Please note that the comments expressed herein are solely my personal views

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- 17 CFR Parts 229, 240 and 249
- Release No. 34-74835
- File No. S7-07-15
- Pay Versus Performance

Dear Sir.

Thank you for giving us the opportunity to comment on your Proposed rule on Pay Versus Performance.

You are proposing amendments to Item 402 of Regulation S-K to implement Section 14(i) of the Securities Exchange Act of 1934 (Exchange Act), as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 14(i) directs the SEC to adopt rules requiring registrants to disclose in a clear manner the relationship between executive compensation actually paid and the financial performance of the registrant. The proposed disclosure would be required in proxy or information statements in which executive compensation disclosure pursuant to Item 402 of Regulation S-K is required. The proposed disclosure requirements would not apply to emerging growth companies or foreign private issuers.

I support proposed new Item 402(v) of Regulation S-K that would require a registrant to provide a clear description of: the relationship between executive compensation actually paid to the registrant's NEOs and the cumulative total shareholder return (TSR) of the registrant; and the relationship between the registrant's TSR and the TSR of a peer group chosen by the registrant, over each of the registrant's five most recently completed fiscal years. In my view the proposal is rather prescriptive, and certainly more prescriptive than required by Section 953(a) of the Dodd-Frank Act. However, I believe that this level of prescription is necessary in order to provide a consistent and comparable approach and interpretable results for different registrants.

In answer to your specific question 21, the proposed definitions of compensation do appropriately capture the concept of “executive compensation actually paid”. In particular the compensation required to be disclosed should be based on total compensation and not only on amounts that are based on the financial performance of the company, as there is wide variability in the split of fixed and variable components of total compensation, and the split changes over time and between executives within the same company. Total compensation is more consistent and comparable between different companies and less easy to manipulate.

In answer to specific question 22, I strongly believe that comparability across registrants is relevant and necessary in determining which compensation elements should be covered by the pay-versus-performance disclosure. The main aim should be to provide meaningful information to the users of the financial statements. The alternative of a principles-based approach would lead to companies simply showing the best picture of executive performance relative to company performance, which would not provide meaningful information. I caution however that the prescriptive approach may not allow for all of the nuances and differences that exist in executive compensation structures, and would recommend that users should analyze the resulting information and disclosures over time as trends, as an aid to decision-making, rather than only looking at information and disclosures at a single point in time.

In answer to specific question 27, the proposal to require only the actuarial present value of benefits attributable to services rendered during the applicable fiscal year, rather than the change in actuarial present value of pension benefits that is required by the Summary Compensation Table, does not necessarily appropriately reflect compensation “actually paid” to NEOs during that year for purposes of the pay-versus-performance disclosure mandated by Section 14(i). The change in the actuarial present value of pension benefits over a period represents an estimate of the full additional cost of securing the accrued pension benefits over the period. However, I agree that the actuarial present value of benefits is highly sensitive to exogenous factors like interest rates, which do not necessarily fairly reflect the executives’ performance over the period. In this case I support the use of actuarial present value of benefits attributable to services rendered as a fair measure of pension-related compensation over the period.

In answer to specific question 34, I agree that you should require registrants to use cumulative total shareholder return (TSR) as the performance measure. TSR is a well-known and widely used metric. It is also relatively straightforward to determine and fairly represents the financial performance over the period. I agree that the comparability across registrants resulting from this proposal would benefit shareholders, and that prescribing the use of TSR would not hinder registrants from providing meaningful disclosure about the relationship between executive pay and financial performance. I do not believe that requiring the use of TSR would result in shareholders or management focusing too much on this single measure of performance or emphasizing short-term stock price improvement over the creation of long-term shareholder value; this is happening anyway, and would not worsen because of this new measure.

In answer to specific questions 40 and 41, I would support a “freedom with publicity” approach. For example I would recommend that a registrant be permitted to choose between the two options of using the same peer group used for purposes of Item 201(e) or the CD&A. A registrant should also be permitted to choose a peer group different from that used for purposes of Item 201(e) or its CD&A. However, I would recommend that you should require disclosure about the registrant's selection of the peer group and a brief narrative explaining the reasons for any changes in the peer group from one period to another. This will permit some flexibility to choose the most appropriate peer group, and will increase transparency and promote the selection and use of an appropriate peer group.

In answer to specific question 43, I would not support the proposed transition period for existing registrants. This will not bring significant relief.

In answer to specific question 44, I would recommend that you should not permit registrants to voluntarily include fiscal years beyond the five-year period. There is clearly a risk that some registrants may choose the time period which is most favorable for performance. We see this in similar situations where entities are permitted to choose the period over which financial performance is disclosed.

Yours faithfully

C.R.B.

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