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Re: Pay Versus Performance (Rel. No. 34-94074)
File No. S7-07-15

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

Dear Ms. Countryman:

We are submitting this letter in response to the above-referenced requests by the Securities and Exchange Commission (the "**Commission**") for comment. We thank you for the opportunity to provide supplemental comments on the proposed rule, published by the Commission on February 2, 2022 (the "**2022 Proposed Rules**"), to implement Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("**Dodd-Frank**").

Section 953(a) of Dodd-Frank amends Section 14 of the Securities Exchange Act of 1934 to add:

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

To effectively fulfill Dodd-Frank's mandate to provide shareholders with clear, meaningful disclosure of the relationship between executive pay and company financial performance, we respectfully recommend that the only required measure of company performance should be total shareholder return (TSR) and that registrants should be permitted to determine whether to disclose one or more additional measures on a voluntary basis if they believe it would be useful to investors in evaluating the link between pay and performance. Both the legislative history of Dodd-Frank and public comments made by the Commission indicate that the pay-versus-performance disclosure is intended to provide shareholders with access to meaningful information on actual pay and company performance so that shareholders may assess a company's executive pay decisions. Required disclosure of compensation actually paid and TSR accompanied by supplemental voluntary disclosure of additional performance measures would adhere to this objective.

TSR as a measure is consistent with the statutory mandate to demonstrate the link between executive pay and financial performance, particularly as it takes into account the change in share price and the value of dividends and other distributions. Moreover, it is objective, easy to calculate and is already an element of required Form 10-K disclosure, making it conducive to cross-company comparisons. Given the large number of public companies that will be subject to pay-versus-performance disclosure and their disparate business models, we do not believe that any other measure is likely to be relevant to a broad cross-section of registrants, and accordingly, we do not believe that any other measure should be required. Furthermore, requiring registrants to identify their "most important" measures would be challenging and costly, and would not further the Commission's goal of providing increased flexibility to address each registrant's evolving business objectives and pay programs. Instead, allowing registrants to choose whether to disclose additional performance measures voluntarily would give registrants the opportunity to determine what further information, if any, would be valuable to investors based on their unique circumstances.

As then Chair Mary Schapiro stated in a speech in connection with the adoption of the say-on-pay rules, the SEC's goals in implementing the Dodd-Frank requirements relating to executive pay include ensuring that "[s]hareholders receive the timely and accurate compensation information they deserve as a company's owners" and that "[t]his information is presented in a way that allows shareholders to make informed judgments."[1] In this letter, we describe suggested revisions to the 2022 Proposed Rules that we believe will help to facilitate these fundamental objectives.

Below we respond in detail to several of the questions raised by the Commission in its proposing release, available at: https://www.govinfo.gov/content/pkg/FR-2022-02-02/pdf/2022-02024.pdf. We respectfully request that the Commission consider these concerns and recommendations for changes and clarifications to the version of the 2022 Proposed Rules that will ultimately be adopted (such rule, the "**Final Rule**").

1. **The Final Rule should not be overly prescriptive in designating the financial measures registrants are required to provide in tabular format.**

The proposing release asks: "*Should disclosure of additional financial performance measures beyond TSR be required? Specifically, would investors find it useful to have pre-tax net income and net income presented in tabular format alongside the other metrics that would be required by the Proposing Release? Would these two additional metrics help investors to appropriately evaluate the relationship between executive compensation actually paid and the financial performance of the registrant?* . . . *Instead of requiring additional financial performance measures, should we instead include pre-tax net income and net income as examples of additional measures registrants could elect to disclose if they believed such disclosure would be beneficial for them? What would the benefits or drawbacks be of that approach?*" (Question 1)

As discussed in our 2015 comment letter (our "**2015 Comment Letter**")[2] and as noted by the Commission in the proposing release of the 2015 pay-versus-performance rules (the "**2015 Proposed Rules**"), a report by the Senate Committee on Banking, Housing and Urban Affairs stated that the pay-versus-performance rules "were not intended to be overly prescriptive" and the "comparison of the amount of executive compensation and the financial performance of the issuer or return to investors . . . may take many forms."[3]

[1] Former Chair Mary Schapiro, Remarks to TheCorporateCounsel.Net "Say-on-Pay Workshop Conference", dated November 2, 2011. A copy of former Chair Schapiro's speech can be accessed here: https://www.sec.gov/news/speech/2011/spch110211mls.htm.

