

Publications

Securities Alert: SEC Proposes 'Pay Versus Performance' Disclosure Rules

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Background

On April 29, 2015, the Securities and Exchange Commission (SEC) proposed rules to implement Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act to require “pay versus performance” disclosure in proxy and information statements that include executive compensation disclosure pursuant to Item 402 of Regulation S-K.

Summary of Proposed Rules

The proposed “pay versus performance” disclosure rules would require the inclusion of a new compensation table in the proxy or information statement that sets forth for each year covered by the table:

- the compensation “actually paid” to the principal executive officer (PEO);
- the total compensation paid to the PEO as reported in the Summary Compensation Table (SCT);
- the average compensation “actually paid” to the other named executive officers (NEOs);
- the average total compensation paid to the other NEOs as reported in the SCT;
- the total shareholder return (TSR) of the company; and
- the TSR of the company’s peer group (either (1) the peer group used for the company’s performance graph included in the company’s annual report or (2) the peer group reported in the Compensation Discussion and Analysis).

The proposed rules would also require graphic or narrative disclosure of the relationship during the years addressed by the table between (1) executive compensation “actually paid” and company TSR and (2) company TSR and peer group TSR.

The compensation “actually paid” to the CEO and the other NEOs would be calculated by: (1) removing from the total compensation reported in the SCT (a) the change in actuarial present value of pension benefits and (b) the grant date fair value of equity awards granted during the year; and (2) adding to the total compensation reported in the SCT (a) the actuarial present value of benefits under defined benefit or pension plans attributable to services rendered by the NEO during the year and (b) the fair value of equity awards vested during the year.

TSR would be calculated using the same methodology used to calculate TSR for the performance graph included in the company’s annual report.

All data elements would be required to be tagged in XBRL format.

Transition Period

The proposed rules would be phased in over three years. For smaller reporting companies, the proposed rules would require two years of disclosure in the first year and three years of disclosure thereafter. For non-exempt registrants other than smaller reporting companies, the proposed rules would require three years of disclosure in the first year, four years of disclosure in the second year and five years of disclosure thereafter.

Exempt Issuers

The proposed disclosure requirements would not apply to emerging growth companies or foreign private issuers.

Comment Period and Effectiveness of Proposed Rules

The proposed rules are subject to a 60-day public comment period from the date the proposed rules are published in the Federal Register. It appears that the SEC intends to have these rules effective for the 2016 proxy season.