



VIA EMAIL

July 7, 2015

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

Re: Pay for Performance (Release No. 34-74835; File No. S7-07-15)

Dear Mr. Fields:

The Society of Corporate Secretaries and Governance Professionals appreciates the opportunity to provide comments on the U.S. Securities and Exchange Commission's (the "Commission's") proposed amendments to Item 402 of Regulation S-K (the "Proposed Rule") to 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 (the "Dodd-Frank Act"). Section 953(a) mandates disclosure regarding the relationship between executive compensation and the financial performance of a company. The Proposed Rule seeks to implement this mandate by requiring a new table comparing executive compensation "actually paid" to total shareholder return and disclosure that describes the relationship between pay and performance in either narrative or graphic form.

Founded in 1946, the Society is a professional membership association of more than 3,200 corporate secretaries, in-house counsel, and other governance professionals who serve approximately 1,600 entities, including 1,000 public companies of almost every size and industry. Society members are responsible for supporting the work of corporate boards of directors and their committees and the executive management teams of their companies regarding corporate governance and disclosure. Our members generally are responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

Summary

In the years since the adoption of "say on pay," many companies have found different ways to tell their respective pay for performance stories. Companies have employed various graphical and tabular presentations, along with evolving narrative descriptions of compensation plans, including how the plan design is intended to incentivize the long-term growth and success of the business. Boards and compensation committees have provided increasingly granular and more transparent discussions about: (i) plan design and objectives and their relationship to the company's strategy, (ii) financial and non-financial performance, and (iii) justifications for compensation awarded given the executive and/or company's performance. The Commission has encouraged these positive developments with its consistent focus on principles-based disclosure.

We do not believe the Proposed Rule, however, with its prescriptive tabular disclosure and focus on narrow measures of compensation and performance, achieves Section 953(a)'s purpose, which is to provide shareholders with meaningful information that will help them assess a company's pay for performance philosophy. As the Commission notes in the proposing release, a report by the Senate Committee on Banking, Housing and Urban Affairs indicated that the rules mandated by Section 953(a) of the Dodd-Frank Act "were not intended to be overly-prescriptive and that Congress recognized that there could be many ways to disclose the relationship between executive compensation and financial performance of the registrant."¹ Accordingly, we urge the Commission to amend the Proposed Rule to provide registrants with flexibility in defining compensation "actually paid" and comparing that to the measure or measures of financial performance most appropriate for their individual companies. The new disclosures under the Proposed Rule should complement a company's existing principles-based Compensation Discussion and Analysis ("CD&A"), not create a conflict between that narrative and a prescriptive table. The CD&A reflects board and compensation committee perspectives on how they are designing compensation programs and selecting goals to incentivize long-term performance.

For the reasons described in more detail below, we recommend the following:

1. Recognize that meaningful comparability among compensation programs and performance measures for all registrants, including in disclosure documents, is not possible or desirable;
2. Adopt a principles-based approach to defining "executive compensation actually paid";
3. Replace total shareholder return ("TSR") as the sole measure of financial performance with a principles-based approach;
4. Eliminate any required disclosure regarding peer groups;
5. Modify the aggregation requirement for multiple Principle Executive Officer ("PEO") compensation during a transition year;
6. Eliminate the XBRL tagging requirement; and
7. Clarify that "no greater prominence" refers only to size of the pay versus performance table and not to supplemental disclosures.

1. Meaningful Comparability Among Compensation Programs and Performance Measures Across All Registrants is Not Possible or Desirable

In the proposing release, the Commission requests comment on whether the substance and format of the Proposed Rule would or should promote comparability across public company registrants. We respectfully submit that meaningful comparisons of compensation programs, the amount of compensation paid to executive officers, and performance are not possible or desirable. We are mindful of the views expressed by certain institutional investors for comparability when determining whether to buy or sell a security in a particular industry, or when voting a particular company's shares in light of performance against its peer group. In fact, the Summary Compensation Table is used for those comparisons, and it represents the expense associated with pay decisions rather than pay actually received. However, the relationship between compensation actually paid and company performance cannot be determined by the SCT and is not comparable. A working group led by the Conference Board, of which the Society was a member, described the framework of pay disclosure as follows:²

¹ Pay Versus Performance, Exchange Act Release No. 34-74835, 8 Fed. Reg. 26,330 (May 7, 2015).