[2] Davis Polk's comment letter, dated July 2, 2015, can be accessed here: https://www.sec.gov/comments/s7-07-15/s70715-33.pdf.

[3] Proposing release of the 2015 Proposed Rules, dated April 29, 2015, quoting the Report of the Senate Committee on Banking, Housing and Urban Affairs to accompany S. 3217, S. REP. NO. 111-176 (2010) (the "**Senate Report**"). A copy of the 2015 proposing release can be accessed here: https://www.govinfo.gov/content/pkg/FR-2015-05-13/pdf/2015-10382.pdf. A copy of the Senate Report can be accessed here: https://www.congress.gov/congressional-report/111th-congress/senate-report/176/1.

Registrants may elect to disclose additional metrics beyond TSR if they believe it would further clarify the relationship between the registrant's pay and performance, but requiring disclosure of a particular performance measure that may not be relevant to a registrant's executive pay decisions is inconsistent with the goal articulated by Chair Gary Gensler in announcing the reopening of the comment period "to make it easier for shareholders to assess the company's decision-making with respect to [a registrant's] executive compensation policies."[4] Requiring registrants to disclose performance metrics that are unrelated to their compensation determinations in a table alongside compensation actually paid to executives could be confusing or even misleading to investors.

When considering net income in particular, it is worth noting that most large companies do not use net income as a performance metric relevant for compensatory arrangements. One recent survey of over 300 large companies found that net income was utilized as a performance metric in only 7% of annual plans.[5] Moreover, usage of net income as a performance metric appears to be declining.[6]

We understand the Commission's desire to provide for comparability across registrants, and we appreciate that disclosure of similar metrics could in theory support investors as they compare one company against another. Nevertheless, we believe that, aside from TSR, the range of performance metrics utilized by registrants is too varied to fit squarely within a standardized approach to disclosure, and we believe that it is important for registrants to maintain flexibility in utilizing the performance metrics that are best-suited to the registrant's individual business strategy and compensatory goals.

2. The Final Rule should not prescribe mandated additional or alternative measures to net income.

The proposing release asks: "*Are there other measures of company performance that we should consider mandating in addition to or in lieu of pre-tax net income and/or net income? If so, which additional or alternative measures should we require and why? How would these additional or alternative measures be useful for investors in measuring company performance? Should we also require that these measures, if any, be discussed in the required description (which may be, e.g., narrative or graphical) that accompanies the tabular disclosure?*" (Question 2)

As discussed in Section 1 above, we believe that registrants should not be compelled to disclose additional measures beyond TSR. Instead, registrants should be permitted to determine whether to supplement the required disclosure with additional measures to provide investors with the clearest picture of the relationship between the registrant's pay and performance. Given the wide range of performance measures utilized by companies and the broad range of weightings given to each of these performance measures, it is important that registrants have the ability to structure disclosure in a manner that is consistent with the compensation program itself.

The increased prevalence of nonfinancial metrics (including environmental, social and governance ("**ESG**")-related metrics and operational metrics, such as customer satisfaction) since the enactment of Dodd-Frank in 2010 and the release of the 2015 Proposed Rules demonstrates that companies' pay programs evolve over time, often in response to shareholder feedback. Commissioner Allison Herren Lee's statement in connection with the release of the 2022 Proposed Rules indicated that "[i]t would be helpful to hear from

[4] Chair Gary Gensler, Statement on Pay versus Performance, dated January 28, 2022, which can be found here: https://www.sec.gov/news/statement/gensler-statement-pvp-012822.

