INFINITE EQUITY

March 3, 2022

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

Subject: Comments on File No. S7-07-15

Dear Ms. Countryman:

On January 27, 2022, the SEC re-opened its proposed rules on pay for performance disclosures and invited comments through March 4, 2022. We are providing our comments in this letter for your consideration with respect to the proposed rules.

Infinite Equity is an independent consulting firm focused on helping organizations, both public and private, support their employee equity programs. We are actuaries, attorneys, accountants, tax professionals, and global equity specialists, who all have the collective belief in employee ownership, and a rigorous understanding of the compliance requirements for employee share plans. We are experts in compensation programs and have a passion in aligning pay programs with performance. We are experts in performance measures and working with companies in defining rigorous goals. We are experts in Total Shareholder Return, as we measure and certify hundreds of vesting events annually for incentive plans based upon TSR.

We have summarized our comments here to the (22) questions that the SEC asked in their January 27, 2022 letter, and categorized as follows:

Questions	Topic
#1-2	Other Financial Measures
#3-8	Company Selected Measure ("CSM")
#9-12	5 Most Important Measures
#13-14	Executive Compensation Disclosures
#15-16	Smaller Reporting Companies
#17	XBRL Tagging
#18	Misalignment of Periods
#19	Pension Service Cost Calculations
#20	Value at Vest Calculations
#21	Calculation of TSR
#22	New Executive Compensation Developments

Questions #1 – #2: Other Financial Measures

- We applaud the additional transparency to include both Pre-Tax Net Income and Net Income in these disclosures, as we are an advocate for transparency. We also note that these numbers are available in other financial disclosures.
- Further, both Pre-Tax Net Income and Net Income are GAAP numbers, which can vary widely period over period due to one-time adjustments or events. We are concerned these variances could create situations where there are wide disparities in pay-for-performance alignment which distort actual performance. Even though the narrative can help to explain the disparity, some interested parties could inappropriately grasp the disclosed GAAP numbers of Pre-Tax Net Income and Net Income - without reference to the narrative.
- A significant benefit of TSR as a performance metric compared to financial metrics is that the marketplace regularly adjusts the stock price to reflect for publicly known information and the narrative of company leadership. We believe it to be a smoother measurement when making period to period comparisons, without having the subjectivity inherent within other financial measures.
- While Pre-Tax Net Income and Net Income may be reliable indicators of annual results for mature, stable companies, they may not provide reliable insight into the results of management's efforts at developmental or transitional stage companies. Moreover, Pre-Tax Net Income and Net Income are a retrospective indication of performance over the short term, whereas a company's stock price represents market participants' expectations about a company's current and future prospects. Consequently, because TSR is based on stock price, it provides a constantly updated prospective measure of the level of management's efforts.
- Both Pre-Tax Net Income and Net Income are absolute measures of performance which do not provide any illustrative understanding of performance compared against others.

Questions #3 – #8: Company Selected Measure

- We agree with the disclosure to define the Company Selected Measure, as the single most important performance measure in determining "Compensation Actually Paid" on the Vesting Date (and therefore be included as a metric in the existing incentive plans). We believe this will simplify the determination of the most important measure, since those calculations are already done, and disclosed as part of this Proposal. Further, it would remove the subjectivity in the determination, and help clarify to investors the metrics that actually yield rewards, in a clearer way than other parts of the Summary Compensation Table.
- We believe that the Company Selected Measure should be determined based on the Compensation Actually Paid for the PEO, and not rely on the remainder of the NEO's for determining this metric.
- We prefer to determine the most important performance measure based on the outcome of the compensation payments (as opposed to what drove the executive compensation decisions).
- As for measurement of the Company Selected Measure and the most important measure, we prefer your suggestion to determine the dollar impact of the measure's variation from the beginning of the year (or end of the prior year) to the value at the end of the year (discussed more in Question #18 below).
- Many employee equity vehicles such as restricted stock or stock options have only time-based vesting criteria and may not have designated performance criteria. Further, some would argue that stock options are "performance-based" because compensation is only delivered if stock appreciation occurs, while others do not believe that time-based stock options are performance

based and are rewarded as a function of systematic volatility in the market. Would the SEC object to companies who classified time-based stock options as having performance criteria of "TSR"? If not, at what "premium" stock price would it be required for stock options to be considered "performance-based"? In our opinion, stock options should be considered performance vehicles.

- If the registrant's most important performance metric is "Adjusted" Pre-Tax Net Income, would the registrant disclose the results of the "Adjusted" Pre-Tax Net Income as the Company Selected Measure, even though they are already disclosing GAAP Pre-Tax Net Income earlier. We presume so but thought it would be worth validating that adjusted GAAP measures are distinct from GAAP measures.

