frequently struggle to develop a permissible CACM when actual compensation and/or employment information for their non-U.S. employees is either unavailable or difficult to obtain and statistical sampling is prohibitively expensive. This challenge is particularly acute when base wages may be the only measure available for a significant number or all of these employees. We recommend the Commission Staff's position with respect to the use of pay rates as a component to determine an employee's overall compensation when a registrant, in good faith, is unable to obtain actual compensation and/or employment information be expanded. Alternatively, since these challenges appear to arise most frequently in situations involving registrants with operations in multiple non-U.S. jurisdictions, such expansion could be limited to non-U.S. employees only.

Finally, we recommend registrants be permitted to identify their median employee only once every three years without regard to changes in their employee population or employee compensation arrangements. While the flexibility provided in Item 402(u) permitting registrants to identify a new median employee only once every three years provided, that, during the last completed fiscal year, there has been no change in either the registrant's employee population or employee compensation arrangements that it reasonably believes would result in a significant change to its

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[123] *See* Commission Guidance on Pay Ratio Disclosure, Release Nos. 33-10415; 34-81673 (Sept. 17, 2017) [82 Fed. Reg. 44,917 (Sept. 27, 2017], *available at* https://www.sec.gov/files/rules/interp/2017/33-10415.pdf.
[124] Instruction 4.3 to Item 402(u) of Regulation S-K.
[125] *See* Commission Staff Compliance and Disclosure Interpretation Question No. 128C.01 and Question No. 128C.02; *available at*: https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/regulation-s-k. C&DI Question 128C.02 appears to permit the use of annual or hourly rates of pay that taken into consideration the number of hours actually worked or the portion of the year the employee actually worked and for which he or she was actually paid, respectively.

pay ratio disclosure[126] is a welcome aspect of the rule's operation, in our experience it does not go far enough. While employee compensation arrangements rarely change significantly from year-to-year (or even over longer periods), employee populations can fluctuate in size over relatively short periods of time, either organically or through a merger, acquisition, or other corporate transaction.[127] Conducting a thoughtful analysis as to whether either an increase or decrease in a registrant's employee population will result in a "significant" change in its pay ratio may thus require the exercise of difficult judgment. Given the limited value of the pay ratio information, we believe this burden is unwarranted.

IV. Clawback Policy

A. The requirements of Exchange Act Rule 10D-1 and Item 402(w) of Regulation S-K addressing the recovery of erroneously awarded incentive compensation should be revised as described below.

We believe Exchange Act Rule 10D-1[128] (as implemented by the applicable listing standards of the national securities exchanges and national securities associations) and Item 402(w) of Regulation S-K (collectively, the "Clawback Rules")[129] are overly prescriptive, unnecessarily punitive, and require the disclosure of information that is not material to investors' investment and voting decisions. Consequently, we recommend the Clawback Rules be revised with respect to both the operation of the recovery policy and the provisions required to effectuate the disclosure and enforcement of the recovery policy as follows:

1. The scope of the Clawback Rules should be limited to "Big R" accounting restatements.

We believe the decision to interpret Section 10D of the Exchange Act[130] to require the recovery of erroneously awarded incentive-based compensation triggered by "an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws" to include so-called "little r" restatements has created several significant compliance challenges for registrants. As explained in the Adopting Release, "little r" restatements arise when material noncompliance results from an error that is material to the current period financial statements if left uncorrected or if the correction were recorded only in the current period. As we understand its reasoning, the Commission determined that since a series of immaterial errors could be considered in the aggregate a "material error," it was consistent with Congressional intent to include "little r" restatements within the scope of the restatements subject to an Exchange Act Rule 10D-1-compliant recovery policy to foreclose the possibility that limiting its