[5] *See* Meridian Compensation Partners, Compensation Trends and Developments Survey Results, at 11, https://d2jsype5crt5mk.cloudfront.net/wp-content/uploads/2021/04/Meridian-2021-Trends-and-Developments-Survey-1.pdf.

[6] A 2015 report by Meridian Compensation Partners, for example, found that net income was used by 17% of the surveyed companies. The Meridian report can be found at *https://www.meridiancp.com/insights/2015-trends-and-developments-in-executive-compensation/*.

commenters on how the increased flexibility contemplated in today's reopening release may facilitate investor analysis of the use of [ESG] metrics and targets in compensation plans."[7] We do not believe that prescribing additional metrics is consistent with Commissioner Lee's stated objective of providing greater flexibility.

If additional or alternative measures are required in tabular format, we do not believe that any additional narrative or graphical disclosure should be *required*. Registrants should be given the flexibility to determine whether any additional discussion or graphical representation would prove meaningful for investors and support investors' understanding of the company's strategy and compensation decisions. If registrants do not have the ability to assess what disclosure would and would not be meaningful for investors, investors may end up with an excess of disclosure that makes it more challenging, instead of less challenging, to analyze a registrant's pay-for-performance alignment.

3. The Final Rule should not require an additional Company-Selected Measure.

The proposing release asks: "*How should we define the Company-Selected Measure, if we were to require its disclosure? . . . Would such a definition [i.e., the most important measure (that is not already included in the table) used by the registrants to link compensations to performance] provide sufficient clarity to a registrant as to what to disclose?* . . . " (Question 3)

We would recommend that the Final Rule not prescribe a "Company-Selected Measure." Rather, as discussed in Sections 1 and 2 above, registrants should be permitted to assess whether to report on measures beyond TSR and determinate if additional disclosure would provide investors with useful information in evaluating the compensation committee's pay decisions.

We believe it would be challenging and burdensome for registrants to identify the appropriate "most important" measure used by the registrant to link compensation and performance. Companies currently utilize the Compensation Discussion & Analysis (CD&A) portion of the proxy statement to describe their compensation rationale. In the years since Dodd-Frank was enacted, the investor community expects a discussion of pay-for-performance, and companies provide a narrative explanation of their compensation philosophy, which is much more nuanced than identifying one measure that is "most important." Requiring registrants to identify one "most important" measure may put companies in a very difficult position as they attempt to oversimplify complex compensation strategy. Companies will also face heightened and unwarranted scrutiny from investors and other stakeholders on only one, somewhat arbitrary, piece of the company's overall strategy.

Furthermore, requiring registrants to label a particular measure as "most important" is inconsistent with best practices, which encourage registrants to use multiple performance metrics and avoid relying too heavily on a single metric. There is a general perception among the institutional investors that the use of the same metric for both annual and long-term incentive compensation could encourage excessive risk taking.[8]

The Commission noted in the 2022 Proposed Rules that identifying the Company-Selected Measure would likely result in additional costs to registrants, particularly those with complex compensation packages, but noted that those additional costs should be limited. In fact, we believe that the process of identifying the "most important" measure may consume significant internal and external resources, thereby resulting in

[7] Commissioner Allison Herren Lee, Measuring Pay Against Performance: Are Shareholders Getting Their Money's Worth?, January 27, 2022, which can be found here: https://www.sec.gov/news/statement/lee-statement-pvp-012722.

[8] *See, e.g.*, Institutional Shareholder Services ("**ISS**") 2017 United States Summary Proxy Voting Guidelines, in which ISS characterizes "[a] single or common performance metric used for short- and long-term plans" as an example of incentives that may motivate excessive risk taking. A copy of the ISS 2017 guidelines can be accessed here: https://www.issgovernance.com/file/policy/2017-us-summary-voting-guidelines.pdf.

substantial additional cost to registrants. Given the prominence that would be accorded to the Company-Selected Measure, board members and senior management will likely scrutinize the implications of selecting a particular measure and may feel compelled to seek input from outside advisors, such as compensation consultants, attorneys and public relations experts. Allowing registrants to determine whether to disclose additional measures voluntarily, without requiring them to label a particular measure as "most important," would further the Commission's objectives of affording registrants the flexibility to provide a more complete picture of the link between pay and performance while avoiding the implications of identifying a single measure as more important than any other.

