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Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0609
VIA Internet Comment Form (http://www.sec.gov/rules/proposed.shtml)
Attention: Ms. Elizabeth M. Murphy, Secretary

RE: File Number S7-07-15

Dear Ms. Murphy:

The National Association of Manufacturers (NAM) – the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states – appreciates the opportunity to provide comments to the Securities and Exchange Commission (SEC) on the proposed "pay versus performance" rule implementing Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Thousands of domestic manufacturers are publically-held companies that would be subject to this new disclosure requirement.

Overview

During Congressional consideration of the Dodd-Frank Act, the NAM urged lawmakers to focus their efforts on strengthening the U.S. financial system and avoiding new regulations that could be costly and hinder job creation for manufacturers and other non-financial companies that had nothing to do with the financial crisis. The NAM continues to have strong concerns about costly rules and regulations implementing Dodd-Frank, including the SEC's proposal on the "pay ratio requirement," which creates significant costs for manufacturers. Similarly, the newly proposed "pay versus performance" regulation would add an additional and duplicative layer of disclosure and burden to manufacturers without providing any significant benefit to shareholders.

While the NAM believes shareholders should receive proper and adequate disclosure of information material to investment decisions, companies should not be unnecessarily burdened by government regulation or required to disclose information that might be advantageous to competitors while not of significant benefit to investors. The NAM has long urged government entities to take into consideration the cost of compliance when considering the adoption of regulations that require disclosure of information.

The Dodd-Frank Act does not prescribe the metrics that must be used, or the manner in which the pay and performance requirement must be disclosed. In its proposal, the SEC cites legislative history stating that the pay versus performance requirement is "not intended to be overly-prescriptive and that Congress recognized that there could be many ways to disclose the relationship between executive compensation and financial performance of the registrant."[1] The proposed rule however, mandates a one-size-fits-all measurement of executive compensation and performance of the issuer company that will impose significant and unnecessary compliance and cost burdens on public companies while not providing issuer companies the flexibility to present information they determine would be most useful to their shareholders or in a manner that they conclude would best serve their investors.

Duplicative and Burdensome

As the SEC acknowledges, the proposed rule "requires the disclosure of information that is largely already required to be reported under current disclosure rules."[2] Under the rule however, public companies would be required to do additional computations to calculate the amount of compensation "actually paid" and further analysis to explain the relationship between compensation and total shareholder return (TSR) for the company and for other companies in the peer group.

The proxy statement already is very lengthy and filled with a number of disclosures and tables that include executive compensation and performance information. The proposed rule, however, would require companies to add a table reflecting data on the total compensation "actually paid" to the principal executive officer, the average compensation paid to the named executive officers, TSR for the company, and the TSR of the company's peer group. In addition, companies would be required to describe the relationship between the executive compensation actually paid and the TSR for the company as well as the relationship between the company's TSR and the peer group TSR. The table, footnotes and narratives must be tagged and electronically formatted using XBRL.

The new table will contain information about executive compensation that is similar, but in some respects very different from the disclosures in the Summary Compensation Table and related text narrative required by the Sarbanes-Oxley Act. In addition to imposing an administrative burden on companies, the new table will confuse investors, who will be forced to wade through additional disclosure with respect to information already reported elsewhere in the proxy.

The proposed rules also do not relate pay and performance in a logical manner and many companies would be forced to include supplemental disclosures to explain why the required disclosure does not demonstrate alignment of pay and performance. For example, some companies' measures of performance are directly connected to their strategic objectives, rather than exclusively TSR. In other cases, compensation actually paid and TSR could reflect performance in different time periods, e.g., an executive may be receiving incentive pay from a past performance that differs from the time period where TSR is measured. In addition, prominent proxy advisory firms use different concepts of realizable pay that will cause further confusion if shareholders are confronted with a number of different pay versus performance disclosures.

Tenuous Goal of the Regulation

As detailed above, manufacturers are concerned that these conflicting standards and disclosures would create confusion and reduce any potential benefit for investors, running counter to the SEC's stated goal "to provide shareholders with information that will help them assess a

[1] Pay Versus Performance, Securities and Exchange Commission, [Release No. 34–74835; File No. S7–07–15] RIN 3235–AL00, Federal Register Vol. 80, No. 88, p. 26330
[2] Federal Register /Vol. 80, No. 88, p. 26344

registrant's executive compensation when they are exercising their rights to cast advisory votes on executive compensation under Exchange Act Section 14A."[3] Indeed, the SEC itself acknowledges that "[t]he proposed amendments are not expected to result in the provision of significant new information to shareholders…"[4]

Instead, the new calculations of executive compensation actually paid and TSR, as presented in a table included in proxy and other statements, could mislead shareholders to place too much emphasis on these single data points without taking the time to consider the many factors that go into the design of executive compensation packages or the varying degree of relevance of a peer group's pay or performance.