² The Conference Board Working Group on Supplemental Pay Disclosure, "Supplemental Pay Disclosure: Overview of Issues, Proposed Definitions, and Conceptual Framework," 3 (2013).

Summary Compensation Table. The Summary Compensation Table definition of total pay is mandated by SEC rules and provides a measure of pay that is comparable across companies. However, this definition includes a mix of some elements that are actual pay, such as salary and annual incentives, and other elements that are accounting estimates of future potential pay, such as performance shares, restricted stock and stock options. Further, annual fluctuations in the discount rate for pension calculations are not part of the pay decision by the compensation committee and may significantly distort the Summary Compensation Table measure of total pay, especially during periods of declining interest rates. **Thus, while the Summary Compensation Table provides helpful information regarding the expense associated with the compensation committee’s intended level of pay, the Summary Compensation Table definition is not as useful in assessing pay for performance or pay versus alignment with shareholders in the form of total shareholder return.**

Realizable Pay. Realizable pay is used primarily to show the alignment between changes in executive compensation and changes in returns to shareholders over a period of time, typically three years. The group believes that **realizable pay is the most appropriate metric for showing the alignment of incentive compensation with shareholder interests over the period of time analyzed and comparing that alignment with peers.**

Realized Pay. Realized pay is used primarily to show the ultimate relationship between pay actually received at the end of the performance period and performance against the specific metrics in the annual and long-term incentive plans that drove incentive payouts. **The group believes that realized pay is the most appropriate metric for comparing total pay actually realized by an executive to his or her company’s performance.** (emphasis added)

The Proposed Rule’s prescriptive definition of compensation actually paid sacrifices meaning in the interests of comparability. Comparability works only if each company structures compensation and aims to link it to performance in a similar way. This is manifestly not the case. There is – appropriately, because no two companies are situated identically – vast diversity in compensation philosophies, markets for talent, compensation elements, performance measures, performance periods, vesting schedules, and a myriad of other factors that comprise pay programs. Similarly, each company’s equity reacts uniquely, in magnitude, speed and duration, to its own financial performance, the performance of its peers, the behavior of the overall market, and macroeconomic factors. Companies implementing the rule as proposed will strive to explain why compensation “actually paid” versus TSR oversimplifies and fails to accurately explain the link between its pay and its performance. As a result, the Proposed Rule risks the opposite of its intended effect to provide meaningful comparability.

The Dodd-Frank Act does not require that the rule be structured to optimize for comparability to this degree, especially at the expense of each registrant using measures that represent its own priorities, methods and circumstances to most accurately demonstrate the link between *its* pay and *its* performance. Section 953(a) mandates only that companies present compensation information (but not the same information) showing the relationship between financial performance and compensation actually paid – taking into account stock price, dividends and distributions. The prescriptive nature of the Proposed Rule will preclude case-specific, thoughtful and nuanced information that is the hallmark of effective disclosure.

2. Adopt a Principles-Based Approach to Defining “Executive Compensation Actually Paid”

Section 953(a) provides the Commission with wide discretion to formulate a definition of “executive compensation actually paid.” We believe a principles-based approach to defining “executive compensation actually paid” is preferable to the proposed prescriptive approach and that the rules should provide flexibility for each company’s compensation committee to determine and explain when compensation is “actually paid,” over which period performance is measured and how the compensation committee measures the company’s and the executive officers’ performance.

“Executive Compensation Actually Paid” for Stock Options Should Be Based on the Exercisable Value, Not Fair Value, on the Vesting Date

If the value of equity awards is included in the definition of “executive compensation actually paid,” stock options should be valued at the difference between the underlying stock’s market value and the strike price of the option on the vesting date. Fair value calculations are complex, and registrants often engage outside actuarial firms to assist in the calculation (especially in the case of registrants that use a lattice-based option valuation mode). Requiring another fair value calculation, in addition to that already included in the Summary Compensation Table, creates an administrative burden and expense for registrants without providing meaningful comparative information for investors on the amount “actually paid” to the executive.

