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July 6, 2015

Mr. Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Comment Letter on Pay Versus Performance Disclosures – Release No. 34-74835 (File No. S7–07–15)

Dear Mr. Fields:

Towers Watson appreciates this opportunity to provide our comments to the Securities and Exchange Commission ("Commission") on its proposed amendments to Item 402 of Regulation S-K 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 (the "Dodd-Frank Act").

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Executive Summary

We are generally supportive of the Commission's proposed approach to this disclosure. We believe the proposed regulations, if finalized largely in their proposed form, will provide shareholders important information on the relationship between executive compensation actually paid and the financial performance of the registrant, while maintaining the flexibility needed for registrants to enhance their Compensation Discussion and Analysis ("CD&A") disclosures to tell their unique stories in a manner that best matches their specific business objectives and compensation structures. Our comments fall into the following categories:

- Pension Calculation Issues
- Equity Valuation Issues
- Peer Group Selection
- TSR Calculation and Presentation, and
- Initial Application and Transition Rule

Regarding these issues, we offer suggestions where we believe the Commission can provide more clarity, simplify its approach for easier compliance or adopt an alternative approach that we believe will be an even further improvement in the measure of compensation "actually paid."

I. Pension Calculation Issues: Alternative Approaches Would Be Preferable and Clarifications Are Needed

Summary: We propose that the Commission consider adopting one of the three alternatives we have outlined below to improve the proposed pension disclosure.

In the proposed regulations, the pension value to be used in determining the compensation "actually paid" to the named executive officers ("NEOs") for the new pay/performance disclosure would equal the service cost as defined in FASB ASC Topic 715 ("ASC 715").

We fully support the Commission's decision to refine the calculation of the pension value to isolate the impact of benefit increases and "exclude changes in actuarial present value of benefits under defined benefit and actuarial pension plans that are not attributable to the applicable year of service." We agree that service cost is a superior measure of the executive compensation "actually paid" compared to the calculation required for the Summary Compensation Table ("SCT"). Finally, we agree that the pension calculations required for the new pay/performance disclosure should not create an additional burden for employers.

At the same time, however, we believe there are certain disadvantages associated with using service cost as the measure of compensation actually paid:

1. Service cost, as defined under ASC 715, includes the value of projected compensation increases that have not yet been (and may not be) earned.
2. Service cost introduces a lack of comparability with other employers, as it is developed based on actuarial assumptions regarding employee termination rates, retirement rates and future compensation increases, that will vary based on each organization's unique workforce demographics (and are not tailored to be specific to each NEO).
3. Service cost is an entirely different type of measure than the pension value that is disclosed in the SCT, introducing inconsistencies within each registrants' proxy.

Recommendation: To address the above described shortcomings associated with service cost, we recommend that the Commission consider adopting one of the following alternatives to calculating the pension value in the pay versus performance table, in our order of preference:

> **Alternative 1:** We believe a preferable approach to using service cost would be to calculate the change in pension value to equal the actuarial present value of the benefit earned during the fiscal year using the same assumptions that are prescribed in Item 402(c)(2)(viii)(A) to calculate the change in pension value disclosed in the SCT.
>
> Thus, the difference between the pay/performance measure and the SCT measure would be essentially as follows:
>
> - The SCT measures the change in the liability for the NEO's accumulated benefit under the plan for the fiscal year.

- The pay/performance approach we recommend would measure the present value of the change in the accrued benefit during the year.

To illustrate how these calculations relate to, yet differ from one another, consider an NEO who was newly hired during the fiscal year and, thus, had a pension value of $0 in the prior year. For the initial fiscal year of service for this NEO, the pension value in the SCT and the pay/performance table would be the same. In subsequent years, the pension value in the SCT would include the impact of changes in assumptions and aging on the entire present value of benefits that have been earned to date, while the value shown in the pay/performance table would reflect only the impact of these changes on the benefit earned during the fiscal year.