Manufacturers also have concerns with another intended goal to "enhance comparability among registrants."[5] Compensation and performance can be based on a huge and varying array of factors ranging from location to size of the business to tenure and experience of executives, factors that could vary dramatically depending on the individual company.

In order to grow a strong and competitive manufacturing economy, manufacturers need to find and attract world-class talent at all levels. The NAM has long supported flexibility in the design of executive compensation benefit packages to ensure manufacturers can recruit and retain leaders that will grow the business, create more jobs and contribute to our overall economic growth. That flexibility enables manufacturers to stay competitive, but creates diversity among the ways executives are compensated that is not easily comparable from company to company.

In light of the wide range in compensation packages for executive officers at different companies, including different pay mixes, timing for receiving compensation, and vesting schedules, it is very difficult to compare compensation packages at different companies. The proposed rule requires the disclosure of the average pay of named executive officers (NEOs) in addition to the principal executive officer, which will vary from company to company given the different levels and tenures of NEOs. Compensation may appear inconsistent from year to year at one company, let alone among a group of companies, given that NEOs may change from year to year and new NEOs may not be in the role, and therefore not compensated for a full year. The pay metric can be affected by outlier data including: new, external incumbents with no historical awards compared to seasoned executives with historical awards; grandfathered pension arrangements; and payments related to special circumstances such as severance, retention concerns, sign-on bonus, awards that vest upon retirement or are forfeited upon resignation, etc.

Likewise, performance in any given year can depend on a variety of factors. Commodity prices, economic trends, and a host of other variables can impact how well a manufacturer performs. The impact of currency and interest rate shifts, and other economic issues that are outside of an executive's control, can also vary tremendously based on the location of operations. Since the SEC has designated TSR to be an adequate measure of performance, shareholders may wrongly assume this is a hard-and-fast standardized data point that can easily be compared across companies, instead of taking into account the market impacts that may have shaped this metric.

In many cases, it will also be difficult to compare a company's TSR to that of a peer group. As discussed below, not all companies have direct, relevant peers. The companies identified as a

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[3] Federal Register /Vol. 80, No. 88 at p. 26331
[4] Federal Register /Vol. 80, No. 88 at p. 26346
[5] Federal Register /Vol. 80, No. 88 at p. 26340

peer group may also change over the five year disclosure period due to mergers, acquisitions, or other factors, which would add to the complexity and achievability of a valid comparison.

Furthermore, nothing in the language of the statute requires that the rule be structured to optimize for comparability, especially at the expense of allowing each issuer to explain the linkage between pay and performance using measures that represent its own priorities, methods and circumstances. Section 953(a) mandates only that companies present compensation information, but not the same information, showing the relationship between financial performance and compensation actually paid. Instead, the proposed rule over-optimizes for comparability at the expense of providing useful information for shareholders.

The idea that a single metric could be an indicator of a company's approach to compensation practices, business strategy, or hundreds of other decisions that comprise their business plan is false and overly simplistic.

Overemphasis on TSR

By requiring the use of TSR to delineate a company's performance, the SEC proposal places too much emphasis on the cumulative TSR metric. There are many different ways that a company's performance can be measured, including earnings per share and revenue. The SEC's request for companies to reflect TSR as the measure of a company's performance oversimplifies how well a company is doing and can depend on a number of outside variables.

Since TSR is based on stock-price, the use of TSR as the required performance metric can have unintended consequences. The TSR metric may place an overemphasis on short-term stock do prices instead of long-term performance and growth. Manufacturers know that investments in R&D, new products, equipment, and plants not always generate immediate returns on investments, but often contribute to overall growth and productivity of the company in the long run. An overemphasis on TSR could force companies to cut back on important investments that contribute to long-term growth. Indeed, mandating the use of TSR as a representation of company performance may actually serve as a disincentive for the types of long-term investments that maximize shareholder value in the long run.

Difficulty Identifying Appropriate Peer Group

In addition to disclosing their own TSR, companies must also measure and disclose the TSR of a registrant peer group and describe the relationship between the company's TSR and the TSR of its peer group. The NAM represents manufacturing companies across all industry sectors, including large and small businesses and domestic-based and multinational companies. With such diversity, it can be very difficult to find two companies that have similar structures, sizes, and lines of business, and virtually impossible to find a group of companies that could adequately represent a "peer group."

For example, it is very difficult for some highly diversified manufacturing companies that may have dozens of lines of business to choose an appropriate peer group with which to measure TSR. These manufacturers defy simple classification and it would not be appropriate to compare them to companies with which they only compete in a limited space. In other cases, a very large company may not have a similar peer company within their industry and their peer group includes companies outside of their industry. It is extremely challenging to compare the TSR of companies in different industries since each industry has very different business cycles and is influenced by different market forces.