The fair value of stock options incorporates a projection of the future value of the award based partly on the expected volatility and expected term of the option. These future projections attempt to place a consistent numerical value on all options granted at a particular time and under the same terms on all executives that received the options, essentially normalizing the valuation across all executives’ options for variations in exercise decisions and stock price volatility at the time of exercise. Using this projected methodology is incorrect for two reasons: first, projecting future valuation of the option is inconsistent with the present nature of the “actually paid” concept; and second, normalizing term and volatility assumptions for *all* executives is inconsistent with the Proposed Rules’ disclosure for individual executives and shareholders’ likely assumption that *each* executive received the compensation reported as “actually paid.” Once an option has vested, any additional increase or diminution in value that an executive may receive upon future exercise is derived from the executive’s decision as to when to exercise. To the extent there is value to be attributed to the ability to make that decision, the value is already included in the Summary Compensation Table’s grant date fair value. The value that is more representative of actual value on the vesting date is the value that the executive has an unconditional right to receive on the vesting date. This should be measured as the amount the executive would receive if he or she exercised the option on that date.

“Executive Compensation Actually Paid” Should Exclude Severance Payments and Signing Incentives

The Society believes that severance benefits and one-time signing incentives should be excluded from the definition of “executive compensation actually paid.” Including extraordinary compensation triggered by termination of employment or offered as a signing incentive could adversely distort the disclosure because such payments are typically made under contractual arrangements that serve a unique purpose and have little to do with a company’s actual performance. Requiring these payments to be included in the table reduces comparability in companies’ compensation actually paid disclosures, and requiring a company to explain in the narrative the connection between those payments and performance is meaningless. Severance awards and signing incentives are disclosed elsewhere in the

proxy statement and we respectfully request that the final rules exclude them from the pay versus performance table.³

3. Replace Total Shareholder Return (“TSR”) as the Sole Measure of Financial Performance with a Principles-Based Approach

Section 953(a) of the Dodd-Frank Act requires that the disclosure take TSR “into account,” but does not mandate that TSR be the sole sanctioned measure of financial performance. As the report by the Senate Committee on Banking, Housing and Urban Affairs stated: “This disclosure about the relationship between executive compensation and the financial performance of the issuer *may* include a clear graphic comparison of the amount of executive compensation and the financial performance of the issuer *or* return to investors and *may take many forms*” (emphasis added throughout).⁴ For the reasons set forth below, we respectfully request that the Commission replace TSR as the sole measure of performance with a principles-based approach.

The Use of TSR as the Sole Performance Measure is Not Correlated to the Underlying Financial Performance

Sole reliance on TSR to measure financial performance of an issuer will not result in disclosure that reflects the relationship between executive compensation and financial performance. TSR is impacted by many external factors and does not necessarily directly correlate with financial performance. In fact, research by Frederick W. Cook & Co., Inc. has shown a disconnect about half of the time between TSR and company performance based on financial results when observing three-year performance cycles (“a review of relative TSR versus relative financial operating performance (defined as GAAP revenue, net income and diluted earnings per share growth) over the last 1 years indicates that, among the Top 250 companies, alignment between TSR and financial performance can be disconnected when measuring over shorter finite periods, but over time tend to be strongly correlated. When observing individual three-year performance cycles, only about half of the observations showed strong alignment.”).⁵

This research underscores the issues with using TSR as the sole measure of company performance. As stated by Roland Burgman and Mark Van Clieaf in their article analyzing TSR as a performance metric, “TSR primarily measures...a shift in shareholder expectations about future cash flows, compounded (in value-creation terms) by the actual or notional reinvestment of dividends received in terms of share accumulation when dividends are actually paid. By definition, then, TSR does not measure a change and only a change in the actual EP [economic profit] of the underlying business; what it does measure is the change in expectations about the retention of and change to existing economic performance.”⁶ Reflecting on intra-period TSR volatility, they argue that “not all TSR is

³ *Id.* at 13: “For the specific purpose of comparing pay for performance and pay for alignment, the analysis should use salary, bonus, annual incentive and long-term incentives. The supplemental pay disclosure should not include special awards . . . or calculations of the annual change in the present value of annual accruals of pension benefits since such awards are not directly tied to the achievement of performance objectives.”

⁴ Pay Versus Performance, *supra* note 1.

⁵ Frederick W. Cook & Co., Inc., RELATIVE TOTAL SHAREHOLDER RETURN PERFORMANCE AWARD REPORT 1 (2012), available at http://www.fwcook.com/alert_letters/The_2014_Relative_Total_Shareholder_Return_Performance_Award_Report.pdf.