We encourage the Commission to consider this approach because it links directly to the existing approach and assumptions used for the SCT. Under the current proposal, the calculation of the NEO's service cost in the above example would be measured using different underlying assumptions and methods than those used in the SCT calculation, introducing fundamental inconsistencies within the proxy and creating the need for two different sets of pension calculations.

To adopt this approach, the Commission would need to recraft its instruction to section 402(v)(2)(iii)(B) to read as follows:

> (B) Add ***the present value of the change in the accrued benefit*** under all defined benefit and actuarial pension plans reported in the Summary Compensation Table in paragraph (c)(2)(viii)(A) calculated as the actuarial present value of each named executive officer's benefit ***earned*** under all such plans attributable to services rendered during the covered fiscal year, ***using the same assumptions that are prescribed in Item 402(c)(2)(viii)(A) to calculate the change in pension value disclosed in the Summary Compensation Table;***

We strongly encourage the Commission to consider adopting this alternative.

Alternative 2: If the Commission ultimately decides to require the use of service cost for this disclosure, we recommend that the calculation should not include a projection of future compensation growth. Thus, we would recommend that the instruction to section 402(v)(2)(iii)(B) be amended with the italicized addition shown below:

> (B) Add the service cost under all defined benefit and actuarial pension plans reported in the Summary Compensation Table in paragraph (c)(2)(viii)(A) calculated as the actuarial present value of each named executive officer's benefit under all such plans attributable to services rendered during the covered fiscal year, consistent with "service cost" as defined in FASB ASC Topic 715, ***modified to exclude projections of future compensation increases***;

Under this alternative, we believe the following additional clarification would be needed.

a. **Please specify whether the assumptions and compensation used to determine the service cost should be the same as those that were in effect during the fiscal year or at the end of the fiscal year.**

Assumptions. For example, for a registrant with a calendar-year fiscal year, the fiscal 2015 service cost that's disclosed in the 10-K is based on assumptions set as of December 31, 2014. At the time of the 2016 proxy filing, year-end 2015 assumptions would have been selected; the year-end 2015 discount rate would be used to determine the pension value in the SCT. We recommend that the regulations require the use of the assumptions in place for financial accounting as of the last regular measurement date before the proxy filing. For example, assuming the regulations are effective for the 2016 proxy for a calendar-year filer, the assumptions used to calculate the 2016 service cost (which would have been selected as of December 31, 2015) would be used.

Compensation. Typically, the service cost for a fiscal year is determined based on data that has been projected forward using actuarial assumptions. For example, the 2015 service cost used for GAAP accounting purposes for an NEO whose pension value is being calculated in early 2016 would be based on a forward projection of 2014 pay rather than the compensation actually earned during 2015. The guidance should clarify that the calculation for this purpose should reflect the actual pay for the most recent year.

Note that reflecting the year-end 2015 assumptions and actual 2015 compensation would require a special calculation to be undertaken outside of the actuarial valuation due to the typical timing of accounting valuations, but would yield the most up-to-date estimates of the pension value.

Calculation Date. The Commission's guidance should also clarify that the pension measure should be a present value as of the beginning of the fiscal year. For example, for a 2016 proxy filing for a calendar-year company, the present value will be calculated as of December 31, 2015.

b. **We suggest that the assumption guidance provided for the SCT pension measure would also apply to this new pay/performance measure as well.**

That is, the Commission should specify that the actuarial assumptions used for the pay/performance disclosure should be the same as those used under ASC 715, except that retirement is at the earliest unreduced retirement age) and the NEO would be assumed to remain employed until that age. We suggest that the Commission explicitly prescribe the assumptions to be employed in the final rules.