Questions #9 –#12: 5 Most Important Measures

- As discussed for Questions #13-#14 around Executive Compensation Disclosures, we believe that a tabular disclosure of the 5 most important performance measures used to determine compensation actually paid would be helpful and create improved transparency to the compensation programs.
- Consistent with our comments on the Company Selected Measure, are time based "stock options" considered a performance vehicle? This will be important to determine the 5 most important measures.
- Further, we believe that each of the 5 most important measures could also include the percentage of total compensation paid at the vesting date. We believe this data is easily accessible by registrants.

Questions #13 –14: Executive Compensation Disclosures

- The current rules around the disclosure of performance metrics and the weights applied to compensation programs are opaque and frequently challenging to determine in the narrative around executive compensation. There can be improvements in this regard, and certainly efficiencies if there was more of a tabular format for supplying this data (consistent with the 5 Most Important Performance Measures in Questions #9-#12).

Questions #15 –16: Smaller Reporting Companies (SRCs)

- We believe in transparency of the financial statements and compensation programs. However, we understand the commitment to complying with these requirements and defer to the SEC in the addition of value through requiring these disclosures for SRCs.

Questions #17: XBRL Tagging

- We believe that XBRL tagging creates a scalable solution for all interested parties to have easier access to public financial data and are supporters of it. However, we also recognize that there is a cost/benefit equation and defer to the SEC on the merits.

Questions #18: Misalignment of Periods

- We have concerns that the definition of compensation actually paid may result in some misalignment between the time period to which pay is attributed (frequently 3+ years for equity) and the time period in which the associated performance is reported (1 year).
- We do not believe that the additional measures of financial performance will help to clarify this misalignment and could potentially further amplify the misalignment.
- In Section IV.C.3 of the initial Proposal, the Commission identifies "incremental compensation earned" as an alternative approach to determine "executive compensation actually paid" (and also suggested by J&J and Technical Compensation Advisors). We believe this approach for defining compensation would be better than the proposed approach since the timing of pay and performance would be better aligned.

  Consistent with the description provided in the release, incremental compensation earned for a given year could include:

  - ✓ All annual pay earned from salary, bonus, annual incentives (equity and non-equity), all other compensation and changes in pension values
  - ✓ Change in equity incentives (a change in "paper gains") on all long-term compensation (equity and non-equity)
    - For awards that vest during a fiscal year, the difference between the value at vesting and the value at the end of the prior fiscal year
    - For awards that remain unvested at fiscal year-end, the year-over-year change in value
    - For awards granted during the fiscal year, the value at fiscal year-end (captures the target or grant-date fair value as well as subsequent changes in value)
  - ✓ We believe the derivation of the incremental gain in equity incentives is easily done leveraging existing disclosures in the Proxy:
    - Table of "Outstanding Equity Awards Table at 20XX Year End"; and the
    - Table of "Option Exercises and Stock Vested Table for 20XX"

Questions #19: Pension Service Cost Calculations

- We do not practice in the area of pension service cost calculations nor cannot provide relevant commentary on this calculation.

Questions #20: Value at Vest Calculations

- We do not believe the valuation of equity awards at vest are overly complex. We believe there to be approximately 2 classes of securities to discuss:

  1. **Stock Options or Stock Appreciation Rights** – The valuation of an employee stock option requires an assumption surrounding "exercise behavior". In a Black-Scholes model, this is typically done with an "expected life". We believe there to be 4 reasonable approaches that would be easy for companies to administer (many of which companies are already performing), and listed in order of complexity, but also with improving levels of accuracy.

a. Midpoint Approach under SEC SAB107/SAB110– This approach is allowed for "plain vanilla" at-the-money stock options and represents the midpoint of the future exercisable term. At the point of vesting, however, it is unlikely that the awards will be at-the-money. As actuaries and valuation professionals, we believe that the midpoint approach is reasonable, and should be acceptable for these disclosures. A great percentage of companies are already applying this approach for grant date valuations.
b. IRS Revenue Procedure 98-34 – This revenue procedure sets forth a methodology to value certain compensatory stock options. Revenue Procedure 98-34 provides an approach to determine the "Computed Expected Life" of an option by multiplying the remaining contractual term of an option by the ratio of grant-date expected life to original contractual term. Volatility and dividend yield would be based on the recent financial statement disclosure. These inputs could be used in a "generally recognized option pricing model" (e.g., Black-Scholes-Merton). Many companies are already using this approach for disclosure in the Proxy for generating estimated payments at the time of termination.
c. IRS Revenue Procedure 2003-68 - This revenue procedure provides guidance on the valuation of stock options solely for purposes of §§ 280G and 4999 of the Internal Revenue Code (which get disclosed frequently in the termination provisions of the Proxy). The revenue procedure provides three (3) Safe Harbor tables (for Low, Medium, and High Volatility) companies. The benefit of these Safe Harbor tables are that they value stock options as a function of both "moneyness" and "time". Many companies are already using this approach for disclosure in the Proxy for generating estimated payments at the time of termination.
d. Research Study by Jennifer Carpenter, Richard Stanton, and Nancy Wallace / Society of Actuaries – The SEC in SAB107 alluded to a study of exercise behavior (page 35),