⁶ Roland Burgman & Mark Van Clieaf, *Total Shareholder Return (TSR) as a Management Performance: Performance Metric Appropriately Used, or Mostly Abused?* 5 *Rotman Int'l J. Pension Mgmt.* 26, 28 (2012) (emphasis omitted), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2147777.

created equal,” noting that sometimes positive TSR correlates with the destruction of shareholder value and vice versa.⁷ Burgman and Van Clieaf’s conclusion is that there are “not one but eight states of the quality of TSR,” depending on how other measures performed, such as economic profit, return on invested capital and future value.⁸

In addition, if the pay for performance disclosure requirement mandates the use of TSR as the performance measure, companies may feel compelled to move to TSR as their incentive plan performance metric to ensure alignment for this disclosure. This could have unanticipated consequences for companies and their shareholders, potentially leading to worse performance among those companies. A recent Proxy Mosaic White Paper reported a study showing that in 2012, nearly a quarter of the companies in the study had negative shareholder returns despite the fact that they used TSR as performance metric.⁹ Their research also found that “large companies (i.e. those with revenues of over \$30 billion annually) that relied on TSR as a performance metric performed worse over five years than those that did not.... In fact, companies that used TSR as a performance metric actually performed 30% worse over five-year period than companies that did not. [They] even found a moderate negative correlation between the use of TSR and return on invested capital, which suggested that TSR use might have an adverse effect on other measures of performance.”¹⁰

This study highlights our concern with using TSR as the sole performance measure in the Proposed Rule. The Commission acknowledges in the proposing release that compensation structure that strongly links compensation to stock performance may not be optimal.¹¹ The Commission also recognizes the risk that using TSR may “... result in shareholders or management focusing too much on this single measure of performance or emphasizing short-term price improvement over the creation of long-term shareholder value”.¹² We very much agree. Although the Commission asks if there are ways to mitigate that risk, we do not believe that is possible. As a result, we think the principles-based approach is the better way, particularly since nothing in the legislation requires the use of TSR—it simply provides that companies “take into account any change in value of the shares of stock and dividends of the issuer and any distributions.”

Allow Companies to Select an Appropriate Measure and Measurement Period for Performance

Instead of using TSR as the sole performance measure, we recommend that the Commission provide flexibility for companies to use the financial performance metrics that are most relevant for their industry, business and other unique circumstances. For example, operating efficiency and productivity metrics are used in certain industries, market share in others, EPS in others, ROE or price to book multiples for insurance companies, and ROAIC in others. Similarly, others, such as REITs, use cash flow measures such as free cash flow, or working capital measures. Start-up companies may use year over year sales growth. Web-based companies may use time spent on the site and unique page views. Social media companies may measure themselves based on advertising revenue or number of daily

⁷ *Id.* at 26.

⁸ *Id.*

⁹ Proxy Mosaic, *TSR AND THE FRAYING LINK BETWEEN PAY AND PERFORMANCE* (2014), available at <https://www.proxymosaic.com/wp-content/uploads/2014/06/TSR-and-the-fraying-link-between-pay-and-performance.pdf>.

¹⁰ *Id.* at 4, 5.

¹¹ *Pay Versus Performance*, *supra* note 1 at 26,353.

¹² *Id.* at 26,341.

active users.¹³ Furthermore, TSR frequently is used as a reference point, a modifier or collar for the other metrics. Should the Commission decide not to follow a principles-based approach, we respectfully request that the Commission allow registrants to include an additional financial metric and measurement period that the registrant believes is more strongly correlated with shareholder returns, or is otherwise a more appropriate measure of the registrant's performance, in the prescribed table and for the narrative description of the relationship between executive compensation actually paid and the registrant's performance. In addition, we request that the Commission clarify the measurement period for TSR. It is unclear in the release whether the proposed rule is intended to reflect five one-year TSRs, a cumulative annual five-year TSR, or aggregated TSR over time.

A principles-based approach would also address the apparent disconnect in the timing between the cumulative TSR periods and the annual compensation amounts. We note that in many cases, compensation paid in one year typically relates to performance in the prior year (particularly for the vesting of performance-based equity awards). Compensation plans with multi-year performance periods further exacerbate the challenge of prescribing a specific measurement period for TSR and trying to compare that to compensation paid to executives.

