

Pay Versus Performance



The Securities and Exchange Commission adopted final rules implementing the pay versus performance requirement as required by Congress in the Dodd-Frank Act.

The rules will require registrants to disclose, in proxy or information statements in which executive compensation disclosure is required, how executive compensation actually paid by the registrants related to the financial performance of the registrants over the time horizon of the disclosure.

Background

Section 14(i) of the Securities Exchange Act of 1934 was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act and requires the SEC to adopt rules requiring a registrant to disclose the relationship between executive compensation actually paid and the financial performance of that registrant.

In April 2015, the SEC [proposed amendments](#) to Item 402 of Regulation S-K to implement the pay versus performance disclosure requirement. In January 2022, the SEC [reopened the comment period](#) for the 2015 proposed rules and provided the public with the opportunity to comment further and to address certain additional requirements the Commission was considering in connection with the reopening of the comment period.

What's Required

The rules will apply to all reporting companies, except foreign private issuers, registered investment companies, and Emerging Growth Companies. Smaller Reporting Companies ("SRCs") will be permitted to provide scaled disclosures.

New Item 402(v) of Regulation S-K will require registrants to provide a table disclosing specified executive compensation and financial performance measures for the registrant's five most recently completed fiscal years.

Registrants will be required to include in the table, for the principal executive officer ("PEO") and, as an average, for the other named executive officers ("NEOs"), the Summary Compensation Table measure of total compensation and a measure reflecting "executive compensation actually paid," calculated as prescribed by the rule.

The financial performance measures to be included in the table are:

- Total shareholder return ("TSR") for the registrant;

- TSR for the registrant’s peer group;
- The registrant’s net income; and
- A financial performance measure chosen by the registrant and specific to the registrant (the “Company-Selected Measure”) that, in the registrant’s assessment, represents the most important financial performance measure the registrant uses to link compensation actually paid to the registrant’s NEOs to company performance for the most recently completed fiscal year.

New Item 402(v) also will require a registrant to provide a clear description of the relationships between each of the financial performance measures included in the table and the executive compensation actually paid to its CEO and, on average, to its other NEOs over the registrant’s five most recently completed fiscal years. The registrant will be required to also include a description of the relationship between the registrant’s TSR and its peer group TSR.

A registrant will also be required to provide a list of three to seven financial performance measures that the registrant determines are its most important measures (using the same approach as taken for the Company-Selected Measure). Registrants are permitted, but not required, to include non-financial measures in the list if they considered such measures to be among their three to seven “most important” measures.

Registrants will be required to use Inline XBRL to tag their pay versus performance disclosure.

What’s Next

The rules will become effective 30 days following publication of the release in the Federal Register. Registrants must begin to comply with these disclosure requirements in proxy and information statements that are required to include Item 402 executive compensation disclosure for fiscal years ending on or after December 16, 2022.

Registrants, other than SRCs, will be required to provide the information for three years in the first proxy or information statement in which they provide the disclosure, adding another year of disclosure in each of the two subsequent annual proxy filings that require this disclosure. SRCs will initially be required to provide the information for two years, adding an additional year of disclosure in the subsequent annual proxy or information statement that requires this disclosure. In addition, an SRC will only be required to provide the required Inline XBRL data beginning in the third filing in which it provides pay versus performance disclosure, instead of the first.

Additional Information:

Visit [sec.gov](https://www.sec.gov) to find for more information about the adopted amendments and the full text of the final rules.