



# ICGN

International Corporate Governance Network  
*Inspiring good governance & stewardship*

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

March 4th, 2022

Dear Secretary Countryman,

**Re: Reopening of Comment Period for Pay Versus Performance, [34-94074](#), File No: S7-07-15**

The International Corporate Governance Network (ICGN) welcomes the reopening of the comment period to provide investors with the opportunity to respond to the consultation questions and discuss the significant issues on pay versus performance that have occurred since 2015.

Led by investors responsible for assets under management in excess of US\$59 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship. Headquartered in London, our membership is based in more than 45 countries and includes companies, advisors, and other stakeholders. ICGN offers an important international investor perspective on corporate governance and investor stewardship to help inform public policy development and the encouragement of good practices by capital market participants. For more information on the ICGN, please visit [www.icgn.org](http://www.icgn.org).

Since the issuance of the proposed rule in 2015, concerns surrounding executive pay and the lack of links to performance have arisen. We would point to four overarching themes that are of importance to investors and companies which directly relate to the need to link executive pay to company performance:

1. The rise in executive pay, compensation, and benefits - since 2015, executive compensation has risen at a significant level when compared to worker pay. According to the Economic Policy Institute:

From 1978 to 2020, CEO pay based on realized compensation grew by 1,322%, far outstripping S&P stock market growth (817%) and top 0.1% earnings growth (which was 341% between 1978 and 2019, the latest data available). In contrast, compensation of the typical worker grew by just 18.0% from 1978 to 2020.<sup>1</sup> This demonstrates the relativity in pay between workers and CEOs as well as the rising social awareness of income inequality as a systemic issue.

2. Impact of COVID-19 - For the past two years, the global economy, businesses, workers and citizens has been gripped with shutdowns and restrictions due to COVID protocols. Workers have been impacted especially hard. According to analysis by the Wall Street Journal:

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<sup>1</sup> "CEO pay has skyrocketed 1,322% since 1978", the Economic Policy Institute, 350 largest publicly owned U.S. firms (i.e., firms that sell stock on the open market) by revenue, August 10, 2021. [ceo-pay-in-2020](#)

CEO pay surged in 2020, a year of historic business upheaval, a wrenching labor market for many workers and unprecedented challenges for many leaders.

Median pay for the chief executives of more than 300 of the biggest U.S. public companies reached \$13.7 million last year, up from \$12.8 million for the same companies a year earlier and on track for a record, according to a Wall Street Journal analysis.<sup>2</sup>

3. Higher rejection of “Say on Pay” and higher support of social and environmental proposals - More investors are rejecting the advisory “Say on Pay” proposals offered by management since 2020. An important development, partly due to the pandemic, is the higher level of shareholder proposals seeking social and environmental reporting at companies.<sup>3</sup> According to Semler Brossey:

“The most notable trend of 2021 was a decrease in the S&P 500 average vote (Say on Pay) result to 88.3%. This was 130 basis points below the prior year result and 210 basis points below the Russell 3000 average vote. The other headline trend was record support levels for social and environmental proposals. 23 social proposals and 16 environmental proposals received greater than 50% support, both significantly higher than any prior year. This report also tracks Director Election and Equity Proposal vote results.”<sup>4</sup>

4. Environmental, Social and Governance (ESG) metrics tied to executive pay - ICGN has noticed an emphasis by investors, asking companies to tie material ESG metrics into their compensation plans that address systemic risks. Investors have a renewed focus on the definition of financial materiality. According to a Deloitte review of proxy statements from February 2020 to January 2021, “financial measures have long been the predominant component of annual executive incentive plan designs.” Deloitte found:

Deloitte’s review of the Fortune 100 companies’ proxy statements found that the most common approach used to evaluate ESG measures in executive annual incentive plans is by far the scorecard approach, followed by a modifier and stand-alone measure. Deloitte also found that these companies typically evaluate ESG measures in incentive plans on a qualitative basis. These market observations are most likely due to the early journey of companies incorporating ESG measures in their incentive plans, as well as there being many areas for companies to focus on with respect to driving ESG results and not wanting to place importance on one area to the potential perceived detriment of another.<sup>5</sup>

ICGN has two foundational documents that set forth guidance for boards and investors to address compensation matters in a way that links remuneration to a company’s long-term performance. As background, the ICGN Global Governance Principles (GGP) provide the basis for boards of directors as they consider remuneration for the CEO and senior management:

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<sup>2</sup> “CEO Pay Surged in a Year of Upheaval and Leadership Challenges”, by Theo Francis and Kristin Broughton, Updated April 11, 2021. [www.wsj.com/articles/covid19broughttheconomytoitskneesbutceopaysurged](https://www.wsj.com/articles/covid19broughttheconomytoitskneesbutceopaysurged)

<sup>3</sup> ICGN Viewpoint, “Shareholder Proposals- An Essential Instrument for Ensuring Corporate Accountability”, December 2021. [ICGN Shareholder Proposal Viewpoint Review](https://www.icgn.org/viewpoint/shareholder-proposals)

<sup>4</sup> “2021 Say on Pay Reports”, Our year-end report recaps proxy voting results and trends for 2021, January 27, 2022. <https://semlebrossy.com/insights/2021sayonpayreport>

<sup>5</sup> Deloitte, [Incorporating ESG Measures into Executive Compensation Plans | Deloitte US](https://www.deloitte.com/us/en/insights/industry/corporate-governance/2021-esg-compensation.html), April 2021.

