INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001

KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

March 3, 2022

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Reopening of Comment Period for Pay Versus Performance

Dear Secretary Countryman:

The International Brotherhood of Teamsters is pleased to provide comments to the U.S. Securities and Exchange Commission in response to the reopening of the comment period for pay verses performance [Release No. 34-94074; File No. S7-07-15].

The Teamsters Union represents over 1.4 million members across almost every major industry and economic sector in the U.S. Collectively, Teamster affiliated pension and benefits funds have more than $100 billion invested in the capital markets, including long-term holdings in practically every publicly traded equity in the United States. Our Capital Strategies Department actively works to promote the governance of portfolio companies, which includes running public "Vote No" campaigns against problematic executive pay practices. This is done in the belief that executive pay provides both a litmus test of the board's independence and oversight and is central to sustainable, long-term value creation. Poorly designed performance metrics, excessively short-term pay horizons, exorbitant golden parachutes, and incentive payouts shorn of their connection to corporate accountability all undermine long-run value creation, which is crucial to our member and plan participants.

Overall, we welcome the Commission's proposals to increase the objectivity and comparability of the linkages of executive pay to company performance, including the expanded requirements being proposed in the updated release. All too often, proxy statement pay and performance disclosures appear an exercise in corporate persuasion – indeed, compensation consultants frequently emphasize the need for a compelling narrative – rather than offering a candid account. Requiring the expanded tabular disclosures, we believe, will provide a crucial anchor for investors as they evaluate the claims put forward by the company in the compensation discussion and analysis section (CD&A) and elsewhere in the proxy statement.

In a similar vein, as the Commission considers the expanded proposals, we strongly recommend the Commission initiate steps to require companies to provide a full reconciliation of all non-

GAAP performance metrics referenced in the CD&A. Untangling compensation drivers – and the ultimate linkage of pay to executive accountability and sustainable value creation - requires clear disclosure of not only what is included in pay metrics, but what is *excluded* from their calculation. Understanding, for example, if and how compliance-related legal settlement costs are impacting compensation metrics is crucial to assessing whether the correct incentives and executive accountability are fostered by the pay plan.[1] This is exceedingly difficult without GAAP to non-GAAP reconciliation tables. Furthermore, the more prominent these disclosures, the greater likelihood issuers will feel compelled to explain their decisions to exclude what can amount to critical costs of doing business.

Set against these general observations in support of the expanded proposals, we would like to offer the following responses to specific requests for comment:

With regards to Requests for Comment 1 and 2, we strongly support supplementing total shareholder return (TSR) with the company's net income and pre-tax net income results. Why? First, even with contextualizing a company's TSR by reference to peer group performance, investors are still left with only a partial representation of performance for evaluating company management. It is widely noted, for example, that highly leveraged companies or historically poorly performing companies can outperform peers on a TSR basis, at least temporarily, even if their operational performance continues to lag peers.[2] Requiring net income and pre-tax income results, we believe, will provide investors with an equally important gauge of company performance, particularly on a directional basis.

Second, with companies frequently presenting and/or measuring their performance on a non-GAAP basis, or otherwise on profit measures that exclude critical costs, the inclusion of these 'raw' numbers would inform investors of the critical bottom-line.[3] Equally important, requiring companies to clearly disclose net income and pre-tax net income alongside compensation will encourage issuers to more fully explain why these alternative measures are preferred.

With regards to Requests for Comments 3 through 13, we support requiring the disclosure of a '*company-selected measure*' that represents, over the period covered by the proposed tabular disclosure, the most important performance measure used by the issuer to link compensation to executive pay, complete with the actual results for that measure. The measure should also be accompanied by an explanation of its calculation and a complete GAAP reconciliation, if applicable. We also strongly agree with the comment letter submitted by the Council of

---

[1] The prominent levels of opposition in 2020 and 2021 to the Say-on-Pay proposals at several companies party to the nation-wide opioid settlement largely stemmed from the fact that incentive awards were based on adjusted metrics that excluded such legal charges from their calculations. The GAAP reconciliation tables were crucial in helping investors identify how non-GAAP-based performance metrics, used in compensation plans, differed from the companies' profitability on a GAAP-basis.

[2] See for instance McKinsey & Co. Inc's "The Expectations Treadmill," in *Value: The Four Cornerstones of Corporate Finance* (2010). The recent meme-stock phenomenon offers another cautionary tale about the limits of relying on snapshots of TSR.

[3] Even for early-stage companies, where net income is often negative, these two metrics can convey, by way of directionality (i.e., lower net losses), crucial information to investors about the linkage of pay to performance.

Institutional Investors (dated Feb. 24, 2022), which calls on the Commission to "revise Item 402 of Regulation S-K to explicitly require registrants to disclose all the performance measures that are used to determine named executive compensation in the current year," including relevant quantitative metrics, targets and thresholds.

On Request for Comment 18, we support the Commission's definition of '*compensation actually paid'* but recognize that any comparison of this figure to performance likely involves different time periods. However, it is not clear to us that there is a better solution than the one being proposed – namely requiring the side-by-side tabular disclosure of the pay provided in the Summary Compensation Table pay and the Commission's proposed compensation actually paid figure. Moreover, given the difficulty that the average investor has, absent a subscription to a third-party data provider, in calculating compensation actually paid, we think it is critical that this information is provided in proxy statement disclosures.

Finally, regarding Request for Comment 21, again, we recognize there is the unavoidable problem of different time periods being involved in any comparison between pay and performance, which feeds into how TSR is defined. On balance, however, we think a single cumulative average within the five-year period in the table offers investors the best snapshot of the connections between pay and company performance.

We are highly supportive of the expanded proposed rules put forward by the Commission, which we believe will aid investor understanding of executive pay decisions and help identify cases where pay is aligned with performance and where there is a disconnect.

Thank you for the opportunity to share our views.

Sincerely,

Ken Hall

Ken Hall
General Secretary-Treasurer

KH/cz