4. **If the Company-Selected Measure is required, the definition should not be confined to a measure used by the registrant in a performance or market condition in the context of an incentive plan.**

The proposing release asks: "*Should we require the Company-Selected Measure to be the most important measure used by the registrant in a performance or market condition in the context of an incentive plan as defined in 17 CFR 229.402(a)(6)(iii)? . . . Should the Company-Selected Measure instead be the performance measure that is deemed most important by the registrant whether or not it is used in a performance or market condition in the context of an incentive plan . . . ?*" (Question 4).

If the Final Rule does require the Company-Selected Measure, registrants should have the flexibility to select a measure that it considers most important, regardless of whether that measure is one that it uses in a performance or market condition in the context of an incentive plan. Limiting the measures a registrant is permitted to select to those in the registrant's incentive plans could have the unintended consequence of causing registrants to alter the metrics they use in order to make certain metrics available for selection.

5. **If the Company-Selected Measure is required, the Final Rule should allow the registrant to define "most important."**

The proposing release asks: "*Should we define 'most important' for the purpose of the selection of the Company-Selected Measure, as well as for the ranking of any other measures, if required? . . . Alternatively, should we not specify a particular method to use to evaluate the relative importance of a performance measure in driving compensation actually paid or define 'most important,' and instead allow registrants to determine what they consider to be 'important' for this purpose and select the Company-Selected Measure accordingly, with disclosure explaining how they made their choice?*" (Question 5).

As discussed in Section 3 above, we recognize the challenges associated with registrants determining "most important" for purposes of the Company-Selected Measure, but we believe that even less meaningful disclosure would result if the Commission were to define "most important" on behalf of registrants. We appreciate the Commission's interest in eliciting disclosure that is standardized enough to allow for comparability across companies; however, meaningful, thoughtful and well-crafted disclosure should not be sacrificed for the sake of uniformity.

The series of alternative definitions provided under this paragraph of the Commission's proposing release illustrates the problem of trying to identify a narrow definition of "most important." The release asks, for example, whether importance should be measured by the level of aggregate dollars at risk with the factor, or the dollar impact of the measure's variation from its initial or expected level to actual compensation, or the importance of the factor based on the drivers of compensation decisions rather than the outcomes. These examples underscore the multitude of factors that could underlie a particular compensation committee's decision-making process.

If the Final Rule does require the Company-Selected Measure, registrants should have the ability to determine which performance goal the registrant believes is "most important" and the flexibility to explain its own reasoning in choosing that factor. Still, as we have described in Section 3 above, we have serious concerns about the drawbacks and costs of forcing registrants to conduct this analysis.

6. If the Company-Selected Measure is required, any definition of "most important" should account for changes over time and across NEOs.

The proposing release asks: "*What disclosure should be required if different measures are important in different years or if different measures determine compensation actually paid for the different NEOs?* . . . *If the measure deemed most important is already included among the performance measures* . . . *should the company be permitted to designate the measure as the Company-Selected Measure, or should the company required to disclose an additional significant measure* . . . *?*" (Question 6).

If the Final Rule does require the Company-Selected Measure, it should be flexible enough to reflect variability in importance in different years because registrants need to be able to adjust factors over time to reflect evolving business objectives and factors that drive performance. Moreover, different measures may very well not be applicable to all NEOs. For example, the pay of an executive officer in charge of a principal business unit may be determined primarily by reference to the performance of that unit, rather than based on overall company performance.

As further discussed in our 2015 Comment Letter, requiring pay-versus-performance disclosure only for the PEO would prevent this complication. Limiting the requirement to the PEO also reduces the burden on registrants, as registrants generally have only one PEO for any given year, but typically have four or more other NEOs for that same year. Moreover, investor interest is primarily focused on PEO compensation,[9] which in part reflects the fact that the PEO has the broadest responsibility for all areas of the registrant's performance. For these reasons, we believe that if the Company-Selected Measure is required, it should apply only to the PEO.