Principle 5: Remuneration. Remuneration should be designed to equitably and effectively align the interests of the CEO, executive officers, and workforce with a company's strategy and purpose to help ensure long-term sustainable value, preservation, and creation. Aggregate remuneration should be appropriately balanced with the payment of dividends to shareholders and retention of capital for future investment and the level of quantum should be defensible relative to social considerations relating to inequality.<sup>6</sup>

The other key document is the Global Stewardship Principles (2020) which sets out "ICGN's view of current best practices in relation to investor stewardship obligations, policies, and processes."<sup>7</sup> We also refer you to ICGN's Guidance on Executive Remuneration<sup>8</sup> and to a 2020 ICGN Viewpoint report on integrating ESG factors into executive pay<sup>9</sup>.

The Request for Comment asks a series of questions that ICGN has responded to as follows:

**1. *Should disclosure of additional financial performance measures beyond TSR be required? Specifically, would investors find it useful to have pre-tax net income and net income presented in tabular format alongside the other metrics that would be required by the Proposing Release? Would these two additional metrics help investors to appropriately evaluate the relationship between executive compensation actually paid and the financial performance of the registrant? Would the inclusion of these measures alleviate concerns previously raised by commenters on the proposed rules about including only TSR and peer group TSR in this disclosure? Would their inclusion complicate the disclosure such that its usefulness could be reduced? Should we also require that these measures, if any, be discussed in the required description (which may be, e.g., narrative or graphical) that accompanies the tabular disclosure? Instead of requiring additional financial performance measures, should we instead include pre-tax net income and net income as examples of additional measures registrants could elect to disclose if they believed such disclosure would be beneficial for them? What would the benefits or drawbacks be of that approach?***

The consultation provides a tabular disclosure which would be required for companies<sup>10</sup>, showing Principal Executive Officer (PEO) Compensation actually paid to the PEO; Average summary compensation table total for non-PEO NEO; Average compensation actually paid to non-PEO NEO; Total shareholder return; and Peer group total shareholder return. ICGN noted that smaller reporting companies would be exempt from the requirements. Since smaller companies can make up a portion of an investor's portfolio, ICGN would encourage the SEC to

<sup>6</sup> ICGN Global Governance Principles (2021), [ICGN Global Governance Principles 2021](#), p. 20.

<sup>7</sup> ICGN Global Stewardship Principles (2020), [ICGN Global Stewardship Principles 2020](#)

<sup>8</sup> ICGN's Guidance on Executive Director Remuneration, 2016: [www.icgn.org/sites/default/files/2021-06/ICGNGuidanceonExecutiveRemuneration](http://www.icgn.org/sites/default/files/2021-06/ICGNGuidanceonExecutiveRemuneration)

<sup>9</sup> ICGN Viewpoint report on integrating ESG factors into executive pay, November 2020:

[www.icgn.org/sites/default/files/2021-06/ICGNViewpointIntegratingESGinExecutiveCompensation](http://www.icgn.org/sites/default/files/2021-06/ICGNViewpointIntegratingESGinExecutiveCompensation)

<sup>10</sup> The proposed rule excludes smaller companies, i.e., a "smaller reporting company" means an issuer that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company and that: (1) had a public float of less than \$250 million (as of the last business day of the issuer's most recently completed second fiscal quarter); or (2) had annual revenues of less than \$100 million (as of the most recently completed fiscal year for which audited financial statements are available) and either: (i) no public float (as of the last business day of the issuer's most recently completed second fiscal quarter); or (ii) a public float of less than \$700 million (as of the last business day of the issuer's most recently completed second fiscal quarter). 17 CFR 240.12b-2. Business development companies, which are a type of closed-end investment company that is not registered under the Investment Company Act, do not fall within the SRC definition.

suggest that smaller companies adopt the disclosure requirements on a voluntary basis, to enhance transparency around compensation awards.

It is important that the proposed rule would require a description of *how* executive compensation is actually paid, related to the financial performance of a company over a time horizon using cumulative total shareholder return (TSR). ICGN would note, however, that TSR is just one measure that should be considered and should not be the stand-alone measure. Measures that only factor in “returns” can lead to rewards in pay that are contrary to the creation of long-term shareholder value.

The consultation refers to pre-tax net income and net income as additional measures, along with peer group TSR. The inclusion of net income could be useful for companies that have a highly complex tax structure, making it harder for investors to decipher the actual calculation of pay related to performance. The inclusion of peer group TSR could be useful, but it may not yield true comparisons given the wide range of compensation plans and strategies.

