

American Federation of Labor and Congress of Industrial Organizations



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June 30, 2015

Sent via electronic mail: rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Pay Versus Performance Rule, File No. S7-07-15

Dear Mr. Fields:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing to provide comments to the Securities and Exchange Commission (the "SEC") on the proposed pay-versus-performance rule. Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") requires the SEC to issue this rule for public companies to disclose the relationship between executive compensation and company performance.

The AFL-CIO is the umbrella federation of U.S. labor unions, including 56 unions, representing 12.5 million union members. Union-sponsored and Taft-Hartley pension plans hold more than \$560 billion in assets. Union members also participate directly in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public-sector employers. The retirement savings of America's working families depend, in part, on ensuring that public companies have responsible compensation practices for their chief executive officers.

Overall, we are supportive of the SEC's proposed rule which adds item 402(v) of Regulation S-K, requiring companies to disclose pay-versus-performance data for the principal executive officer and other named executive officers in a new standardized table in proxy statements. The proposed disclosure requirement will give investors a valuable new tool for reviewing the relationship between the compensation actually paid to senior executives and their company's total shareholder return.

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Pay-versus-performance tables—along with disclosure of the ratio of the CEO-to-worker pay, as mandated by Section 953(b) of the Dodd-Frank Act—will provide shareholders with information that will help them assess a company’s executive compensation when casting advisory Say-on-Pay votes. As the legislative history of the Dodd-Frank Act suggests, this disclosure will also aid shareholders in elections of directors, especially compensation committee members, by helping them evaluate the directors’ oversight of executive compensation.¹

“Actually Paid” Compensation

We agree with the SEC’s proposal that “executive compensation actually paid” should include all compensation actually paid, regardless of whether it is specifically linked to a company’s performance. As we noted in our August 8, 2014 comment letter, we believe that the inclusion of all forms of executive compensation in total amounts will help investors better understand the relationship between executive pay and company performance, or the lack thereof.² Excluding some forms of executive compensation from pay totals because they are not linked to performance would defeat the entire purpose of the pay-for-performance table disclosure requirement.

Alternative total pay methodologies such as a “realized pay” approach will not satisfy the definition of “executive compensation actually paid” as mandated by Section 953(a) of the Dodd-Frank Act. By including stock price appreciation of equity awards after vesting, a “realized pay” approach would conflate changes in executives’ wealth with their income. Equity awards cannot be considered “actually paid” upon exercise because executives decide how and when to exercise their awards after they are vested. For this reason, the proposed definition of “actually paid” compensation appropriately focuses on the fair value of awards on the vesting date.

Summary Compensation Table Total Compensation

We commend the SEC for preserving the Summary Compensation Table in its current form under Item 402 of Regulation S-K, and for including the total compensation from the Summary Compensation Table in the new pay-versus-performance table. The Summary Compensation Table informs investors of the total compensation granted to senior executives in the latest fiscal year, including the fair value of equity awards. This helps shareholders evaluate the annual compensation decisions made by boards of

¹ *Report on The Restoring American Financial Stability Act of 2010*, Senate Committee on Banking, Housing and Urban Affairs, April 30, 2010. At 135. Available at:

http://www.banking.senate.gov/public_files/Comittee_Report_S_Rept_111_176.pdf

² AFL-CIO comment letter to the SEC, August 8, 2014. Available at: <http://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-329.pdf>

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directors' compensation committees. For this reason, it is important that the Summary Compensation Table total amounts be listed in the pay-versus-performance table.

Measuring Company Performance

While we recognize that Total Shareholder Return ("TSR") is an important performance yardstick for investors, we urge the SEC to require disclosure of the quantitative performance metrics and numerical formulas that compensation committees are actually using to set executive pay. At the time that the Dodd-Frank Act was being debated in Congress, the Council of Institutional Investors urged lawmakers to require the disclosure of quantitative performance targets and thresholds for setting target pay.³ Since the Dodd-Frank Act became law, some, but not all companies, have begun disclosing their quantitative performance metrics for executive pay.⁴

Although the statutory language of Section 953(a) suggests that TSR should be included in pay-versus-performance tables, TSR is not the only measure of financial performance. In fact, TSR may not be a good measure of executive performance over the long term because many other factors impact TSR that are entirely outside the influence of executives. Investors need to be able to consider the quantitative performance metrics that are actually used to determine executive pay and whether those benchmarks are rigorous. To enhance comparability, these quantitative performance metrics should be required to be disclosed in a standardized format.

Graphic Representation of Pay-Versus-Performance

Additionally, we recommend the SEC require companies to present the pay-versus-performance data in a standardized graph showing the trend line for both the top executive and the other senior executives over the required time periods. We believe such a graph will be especially useful to investors if it shows the percentage change in executive compensation actually paid and the Summary Compensation Table total compensation compared with the company's TSR and peer group performance over each year of the required time period.

³ *Protecting Investors and Fostering Efficient Markets: A Review of the S.E.C. Agenda*, Hearing before the House Committee on Financial Services, statement of Ann Yerger, executive director of the Council of Institutional Investors, May 25, 2006.

⁴ For example, see Chesapeake Energy Corp., 2015 Proxy Statement, April 10, 2015 at 25; General Electric Co., 2015 Proxy Statement, March 10, 2015 at 38. Prudential Financial Inc., 2015 Proxy Statement, March 24, 2015, at 42-44; 47-49.

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Peer Group Total Shareholder Return

The peer group TSR disclosed in the pay-versus-performance table should be the same peer group used in determining executive compensation. If companies use more than one peer group to set executive pay, they should be required to disclose each peer group in the pay-versus-performance table. For example, a company may set target pay amounts using one peer group and use quantitative performance metrics from another peer group. If companies change their peer groups, they should be required to disclose the changes and explain the reasons for the change.

Separate Pay Disclosure for Different CEOs

If more than one individual serves as the principal executive or CEO during the fiscal year in question, companies should be required to separately disclose the pay-versus-performance data for each person. Combining the compensation of various CEOs, as proposed by the SEC, will hamper the ability of investors to correctly assess the performance of the different chief executives. Investors can easily combine the “actually paid” compensation amounts if a company lists more than one CEO in the table, but they cannot easily separate the aggregate pay of two or more CEOs.

XBRL Tagging

We support the SEC’s proposed requirement that the pay-versus-performance data be tagged in XBRL format. We believe that XBRL tagging of the relationship of executive compensation to financial performance will enhance the ability of investors to compare data across companies, and over time. Furthermore, XBRL tagging should be extended to the actual performance metrics that are being used to determine executive compensation. Such disclosure will facilitate proxy voting by institutional investors who often vote hundreds if not thousands of proxies each year.

We thank you for taking the AFL-CIO’s views into consideration regarding this matter. We look forward to speedy implementation by the SEC of the final rule on Section 953(a) of the Dodd-Frank Act. If the AFL-CIO can be of further assistance, please contact Brandon Rees at (202) 637-5152 or brees@aflcio.org.

Sincerely,



Heather Slavkin Corzo
Director, Office of Investment