Alternative 3: Finally, while we understand that the Commission may determine that the best approach for achieving comparability is to choose a single approach, we could envisage the Commission permitting registrants to use any approach among those discussed to permit maximum flexibility. This would be similar to the approach it has chosen for the valuation of equity vested during the year, in that fair-market calculations would be permitted to use any assumptions the registrant deems appropriate for that valuation. That is, registrants would be permitted to choose among:

1. The present value of the benefit accrued, as recommended in Alternative 1 above;

2. Service cost as defined under the proposed regulations, without pay increases, as recommended in Alternative 2 above; or

3. Service cost as defined under the proposed regulations.

II. Equity Valuation Issues: Default Disclosure Requirement May Not Yield Accurate Disclosed Values

Summary: Rather than designate the use of grant date assumptions as the default for disclosure of equity values at the vesting date, we recommend that the instructions for how equity awards are valued that would require footnote disclosure if the vesting-date valuation assumptions used are materially different than those disclosed in the registrant's current financial statements.

We're in agreement with the Commission's goals in requiring disclosure of the vesting-date fair value of equity grants. We also agree with the Commission's desire to have clear information provided to shareholders on how vested equity is valued, as was stated in the preamble:

> We believe shareholders may be interested in vesting date valuation assumptions to the extent they believe that changes in the value of equity grants after the grant date are a primary channel through which pay is linked to performance. We believe that requiring disclosure of vesting date valuation assumptions would make these computations readily accessible to shareholders, which may be useful to shareholders to the extent they are interested in computing slightly different measures or using parts of the computations for other purposes.

However, when we turn to the instruction as to how section 402(v)(2)(iii)(C) is applied, we are unsure that the instruction, in its current form, will elicit as precise valuations as might otherwise be calculated. The instruction, found in section 402(v)(4), states:

> (4) For the value of equity awards added pursuant to paragraph (v)(2)(iii)(C), disclose in a footnote to the table required by paragraph (v)(1) any assumption made in the valuation that differs materially from those disclosed pursuant to Instruction 1 to Item 402(c)(2)(v) and (vi), or for smaller reporting companies, Instruction 1 to Item 402(n)(2)(v) and (vi).

Based on our experience performing equity grant calculations for use in clients' financial statements and proxy presentations, we are concerned that the above instructions would not elicit disclosure of the most accurate vesting-date fair values, which we believe should be based on the registrant's most recent economic and demographic assumptions for grants made during the current fiscal year. Using the same assumptions as in the registrant's current Form 10-K, or adjustments to those assumptions as of the actual vesting dates, would yield more accurate information in accordance with the fair value guidance in FASB ASC Topic 718 for the new pay/performance disclosures.

We read the proposed rule to suggest that the default approach for registrants would be to continue to use the grant-date assumptions used in prior periods, which may have been set several years before the date the equity grants vested. These assumptions may no longer be the company's best estimates and because the awards vesting in the current year will likely have been granted in multiple prior years, the assumptions used in the vesting-date valuations will not be uniform. We believe that many registrants will decide to use those grant-date assumptions, rather than using a more current and accurate set of assumptions, predominantly because of concerns that using alternative assumptions would require footnote disclosures that would send a negative message to shareholders.

Our experience also has been that company counsel tends to be conservative in advising companies and that the conventional wisdom regarding disclosure is to avoid calling unwanted attention to an issue when it can be avoided. In our view, we would forecast that whichever approach the Commission considers to be the "default" approach would be that favored by the majority of registrants.

Recommendation: We suggest that the Commission amend the proposed instruction for section 402(v)(2)(iii)(C), found in section 402(v)(4).

Alternative 1: We believe a model already exists for this amended instruction similar to that in place for the instructions to columns (e) and (f) of the SCT. Those instructions, for purposes of reporting grant-date values in the SCT, read as follows:

Instructions to Item 402(c)(2)(v) and (vi).

1. For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

Using this as a model, the instruction for section 402(v)(2)(iii)(C), found in section 402(v)(4) should read as follows:

(4) For the value of equity awards added pursuant to paragraph (v)(2)(iii)(C), disclose in a footnote to the table required by paragraph (v)(1) any assumption made in the valuation that differs materially ***<u>from those assumptions in the registrant's current financial statements, footnotes to the financial statements or discussion in the Management's Discussion and Analysis</u>***.