Ultimately it is more important for companies to focus more on generating sustainable returns on capital than to try to outperform the stock market. We sense that TSR is receiving a disproportionate amount of attention relative to other metrics. ICGN would prefer that the SEC employ metrics that relate to more economic profitability and less to stock market performance. As we note in our Viewpoint on capital allocation, companies should disclose their risk adjusted returns on capital and economic profit or loss (noting that companies can make nominal profits but suffer economic losses if their returns on capital are inadequate).<sup>11</sup>

ICGN has long advocated for aligning executive remuneration with a company’s purpose and long-term strategy. A company should be clear on the level of benefits included and how they link pay to performance. In the GGP, Principle 5, Remuneration, it says:

Principle 5.2 Structure. Executive remuneration should be structured in a simple manner that is aligned with the company’s purpose and long-term strategy. Salary levels should be balanced appropriately with the level of benefits such as bonuses, deferred stock options or long-term incentive plans (LTIPS). The use of restricted stock with long-term vesting and holding periods brings the benefit of simplicity compared with metric-based performance awards (such as LTIPs). But caution should be exercised to ensure the tenet of payment-for-performance is upheld and holding periods should extend beyond the active period of tenure of the executive in support of the long-term orientation of company leadership.

Remuneration Committees are encouraged to consider whether restricted stock could be introduced alongside, or as an alternative to LTIPs, as long as their use is consistent with the company’s capital allocation model, and provided that award size is reduced materially to take account of the greater certainty of vesting due to absence of performance hurdles. The awarding of pension benefits should be consistent across the company so that the CEO and executive pension contributions are aligned across the workforce.<sup>12</sup>

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<sup>11</sup> ICGN Viewpoint on Capital Allocation, [ICGN Viewpoint on Capital Allocation](#), July 2019.

<sup>12</sup> [ICGN Global Governance Principles 2021](#), p. 20.

Our preference for investors would be for a tabular design that showcases the above elements of an executive compensation plan and demonstrates how each of them relate to long-term strategy and company performance.

**2. Are there other measures of company performance that we should consider mandating in addition to or in lieu of pre-tax net income and/or net income? If so, which additional or alternative measures should we require and why? How would these additional or alternative measures be useful for investors in measuring company performance? Should we also require that these measures, if any, be discussed in the required description (which may be, e.g., narrative or graphical) that accompanies the tabular disclosure?**

Income metrics by themselves can be incomplete or misleading. They are numerators lacking a denominator. More important is to focus on income relative to a company's capital base, as that is the only way to get a proper contextual understanding of profitability. As mentioned in our response to #1, additional measures would include bonuses, deferred stock options or LTIPs, restricted stock options, pension benefits, and other elements that would serve as appropriate disclosures for investors. Full transparency is essential to understand how the company has structured its compensation plan. In the GGP, Principle 5. Remuneration, it states:

5.3 Performance measures. Performance measures in incentive-based plans should integrate risk considerations so that there are no rewards for taking inappropriate risks at the expense of the company, shareholders, and relevant stakeholders. Metrics should be rigorous and measured over timescales, and with methodologies, which help ensure that performance pay is directly correlated with sustained value creation and preservation. In addition to financial performance metrics, quantifiable indicators that are material to the company's sustainable value creation and preservation, such as human capital and natural capital should be considered. Metrics guiding performance grants should be based on audited financial data, and, where possible, assured sustainability indicators.<sup>13</sup>

**3. How should we define the Company-Selected Measure, if we were to require its disclosure? We are considering defining the Company-Selected Measure as the measure that in the registrant's assessment represents the most important performance measure (that is not already included in the table) used by the registrant to link compensation actually paid during the fiscal year to company performance. Would such a definition provide sufficient clarity to a registrant as to what to disclose? What computations or considerations would be required in determining the Company-Selected Measure and what would be the associated costs for registrants? Should we require registrants to disclose the methodology used to calculate the Company-Selected Measure? Should that consideration depend on whether the measure is already disclosed in the Company's financial statements?**

In many ways Company-Selected Measure is another way of looking at Key Performance Indicators (KPIs). KPIs can be both quantitative and qualitative, including financial material ESG metrics. ICGN supports additional measures of this nature that could link compensation to the actual performance of a company as long as they have clear materiality to sustainable value

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<sup>13</sup> [ICGN Global Governance Principles 2021](#), p. 21.

creation. It is also important for Company-Selected Metrics to be auditable/assurable if they are to feature in executive pay plans. We recognize that an annual measure can lead to perverse incentives and discourage a short-term focus. The disclosure of the methodology would be useful in order for investors to conduct their own analyses, particularly in a comparison with peers. If a company has already disclosed the required information in its financial statements, we would agree that the SEC should adopt it in a formal way. ICGN would not want to see any diminished reporting or watered-down methodology based on the SEC's final rule adoption.

In the ICGN GGP, Principle 5, Remunerations, ICGN calls for:

5.8 Workforce incentives. The board should ensure that remuneration structures for workforce reinforce, and do not undermine, sustained value creation. Performance-based remuneration should incorporate risk, including other intangible factors related to value creation and the measurement of risk-adjusted returns, to help ensure that no inappropriate or unintended risks are being incentivised. While a major component of most employee incentive remuneration is likely to be cash-based, these programmes should be designed and implemented in a manner consistent with the company's long-term performance drivers. Adherence to codes of conduct and compliance protocols should serve as preconditions to incentive awards.