4. Eliminate Any Required Disclosure Regarding Peer Groups

In addition to the comments above with respect to the merits of using TSR as the appropriate measure of performance, we are concerned with the requirement under the Proposed Rule for a company to disclose the TSR of its peers and the relationship between the company's TSR and the TSR of its peers because we do not believe these disclosures would inform shareholders' understanding of the company's compensation programs and compensation paid to its executive officers. The peer groups used for purposes of the performance graph are broad-based indices and often include hundreds or thousands of companies. Most companies do not choose to measure performance against these broad indices, much less design or measure compensation against peer groups in the indices. Accordingly, the performance graph peer group is not appropriate for comparing compensation and performance.

The proposed rule, in Item 402(v)(2)(iv), requires for each year disclosure of the cumulative total shareholder return of the registrant and peer group cumulative total shareholder return, calculated in the same manner and over the same measurement period as under Item 201(e) of Regulation S-K, and further requires that the same methodology must be used in calculating both the registrant's total shareholder return and that of the peer group. Instruction 7 to the proposed rule provides that the returns of each component issuer of the peer 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. Further, as described in the Proposing Release, in contrast to the performance graph currently required by Item 201(e) of Regulation S-K, the pay-versus-performance disclosure, including total shareholder return ("TSR") for the registrant and for a peer group, will be deemed to be "filed" with the SEC in certain proxy or information statements and subject to the liabilities of Section 18 of the Exchange Act. The SEC asks for comment on whether the disclosure about TSR should be deemed filed, as proposed, and if the TSR disclosure should be deemed to be "furnished," whether such treatment should apply only to peer group TSR.

Discussion of Peer Group TSR is Burdensome and Not Meaningful

¹³ http://www.stern.nyu.edu/sites/default/files/assets/documents/con_042969.pdf

Section 953(a) of the Dodd-Frank Act does not require the pay-versus-performance disclosure to include information on peer group performance or to compare registrant TSR with the TSR of a peer group and we do not believe it is necessary or helpful to include this information because performance of a peer group is often not relevant in companies' compensation decisions. Furthermore, information on peer group performance is already disclosed in the performance graph required by Item 201(e) of Regulation S-K. However, if the final rule requires this disclosure, we suggest that the rule allow an issuer to rely on publicly available information in calculating the TSR of its peer group. We also believe that the disclosure regarding peer group TSR should be deemed "furnished" rather than "filed" with the SEC, consistent with the treatment currently afforded to the Item 201(e) disclosure. We do not believe it is appropriate to expose companies to liability under Section 18 of the Exchange Act for peer group TSR disclosure when in calculating such information it is able to rely only on information made available by members of the peer group and the company has no insight into or control over the accuracy of the information. The final rule should also make it clear that regardless of whether a registrant selects as its peer group the index or issuers used for purposes Item 201(e)(1)(ii) or the companies it uses as a peer group in its CD&A under Item 402(b), it will have no liability under the Exchange Act for any peer group information disclosed.

Thus, requiring a narrative explanation of the peer group's TSR performance is burdensome and impractical. There could be a number of reasons for the growth or decline of a company's TSR, including short-term market fluctuations at the beginning or end of the period, market perceptions, macroeconomic conditions, geo-political risks, an increase in dividends, or performance correlated to other financial metrics. While it is reasonable for the company to explain its own particular performance (and the company is, in fact, required to do so in its CD&A), it is not feasible or appropriate to require registrants to explain the performance of other companies without insight into their strategy and execution plans, or a larger discussion of economic, political, and market conditions.

Finally, the Proposing Release also appears to limit the peer group that may be used for purposes of Item 402(v) to the peer group used in the CD&A for compensation benchmarking. This does not account for the fact that some registrants use different peer groups for different purposes, including for purposes of measuring registrant performance as part of the compensation decision-making process, and that it may be equally or more appropriate for such registrants to use one of such other peer groups in their pay-versus-performance disclosure. As a result, we believe that the final rules should allow registrants to use any one of the peer groups they use in their CD&A when disclosing their pay-versus-performance information under Item 402(v), provided that the registrant will be able to demonstrate consistent and good faith usage of such selected peer group in its CD&A and to explain any change in the peer group it uses in its Item 402(v) disclosure from year to year.