[126] Instruction 2 to Item 402(u) of Regulation S-K. We note that this Instruction also provides helpful guidance when it may no longer be appropriate for a registrant to use a median employee identified in a previous year because of a change in the original median employee's circumstances that it reasonably believes would result in a significant change in its pay ratio disclosure.
[127] While Instruction 7.2 to Item 402(u) of Regulation S-K provides flexibility in determining the size of a registrant's employee population for a fiscal year in which a business combination or acquisition of a business becomes effective, in our experience this relief is of limited use for many transactions.
[128] 17 C.F.R. 240.10D-1.
[129] The Commission adopted Exchange Act Rule 10D-1 [17 C.F.R. 240.10D-1] and Item 402(w) of Regulation S-K in 2022. *See* Listing Standards for Recovery of Erroneously Awarded Compensation, Release Nos. 33-11126, 34-96159, IC-34732 (Oct. 26, 2022) [87 Fed. Reg. 73,076 (Nov. 28, 2022)] [hereinafter "Clawback Adopting Release"]. *See also* Items 402(c), and (n), and 601(b) of Regulation S-K.
[130] 15 U.S.C. § 78j-4 (2025), as implemented by Exchange Act Rule 10D-1(a) [17 C.F.R. 240.10D-1(a)]. Section 10D essentially "codified" and expanded the earlier requirements contained in Section 304 of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204 (July 30, 2002) [hereinafter "Sarbanes-Oxley Act"], *available at* https://www.govinfo.gov/content/pkg/PLAW-107publ204/html/PLAW-107publ204.htm, introducing the concept of a clawback requirement for erroneously awarded incentive-based (cash or equity) compensation (along with any related profits realized from the sale of registrant securities) with numerous enhancements and modifications.

application to "Big R" restatements could motivate registrants to make inappropriate materiality determinations for identified errors to avoid a compensation clawback.

In our view, it is reasonable to interpret Section 10D's use of the term "material noncompliance" to refer only to accounting restatements[131] resulting from a "Big R" error and not the aggregation of multiple immaterial errors. In our experience, the evaluation of the errors that would result in the determination of a "little r" restatement often involve nuanced matters of judgment upon which reasonable persons may differ and, accordingly, should not be the basis for triggering the mandatory operation of a recovery policy with all its attendant consequences. Moreover, the inclusion of "little r" restatements within the scope of Section 10D is not necessary from a policy perspective because, as a practical matter, disclosure of a series of "little r" restatements are not material to previously issued financial statements and the resources expended by registrants in applying a recovery policy to such restatements misaligns the balance of interests between investors and registrants.

We believe the more expansive interpretation of the scope of the terms "accounting restatement" and "material noncompliance" for purposes of Section 10D as reflected in the Clawback Adopting Release appears to have arisen largely as a result of the Commission's determination that, in some situations, a "little r" restatement may become material to a current period restatement. However, as has been noted by an earlier commenter,[132] if the use of a "little r" restatement eliminates the materiality of the current period error (either through full or partial correction) the condition precedent to a recovery does not exist. We believe that a more pragmatic interpretation of the purpose and intent of the statute leads to the conclusion that a clawback should only be required in the event a registrant is required to correct errors that are material to previously issued financial statements and which are understood to warrant disclosure[133] to market participants.

We recommend Exchange Act Rule 10D-1(b)(1) be revised to limit the application of the required recovery policy to situations involving the preparation of an accounting restatement due to a "Big R" restatement.

Alternatively, and notwithstanding our belief that the application of Exchange Act Rule 10D-1(b)(1) to "little r" restatements is unnecessary, if the Commission is not receptive to this recommendation, we recommend Exchange Act Rule 10D-1(c)[134] be revised to expressly provide that the board or compensation committee reserves the discretion to decline to seek the clawback of erroneously awarded incentive-based compensation in the event of a "little r" restatement if it determines that such action is in the best interests of the registrant and its shareholders.