Alternative 2: If the Commission is uncomfortable with this approach, in the alternative we would recommend that the Commission craft an instruction that permits registrants to ***<u>use either the grant-date fair-value assumptions, assumptions used for grants made in the current fiscal year or assumptions developed as of the vesting dates,</u>*** to avoid the possibility that shareholders would perceive any approach with skepticism. Thus, the Commission could specify in its instruction that a registrant would simply be required to provide a brief footnote describing the approach it chose for the "compensation actually paid" disclosure, as follows:

1. If it chose to use assumptions disclosed pursuant to Instruction 1 to Item 402(c)(2)(v) and (vi), the footnote would state: "based on grant-date fair-value assumptions."
2. If it chose to use assumptions from the current fiscal-year financial statements, the footnote would state: "based on 10-K assumptions for the current fiscal year."
3. If it chose to use assumptions as of the vesting dates, footnote disclosure would be required if they are materially different than either the grant-date or the current 10-K assumptions.

Under this alternative, the Commission would permit registrants the flexibility to choose the assumptions they would use, without the risk that shareholders would view those alternative assumptions with suspicion. This would place companies on a level playing field regardless of the approach they take to valuing equity compensation actually paid for their pay/ performance disclosure.

III. Equity Valuation Issues: Post Year-End Vesting of Performance Shares

Summary: We recommend that the Commission amend its instructions to provide further clarity on the date of vesting for performance grants that legally vest in the year following the conclusion of the performance period.

For purposes of reporting the equity value actually paid for a fiscal year, section 402(v)(2)(iii) of the proposed regulations provides:

> (v) Pay versus Performance. (2)(iii) . . . . For purposes of columns (c) and (e) of the table required by paragraph (v)(1) of this Item, executive compensation actually paid shall be the total compensation for the covered fiscal year for each named executive officer as provided in paragraph (c)(2)(x) of this Item, or paragraph (n)(2)(x) for smaller reporting companies, adjusted to:
>
>> (C) Deduct the amounts reported in the Summary Compensation Table pursuant to paragraphs (c)(2)(v) and (c)(2)(vi) of this Item and add in their place the fair value on the vesting date of all stock awards, and all options awards, with or without tandem SARs (including awards that subsequently have been transferred), ***<u>for which all applicable vesting conditions were satisfied during the covered fiscal year.</u>*** [Emphasis added.]

We have some questions about how the highlighted phrase in the proposal should be interpreted in circumstances where a company grants performance shares or other equity that vests upon the attainment of objective performance goals. As the Commission is aware, many of these performance share grants are intended to comply with the "performance-based exception" to the deduction limitations of Internal Revenue Code Section 162(m). These grants must, by their terms, have pre-established and objective performance criteria upon which vesting is based, and at the conclusion of the performance period (most predominantly three years), the compensation committee must certify that those performance conditions are met before actual vesting can take place. This certification most often takes place following the conclusion of the fiscal year when the performance period ends, after the accountants have compiled the financial information needed for the compensation committee to take action. Soon after this date, but most often before the company files its proxy for that just-ended fiscal year, the actual vesting date occurs.

For example, let's assume performance shares with objective performance criteria were granted by a calendar-year registrant to the principle executive officer ("PEO") and NEOs with a three-year performance period starting on January 1, 2013 and ending on December 31, 2015. Assume further that soon after the conclusion of this performance period, the registrant's CFO presents to the compensation committee the financial results for the three-year performance period, and on February 15, 2016, the compensation committee certifies the results so that the performance shares legally vest. The question arises whether the Commission, in this situation, would interpret that "all applicable vesting conditions were satisfied during the covered fiscal year" (i.e., 2015).

We believe the answer to this question should be yes because it would place performance shares on the same footing as stock options, restricted stock and restricted stock units that vest at the end of any given fiscal year. We believe consistent treatment of these various equity vehicles would serve shareholder interests by making it easier for shareholders to ascribe vesting dates to the proper performance period.