5. Modify the Aggregation Requirement for Multiple PEO Compensation During Transition Year

The Proposed Rule requires a registrant to disclose the aggregate compensation actually paid for all persons who served as PEO in that fiscal year. In years when a PEO transition occurs, there is a significant risk that the aggregation requirement could be misleading to shareholders because of the unique factors at play during a PEO transition. Therefore, for the reasons set forth below, we urge the Commission to amend the Proposed Rule to provide for flexibility in disclosing the compensation paid to PEOs during a transition year.

Disclosure Should Be Limited to Compensation for Services as the PEO

When an internal candidate becomes the PEO or the predecessor PEO stays on as an executive chair or in an advisory role¹⁴ the compensation provided to these individuals in the year of transition is partly for their services as PEO and partly for their services in the other position. The Proposed Rule's stated rationale for the aggregation requirement – that the aggregate numbers reflect the total amount paid by the registrant for PEO services – does not support including in the aggregate number compensation for services in other positions. The aggregation requirement should be modified so that it includes only compensation received for services as PEO. Companies often hire internal candidates as a PEO and/or retain predecessor PEOs as executive chair to facilitate a smooth PEO transition, and the aggregation requirement should not place companies that do so on an unequal footing when PEO compensation is compared to performance. Considering that the compensation plans for the PEOs will be discussed in detail in the CD&A, we urge the Commission to provide flexibility to select an appropriate allocation methodology to reflect the compensation actually paid for PEO services for the transition year and to disclose the methodology selected.

If the Commission determines not to provide the requested flexibility, the alternatives suggested by the Commission – i.e., separate tabular disclosure for each individual who served as a PEO during the fiscal year, including only the compensation received as the PEO, or annualizing the compensation of the PEO serving at the end of the fiscal year¹⁵ – are preferable to aggregating PEO compensation. To include only the compensation received as the PEO, companies should be allowed to prorate each PEO's compensation based on time served as PEO and aggregate the two prorated amounts for the individual PEOs. (If the combined service of both PEOs is less than a calendar year, then the total of the two prorated amounts for each PEO should be annualized.) These alternatives would result in better cross-registrant comparability than aggregating annual compensation for each PEO because the alternative methods more accurately represent the compensation "actually paid" during the year to the PEO while serving in the PEO position.

6. Pay for Performance Data Should Not be Required to be Tagged in XBRL Format

We do not believe that tagging the pay for performance data in XBRL format is necessary or useful to investors given the variation among different executive compensation plans. It could even be potentially misleading since the data, particularly the compensation amounts, will likely be taken out of context and analyzed without appropriate attention to the rest of the disclosure that explains the data. In addition, the perceived benefits of tagging the data do not outweigh the additional burden on companies to comply with this requirement, which is particularly acute for small and mid-cap companies. For these reasons, we recommend that the Commission not require this information to be tagged in XBRL format.

¹⁴ According to research by Spencer Stuart, more than 70% of CEOs hired by S&P 500 companies between 2007 and 2014 were internal candidates. Furthermore, approximately half of the outgoing S&P 500 CEOs in 2013 and 2014 continued with the company as board chair and, in many of these cases, the outgoing CEO continued to serve and was compensated as an executive chair. See Spencer Stuart, 2014 CEO TRANSITIONS (2015), available at <http://www.spencerstuart.com/research-and-insight/2014-ceo-transitions/>.

¹⁵ Note that a rule permitting annualized compensation should be clear that compensation otherwise accurately reflected (such as the grant date fair value of stock or option award, in circumstances where the amount of the award would have been the same regardless of whether the individual was PEO for part or all of the year) need not be annualized.

XBRL is a data-driven tool that allows investors to easily compare and analyze financial information about companies. By collecting and organizing financial data into downloadable spreadsheets, investors can readily analyze the data and compare financial results across companies. This works with financial statement information, where Generally Accepted Accounting Principles (GAAP) dictate how companies account for specific line items, such as revenues, expenses and diluted earnings per share. However, as discussed above, meaningful comparability among compensation programs across registrants is not possible. Each company's executive compensation program design is unique and tailored specifically to incent its executives and employees in the most meaningful way. The compensation disclosures and explanatory narratives in the Proxy Statement are critical to an investor's understanding of compensation data. In XBRL format, the connection between the numerical information and the narratives and explanatory notes that give important context for this information will be lost.