2. <u>The Clawback Rules' definition of "financial reporting measures" should be revised to exclude stock price and TSR from such definition.</u>

In our experience, the requirement to include a "reasonable estimate" of the amount of short-term and long-term incentive compensation awards to be recovered where performance is based on

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[131] A "Big R" restatement occurs in the event of material noncompliance of the registrant with any financial reporting requirement under the securities laws.
[132] Most recently in the comment letter of Davis Polk & Wardwell (July 31, 2025), *available at* https://www.sec.gov/comments/4-855/4855-635027-1882894.pdf.
[133] See Item 4.02(a) of Form 8-K [17 C.F.R. 249.308].
[134] 17 C.F.R. 240.10D-1.

stock price or TSR, where the amount of erroneously awarded incentive-based compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, is problematic as it presents complexities in calculating the amount to be recovered and potentially exposes a registrant to the risk of challenges that the amount calculated is too small.

To date, only a few of the required disclosures[135] included in registrants' definitive proxy statements disclosing an accounting restatement and requiring the recovery of erroneously awarded incentive-based compensation have included discussions of performance awards based on stock price or TSR. While the disclosures appear to indicate that these recoveries were both straightforward and nominal in amount, virtually every registrant that has disclosed a recovery process involving such awards has also disclosed the retention of a third-party consultant or other expert to model the potential impact of the restatement on these awards. We believe that the resources needed to generate a "reasonable estimate" have the potential to require registrant expenditures that may outweigh the amounts to be recovered from these awards (assuming an amount is even determined by this analysis to be subject to the registrant's recovery policy).

Accordingly, we recommend Exchange Act Rule 10D-1(d) be revised to expressly exclude stock price and TSR from the definition of "financial reporting measures."

3. <u>The Clawback Rules should be revised to permit the amount of incentive-based compensation that is subject to recovery to be computed on an "after-tax" basis.</u>

Another issue that we believe potentially increases the compliance burdens associated with the recovery of erroneously awarded incentive-based compensation is the requirement to calculate the recoverable amount without regard to any taxes paid by the affected executive officer(s). We note neither Section 954 nor Section 10D indicate whether the amount subject to recovery is to be clawed back on a pre-tax or post-tax basis.

In adopting the final version of Exchange Act Rule 10D-1, the Commission chose to provide for recovery on a pre-tax basis, stating that such an approach best effectuated the statutory intent of Section 10D, thereby promoting the best interests of shareholders and avoiding the burden and administrative costs associated with calculating erroneously awarded compensation based on each individual executive officer's particular tax circumstances.[136] We believe that, on balance, registrants and their shareholders are better served by a requirement that avoids both the possibility of over-collection as well as the potentially more significant compliance burdens associated with recovering pre-tax amounts.

Accordingly, we recommend Exchange Act Rule 10D-1(b)(1)(iii)[137] be revised to delete the reference to "computed without regard to any taxes paid" when calculating the amount of erroneously awarded incentive-based compensation subject to recovery.

4. <u>The Clawback Rules should be revised to narrow the scope of the executive officers subject to the "no fault" recovery policy required by Section 10D.</u>

[135] Item 402(w)(1) of Regulation S-K.
[136] *See* Clawback Adopting Release, note 131 above, at Section II.C.3.a.iii.
[137] 17 C.F.R. 240.10D-1(iii).

Even though Section 10D expressly references the term "executive officer,"[138] we believe a better balance between providing material information to investors and maintaining a reasonable compliance burden on registrants is achieved by limiting the scope of the required recovery policy to a registrant's PEO and PFO and, with respect to the other executive officers, introducing a "fault" predicate before subjecting a current or former executive officer to a potential clawback. We believe this will relieve many of the compliance burdens that registrants face in complying with the Clawback Rules, the applicable listing standard, and their own recovery policy, while, at the same time, continuing to provide investors with meaningful information about a registrant's efforts to recover erroneously awarded incentive-based compensation.

Accordingly, we recommend Exchange Act Rule 10D-1(a)(3)[139] be revised to limit the scope of recovery to (i) the PEO, (ii) the PFO, and (iii) to the extent at fault or otherwise responsible for the events leading to the accounting restatement, a current or former executive officer.