   "data about exercise patterns of employees in similar industries and/or situations as the company's might be used. While such comparative information may not be widely available at present, the staff understands that various parties, including actuaries, valuation professionals and others are gathering such data."

   This research is now completed and publicly available after being published in the Journal of Finance, although it is not in a format generally consumable by corporate issuers. That being said, the community of valuation professionals think that this aggregate data is preferred to other valuation approaches and is a possible long-term solution in a scalable way. We believe that the behavior summarized in this research could be scaled into easily digestible actuarial tables.

We are starting to see more nuanced provisions written into stock option programs that would not be considered in the 4 above alternatives. Some of the provisions that would be challenging to consider are (but not limited to): maximum value caps, auto-cancel features on a defined negative TSR performance, or the mandatory hold of the net settled shares after exercise. These provisions may require more significant consideration and/or valuation.

2. **Full value shares that have restrictions after the Requisite Service Period -** It is becoming more and more common to see shares have sale restrictions after vesting and is specifically recommended by governance groups. If shares have sale restrictions after vesting, then those shares are inherently less valuable than a freely tradable share. ASC718 allows for a discount of shares, which many companies include.

   Further, per the comment letter by KPMG, it is very common to have many Principal Executive Officers (PEOs) who are "Retirement Eligible". In this case, it is common for these individuals to have a provision stating that they will be allowed to continue to hold the awards after retirement. Paragraph 718-10-55-88 that for Retirement Eligible employees, *"Because the employee is eligible to retire at the grant date the award's explicit service condition is non-substantive. Consequently, Entity A has granted an award that does not contain a service condition for vesting, that is, the award is* ***effectively vested****, and thus, the award's entire fair value should be recognized as compensation cost on the grant date."* Similarly to awards that have explicit holding periods upon vesting, these are awards that have restrictions after the requisite service period, and theoretically are less valuable than a freely tradable share.

Questions #21: Calculation of TSR

- The proposed illustration of 1-year TSR's is consistent with Item 201(e) of Regulation S-K , including the concept of market cap weighting (Question 5.02). This time period is already used, and registrants are familiar with the practice.
- The only reason to consider a different time period would be to try and better align with the proposed definition of compensation. Our opinion is that it may be improved to change the definition of compensation "Compensation Actually Paid" (per our comments on Question #18) to better align with the 1-year TSR disclosures.
- Because long term incentives, which are typically earned over a period of years, comprise the majority of the compensation that is paid to the PEO in a given, including 3-year and 5-year TSR in the disclosure may provide useful context to the reader.
- The concept of market cap weighting TSR is uncommon to registrants for this purpose of executive compensation decisions and can unduly overweight the constructed index by a single outlier. A more common measure used by Registrant's for this purpose is to use the median of the constructed peer group.

Questions #22: New Executive Compensation Developments

- In 2019, the Business Roundtable released a new statement on the purpose of a corporation, to lead their companies for the benefit of all stakeholders (Customers, Suppliers, Employees, Shareholders, and the Community).
- Compensation programs are slowly evolving to better address the aforementioned stakeholders.
- As part of that evolution, more registrants are including ESG goals into their incentive programs.

- This framework of executive compensation is quickly evolving, and we would recommend monitoring it for now, but not requiring anything further within these pay for performance disclosures.

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We hope these responses to your questions are helpful. In summary to the Proposed Rules, we are generally very supportive of their disclosure and transparency, and would recommend re-consideration of the following 2 questions:

1. Consideration of "incremental value" for defining Compensation Actually Paid during the year, as we discussed in greater detail in Question #18, which would create better alignment with the annual TSR's.

2. A better description if a "time-based" stock option is considered a Performance Vehicle, and if not, then what sort of absolute stock price returns are required for an equity vehicle to be considered performance based?

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We appreciate the opportunity to offer these comments and hope that the Commission finds our observations and recommendations useful in developing final rules. Please do not hesitate in contacting us to discuss any of our suggestions.

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