**4. Should we require the Company-Selected Measure to be the most important measure used by the registrant in a performance or market condition in the context of an incentive plan as defined in 17 CFR 229.402(a)(6)(iii)? Would including such a measure in the tabular disclosure allow investors to better evaluate the extent to which the total compensation reported as actually paid reflects the performance the company explicitly chose to incentivize, and if so, would such an evaluation be useful to investors? Should the Company-Selected Measure instead be the performance measure that is deemed most important by the registrant whether or not it is used in a performance or market condition in the context of an incentive plan (i.e., including the effect of stock price movements on equity incentive plan compensation, even in the absence of a market condition; or measures that affect non-incentive plan compensation, such as the retrospective use of performance measures in determining compensation reportable in the bonus column of the Summary Compensation Table)?**

ICGN is in favour of allowing a registrant to utilize the performance metric that is most useful for it. Investors are not a monolithic group nor are companies; therefore, if a company decides that a Company-Selected Measure is the most accurate measure, it should be prepared to explain the selection, how the measure is utilized and how any decisions or calculations are made based upon the measure. Investors should be able to understand why a company has selected a specific measure and how it has been applied to the pay compared to performance calculation.

**5. We recognize that there could be varying methods of evaluating which measures are the most important. Should we define "most important" for the purpose of the selection of the Company-Selected Measure, as well as for the ranking of any other measures, if required? If so, how? For example, should the "most important" measure be the one on which the highest aggregate dollars of compensation actually paid were contingent? Or should "importance" be based on the dollar impact of the measure's variation from its initial or expected level on compensation actually paid, whether positive or negative?**

***Instead, should “importance” be weighed based on what considerations drove the registrant’s executive compensation decisions rather than its executive compensation outcomes? Alternatively, should we not specify a particular method to use to evaluate the relative importance of a performance measure in driving compensation actually paid or define “most important,” and instead allow registrants to determine what they consider to be “important” for this purpose and select the Company-Selected Measure accordingly, with disclosure explaining how they made their choice? Instead of requiring that the “most important” measure be the measure generally used by the registrant to link compensation actually paid to company performance, should we require that the “most important” measure be the measure specifically used by the registrant to link only PEO compensation actually paid to company performance? What would the benefits and drawbacks be of narrowing the definition of “most important” to only PEO compensation?***

ICGN believes that a company should prioritize and disclose the metrics and measures it utilizes when considering pay versus performance for CEOs and officers of the company. The disclosure should be able to be replicated by investors, who may wish to make comparisons with peers. In the GGP, Principle 5, Remuneration, we state:

***5.5 Disclosure.*** The board should disclose clear and understandable remuneration policies and reports which are aligned with the company’s purpose and long-term strategic objectives. Such disclosure should facilitate comparability and accountability and include reference to how awards were deemed appropriate in the context of the company’s underlying performance and long-term strategic objectives and whether remuneration consultants were involved in the process. Disclosure should refer to executives, non-executive directors and the CEO and reported on an individual basis, whilst also taking account of the company’s overall approach to human resource strategy. This extends to non-cash items such as director and officer insurance, pension provisions, fringe benefits and terms of severance packages if any.<sup>14</sup>

***6. What disclosure should be required if different measures are important in different years or if different measures determine compensation actually paid for the different NEOs? Would aggregating the NEOs for purposes of determining the most important measure be difficult, given that some NEOs may have their compensation linked to industry- or segment-specific performance measures, which are not used for other NEOs? If so, are there ways to mitigate these differences to provide useful disclosures for investors? What if different measures contribute equally to determining compensation actually paid? If the measure deemed most important is already included among the performance measures in the Proposed Rules or among the additional measures we are considering in this release, should the company be permitted to designate that measure as the Company-Selected Measure, or should the company be required to disclose an additional significant measure, such as the next-most important measure not already disclosed, as the Company-Selected Measure? What would the impact of either approach be on the usefulness of disclosure of the Company-Selected Measure? If we permit a registrant to designate TSR, peer group TSR, pre-tax net income, or net income as the Company-Selected Measure, or if a registrant did not use any***

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<sup>14</sup> [ICGN Global Governance Principles 2021](#), p. 21.

***measures other than those already included in the table, how should it indicate that fact in its disclosure? For example, should the registrant be required to include in the Company-Selected Measure column duplicate disclosure of the measure already included in the table, or should the registrant be required to include a note to the measure already included in the table indicating that measure is also the registrant's Company-Selected Measure?***

This question is especially important coming off two years of COVID-19 lockdowns and restrictions that have caused companies and investors to consider executive compensation in a totally different perspective. Investors have been highly and rightly focused on the “social” consequences of the pandemic, which included downsizing the workforce, laying off workers and shifting patterns of work from offices to home bases. As companies have begun to emerge from the government restrictions, new challenges are emerging. Supply chains are stretched, workers are leaving jobs to find more attractive working scenarios, and diversity, equity and inclusion overtones have caused boards and senior management to reexamine pay and compensation for the entire organization.

If a company is intending to implement special measures to determine compensation in different years, it is incumbent on the company to provide investors with the rationale and analyses for the different compensation. The reasons should include performance metrics and a narrative on how long the compensation measures will likely be applied in future years.