Adopting this approach would be similar to what the Commission already has adopted for disclosing payments from cash plans in the SCT and, by extension, for purposes of calculating cash compensation actually paid. That is, if cash compensation is treated as earned for a fiscal year, it would be reported for both purposes in that fiscal year, regardless of the fact that it is paid out soon after year-end or is deferred until a later year. We believe adopting a consistent approach for all forms of compensation actually paid would be most beneficial to shareholders.

Recommendation: We recommend that the Commission clarify that, with regard to performance shares, the phrase "for which all applicable vesting conditions were satisfied during the covered fiscal year" permits the determination of whether those conditions were satisfied to be made after the end of the fiscal year, as long as that occurs before the date the proxy is filed.

IV. Comparison to Peer Group Total Shareholder Return ("TSR") – Relative-TSR Plan Peer Groups

Summary: We recommend that the Commission clarify that the peer group a company uses for purposes of its relative-TSR long-term incentive plan can be used for the 402(v) peer group disclosure.

In the proposed Instructions to Item 402(v), the proposed regulations provide:

> 7. Peer group. For purposes of determining the total shareholder return of the registrant's peer group, the registrant shall use the same index or issuers used for purposes of Item 201(e)(1)(ii) or, if applicable, the companies it uses as a peer group for purposes of Item 402(b). If the peer group is not a published industry or line-of-business index, the identity of the issuers comprising the group must be disclosed. The returns of each component issuer of the group must be weighted according to the respective issuers' stock market capitalization at the beginning of each period for which a return is indicated.

The preamble to the proposed regulations and accompanying footnote 89 provide some additional guidance:

> Consistent with these suggestions, we also are proposing to require registrants, other than smaller reporting companies, to disclose peer group total shareholder return, using either the same peer group used for purposes of Item 201(e) of Regulation S–K, or, a peer group used in the CD&A for purposes of disclosing registrants' compensation benchmarking practices.[89]

Footnote 89 provides:

> See Item 402(b)(xiv) of Regulation S–K (17 CFR 229.402(b)(xiv)). We note that smaller reporting companies are not subject to Item 201(e) and that requiring disclosure of peer group total shareholder return would require smaller reporting companies to collect and disclose information that they are not currently required to disclose.

We believe that the intended cross-reference is to Item 402(b)(2)(xiv) of Regulation S–K, which provides:

> (2) While the material information to be disclosed under Compensation Discussion and Analysis will vary depending upon the facts and circumstances, examples of such information may include, in a given case, among other things, the following:

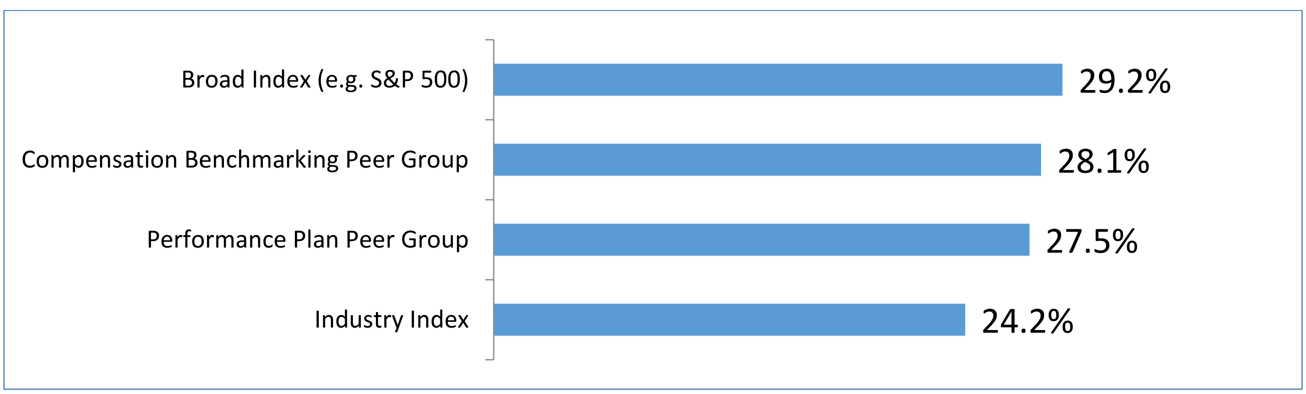
> (xiv) Whether the registrant engaged in any benchmarking of total compensation, ***or any material element of compensation*** [emphasis added], identifying the benchmark and, if applicable, its components (including component companies);