Cost-Benefit

Under the proposal, issuers of all sizes would be forced to divert company resources to comply with the rule, including calculating the amount executives are "actually paid," finding an appropriate peer group to measure TSR, justifying the relationship between a company's pay and performance and describing the relationship between the company TSR and the TSR of its peer group. Preparing and reviewing these new pay versus performance disclosures is likely to involve significant man hours of the reporting company's staff, management, in-house counsel, the Board of Directors, and outside counsel or service providers. Manufacturers believe that the pay versus performance requirement, which will generate unnecessary paperwork and waste significant company resources, is an example of rules targeted by President Obama in Executive Order 13563.

As noted above, the pay versus performance rule would add to length and complexity of proxy and information statements, as companies seek to provide context around the metrics. This would reduce the benefit of other information provided in these reports as investors become overwhelmed with the amount of disclosures and explanations used to qualify the new pay versus performance requirement.

Manufacturers also are concerned that new regulations on executive compensation could trigger frivolous lawsuits claiming an existing disconnect in a company's pay and performance. This is heightened by the fact that the proposed pay versus performance disclosures would be considered "filed" instead of "furnished," creating additional litigation risk.

It also is important to note that the proposed pay versus performance requirement is not happening in a vacuum. Other regulations promulgated under the Dodd-Frank Act, including the pay ratio proposal released in September 2013, already impose a significant compliance burden on public companies, a burden that would be exacerbated by the pay versus performance requirement. Manufacturers believe the SEC's estimates of the man hour and cost burden of the rule on companies – "67,500 hours for internal company time, and $9,000,000 for the services of outside professionals"[6] – is grossly underestimated. Pay versus performance disclosures would create additional costs that would be added on top of the millions of dollars manufacturers expect to pay in order to comply with the pay ratio requirement.

Manufacturers also are concerned that the costs associated with the pay versus performance proposal would not lead to greater transparency for shareholders. The release explains that the benefits of the proposal will "depend on the extent to which the computations provided or the format used for the proposed disclosure is useful to shareholders."[7] Since most of the information required to be disclosed in the proposal is already available to shareholders, the new requirement adds no new benefit despite the additional cost and administrative burden imposed on reporting companies. Instead, shareholders may be more confused by the new disclosures, particularly in cases when a very unique company has been forced to list a peer group TSR that does contain companies that closely resemble the reporting company, or in cases where a shareholder has historically measured executive compensation in realizable pay or another metric that differs from the one required in the proposal.

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[6] Federal Register /Vol. 80, No. 88 at p. 26352
[7] Federal Register /Vol. 80, No. 88 at p. 26350

Conclusion

The NAM continues to oppose the pay versus performance requirement and appreciates the opportunity to raise concerns with the proposed rule, which would impose compliance and cost burdens on manufacturers. In the event the regulatory process moves forward, we recommend that the SEC undertake a comprehensive project to remove duplicative and confusing disclosures in the proxy statement.

In addition, any final rules should delay implementation to allow companies to understand the new requirements, determine how to gather and compute the new data, and, if applicable, how to modify current pay for performance narratives. Manufacturers also urge the SEC to allow more flexibility for companies in the method used to measure compensation actually paid and in providing a data point on performance.

The prescriptive structure the proposed rule sets up will impede providing case-specific, thoughtful and nuanced information that is the hallmark of effective disclosure. The Commission has repeatedly and appropriately used – most notably in the parts of Item 402 covering Compensation Disclosure and Analysis – a principles-based approach to disclosure that has resulted in an ongoing evolution of how each registrant explains compensation to its investors. The SEC should move away from the prescriptive nature of the proposed rule, and instead continue to encourage principles-based disclosure.

Manufacturing supports an estimated 17.6 million jobs in the United States – about one in six private-sector jobs – and more than 12 million Americans (or 9 percent of the workforce) are employed directly in manufacturing.[8] Manufacturers strive to compete in a global world and are committed to ensuring that their workforces are highly trained and well compensated. In fact, in 2013, the average manufacturing worker in the United States earned $77,506 annually, including pay and benefits. Whereas the average worker in all industries earned $62,546.[9] Manufacturers are proud of their commitment to their workforces and want to dedicate resources to competing, growing and investing in their companies, their products and their employees and are concerned about regulatory burdens that will distract them from this mission.

In contrast, the cost of complying with this rule would divert company resources from needed and investment and job creation without providing a benefit to shareholders, companies or the broader economy. On behalf of the NAM and the 12 million men and women that work in manufacturing, thank you for your attention to these concerns.

Sincerely,

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[8] Bureau of Labor Statistics (2014), with estimate of total employment supported by manufacturing calculated by NAM using data from the Bureau of Economic Analysis (2013, 2014).
[9] Bureau of Economic Analysis, National Economic Accounts by Industry (2013).