Brent J. Fields, Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20540-1090

Re: Comments to Proposed Pay-Versus-Performance Disclosure

Dear Mr. Fields:

This email is submitted by Ross Stores, Inc. ("Ross" or "we") in response to the Commission's request for comments on the pay-versus-performance disclosure rules proposed by the Securities and Exchange Commission (the "SEC") on April 29, 2015 (the "Proposed Rules"). The Proposed Rules would implement Section 14(i) of the Securities Exchange Act of 1934, as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. We appreciate the opportunity to provide comments.

<u>Overview</u>

We respectfully submit that the Proposed Rules will not benefit investors. Investors "report that the ideal length of a proxy is 25 pages, compared to the actual average of 80 pages among companies in the Russell 3000."[1] With this context, we support rules that would simplify and offer clarity to investors, while we are generally against rules that would unnecessarily increase the length and complexity of proxies -- particularly where such rules would not be meaningful, would remove clarity, or could confuse shareholders. Here, the Proposed Rules address information already publicly available elsewhere and would be unnecessarily duplicative. Further, for reasons such as those discussed below, we believe the Proposed Rules would create unnecessary burden to issuers and potential confusion to shareholders. We therefore respectfully recommend that the Proposed Rules not be adopted at all.

We also submit the following specific callouts and suggestions regarding workability of the Proposed Rules.

<u>A Uniform Weighted Average TSR Rule Could Mislead Investors</u>

We suggest that the Proposed Rules permit non-weighted total shareholder return ("TSR") to be used in place of a TSR weighted by market capitalization.

In calculating TSR for purposes of Regulation S-K Item 201(e), if a registrant incorporates peer group constituents "with similar market capitalizations," then for purposes of the Proposed Rules "returns of each component issuer of the group must be weighted according to the respective issuer's stock market capitalization at the beginning of each period for which a return is indicated."[2]

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[1] STANFORD U. SCHOOL OF BUSINESS ET AL., 2015 INVESTOR SURVEY: DECONSTRUCTING PROXIES – WHAT MATTERS TO INVESTORS 1 (2015).

[2] Prop. Item 402(v)(2)(iv) (citing 17 CFR § 229.201); *accord* Compliance and Disclosure Interpretation: Item 201 of Regulation S-K — Market Price of and Dividends on the Registrant's Common Equity and Related Shareholder Matters, Section 5 Question 5.02 (March 13, 2007) ("A registrant that presents a self-constructed peer or market capitalization index should weight the returns of the component entities of that index according to their market capitalization as of the beginning of each period for which a return is indicated.").

The Proposed Rules fail to address that many companies and compensation consultants benchmark compensation programs by the simple average of a peer group, rather than the weighted TSR reporting of Item 201(e). The Proposed Rules' primary purpose is to explain the relationship between TSR and executive compensation actually paid to the registrant's NEOs.[3]

An important component of an executive compensation approach is a company's approach to benchmarking. We believe use of weighted TSR metrics could be misleading to shareholders when it differs from a company's benchmarking-related TSR calculations, and that such disconnect would confuse shareholders' understanding of the company's compensation practices.[4] The Proposed Rules state that the potential for confusion is particularly of concern given that the proposed disclosure "may be of most interest to less sophisticated shareholders."[5] Accordingly, we respectfully request that the Proposed Rules contain sufficient flexibility to report TSR consistent with a company's benchmarking practices.

In addition, we believe that in many cases it may be administratively difficult or costly to retrieve or recalculate the weighted TSR of each company in the registrant's peer group over each of the registrant's three-to-five most recently completed fiscal years.

<u>A Timing Mismatch Between Vesting and TSR Could Confuse Shareholders</u>

The Proposed Rules discuss at length that a timing mismatch between the vesting of awards granted in some prior year and a change in TSR for the immediately preceding year might leave the disclosure of "executive compensation actually paid . . . particularly subject to volatility"[6] and that the Proposed Rules "may be less meaningful . . . if the disclosed relationship between compensation and performance does not (because of timing considerations or vested equity holdings) accurately capture the economic relationship between a company's performance or market conditions and the financial rewards to the NEO."[7]

We suggest that the Proposed Rules' incorporation of a paid-at-vesting concept[8] requires an inappropriate comparison of TSR performance at any given time to the pre-determined vesting schedule of awards granted at some prior time. This could lead to disclosure that at best is not helpful to investors seeking to understand the relationship between the company's award granting philosophy and company performance, and at worst would misrepresent and mislead as to that relationship.

We support the view that "the use of aggregate measures, recommended by several commenters, may reduce the potential timing mismatches and volatility in executive compensation actually paid."[9]

<u>Conclusion</u>

We respectfully submit that the proposed pay-versus-performance disclosure rules do not serve investors. We further believe that the Proposed Rules would ultimately increase the length and

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[3] *See* Proposed Rules at 9.
[4] *Id.* at 46.
[5] *Id.* at 92. Ross believes the potential for confusion to be particularly high between the nuanced distinction of weighted TSR for Item 201(e) purposes and non-weighted TSR for many companies' benchmarking purposes.
[6] *Id.* at 91 (stating that drawing attention to a non-meaningful relationship "may confuse shareholders about the optimality of pay practices"). *Id*. at 90–91.
[7] *Id.* at 91.
[8] *Id.* at 37 ("We are proposing that equity awards be considered actually paid on the date of vesting and valued at fair value on that date, rather than fair value on the date of grant as required in the Summary Compensation Table.").
[9] Proposed Rules at 102 (citing letters from SVA).

complexity of proxy statements, while merely duplicating existing publicly available information and potentially misleading investors due to structural mismatching in TSR formulations and in vesting and TSR figures.

We do appreciate the opportunity to submit these comments. Please contact me if you wish to discuss these comments further.

Ken Jew

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[1] STANFORD U. SCHOOL OF BUSINESS ET AL., 2015 INVESTOR SURVEY: DECONSTRUCTING PROXIES – WHAT MATTERS TO INVESTORS 1 (2015).
[2] Prop. Item 402(v)(2)(iv) (citing 17 CFR § 229.201); *accord* Compliance and Disclosure Interpretation: Item 201 of Regulation S-K — Market Price of and Dividends on the Registrant's Common Equity and Related Shareholder Matters, Section 5 Question 5.02 (March 13, 2007) ("A registrant that presents a self-constructed peer or market capitalization index should weight the returns of the component entities of that index according to their market capitalization as of the beginning of each period for which a return is indicated.").
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