Our question is whether the Commission's intention in its instructions is to give companies the choice of which peer group to use for the new pay/performance disclosure as long as those peer companies are disclosed in the CD&A. More particularly, while virtually all companies disclose a compensation peer group for purposes of benchmarking their total compensation and some disclose a compensation peer group for certain elements of compensation, we're unsure of the Commission's intention with regard to companies used as a select peer group against which long-term performance is measured for purposes of determining payment values under a relative-TSR plan.

From one perspective, this group of companies can be viewed narrowly as simply a set of companies used mechanically in the pay determination — more like a typical plan payout formula than an actual peer group. However, we think the more appropriate reading is that the relative-TSR plan peer group is a group of companies against which the company's performance is truly measured to set pay. That is, it's not only a formula for determining a payment value, it's also the peer group against which pay amounts are measured that helps focus executives on their performance versus that group. Viewed from this perspective, we would read the instruction that references "any material element of compensation" to include the peer group used to measure the performance under a relative-TSR plan.

The Commission should be aware of the increasing prevalence of relative-TSR plans. For example, Towers Watson's survey of pay disclosed by *Fortune* 500 companies in their 2014 proxies shows that 38% grant long-term performance awards using relative TSR as a determinant of payout. Table 1 reflects how these companies measure relative TSR.

Table 1: Peer Groups Used in Relative-TSR Plans



Based on the above, almost three-quarters of the companies in our sample would be permitted to use their relative-TSR plan peer groups in their 402(v) disclosure, based on the peer group or index they use in their Item 201(e) disclosure.[1] If the Commission fails to clarify that the relative-TSR plan peer group can be used for the 402(v) disclosure, this could place the roughly one-quarter of companies using a performance plan peer group at a disadvantage. Not only would that potentially disadvantage shareholders seeking more information on TSR performance of that peer group, it might potentially

[1] Assuming that the compensation benchmarking peer group is the same as the peer group chosen for 201(e) purposes.

cause these companies to rethink their use of a performance plan peer group for their relative-TSR plan, even though that might not be an optimal design for their particular circumstances.

Recommendation: We recommend that the Commission clarify its instructions to permit the use of the relative-TSR peer group by adding the highlighted phrase below:

> 7. Peer group. For purposes of determining the total shareholder return of the registrant's peer group, the registrant shall use the same index or issuers used for purposes of Item 201(e)(1)(ii) or, if applicable, the companies it uses as a peer group for purposes of Item 402(b), ***which may include the peer group used for any benchmarking of total compensation, or any material element of compensation including that of a relative-TSR plan.*** The returns of each component issuer of the group must be weighted according to the respective issuers' stock market capitalization at the beginning of each period for which a return is indicated.

V. TSR Measurement – Percentage Increases Are the Favored Approach

Summary: We recommend that the Commission require the disclosure of TSR for the registrant and the registrant's peer group to be expressed as percentages, as this is how most shareholders evaluate TSR.

Proposed regulation 402(v)(2)(iv) provides that TSR should be calculated as follows:

> (iv) For purposes of columns (f) and (g) of the table required by paragraph (v)(1) of this Item, for each year disclose the cumulative total shareholder return of the registrant (column (f)) and peer group cumulative total shareholder return (column (g)) calculated in the same manner, and over the same measurement period, as under Item 201(e) of Regulation S-K. The term "measurement period" shall be the period beginning at the "measurement point" established by the market close on the last trading day before the registrant's earliest fiscal year in the table, through and including the end of the registrant's last completed fiscal year. The closing price of the measurement point must be converted into a fixed investment, ***stated in dollars***, [emphasis added] in the registrant's stock (or in the stocks represented by the peer group). For each fiscal year, the amount included in the table shall be the cumulative total shareholder return as of the end of that year. The same methodology must be used in calculating both the registrant's total shareholder return and that of the peer group.