In addition, ICGN is keen to acknowledge that engagement between representatives of a company and its investors should continue, regardless of the output of Company-Selected Measures or disclosures, tabular or otherwise. Compensation strategies may be complex, therefore, discussions between the parties may not only assist with understanding the pay and performance linkage but provide companies with the opportunity to hear investors' concerns.

***7. Would mandated disclosure of the Company-Selected Measure be useful to investors when placed alongside the metrics that would be required by the Proposing Release? How would these benefits, if any, compare to those of any supplemental financial performance measures that would voluntarily be disclosed by registrants in the absence of such a mandate? Would there be challenges to registrants to presenting information about the Company-Selected Measure in tabular form? If so, how could we elicit comparable disclosure while also allowing registrants flexibility in presenting this information to accommodate their particular facts and circumstances? Is there another format we should consider for the Company-Selected Measure? Should we specifically limit any Company-Selected Measure only to those measures that relate to the financial performance of the registrant? Or should we allow the Company-Selected measure to be any measure that could be disclosed under the existing CD&A requirements, including financial performance measures; environmental, social and governance related measures; or any other measures used by the registrant to link compensation actually paid during the fiscal year to company performance?***

ICGN would note that many companies attempt to provide extensive information on their compensation packages and metrics. The key, as identified in this reopened comment period, is the need to link pay *and* performance. Any mandated disclosure should not become the watered-down reporting for a company that disclosed more granular compensation information. Tying compensation to long-term performance may require that companies seek outside



assistance to determine the appropriate measures to be instituted. While ICGN would understand that companies need flexibility to determine the best way to present this information, investors do need to make comparisons for peers and sectors. A minimum standard is just that; there is no penalty for providing more robust data. Investors would welcome more transparency.

**8. We are considering requiring the one Company-Selected Measure that is the most important measure over the time horizon of the disclosure to be identified in the table, and issuers would provide information about that measure, including the numerically quantifiable performance of the issuer with respect to that measure, for all of the years in the table. Would investors find such a presentation useful? Would there be challenges to registrants to presenting this information for all years? Should we instead allow companies to change their Company-Selected Measure from year to year, such that they would disclose in the table a potentially different Company-Selected Measure for each respective year? Would doing so have any impact on investors' ability to understand how pay relates to performance and compare across different years? If we do require a registrant to disclose one Company-Selected Measure to be identified in the table, and that registrant elects to change what that measure is in consecutive years, should we require that registrant to separately disclose in additional columns, or narratively, the Company-Selected Measures used in the table in prior years? How often do registrants change, from year to year, their primary performance measures used by the registrant to link executive compensation during a fiscal year to company performance?**

ICGN understands that there would be circumstances in which companies could legitimately need to change the Company-Selected Measure after a year that was atypical. Should this occur, an explanation within the tabular disclosure should be made to provide the same level of information to investors on the link between executive pay and company performance in that year and how it has impacted (or not) the longer-term performance and strategy.

**9. Would a tabular list of a registrant's five most important performance measures used to determine compensation actually paid be useful to investors in addition to existing disclosures? As in the case of the Company-Selected Measure above, how should we define "importance" and how should performance measures be ranked for this purpose, particularly if multiple performance targets apply to the same elements of compensation? Should we require disclosure of the five most important performance measures or some other number of performance measures? Would the inclusion of an additional tabular list of a registrant's five most important performance measures dilute the impact of, or otherwise lead to confusion regarding, the table that would be required by the Proposing Release? Should we require that the five measures be listed in order of importance? How could we increase the usefulness of the tabular list of a registrant's five most important performance measures for investors? Should there be disclosure of the methodology behind those measures?**

ICGN believes that most companies will know the most important performance measures, whether it is five or a different number, used to determine compensation that is actually paid. Whatever metrics and methodology are utilised to determine compensation should be disclosed to investors.

**10. What would be the cost to registrants of any computations required to identify and rank the five most important performance measures? If registrants do not currently rank**

***their performance measures, would requiring them to list their five most important performance measures in order of importance be unduly burdensome? Would such disclosure contain information that is sensitive or has competitive value to a registrant? Should an exemption from any requirement to disclose the five most important performance measures be available if the disclosure would contain such sensitive or competitive information? If so, how should we specify the scope of any such exemption?***

ICGN would not be aware of additional costs to registrants of any required computations and the ranking thereof. An exemption for any sensitive or competitive information should not be necessary, given that the reporting of executive compensation and its link to company performance should be made public.

***11. What if a registrant's five most important performance measures include measures that are included in the proposed rules or the additional measures we are considering? Should registrants be permitted to disclose fewer than five measures if they deem fewer than five to be important or if they consider fewer than five measures?***

ICGN would recognize that some companies may not utilize up to five performance measures and if so, the disclosure of the number of important measures it uses should be sufficient. The key will be for the important measures to disclose how they link to long-term company performance.

***12. Would a tabular format help investors locate, use and understand disclosure of the five most important performance measures? Are there practical or other considerations that would make such tabular disclosure challenging or unduly burdensome for registrants? Would this format impede registrants from providing meaningful disclosure about their primary performance measures that factor into determining pay?***

ICGN would recommend that a tabular or similar disclosure would be useful for investors to make comparisons between a company and its peers more readily. Any standard requirements do not preclude a company from disclosing more information that is meaningful.