We believe this objective can best be achieved by expanding the current "impracticability" situations listed in Exchange Act Rule 10D-1(b)(1)(iv)[140] to provide a registrant's board or compensation committee with the flexibility, except in the case of the PEO and PFO, to decline to apply its recovery policy in situations where it makes a good faith determination that, based on the costs of recovery and the proportional responsibility of the affected executive officer(s) for the event or events resulting in the accounting restatement, such action is in the best interests of the registrant and its shareholders. We believe this approach is reasonable when considering that there are numerous executive roles that are not involved in the preparation of a registrant's financial statements (for example, the chief human resources officer). Further, this approach reduces the incentive for a registrant to narrow the group of individuals who qualify as "executive officers" so that fewer individuals are subject to its recovery policy, which would diminish the amount of information investors have with respect to the registrant and its managers.

Alternatively, if it is not receptive to the foregoing recommendation, we recommend the Commission consider exercising its general exemptive authority under the Exchange Act[141] to exclude executive officers (other than the PEO and PFO) from the scope of Section 10D as necessary or appropriate in the public interest, and consistent with the protection of investors. Then, with respect to these other current or former executive officers, we recommend the Commission adopt a *malus* requirement similar to that contained in Section 304 of the Sarbanes-Oxley Act[142] consistent with the reasonable interpretation of Section 10D.

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[138] *See* Section 10D(b)(2) of the Exchange Act [15 U.S.C. § 78j-4].
[139] 17 C.F.R. 240.10D-1(a)(3).
[140] 17 C.F.R. 240.10D-1(b)(1)(iv).
[141] *See* Section 36 of the Exchange Act [15 U.S.C. § 78mm]. Generally, Section 36 provides the Commission may conditionally or unconditionally exempt any class of persons from any Exchange Act provision or related rule or regulation to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. While we recognize that exemptive orders for individuals or classes of individuals are rare, we believe a narrow exemption is justified here given the harsh and punitive nature of the clawback requirement when applied to current or former executive officers who may be innocent bystanders to the cause of an accounting restatement. In this regard, we note the Commission on occasion has granted temporary exemptive orders to classes of individuals in light of the challenges presented by the global pandemic. *See*, for example, Order Under Section 17A and Section 36 of the Securities Exchange Act of 1934 Extending Temporary Exemptions from Specified Provisions of the Exchange Act and Certain Rules Thereunder, Release No. 34-88960 (May 27, 20200, *available at* https://www.sec.gov/files/rules/exorders/2020/34-88960.pdf.
[142] *See* Section 304 of the Sarbanes-Oxley Act, note 132 above.

5. The requirement to describe a registrant's actions to recover erroneously awarded incentive-based compensation should either be removed from Item 402 of Regulation S-K or revised to include a dollar-based disclosure threshold.

We do not believe the required disclosures regarding an accounting restatement and the performance of a recovery analysis[143] will yield insightful information concerning a recovery process. Indeed, the majority of disclosures that have been made to date regarding a recovery analysis have simply disclosed that, following the required analysis, a recovery process was not required.[144] Further, the handful of disclosures disclosing an actual recovery process have involved relatively small dollar amounts accompanied by largely rote disclosure typically indicating that the recovery was accomplished by the withholding or reduction of payments to be made or a nominal repayment. It is difficult to see the benefits of this information when balanced against the time and expense of providing this disclosure. Accordingly, since Section 10D(b)(1) only requires disclosure of a compliant recovery policy, we recommend Item 402(w) be removed from Item 402 of Regulation S-K.

Alternatively, given the resources required to summarize the recovery process where the information produced has little probative value, we believe it would be appropriate to establish a threshold dollar amount before disclosure is required. Accordingly, we recommend Item 402(w) be revised to require a specified dollar threshold (for example, $100,000) to trigger disclosure and that such disclosure not require inclusion of the details concerning the enforcement of a registrant's recovery policy. We believe investors would still be required to identify *de minimis* situations where a clawback was in fact enforced against one or more NEOs given the required disclosure in the SCT.[145] Further, a simpler requirement combining the disclosures contained in Item 402(w)(1)(i)(D) and 402(w)(1)(iii) covering recoverable amounts that remain outstanding as of the end of the last completed fiscal year, could replace Item 402(w).