Further, we believe that the registrant should be permitted to designate an already-required metric as the Company-Selected Measure if it is the most important measure rather than being forced to designate an additional metric that is "next-most" important as the Company-Selected Measure. Otherwise, the meaningfulness of the most important measure will be diluted, as companies will be forced to select a metric that is not the most important metric from a compensation standpoint. Requiring duplicate disclosure of the "most important metric" in the table if it has already been disclosed would likely lead to confusion. Rather, the registrant should include a note indicating that the metric at issue is also the Company-Selected Measure.

7. The Company-Selected Measure should not be limited to those measures that relate to the financial performance of the registrant and registrants should have flexibility in determining how to present the data.

The proposing release asks: "*Would mandated disclosure of the Company-Selected Measure be useful to investors when placed alongside the metrics that would be required by the Proposing Release?* . . . *Would there be challenges to registrants to presenting information about the Company-Selected Measure in*

[9] *See, e.g.*, the ISS Pay-for-Performance Mechanics, dated December 17, 2021, which describes the process that ISS uses to analyze CEO pay relative to company performance. ISS's pay-for-performance review represents a significant factor in ISS's determination of whether to recommend FOR or AGAINST a registrant's say-on-pay proposal. ISS explains the rationale for limiting its analysis to CEO pay as follows: "ISS primarily focuses on the CEO's pay because it sets the compensation pace at most companies, and the compensation committee and board are most directly involved in and accountable for the decisions that generate the CEO's pay." A copy of the ISS Pay-for-Performance Mechanics is available here: https://www.issgovernance.com/file/policy/active/americas/Pay-for-Performance-Mechanics.pdf.

tabular form? Should we specifically limit any Company-Selected Measure only to those measures that relate to the financial performance of the registrant? . . . " (Question 7).

In order to allow compensation committees to determine those factors that are important to the registrant's overall success and, therefore, important drivers of compensation, we recommend that if the Company-Selected Measure is required, it should be permitted to encompass factors other than measures that relate to financial performance, as further discussed in Section 2 above, including nonfinancial operational metrics (e.g., customer satisfaction measures or cash conversion cycle) and ESG-related metrics. This, in turn, suggests that these measures may not be easily presented in tabular form. Thus, registrants should be provided flexibility in presenting the information required by the Company-Selected Measure.

8. The Final Rule should allow registrants to change their Company-Selected Measure over time.

The proposing release asks: "*Should we* . . . *allow companies to change their Company-Selected Measure from year to year, such that they would disclose in the table a potentially different Company-Selected Measure for each respective year?* . . . " (Question 8).

The questions posed in the proposing release about the complexities of changing the Company-Selected Measure over time suggest concern about the ability to make comparisons of company performance year-over-year, especially given that multiple years are reflected in the table. However, as discussed above, if a Company-Selected Measure is required, we believe that registrants should have flexibility to make an annual determination about which measure is "most important" in determining executive pay. Registrants regularly make changes to their compensation programs to address a variety of circumstances, including shareholder feedback, changes in the macroeconomic environment, business strategy, workplace demographics and other factors. To take an example from the recent past, many companies experienced extreme disruption in 2020 as a result of the COVID-19 pandemic and had to make fundamental changes to their business strategies, so it is not surprising that a performance measure that was "most important" in determining executive pay in 2019 might not have remained "most important" in 2020. Requiring registrants to continue to report as "most important" a metric that has declined in significance and no longer represents as meaningful a link between pay and performance would be confusing to investors and undercut the objectives for identifying a metric as "most important" and would undermine the fundamental objective of providing investors with the information that they need to make informed investment decisions.

Thus, despite the potential confusion that may be caused by trying to make comparisons amongst years when the Company-Selected Measure has changed, the registrant should nevertheless be able to make the changes it determines are necessary and explain them in narrative fashion.