***13. Should we, either in addition to or in lieu of the proposed rules and the disclosure of the additional measures we are considering, revise Item 402 of Regulation S-K to explicitly require registrants to disclose all of the performance measures that actually determine NEO compensation? If registrants are already providing this disclosure, are there ways we could improve this disclosure? For example, do investors find current disclosures about executive compensation performance measures complicated or difficult to analyze? If so, how could we make these disclosures less complicated or facilitate their analysis while also meeting the requirements of Section 953(a) of the Dodd-Frank Act?***

ICGN's investor base has indicated that some companies provide significant levels of information on the performance measures they utilize to determine NEO compensation. Other companies provide information that is challenging to analyze or may not contain all the information necessary for investors to understand the methodology. As we have noted, if a company has identified performance measures that it will utilize to determine NEO compensation, then all the relevant measures should be disclosed to investors in similar formats.

14. *To what extent would the ability of registrants to voluntarily supplement the disclosure required by the proposed rules obviate the need for additional mandated elements of disclosure considered in this re-opening release? Should we rely on investor demand and individual registrant circumstances to drive any additional disclosures? Would such voluntary disclosures be more useful than the additional contemplated disclosures? Would such disclosures lack comparability or be overly subjective relative to the additional contemplated disclosures?*

ICGN would prefer that certain elements of disclosure should be required by companies. Additional and voluntary disclosure is encouraged because every company has its own unique compensation plans and performance history.

**15. *As noted above, based on staff analysis of filings in 2019, approximately 45 percent of registrants subject to the proposed rules would be SRCs, compared to approximately 40 percent at the time of publication of the proposed rules. In light of this, should we reconsider the scaled requirements for SRCs in the proposed rules and/or the additional measures we are considering?***

The growth of SRCs during this timeframe is not surprising to ICGN. ICGN believes that smaller companies must utilize performance metrics to set executive compensation as well. Investors would appreciate the voluntary submission of performance measures by SRCs in order to ensure that pay and company performance are linked. As SRCs graduate from the small cap definition included in the proposed rule, they will need to provide the required disclosures.

**16. *For SRCs, would disclosure of either pre-tax net income or net income be useful to investors when placed alongside the metrics included in the Proposing Release? Are there different measures of financial performance that would be more appropriate for SRCs? Should we require SRCs to disclose a Company-Selected Measure and the list of their five most important performance measures used to set NEO compensation? Why or why not? What would be the burdens on SRCs of providing this additional disclosure and would the benefits of requiring this disclosure for SRCs justify the burdens? Would any such burdens be mitigated by the fact that the Company-Selected Measure and the list of a company's five most important performance measures are by definition measures that the company already uses to link compensation actually paid to financial performance? Is there relevant data on the long-term costs from diminished transparency that we should consider in this regard?***

ICGN would not have an opinion whether SRCs should utilize pre-tax net income or net income in order to determine performance measures for disclosure to investors. That should be up to the company. SRCs are in the best position to know which performance measures are appropriate that link executive pay to performance. But we repeat the point that return on capital metrics should have greater emphasis than on net income alone.

**17. *The Commission proposed to require that registrants use XBRL to tag separately the values disclosed in the required table, and separately block-text tag the disclosure of the relationship among the measures, the footnote disclosure of deductions and additions used to determine executive compensation actually paid, and the footnote disclosure regarding vesting date valuation assumptions. We are considering requiring registrants to also tag specific data points (such as quantitative amounts) within the footnote disclosures that would be block-text tagged. In addition, we are considering requiring registrants to use Inline XBRL rather than XBRL to tag their pay versus performance***

***disclosure. Would additional detail tagging of some or all of those specific data points within the footnote disclosures be valuable to investors? If so, which specific data points within the footnote disclosures should we require registrants to detail tag and why? What would be the incremental costs of such a requirement? Should we require registrants to use Inline XBRL rather than XBRL to tag the proposed new pay versus performance disclosures? Is there an alternative machine-readable language to Inline XBRL that we should consider? Should we enable more flexibility by accommodating other machine-readable languages? If we were to require Inline XBRL detail tagging of the disclosures, should we exempt smaller reporting companies from that requirement? Would the costs be different for smaller reporting companies to comply with such a requirement as compared to other registrants? Should we, as was proposed with respect to the original XBRL tagging requirement, provide a phase-in for smaller reporting companies for any Inline XBRL requirement that includes additional detail tagging?***

ICGN would support the use of inline XBRL tagging of the required disclosures because it allows for human and machine-readable documents. When compensation is presented in company proxy statements, much of the information is depicted in graphs and charts that are not able to be tagged effectively in an XBRL format. The relative and comparison details may be lacking. Investors would be able to more effectively analyse pay versus performance measures that are tagged on the front end by using inline XBRL tagging.

Smaller companies may have additional costs initially, however, they should already be using XBRL tagging. An interim or phase-in period of a specific time should assist smaller companies with the transition. The use of Inline XBRL would ultimately benefit companies as well.