Finally, if the Commission determines to revise the disclosure requirements for the CD&A, we believe a decision to enforce a recovery policy may, in some circumstances, be considered a material development subject to disclosure either as a matter addressed in the body of the CD&A[146] or, alternatively, in a footnote to the SCT regardless of the fiscal year to which the erroneously awarded compensation related and whether the person subject to clawback was a NEO in one or more of the fiscal years covered by the SCT.

PART 3 Other Executive Compensation-Related Disclosure Requirements

In keeping with the 2025 Roundtable's agenda, the comments in this letter have focused principally on the Commission's disclosure requirements under Item 402 of Regulation S-K addressing executive and director compensation. We recognize, however, there are a number of Commission rules in addition to Item 402 that either directly or indirectly affect the overall mix of compensation-related information required to be provided to investors, shareholders, and other stakeholders,

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[143] Item 402(w)(a)(1) of Regulation S-K.

[144] A recent Compensia analysis of preliminary and definitive proxy statement filings of registrants for the period from March 31, 2025 through August 31, 2025 found that, of the 58 registrants disclosing a recovery analysis, only seven registrants reported the actual clawback of erroneously awarded incentive compensation while two other registrants reported that the recovery analysis was ongoing. The remaining registrants disclosed the analysis established that no recovery was required.

[145] Instruction 5 to Item 402(c) of Regulation S-K. Should the Commission be receptive to our recommended revisions to the SCT or some other approach and this alternative recommendation, we believe this Instruction continue to be applied.

[146] Item 402(b)(2)(viii) of Regulation S-K.

including, but not limited to, Item 404 of Regulation S-K, Item 5.02 of Form 8-K, Form S-8, Securities Act Rule 701, Exchange Act Rule 10b5-1, and Sections 13 and 16 of the Exchange Act. We intend to submit a separate comment letter addressing some or all of the relevant disclosure and/or registration requirements, possibly as well as others, at a future date.

* * * * *

The Committee appreciates the opportunity to submit comments on the executive compensation disclosure requirements and respectfully requests that the Commission consider the recommendations set forth above. We would be happy to discuss these matters further with the Commission and its Staff.

Respectfully submitted,
/s/ Michael L. Arnold
Michael L. Arnold
Chair, Committee on Federal Regulation of Securities

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Steven Seelig
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Maj Vaseghi

Exhibit A

Summary Compensation Table

Name and Principal Position	Year	Direct Compensation Opportunity					Compensation Earned				
		Salary	Target Cash-Based Incentive Compensation	Stock Awards	Option Awards	Total Direct Compensation Opportunity	Salary Earned	Cash-Based Incentive Compensation Earned	Equity Compensation Earned	All Other Compensation	Total Compensation Earned
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
PEO	20__										
PFO	20__										
A	20__										
B	20__										
C	20__										

Exhibit B

Incentive and Equity Award Activity Table

Name and Principal Position	Year	Award Type and Grant Date		Outstanding at Beginning of Last Completed Fiscal Year		Granted During Last Completed Fiscal Year		Earned or Vested During Last Completed Fiscal Year		Outstanding at End of Last Completed Fiscal Year	
		Award Type	Grant Date	# of Unearned or Unvested Shares/Units	Fair Value of Unearned or Unvested Shares/Units	# of Shares/Units	Grant Date Fair Value of Shares/Units	# of Earned or Vested Shares/Units	Fair Value of Earned or Vested Shares/Units	# of Unearned or Unvested Shares/Units	Fair Value of Unearned or Unvested Shares/Units
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
PEO	20__										
	20__										
	20__										
	20__										
	20__										
	20__										
PFO	20__										
	20__										
	20__										
	20__										
	20__										
	20__										
A, B, C	20__										
	20__										
	20__										
	20__										
	20__										
	20__										