July 2, 2015

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Subject: Release No. 34 – 74835; Pay Versus Performance
File Number S7-07-15

Proposed amendments to Item 402 of Regulation S-K outline additional disclosure requirements designed to implement Section 14(i) of the Securities Exchange Act of 1934 (the "Exchange Act"), as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").

> "Section 14(i) directs the Commission to adopt rules requiring registrants to disclose in a clear manner the relationship between executive compensation actually paid and the financial performance of the company, taking into account any change in the value of the shares of stock and dividends of the company and any distributions."

We are concerned that the proposed rules are too prescriptive and overly complex. Implementation will burden many companies because the information required to comply with the proposed amendments is not readily available and will require complex and time-consuming calculations.

After completing our review of the proposed amendments, we suggest a number of changes in response to the Commission's request for comment. We discuss our proposed approach to calculating compensation actually paid below, and provide a table in Exhibit 1 that compares the Commission's proposed approach with our proposal:

1) For purposes of calculating compensation actually paid, equity awards (i.e., stock awards and stock option awards) that are granted in a particular year, rather than equity awards that vest during the year, should be considered. (Request for Comment 29)
2) Stock awards granted during a given year should be re-valued as of the earlier of (1) the last day of the fiscal year in which the shares vest (rather than on the date of vesting), or (2) the end of the most recent fiscal year if the shares have not yet vested. Valuation of performance contingent shares should reflect the actual number earned if the performance period is complete or an estimate of the number earned used for financial reporting purposes at the end of the most recent fiscal year if performance period is incomplete. (Request for Comment 29)

1133 Avenue of the Americas | New York, NY 10036 | Phone: (212) 921-9350 | Fax: (212) 921-9227 | capartners.com

3) Revaluation of option grants at the date of vesting will be very complicated, presenting challenges for most registrants, so we propose a simpler approach the uses the intrinsic value of the option measured on the last day of the most recent fiscal year. (Request for Comment 30)
4) Disclosure of compensation actually paid should be limited to the Principal Executive Officer ("PEO"). (Request for Comment 20)
5) As proposed, modification of the stock performance graph to add a line representing executive compensation actually paid would not provide meaningful disclosure about the relationship between executive pay and company performance. (Request for Comment 10)

In addition, there are a number of points where we agree with the Commission's proposed rules:

6) The disclosure required by Exchange Act Section 14(i) should be a separate requirement under Item 402 of Regulation S-K and not required as part of the CD&A. (Request for Comment 4)
7) The disclosure should include a table that includes the Summary Compensation Table ("SCT") total compensation, in addition to the values for executive compensation actually paid and company financial performance. (Request for Comment 5)
8) We support the adjustment to SCT reported total compensation to limit the value of defined benefit and pension plans to the service cost for services rendered during a given year. (Request for Comment 27)
9) We agree that Total Shareholder Return ("TSR") should be required as a performance measure to promote comparability across companies. (Request for Comment 34)
10) We agree that companies should be permitted to add information on other performance metrics as they deem appropriate. (Request for Comment 38)

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Additional detail on each of these points is provided below.

1) For purposes of calculating compensation actually paid, equity awards (i.e., stock awards and stock option awards) that are granted in a particular year, rather than equity awards that vest during the year, should be considered. (Request for Comment 29)

Our first recommendation relates to the proposed formulation of "compensation actually paid." We believe that the approach to measuring the value of equity awards outlined in the proposed amendments is overly complex and not well-suited to provide investors with clear information about the relationship between pay and performance.

Registrants have not reached consensus on how to measure compensation actually paid. Our research indicates that 15% to 20% of S&P 250 companies provide supplemental disclosure of either realized or realizable pay, but a standard definition of either formulation of total compensation has not developed. We agree that a standard approach would be beneficial and would improve investor understanding. However, we believe that the final approach should avoid unnecessary complexity, recognizing that all approaches will require registrants to make certain assumptions. We also believe it is important to adopt an approach that can provide investors with insight into the thought process of a registrant's board of directors in determining executive compensation levels.

Given these principles, we believe that equity awards *granted* in a given year should be factored into compensation actually paid, not equity awards that vest. The Commission's proposed approach of re-valuing awards that vest is simply not intuitive. Even though a strong consensus on calculating total compensation for purposes of supplemental pay disclosure has not developed, we are not aware of any registrants that use the approach proposed by the SEC. This is no accident! We submit that the proposed approach is not frequently used because it is complex and not well-suited to shed light on the thought process followed by a board of directors.