***18. Some commenters to the Proposing Release noted that the definition of compensation actually paid may result in some misalignment between the time period to which pay is attributed and the time period in which the associated performance is reported, but they generally disagreed on whether and how to revise the definition to improve such alignment. Is there an alternative approach that would reduce the risk of misalignment of compensation actually paid with the associated financial performance and still provide for appropriate comparability across registrants, including the additional measures of financial performance discussed above? Would the inclusion of additional measures of financial performance as contemplated above affect this potential mismatch?***

Investors understand that some compensation, such as salary and benefits, will be paid in one year and other compensation (LTIPs, pension benefits, stock awards) may be paid out at some time in the future. The proposed requirements for disclosing important performance measures, the disclosure of time-based awards, explanations of the time-period for awarding pay compared to when pay is attributed to company performance should help investors with comparability analyses.

***19. Some commenters to the Proposing Release noted potential challenges with using the pension service cost as defined in FASB ASC Topic 715 to determine the amount attributable to pension plans to be included in compensation actually paid. As discussed in the Proposing Release, the service cost for services rendered by the executive in the applicable year is meant to approximate the value that would be set aside currently by the registrant to fund the pension benefits payable upon retirement for the service***

***provided during the applicable year, and is intended to provide a more meaningful comparison across registrants of the amounts “actually paid” under both defined benefit and defined contribution plans. Is there an alternative measure of the change in pension value attributable to the applicable fiscal year that is better representative of the “actually paid” amount of pension benefits for an executive and would reduce the burden of computing compensation actually paid while preserving the benefits of the measure for investors? If so, describe how that amount would be calculated and what assumptions or new or additional data would be necessary for such calculation.***

ICGN would like to see the value of dollars set aside to provide a pension benefit to an executive disclosed. The amount set aside, as the “service cost for services rendered by an executive”, can be part of a meaningful comparison between a company and its peers, and any pension benefits received by employees.

***20. Some commenters to the Proposing Release noted potential challenges associated with computing the fair value of options at the vesting date as opposed to the grant date. Are there simplifications or other adjustments that we could permit for this purpose in order to mitigate such challenges? How, if at all, would any such simplifications or adjustments affect the cost of producing the disclosure and the usefulness of the disclosure? For example, are there certain assumptions used in the valuation of options that we should allow to be carried forward from the grant date rather than re-computed as of the vesting date? What is the likelihood that assumptions would vary significantly between grant date and vesting date? To what extent could any new assumptions required for a valuation as of the vesting date be determined based on computations that would be made for another purpose, such as the valuation of new grants made around the same time?***

ICGN recognizes that the computation of options from grant date to the vesting date may have some challenges in the computation. The value of the options at the grant date should be discernible, as that value is contained in the awarding of options to executives. A company has a way to forecast the options that could be exercised at the vesting date and should be able to calculate disclosure on or about that forward date. There should be software solutions that enable an accurate valuation of options for disclosure to investors.

***21. Some commenters to the Proposing Release had questions about which time periods should be disclosed in the TSR portions of the table. Should we clarify what time periods should be disclosed? For example, should we require TSR to be a five-year cumulative and rolling average (i.e., the TSR for the first year would be the average TSR over the five years preceding and including the first year, the TSR for the second year would be the average TSR over the five years preceding and including the second year, etc.); should we require TSR to be a cumulative average within the five-year period in the table (i.e., the TSR for the first year would be an average of the TSR over that first year, the TSR for the second year would be an average of the TSR over the first year and the second year, etc.); or should we require TSR to be an annual year-over-year figure (i.e., the TSR for the first year would be the average TSR over the first year, the TSR for the second year would be the average TSR for the second year, etc.)? 33 What would the benefits and drawbacks be of each of these approaches?***

ICGN recommends that a standard timetable for TSR be included in the tabular design. ICGN would like the SEC to consider a rolling average, which would take into account variations within one year and be reflected as part of the cumulative average. It would be a way for investors to make comparisons between a company and its peers on a yearly and over the course of the rolling five-year period for TSR.

**22. Are there any other developments (including with respect to executive compensation practices) since the Proposing Release that should affect our consideration of the proposed rules or their potential economic effects? How have qualitative measures in executive compensation packages changed and/or developed since the Proposing Release? How should we contemplate such changes in our consideration of the disclosures discussed above and in the Proposing Release? How have environmental, social and governance related metrics changed and/or developed since the Proposing Release? How should we contemplate such changes in our consideration of the disclosures discussed above and in the Proposing Release? Are there changes in market practices with respect to disclosures in the CD&A or voluntary disclosures that should affect our approach or affect our consideration of the economic effects of any rule changes? Are there any changes we should consider in the methodologies and estimates used to analyze the economic effects of the proposed rules in the Proposing Release? We request and encourage any interested person to submit comments regarding the Proposed Rules, specific issues discussed in this release or the Proposing Release, and other matters that may have an effect on the proposed rules or the additional disclosure requirements we have noted here that we are considering. We request comment from the point of view of registrants, shareholders, directors, executives, investors, other market participants, and anyone else with an interest in this issue. If alternatives to the Proposed Rules are suggested, supporting data and analysis and quantitative information as to the costs and benefits of those alternatives are of particular assistance. Commenters are urged to be as specific as possible; when commenting, it would be most helpful if you include the reasoning behind your position or recommendation.**

ICGN would respectfully ask the SEC to consider other necessary provisions that have an impact on executive compensation and its link to company performance.

