FARIENT ADVISORS
PARTNERING FOR PERFORMANCE

ROBIN A. FERRACONE
EXECUTIVE CHAIR
ROBIN.FERRACONE@FARIENT.COM

2600 MISSION STREET, SUITE 201
SAN MARINO, CA 91108
PHONE: (626) 799-2700
CELL: (213) 399-6225
FAX: (626) 799-1102

September 20, 2010

Chairman Mary L. Shapiro
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Subject: Comments on Pay-for-Performance Disclosures under Title IX of the Dodd-Frank Act

Dear Chairman Shapiro:

On July 27 the SEC invited public commentary on various aspects of the Dodd-Frank Act. We are providing suggestions in this letter for your consideration with respect to how companies could be required to disclose pay-for-performance.

Farient Advisors LLC is an independent executive compensation consulting firm founded in 2007 that provides executive compensation advice largely to compensation committees of publicly traded companies. Each member of our senior team has decades of consulting experience in executive compensation.

<u>Section 953: Pay-for-Performance Disclosure</u>

At Farient, we call the pay for performance relationship “alignment.” We are experts in pay for performance alignment, and recently published a book on this topic entitled, *Fair Pay, Fair Play: Aligning Executive Performance and Pay*. We see three issues with the pay for performance, or alignment, disclosure required by the Dodd-Frank Act. First, there is no clear definition of what pay for performance means. Second, companies will use different standards to argue that their pay is sensitive to performance, and these standards may change from year to year. Third, there is no requirement for comparative analysis. We believe that these issues will cause investors to have to spend undue time analyzing the meaning of each disclosure and that this provision will have limited utility to investors. Further, there are certain myths about what features of an executive pay system create alignment, and this provision could further advance these myths. For example, some believe that significant stock option grants automatically create alignment (and filers will use this as an argument as to why they have alignment), but this is not necessarily the case.

Farient has developed a definition of alignment, an alignment reporting tool, and an understanding of the contributors to alignment that we believe would be helpful to investors in evaluating the pay for performance attributes of any given executive pay system. Further, we believe that the SEC should provide stronger guidance to companies for pay for performance reporting, and that the SEC itself should use a standard approach in evaluating the quality of the disclosures. Key elements of the suggested guidance are discussed below.

Definition of Alignment

We suggest that aligned pay be defined as *total compensation that: (1) is sensitive to company performance over time, and (2) is reasonable for that company's size, industry (or peer set), and the performance delivered.*

Disclosure of the Company's Historical Pay for Performance Alignment

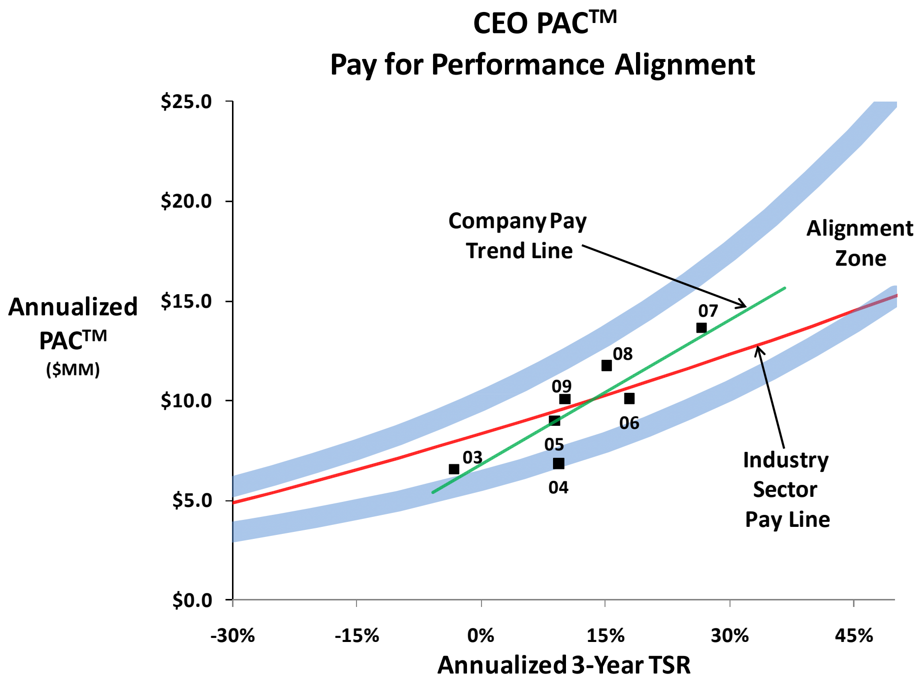
Based on our research of the S&P 1500 over the past 15 years, we have developed a simple reporting tool that assesses a company's historical Performance-Adjusted Compensation™ (PAC™)[1] relative to the Total Shareholder Return[2] for the same periods of time, and compares the company's pay for performance relationships to other companies in the broader executive marketplace. We then capture this information in a Farient Alignment Report™ that helps investors see at a glance whether their Performance-Adjusted Pay™ has historically been within a reasonable range (called the Alignment Zone) relative to the company's size, industry (or peer set) and performance delivered. The Farient Alignment Report provides objective guidance for investors on whether pay and performance are aligned in accordance with the definition discussed above.

An example of the Farient Alignment Report is shown on the next page wherein each dot on the chart represents the CEO's 3-year average PAC™ (ending in the year shown) relative to the company's 3-year average TSR over the same period, relative to industry norms.

---

[1] Performance-Adjusted Compensation™ for a given year is the average of the most recent three years of: (1) actual salary and short-term incentives earned, (2) the value of vested and unvested long-term incentives granted using the stock price at the *end* of the three-year period, and (3) all other compensation, all adjusted for inflation and current company revenue size.

[2] Total Shareholder Return is the average annualized stock price growth, plus dividends paid as if they had been reinvested in the stock, over rolling 3-year periods.



The company shown above has an excellent pay for performance alignment story, as: (1) pay is within a reasonable range as it is within the Alignment Zone, (2) there is a good sensitivity between pay and TSR performance, and (3) there is good consistency of pay outcomes relative to performance.

Along with showing the Alignment Report, each filer would then discuss how the elements of its compensation plans contributed to this result. For example, the discussion could include the following elements, all of which, as shown by our research, affect alignment:

- Pay positioning and mix
- Impact of performance measures on shareholder return
- Approach to goal-setting
- Relationship between pay and performance in the incentive plans
- Consistency of application of executive pay programs
- Program features, such as vesting and term provisions, equity holdbacks, and ownership guidelines
- Consideration of non-financial or discretionary factors in award determination

If a company's pay is not aligned, then the company would report what it is doing to improve its alignment going forward.

The strengths of this approach are that it provides:

- Strong guidance to companies for proxy disclosure

- An objective pay and performance assessment presented in a way that is easier for investors to evaluate, including:
  - A tailored explanation of how pay and performance are related
  - A pay and performance context that is relative to appropriate comparator groups

* * * * *

We suggest that the SEC require companies to adopt a more standardized way of showing a company's pay for performance alignment, and to discuss their pay for performance relationships in accordance with the definition above (i.e., pay reasonableness *and* sensitivity to performance). A standardized approach would shorten the amount of time investors need to evaluate pay and performance. Further, we suggest that the SEC consider using the Farient Alignment Report in evaluating the quality of each filer's pay for performance disclosure.

In closing, we appreciate this opportunity to comment on the proposed rules relating to executive pay. Please contact us if you have any questions regarding our comments.

Sincerely,

Robin A. Ferracone
Executive Chair
Farient Advisors LLC