9. Disclosure of the registrant's five most important performance measures would not enhance the usefulness of existing disclosures.

The proposing release asks: "*Would a tabular list of a registrant's five most important performance measures used to determine compensation actually paid be useful to investors in addition to existing disclosures?* . . . *Would the inclusion of an additional tabular list of a registrant's five most important performance measures dilute the impact of, or otherwise lead to confusion regarding, the table that would be required by the Proposing Release? Should we require that the five measures be listed in order of importance?*" (Question 9).

We recommend that the Final Rule not include an additional requirement to disclose the registrant's five "most important" performance measures. As we have discussed in Section 3 above, registrants already currently provide extensive disclosure in the CD&A of all material elements of the compensation of their NEOs, including "[w]hat specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions" and "[h]ow specific forms of compensation are structured and implemented to reflect these items of the registrant's performance."[10] In fact, the length and complexity of compensation disclosure has been a longstanding complaint among investors[11], and many companies work every year to synthesize and hone disclosure to ensure that shareholders are clearly and succinctly presented with the information that is most significant in the particular year.

Each of our concerns presented above about the Company-Selected Measure rings true in this context as well and is multiplied five-fold. Companies are already engaging with shareholders and already present this information to shareholders in the manner they believe to be most useful. Additionally, prescriptive disclosure requirements will result in even lengthier, and quite possibly confusing, disclosure given the complexity of compensation decisions, the range of financial and nonfinancial performance measures currently in use and the likelihood of additional measures being introduced in the future. We believe that such additional disclosure requirements would ultimately run counter to the Commission's goal of simplifying compliance for registrants and improving the readability of disclosure documents.[12]

10. Less prescriptive disclosure of all performance measures or the ability to voluntarily supplement minimal required disclosure are preferable to the additional required measures contemplated by the 2022 Proposed Rules and corresponding request for comment.

The proposing release asks: "*Should we, either in addition to or in lieu of the Proposed Rules and the disclosure of the additional measures we are considering, revise Item 402 of Regulation S-K to explicitly require registrants to disclose all of the performance measures that actually determine NEO compensation?* . . . " (Question No. 13) *"To what extent would the ability of registrants to voluntarily supplement the disclosure required by the Proposed Rules obviate the need for additional mandated elements of disclosure considered in this re-opening release?* . . . " (Question 14).

Given our concerns with many aspects of the 2022 Proposed Rules discussed above, we believe that investors would receive more meaningful disclosure if registrants were able to choose whether to supplement disclosure on a voluntary basis based on either investor demand for the information or individual circumstances of the registrant. The Commission noted in the proposing release the challenges associated with the misalignment between the time period to which pay is attributed and the time period in which the associated performance is reported. This issue is particularly prominent in the case of long-term incentive compensation, which is based on performance over a multi-year cycle and plays a fundamental role in aligning the long-term interests of executives and shareholders. Given the complexity and importance of long-term incentive compensation, we think it is especially critical for registrants to have the flexibility to determine how to present the factors that they consider most meaningful in determining executive pay. While we appreciate the Commission's concerns with comparability across registrants, an attempt to achieve uniformity should not create confusing or misleading disclosure.

We recognize the importance of executive compensation disclosure and the mandate of Dodd-Frank. Still, we recommend the Commission consider the complexity of compensatory programs, the evolving nature of

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

[11] *See,e.g.*, former Chair Schapiro's speech referenced in Footnote 1 above, in which she states: "[I]n the years leading up to Dodd-Frank, there was a feeling that the conversation between shareholders and boards regarding executive compensation was unsatisfactory. We heard complaints that the compensation disclosures provided investors were too dense to penetrate, too complex to analyze and too obtuse to persuade. In fact, we were under noticeable pressure to force clearer disclosure through the rulemaking process."

[12] *See, e.g.,* Final Rule, Modernization of Regulation S-K Items 101, 103, and 105, https://www.sec.gov/rules/final/2020/33-10825.pdf.

these programs and registrants' need to engage with their own shareholders and incorporate the feedback of shareholders to design (and ultimately disclose) a compensation package that aligns with corporate objectives and strategy.