In certain cases, this could potentially even lead to misleading information for investors. In a CEO transition year under the proposed rules, for example, there would be a gross overstatement of CEO compensation actually paid if the amounts are aggregated for both CEOs. If an investor simply looks at the CEO compensation data in XBRL format without reading the explanatory information or seeing the full disclosure in the Proxy Statement, he or she may not realize that the amount includes two individuals' compensation information versus a single individual at most other companies. The distinctions between what is paid in cash versus what is paid in equity, or what is guaranteed versus what is at risk, is also lost in this format. Requiring XBRL format of this data will over-emphasize the amount of compensation "actually paid," over-simplify compensation program designs, and de-value the CD&A disclosures.

Similarly, the potential for misleading information would also be problematic for a company that provided supplementary disclosure in order to explain why TSR was not the appropriate metric for their circumstances, and which other metrics were more relevant. This supplementary disclosure would be completely lost to an investor who focused only on the XBRL data, and thus the investor may end up with an incomplete and potentially misleading picture of how that company's compensation program takes pay for performance into account.

In addition, this would be the first time that information in Schedule 14A Proxy Statements would be tagged in XBRL, which imposes a significant burden on companies (particularly small and mid-cap companies) to establish processes and systems to convert the Proxy Statement into XBRL-compatible formats and layer on appropriate training and review time for the team working on the Proxy Statement to implement the XBRL tags.¹⁶ Moreover, there is no evidence that since the initial requirement of XBRL in periodic filings under the Securities Exchange Act of 1934, as amended, there has been widespread use or benefit by the investment community. Given the lack of meaningful comparability and context of stand-alone executive compensation data as well as the potential for it to be misleading to investors, we do not believe that the perceived benefits of tagging this information in XBRL format outweigh the burden on registrants.

¹⁶ In addition, we note that at many, if not most, companies, the Proxy Team does not include the finance team responsible for tagging XBRL data in Form 10-Ks and Form 10-Qs. There would be a significant learning curve for Proxy Teams to become familiar with the intricacies of the data tagging process. There are also timing considerations for conversion, review and testing of XBRL exhibits before filing, which will put pressure on registrants who are already on tight schedules to meet printing and filing deadlines.

7. Clarify That “No Greater Prominence” Refers Only to Size of the Pay Versus Performance Table and Not to Supplemental Disclosures

With respect to supplemental disclosures, we appreciate the Commission’s recognition that companies may choose to include supplemental disclosures using alternative measures as they deem appropriate. However, we respectfully request that the Commission’s statement about “no greater prominence” be clarified in the final rule proposal to refer only to the size of the graph, not its location in the Proxy Statement or length of the related narrative.

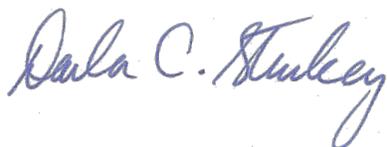
First, the Schedule 14A rules do not prescribe any order of the required disclosures in the Proxy Statement. Companies should be able to determine the order of the pay for performance graph and supplemental graphs within the proxy as best flows with the rest of the document.

Secondly, there may be need to provide more narrative description of the formula and calculation for supplemental disclosures than the required graph. Companies should not feel constrained when preparing the explanation for supplemental disclosures, especially if that additional narrative is necessary to avoid any confusion or misleading disclosure. clarification in the final rule proposal that this statement refers only to size of the graph would ensure that companies can provide appropriate supplemental disclosure to assist shareholders in understanding their executive compensation programs and alignment with company financial performance.

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We appreciate the opportunity to provide comments on this important rulemaking and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,



Darla C. Stuckey
President and CEO

- cc: Mary Jo White, Chair
Luis A. Aguilar, Commissioner
Daniel M. Gallagher, Commissioner
Michael S. Piwowar, Commissioner
Kara M. Stein, Commissioner
Keith F. Higgins, Director, Division of Corporation Finance
Rachel C. Lee, Chair, Corporate Practices Committee, SCS&GP
Joseph B. Amsbary, Jr., Chair, Policy Advisory Committee, SCS&GP