With the requirement to state TSR in dollars, along with the cross-reference to Item 201(e), we read this rule to require registrants to delineate TSR in the form of the investment return of a $100 investment over the measurement period. In contrast, in the preamble to the proposed regulations, footnote 85 suggests that the calculation is in the form of a fraction, which suggests that the depiction of TSR is in the form of a percentage:

> Item 201(e) of Regulation S-K, which prescribes disclosure for the stock performance graph included in the annual report to security holders required by Rules 14a-3 and 14c-3, provides that cumulative total shareholder return is calculated by "dividing the (i) sum of (A) the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and (B) the difference between the registrant's share price at the end and the beginning of the

measurement period; by (ii) the share price at the beginning of the measurement period." 17 CFR 229.201(e).

As we read this rule, an illustrative presentation of registrant's TSR compared to that of a peer group (index) would appear as follows, reflecting the gains that a $100 investment would yield at the end of a five-year period. We've used future years in our example due to uncertainty about the transition rules, which we comment on below.

Table 2 Five-Year Rolling Return on $100		
Measurement Period	Five-Year Investment Return	Five-Year Investment Return of Index
2020-2025	$183	$185
2019-2024	$194	$206
2018-2023	$227	$232
2017-2022	$93	$110
2016-2021	$91	$99

Recommendation: Disclosing TSR results on a percentage basis strikes us as a more useful format for the pay/performance table because that's the most common approach we've seen in pay-for-performance analyses presented by registrants, consultants and proxy advisors. Our experience suggests that if the Commission requires depiction of TSR in dollars, most proxy advisors and investors will be required to perform the conversion to percentages on their own. Under our recommended approach, the disclosure would appear as follows in Table 3:

Table 3 Five-Year Rolling Cumulative Percentage		
Measurement Period	Five-Year Investment Return (%)	Five-Year Investment Return of Index (%)
2020-2025	83%	85%
2019-2024	94%	106%
2018-2023	127%	132%
2017-2022	-7%	10%
2016-2021	-9%	-1%

VI. TSR Measurement – Annualized Percentage Increases Are Also Favored

Summary: We recommend that the Commission require the disclosure of TSR to be based on an annualized (as opposed to a cumulative) calculation.

The proposed pay/performance disclosure appears to require that a registrant depict the cumulative TSR over a five-year period, with each prior year's disclosure looking back over the previous five-year period. While we understand that the cumulative approach is the depiction that appears on Form 10-K pursuant to Item 201(e), we believe that most investors and proxy advisors generally look to an annualized approach when they assess a company's TSR. When it comes to performing pay/ performance calculations under current models, our experience is that the vast majority of those calculations are performed using annualized TSR.

For an example of how annualized TSR is calculated, the starting point would be the five-year rolling cumulative percentage information shown in Table 3 above, annualized as presented below in Table 4:

Table 4				
Measurement Period	Five-Year Rolling Cumulative Investment Return (%)	Five-Year Annualized Investment Return (%)	Five-Year Rolling Cumulative Investment Return of Index (%)	Five-Year Annualized Investment Return of Index (%)
2020-2025	83%	13%	85%	13%
2019-2024	94%	14%	106%	16%
2018-2023	127%	18%	132%	18%
2017-2022	-7%	-2%	10%	2%
2016-2021	-9%	-2%	-1%	0%

Recommendation: Assuming the Commission agrees to adopt the disclosure of TSR on a percentage basis, we would recommend that this disclosure be made on an annualized percentage basis, rather than on a cumulative basis. Investment results for proxy advisory firms and many shareholders are often expressed on an annualized percentage basis, and investors are accustomed to considering the percentage return on their investments.