The ICGN GGP also provides guidance for boards in this area and encourages companies to include terms to withhold the payment of any sum or to recover any sums of money that have been paid due to misconduct or misstatements, in Principle 5, Remuneration:

5.4 Malus and clawback. Companies should include provisions in their incentive plans that enable the company to withhold the payment of any sum ('malus'), or recover sums paid ('clawback'), in the event of serious misconduct or a material misstatement in the company's financial statements.<sup>15</sup>

As another consideration for market and company practices, ICGN would note that the ownership of shares by the CEO, NEDs and other executives is an important data set for investors. We respect that U.S. companies disclose the ownership of shares by these executives in annual proxy statements, however, there could be more disclosure surrounding

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<sup>15</sup> [ICGN Global Governance Principles 2021](#), p. 21.

the use of derivatives, hedging, and pledging of shares. The ICGN GGP, Principle 5, Remuneration, states:

5.5 Share ownership. The board should disclose the company policy concerning ownership of shares by the CEO, non-executive directors, and executives. This should include the company policy as to how share ownership requirements are to be achieved and for how long they are to be retained. While CEO and executive share ownership is encouraged, the use of derivatives or other structures that enable the hedging of an individual's exposure to the company's shares should be prohibited

In addition, ICGN would recommend that shareholders have a *binding* vote, rather than an advisory vote on remuneration policies. We understand that the U.S. rules call for an advisory vote at least every three years. As a frame of reference, we would call your attention to the recommendation in the GGP, Principle 5. Remuneration:

5.6 Remuneration policy. Shareholders should have an opportunity, where a jurisdiction allows, to a binding vote on remuneration policies at least every four years or where significant change to remuneration structure is proposed.

ICGN also believes that a board should have a fully functioning Remuneration Committee, made up of independent members. The Committee should be the arm of the board that determines the makeup of an executive compensation plan and its ties to long-term performance, that is recommended to the full board. In the GGP, Principle 5, ICGN calls for the following action by a Remuneration Committee:

5.10 Remuneration Committee: The board should establish a Remuneration Committee comprised wholly of independent non-executive directors. The terms of reference of the Remuneration Committee should be publicly disclosed and include:

- a) determining and recommending to the board the company's remuneration philosophy and policy which should take into account pay and employment conditions within the context of the company as a whole and its human capital management strategy;
- b) designing, implementing, monitoring and evaluating short-term and long-term share-based incentives and other benefits schemes including pension arrangements;
- c) ensuring that conflicts of interest among committee members and between the committee and its advisors are identified and avoided;
- d) appointing any independent remuneration consultant including their selection and terms of engagement. This includes scrutiny of the rationale for consultancy proposals (particularly if levels appear industry benchmarked). The consultant's identity and fees should also be publicly disclosed;
- e) considering sustainable capital allocation in developing remuneration structures through the use of metrics which take account of shareholder and relevant stakeholder interests; and
- f) maintaining appropriate communication with shareholders on the subject of remuneration either directly or via the board.

ICGN would cite the recent report in February 2022 by *As You Sow*, an organization which has charted CEO compensation since its first report in 2015. According to the Key Takeaways,

Since *As You Sow* published the first "The Most Overpaid CEOs report" in 2015, in each and every report, the companies with the most overpaid CEOs suffer lower returns for shareholders than the average S&P 500 company. Cumulating these underperformances over all seven years of this report series, a rolling portfolio of the most 100 overpaying companies each year would have returned a full 20 percentage points less than the S&P 500 average.

According to *As you Sow*:

2021 showed substantial increases in opposition to CEO pay packages. A record 16 companies had CEO pay packages rejected by more than half of the shareholders, a 60 percent increase from the ten in 2020 and more than double the seven in 2019. Using a calculation that excludes management and "insiders" and includes just institutional shareholders, the number of CEO pay packages that were rejected by more than a majority of institutionally held shares was 29, almost twice the 15 we saw last year.

This increase in opposition seems to be based on more companies employing questionable practices and metrics in setting CEO pay. It does not seem to be based on the total amount of pay. For example, companies that changed CEO pay performance metrics this year using COVID-19 as the excuse received high levels of negative votes from shareholders.<sup>16</sup>

Thank you for the opportunity to provide our perspective on this important consultation, which has given investors the ability to update concerns that have developed since 2015. If you would like to follow up with us with questions or comments, please contact me or Carol Nolan Drake, Governance and Stewardship Policy Manager by email at: [REDACTED].

Yours faithfully,



**Kerrie Waring**

**Chief Executive Officer, ICGN**

CC: George Dallas, ICGN Policy Director: [REDACTED]

Catherine McCall, Chair, ICGN Global Stewardship Committee: [REDACTED]

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<sup>16</sup> "The 100 Most Overpaid CEOs", *As You Sow*, [www.asyousow.org/report-page/the100mostoverpaidceos2022](http://www.asyousow.org/report-page/the100mostoverpaidceos2022), February 23, 2022.