11. **The Final Rule should not require that the pay-versus-performance disclosure be tagged in Inline XBRL format.**

The proposing release asks: "*We are considering requiring registrants to use Inline XBRL rather than XBRL to tag their pay versus performance disclosure. Would additional detail tagging of some or all of those specific data points within the footnote disclosures be valuable to investors? Should we require registrants to use Inline XBRL rather than XBRL to tag the proposed new pay versus performance disclosures?*" (Question 17).

As discussed in our 2015 Comment Letter, while we recognize that inline XBRL could increase the ability of investors to compare information across filers, we would recommend that the Final Rule not require the pay-versus-performance disclosure be separately detail tagged using inline XBRL.

We believe that the initial compliance costs, the quality and the extent of use of XBRL data by investors would not justify the cost of creating XBRL data in company filings. Therefore, we recommend not requiring pay-for-performance disclosure be separately detail tagged using inline XBRL. If the Final Rule requires mandatory inline XBRL tagging, we recommend that issuers be given latitude with a phase-in period to ease the transition and be allowed additional time to comply with this new disclosure requirement.

12. **The Final Rule should not require registrants to compute the fair value of options on the vesting date in order to calculate the amount "actually paid" to NEOs.**

The proposing release asks: "*Some commenters to the Proposing Release noted potential challenges associated with computing the fair value of options at the vesting date as opposed to the grant date. Are there simplifications or other adjustments that we could permit [to address the challenges associated with computing the fair value of options at the vesting date as opposed to the grant date]* . . . *in order to mitigate such challenges?*" (Question 20).

Preparing the assumptions to determine the fair value of options on the vesting date would require burdensome, complex calculations, often requiring the involvement of an outside professional firm and would not provide meaningful information to investors. As discussed in our 2015 Comment Letter, we believe that an equity award should be considered "vested" on the date that the NEO is first able to monetize the award, and the amount "actually paid" to the NEO should be the amount that the NEO would have received had the NEO monetized the award on that date. Such an approach would be consistent with the approach already utilized in Item 402(j) of Regulation S-K, which quantifies the value of options that vest in connection with a termination or change in control event based on the closing market price of the registrant's stock on the last business day of the registrant's fiscal year.

Furthermore, we believe it would be burdensome and costly for registrants, and confusing to investors, to introduce another methodology of determining total compensation beyond the total compensation already disclosed in the Summary Compensation Table and the extensive discussion of a company's compensation program and methodologies already included in the CD&A.

13. **The Final Rule should require only one year of disclosure in the TSR portions of the tabular disclosure.**

The proposing release asks: "*Should we clarify what time periods should be disclosed [in the TSR portions of the table]? For example, should we require TSR to be a five-year cumulative and rolling average . . . ; should we require TSR to be a cumulative average within the five-year period in the table . . . ; or should we require TSR to be an annual year-over-year figure . . . ?*" (Question 21).

As discussed in our 2015 Comment Letter, we continue to recommend that the Final Rule limit the disclosure period to one year. Dodd-Frank does not require the pay-versus-performance disclosure to be provided for multiple years, and we believe that it would be useful to investors to align the pay-versus-performance period with the disclosure period for the say-on-pay vote, as the vote is focused on executive compensation that was paid for the most recent fiscal year. Registrants could then choose whether to provide supplemental disclosure addressing additional years of TSR information if the registrant believed it would prove useful to investors.

If the Final Rule requires a five-year disclosure period, then we recommend that registrants retain the flexibility to measure and disclose TSR in a manner that is consistent with the ways in which the compensation committee considers TSR in the pay setting process.

* * *

We appreciate the opportunity to participate in the process, and would be pleased to discuss our comments or any questions that the Commission or its staff may have, which may be directed to Jennifer S. Conway, Kyoko Takahashi Lin and Joseph A. Hall of this firm at [redacted].

Best regards,