By focusing on equity awards that vest, total compensation actually paid as proposed by the Commission would reflect tranches of different equity awards that were granted in different years – likely spanning a three-year to five-year period for most companies. We believe that this approach will only contribute to confusion around the board's thinking on pay and performance alignment. None of the boards that we work with make decisions about pay and performance based on vesting tranches. Instead, the size of the grant is the primary way that boards reward performance.

When vesting tranches are considered, the conversation is almost always about retention. In this context, boards will ask whether enough unvested equity is in place to serve as meaningful handcuffs sufficient to retain an executive should another job opportunity come along. But we submit that this issue generates a very different conversation from pay versus performance considerations.

2) Stock awards granted during a given year should be re-valued as of the last day of the fiscal year in which the shares vested (rather than on the date of vesting) or at the end of the most recent fiscal year if the shares have not yet vested. Valuation of performance contingent shares should reflect either the actual number earned if the performance period is complete or an estimate of the number earned used for financial reporting purposes at the end of the most recent fiscal year if the performance period is incomplete. (Request for Comment 29)

Since most registrants report financial results on a calendar year basis, equity is most commonly awarded during the first quarter of the following year, typically in February or

March. Because vesting almost always occurs on an anniversary date basis, stock awards will be re-valued as of February or March for most companies under the Commission's proposal. This creates an instant disconnect with the TSR reported in the stock performance graph which is valued at year end. Our proposal solves this by requiring re-valuation of stock awards using the year end stock price to be consistent with the stock performance graph.

Since our proposal also focuses on shares granted during the applicable 5-year period, rather than shares vesting, we advocate two more refinements to the proposed amendments. For stock awards that have vested, the valuation would occur on the last day of the fiscal year in which the shares vest. For stock awards that have not yet vested, valuation would reflect the stock price on the last day of the most recently completed fiscal year.

For performance contingent shares, the valuation would reflect the actual number of shares earned if the performance period is complete. If the performance period is incomplete, the estimated number of performance contingent shares earned would reflect the assumption used for financial reporting purposes at the end of the most recent fiscal year. Note that this approach is consistent with the approach a number of companies have adopted when presenting realizable pay in supplemental proxy statement disclosure.

3) Revaluation of option grants at the date of vesting will be very complicated, presenting challenges for most registrants, so we propose a simpler approach that incorporates the intrinsic value of stock options. (Request for Comment 30)

For stock options, the value of the award upon vesting bears no relation to the value "actually paid", or to an executive's W-2 value, as it is only upon exercise that the option value "actually paid" will be determined. Our view is that a cleaner approach is to look at the stock options granted over 3 - 5 years and then revalue all of the stock options granted over that period as of the end of the most recently completed fiscal year based on the intrinsic or in-the-money value (i.e., the spread between the end of year stock price and the option's strike price).

If the Commission instead requires a fair value calculation for previously granted stock options at the time of vesting, registrants will undoubtedly encounter many complications. First and foremost, we are concerned that while companies have experience in valuing newly granted options for accounting purposes, very few companies (i.e., only companies making material modifications to previously granted stock options) have experience valuing options that have been outstanding for several years.

The most common methodology for valuing stock options at the date of grant is the Black-Scholes model. The Black-Scholes model is not appropriate for valuation of "in-the-money" stock options, or for valuation of options on shares that pay substantial dividends. For any companies, where the stock price has increased to be above the exercise price between the grant date and the vesting date, the use of the Black-Scholes model may systematically undervalue the stock options because it does not allow for the possibility of optimal early exercise of the stock options. As a result, the valuation model that most companies use at the date of grant is not generally appropriate to use at the time of vesting. In these situations, a binomial model would be the preferred approach. Clearly, use of a new model would add to time, cost and complexity.

Our proposed approach addresses each of these issues. First, we propose that stock options be valued at the intrinsic value calculated at the end of the most recently completed fiscal year. For example, options granted in 2011 to 2015, would be valued at the stock price at the end of 2015. The intrinsic value of the options granted in 2011 would then be ascribed to 2011 compensation and so on. Use of intrinsic value solves the problems companies will encounter by relying on Black-Scholes for in-the-money stock options or for options on dividend paying stocks. It is also arguably better aligned with the concept of "compensation actually paid."

If the Commission insists on a fair value approach for stock options, new methodologies will have to be developed for establishing the valuation assumptions for previously granted options. Some inputs to the valuation model are reasonably straightforward (e.g., volatility, risk-free rate, dividend yield), and each should be calculated to reflect market conditions at the end of the most recently completed fiscal year. The expected life of the option after grant is more challenging to determine and may lead to inconsistent approaches applied across companies.

