

As You Sow Comments on SEC Pay vs. Performance Disclosure Proposal

Subject: Pay versus Performance

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As Program Manager of As You Sow's Power of the Proxy initiative, I am writing to provide our comments on the proposed rules to implement Section 953(a) of the Dodd-Frank Act relating to disclosure of pay-versus-performance.

Founded in 1992, As You Sow promotes environmental and social corporate responsibility through shareholder advocacy, coalition building, and innovative legal strategies. Our efforts create large-scale systemic change by establishing sustainable and equitable corporate practices.

As You Sow was founded on the belief that many environmental and human rights issues can be resolved by increased corporate responsibility. As investor representatives, we communicate directly with corporate executives to collaboratively develop and implement business models that reduce risk, benefit brand reputation, and protect long term shareholder value while simultaneously bringing about positive change for the environment and human rights.

We will weigh in specifically on some of the questions raised for comment, but first wish encourage the quickest possible timeline to issue final rules on pay versus performance and other components of Dodd-Frank. On July 21, it will have been five years since the passage of Dodd-Frank and there is much that remains to be done.

In general we believe that this rule is a step in the right direction. Anything that clarifies for shareholders the alignment – or more critically, the lack of alignment – between executive compensation and company performance provides a great service to shareholders. This rule is imperfect. It does not, as noted by Los Angeles Times columnist Michael Hitzlick noted in a recent [column](#): “nothing in the SEC proposal addresses the core issue with the pay of American CEOs: it's way out of line with the rest of the economy.”

We have read through with great interest a number of the comment letters already received and note two strands of commentary in opposition to each other: one states that the information is already available and accessible, and the other that the chart requirement is too complex and likely to confuse shareholders. The effort to throw all manner of arguments in the hopes that something will stick reminds us of no-action challenges on shareholder proposals. Some corporations and the entities that represent them have never seen disclosure that they would support, and their letters should be understood in that context.

In general, the rule appears to us to be thoughtfully constructed, with disclosure that we and other shareholders will find useful. In addition, we applaud the inclusion of peer groups to the disclosure. While it is not specifically mandated by the statute, it is a worthy addition to the rules. The disclosure of peer group total shareholder return is critical. Ideally, all companies would use the same group found in the CD&A for purposes of disclosing registrants' compensation benchmarking practices.

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A number of specific questions from the rulemaking are cited below with our responses:

5. Should we require registrants to provide, as proposed, a table that includes the Summary Compensation Table total compensation, in addition to the values of the prescribed measures of executive compensation actually paid and registrant financial performance used for the pay-versus-performance disclosure? Why or why not?

Uniformity of disclosure is critical for shareholders. The summary compensation table is the single most useful item in the proxy statement, and the one we turn to first. We believe that it is critical that the SEC, as proposed, include this well understood measure of compensation in the new chart. It is also important that the full summary compensation table remain available to shareholders. The table plays a critical role in allowing cross-company comparison and well as compensation trends.

10. Would the stock performance graph required by Item 201(e) of Regulation S-K modified to add a line representing executive compensation actually paid provide meaningful disclosure about the relationship between executive pay and registrant performance? Why or why not? If so, should we require the stock performance graph, as so modified to be included in the proxy or information statement as well as, or instead of, in the annual report to security holders required by Exchange Act Rules 14a-3 and 14c-344? Would such disclosure satisfy Exchange Act Section 14(i)?

The stock performance graph is a useful feature for a quick review. Particularly in the midst of proxy season, when we are looking at many documents in quick succession, any graphic presentation is useful. From March to May we focus primarily on proxies, and returning the information to that location would be a change we support.

9. Should we require separate disclosure for the PEO, as proposed? Should we require, in instances where a registrant had more than one PEO in a given year, that the amounts for each PEO be added together, as proposed? Under our 55 17 CFR 240.3b-7. 30 executive compensation disclosure rules, if an individual served in the capacity of PEO during any part of a fiscal year for which executive compensation disclosure is required, information about the individual's compensation for the full fiscal year is required to be disclosed. Should the compensation amount for the pay versus-performance disclosure include only compensation received as the PEO? Should we require separate disclosure for each individual who served as a PEO during the required time period of disclosure? Are there alternative approaches we should consider? For example, where a registrant had more than one PEO in a given year, should we permit registrants the flexibility to choose instead to annualize the compensation of the PEO serving at the end of the fiscal year?

When a company has two CEOs in the course of one year, we believe that data should be available on both aggregated and disaggregated basis. Transition years should come up rarely and it should not be a hardship to make this data available in multiple formats. The transition time is also when we typically see excessively high payments. So we believe the fullest disclosure possible is particularly critical in those years. However, to offer the company flexibility would be problematic as we believe that companies will use whatever data puts them in the best light.

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21. Does our proposed definition appropriately capture the concept of “executive compensation actually paid?” Why or why not? Are there elements of compensation excluded by our proposed definition that should not be? Alternatively, does the proposed definition include any items that should be excluded? If so, which ones and why?

In an ideal world more data would be available. “Actually paid” would not simply be a figure available annually, but also available on a cumulative basis. Other forms that could be disclosed could be career realized, or perhaps additional disclosure in proxies rather than Form 4, relating to the sales of stock. It would be interesting to have a chart that shows both stock price and the timing of executive exercises and/or sales. We do not expect this disclosure to make it onto current rulemaking, but list it as an example of the sorts of things we would like to see.

24. Instead of our proposal, should we permit a principles-based approach that would allow registrants to determine which elements of compensation to include, so long as they clearly disclosed how the amount was calculated? Why or why not? How should such a provision be structured? What requirements should we include?

In reading the correspondence in opposition to this proposal we noticed companies describe the efforts to make data consistent as limiting or narrow. The suggestion comes up again and again that the SEC should “allow” alternative disclosure rather than the chart as suggested. We strenuously disagree.

Alternatives are allowed for disclosure in CD&A. The principles based approach is permitted in the narrative and the way it has been used illustrates the need for this rule.

The SEC fully allows the Compensation Committee to explain the way that pay and performance are linked. In fact such language appears broadly, if not clearly, in many proxy statements. It seems to us to be the most critical component of the CD&A.

The reason this rule is necessary, however, is that every company cherry-picks data that makes it appear in the best possible light. If stocks options are underwater, there’s likely to be a chart showing “actual” pay. The same chart disappears if the company’s stock has performed well.

As You Sow appreciates the opportunity to submit our comments on the Proposed Rule, and thank you for taking these opinions into consideration. We hope that this rule and others will be implemented as quickly as possible to give shareholders the most complete and comparable compensation figures.

Sincerely,

Rosanna Landis Weaver