



Axcelis Technologies, Inc.
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Lynnette C. Fallon

Executive Vice President HR/Legal and General Counsel



January 31, 2022

by email to rule-comments@sec.gov

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number S7-07-15: Proposal to adopt a new Item 402(v) of Regulation S-K

Dear Secretary Countryman:

I am General Counsel for Axcelis Technologies, Inc., a Nasdaq-listed public company (ACLS). We are a US-based manufacturer of capital equipment for the global semiconductor industry.

By this letter, I am responding to the Commission's request for comments in Release No. 34-94074, entitled "Reopening of Comment Period for Pay Versus Performance," to implement Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). The Dodd-Frank Act mandated that the SEC adopt a proxy statement rule requiring companies to disclose the relationship between executive compensation actually paid and the financial performance of the company. It is now 2022, more than a decade after the Dodd-Frank Act was made law in 2010, and seven years after the Commission's initial effort to implement Section 953(a) in 2015. Given this passage of time, I encourage the Commission to think critically about the Congressional mandate, which no longer makes sense. In 2022, we all know that neither professional or non-professional investors read proxy statements to analyze either current or potential investments. Implementing the proposed Regulation S-K Section 402(v) would only create busy work for public companies and would not provide any new information to market participants. Congress must recognize this as well.

Professional investors are constantly reviewing publicly available information, making short term and long term decisions based on the most recent financial reporting in earnings and other press releases and in Forms 10-K, 10-Q and 8-K SEC filings, as well as on general information about industries and economies. These professional investors capture financial performance data that is relevant to their analyses, which undoubtedly varies by industry, and have a good understanding of a company's

performance long before the proxy is filed. Many professional investors also rely on evaluative metrics created by proxy advisory firms, especially in the area of equity compensation. This category of investors does not need the Commission to create a new metric on performance and compensation.

“Main street” investors follow stock prices, press releases and television and internet coverage of companies and stocks. By and large, everyday people are not reading and analyzing proxy filings. If they want to know how a company is doing, they will most likely do a google search or go to a site like Yahoo Finance or one of the brokerage firms’ websites to look for coverage. Many will just use the current stock price as a proxy for performance.

I’m sure none of these observations are news to the Commission staff. Given the absence of benefit to the investing public, perhaps the new Item 402 disclosure is designed to improve the decisions of Compensation Committees. However, executive compensation is largely designed in advance of performance to drive results. Compensation designs can be complex, and occasionally, despite the best intentions of the Board, the results of previously designed compensation are not as intended due to some unforeseen factor. Also, companies often still need to retain executives to improve future performance in years when performance lags, sometimes due to factors beyond the executives’ control. Lower pay is not always the right decision for the long term benefit of stockholders. In any event, the Commission must recognize that that situations of performance/compensation misalignment would be known to the members of the Compensation Committee long before the data appears in a proxy statement. This new proposed Item 402(v) disclosure will just go the way of the median employee to CEO pay ratio, which seemed intended to influence compensation decisions. As far as I can see the CEO pay ratio disclosures have had no observable effect on executive compensation, since pay ratios mainly reflect range of jobs at a particular company and industry.

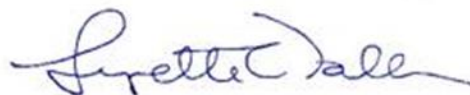
If the Commission really wants to respond to the Congressional mandate and help non-professional investors see both performance and compensation in one place, it could create a website, targeted at “Main Street” investors and perhaps the non-financial media, that provides a set of financial performance data for all public companies in a searchable format. This site could also provide year over year changes in CEO compensation in comparison to these annual and quarterly financial data. If you put this in an easily accessible, easily understandable website, it would get far more use than having companies regurgitate already reported or publicly available financial and stock performance data in the depths of proxy statements (which documents now generally extend for more than 50 pages and are only filed once a year).

At the end of the day, having declined to complete the Dodd-Frank mandate for more than a decade, I would hope the Commission might ask the current Congress to consider whether more proxy disclosure is really useful. I tend to agree with prior SEC commissioner, Daniel Gallagher, who at the open meeting to consider the 2015 proposal, suggested that the Commission “admit that we have not solved the very difficult question of how to align executive pay with performance. Perhaps because we shouldn’t be involved in that determination in the first place.”

I think the Commission’s mandate should be to ensure the availability of accurate information to all investors, but not necessarily to determine how and when the information should be analyzed to make investment decisions. That seems to go beyond the expertise and regulatory scope of the Commission.

If you have any questions or request additional information, please do not hesitate to contact the undersigned at [REDACTED] or at [REDACTED]. Thank you.

Very truly yours,

A handwritten signature in blue ink that reads "Lynnette Fallon". The signature is written in a cursive style with a large initial "L" and a long, sweeping tail.

Lynnette C. Fallon
Executive Vice President HR/Legal, General Counsel and
Secretary