4) **Disclosure of compensation actually paid should be limited to the Principal Executive Officer ("PEO"). (Request for Comment 20)**

Under the proposed amendments, compensation actually paid will be reported for the PEO and for the average of remaining Named Executive Officers ("NEOs"). In our view, this greatly increases the compliance burden and will provide relatively little additional insight to investors. The requirement to calculate compensation actually paid factoring in equity awards that vest to a minimum of four executives for a five-year period will require dozens of calculations. To the extent that companies grant stock options and the Commission requires a fair value approach, assumptions used in option pricing models will require updating.

Limiting the pay and performance disclosure to the PEO, would greatly reduce the compliance burden. Additionally, a focus on the PEO would arguably allow for a more targeted explanation of the board's thinking on pay and performance alignment. After all, the chief executive officer normally sets the tone for the entire organization.

5) As proposed, modification of the stock performance graph to add a line representing executive compensation actually paid would not provide meaningful

disclosure about the relationship between executive pay and company performance. (Request for Comment 10)

TSR presented in the stock performance graph is shown over 5 years by graphing 6 plot points. As proposed by the Commission, executive compensation would have only 5 plot points so the format is not readily compatible. Also, TSR is indexed based on a $100 investment while compensation is reported in dollars so the scales are fundamentally different. The easiest solution would be to require companies to calculate compensation actually paid for 6 years, with the sixth year indexed to 100, similar to TSR in the stock performance graph.

6) **The disclosure required by Exchange Act Section 14(i) should be a separate requirement under Item 402 of Regulation S-K and not required as part of the CD&A. (Request for Comment 4)**

We agree with the proposal to provide the pay and performance disclosure separately from the CD&A. The purpose of the CD&A is to provide shareholders with insight into how the compensation committee makes decisions about executive compensation and how company performance factors into the decision framework. The calculation of compensation actually paid and TSR performance occurs after these decisions are made. They reflect the outcome of the decisions made by a compensation committee, but are not inputs.

7) The disclosure should include a table that includes the Summary Compensation Table ("SCT") total compensation, in addition to the values for executive compensation actually paid and company financial performance. (Request for Comment 5)

We agree that providing a table that foots to the SCT will help to clarify potential differences between reported compensation and compensation actually paid.

8) We support the adjustment to SCT reported total compensation to limit the value of defined benefit and pension plans to the service cost for services rendered during a given year. (Request for Comment 27)

Increases in compensation related to changes in interest rate and mortality assumptions should be excluded from compensation actually paid. Reported benefits can vary significantly depending on the assumptions used, so this adjustment will increase comparability across companies.

9) We agree that Total Shareholder Return ("TSR") should be required as a performance measure to promote comparability across companies. (Request for Comment 34)

The language in the statue calls for a metric that takes change in the value of the shares and distributions into account. TSR does this and has been used as a metric in the stock performance graph for many years. We agree that use of a consistent metric across companies will increase comparability.

10) We agree that companies should be permitted to add information on other performance metrics as they deem appropriate. (Request for Comment 38)

Disclosure of performance measures that drive the board's decision-making process on executive compensation would be positively received by investors. Registrants should be afforded the flexibility to use tailored performance measures.

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We would be happy to discuss our comments with you at greater length if that would be helpful. You can reach Margaret Engel at [redacted] and Eric Hosken at [redacted]. Thank you for your attention to this important matter.

Compensation Advisory Partners LLC

Margaret Engel
Partner

Eric Hosken
Partner

Exhibit 1

Component of Compensation	SEC Proposed Rules for Compensation Actually Paid	CAP Proposal for Compensation Actually Paid
Salary	• As reported in Summary Compensation Table	• Same
Bonus	• As reported in Summary Compensation Table	• Same
Stock Awards	• Value of shares vesting in each fiscal year • Valuation to reflect stock price on the date of vesting	• Value of shares granted in each fiscal year • Valuation to reflect stock price at the end of the fiscal year in which the shares vested or at the end of the most recent fiscal year if the shares have not yet vested • Valuation of performance contingent shares to reflect actual number earned if performance period is complete or estimate of number earned used for financial reporting purposes at the end of the most recent fiscal year if performance period is incomplete
Stock Options	• Value of options vesting in each fiscal year valued on the date of vesting • Valuation to reflect accounting fair value recalculated on the date of vesting	• Value of options granted in each fiscal year valued at the end of the most recent fiscal year (i.e., valuation would reflect stock price on 12/31/2015 for options granted in 2011 – 2015) • Valuation to reflect the intrinsic value of the option
Non-Equity Incentive Plan Compensation	• As reported in Summary Compensation Table	• Same
Change in Pension Value and Non-Qualified Deferred Compensation Earnings	• As reported in Summary Compensation Table with adjustment to change in pension value to reflect service cost for the year	• Same
All Other Compensation	• As reported in Summary Compensation Table	• Same