VII. Initial Application and Transition Rule

Summary: The interaction of the transition rule in the instructions to Item 402(v) with proposed regulation section 402(v)(2)(iv) that would require companies to provide an appropriate history of TSR performance in the initial required disclosure is unclear. We suggest it be clarified as discussed below.

The proposed Instructions to Item 402(v) provide:

1. Transitional relief. A registrant may provide the disclosure required by paragraph (v) for three years, instead of five years, in the first filing in which it provides this disclosure, and provide disclosure for an additional year in each of the two subsequent annual filings in which this disclosure is required.

Proposed regulation section 402(v)(2)(iv) provides:

> (iv) For purposes of columns (f) and (g) of the table required by paragraph (v)(1) of this Item, for each year disclose the cumulative total shareholder return of the registrant (column (f)) and peer group cumulative total shareholder return (column (g)) calculated in the same manner, and over the same measurement period, as under Item 201(e) of Regulation S–K. The term ‘‘measurement period’’ shall be the period beginning at the ‘‘measurement point’’ established by the market close ***on the last trading day before the registrant's earliest fiscal year in the table***, [emphasis added] through and including the end of the registrant's last completed fiscal year.

We note that although proposed regulation section 402(v)(2)(iv) provides a definition of "measurement period," it also indicates that TSR should be determined over the same measurement period that is used in Item 201(e), which provides:

> The term "measurement period" shall be the period beginning at the "measurement point" established by the market close ***on the last trading day before the beginning of the registrant's fifth preceding fiscal year,*** [emphasis added] through and including the end of the registrant's last completed fiscal year.

When attempting to reconcile these two definitions of "measurement period" and "measurement point," we believe the Commission used different language to account for the fact that the rule would be phased in under the transitional relief rule cited above.

This raises the question of precisely how many years of TSR history should be disclosed on the pay/performance table in the initial year of disclosure. We read the proposed rules to mean that the starting point for the first TSR "measurement period" under 402(v)(2) under the transitional rule is not five years before any fiscal year disclosed on the table, but rather only begins on the last trading day before the registrant's earliest fiscal year in the table.

The following example for a 2016 fiscal year proxy will illustrate our reading of the proposed rule:

Table 5

Fiscal Year in Table	Measurement Period Using 402(v) Definition	Measurement Period Using 201(e) Definition
2015	12/31/12 – 12/31/15	12/31/10 – 12/31/15
2014	12/31/12 – 12/31/14	12/31/09 – 12/31/14
2013	12/31/12 – 12/31/13	12/31/08 – 12/31/13
2012	N/A	N/A
2011	N/A	N/A

We're uncertain whether our interpretation was intended. In any event, we believe it would be preferable from a consistency standpoint to use the Item 201(e) measurement period.

Recommendation: We suggest that the instruction be clarified to require registrants to provide the same five-year history of TSR performance as is required in the Item 201(e) disclosure. Our view is that the truncated measurement period disclosed per our interpretation of the current instructions will unduly focus shareholders on the performance of the company for a single year, which is in contrast to the rule that would apply in subsequent years. Similarly, having truncated periods in place will make it more difficult for shareholders trying to compare five-year TSR from the initial year of disclosures to the current year. The instruction at section 402(v)(2)(iv) should instead read:

> (iv) For purposes of columns (f) and (g) of the table required by paragraph (v)(1) of this Item, for each year disclose the cumulative total shareholder return of the registrant (column (f)) and peer group cumulative total shareholder return (column (g)) calculated in the same manner, and over the same measurement period, as under Item 201(e) of Regulation S–K. The term ''measurement period'' shall be the period beginning at the ''measurement point'' established by the market close ***on the last trading day before the beginning of the registrant's fifth***

preceding fiscal year, through and including the end of the registrant's last completed fiscal year.

VIII. Conclusion

We appreciate the opportunity to offer these comments and would be pleased to provide any additional information that might be helpful to the Commission in finalizing the proposed rules.

Please contact Steve Seelig at [redacted] if you have any questions or need further information regarding the substance of our comments.

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