PAY VERSUS PERFORMANCE DISCLOSURES: A SNAPSHOT

JANUARY 2024

SUMMARY

The pay versus performance disclosures required by Item 402(v) of Regulation S-K require registrants to disclose information about the relationship between executive compensation paid and the financial performance of the registrant. These disclosures are required in proxy and information statements that require disclosure of executive compensation, but not in registration statements or in annual reports on Form 10-K. Emerging growth companies, registered investment companies and foreign private issuers are exempt from compliance with the pay versus performance disclosure requirements. Smaller reporting companies (SRCs) may scale their disclosures.

DISCLOSURE PRESENTATION: KEY HIGHLIGHTS

SEC STAFF GUIDANCE

SEC Staff Compliance & Disclosure Interpretations (C&DIs)

Registrants must disclose executive compensation "actually paid" to named executive officers (NEOs),[1] as well as the following financial performance measures:

- Cumulative total shareholder return (TSR) for the registrant
- Peer group cumulative TSR
- Net income for the registrant
- Measure used by the registrant to measure financial performance (Company-Selected Measure)

[1] Persons covered under the NEOs are specified in Item 402(a)(3) of Regulation S-K and listed in the SCT.

The disclosures are required in tabular format, as follows:

PAY VERSUS PERFORMANCE								
Year **(a)**	Summary Compensation Table for Total Principal Executive Officer (PEO)	Compensation Actually Paid to PEO **(b)**	Average Summary Compensation Table Total for Non-PEO NEOs	Average Compensation Actually Paid to Non-PEO NEOs	Value of Initial Fixed $100 Investment Based On:		Net Income **(f)**	Company Selected Measure* **(g)**
					Registrant TSR **(c)** **(e)**	Peer Group TSR* **(d)** **(e)**		

*SRCs may omit this disclosure.

(a) If a registrant changes its fiscal year, disclosures should be provided for the "stub period" in the year of change (that is, the period between the last fiscal year end and the new fiscal year end). Refer to C&DI 228D.01 for an example.

(b) Executive compensation "actually paid" during a year is the "Total" column in the Summary Compensation Table (SCT) required by Item 402(c) of Regulation S-K, adjusted for certain amounts related to equity-based compensation and defined benefit and actuarial pension plans discussed further in section Compensation "Actually Paid". If the registrant had multiple PEOs in a fiscal year, the compensation actually paid to the PEOs may be aggregated for disclosure if the presentation is not misleading to investors.

(c) Item 201(e) of Regulation S-K defines TSR as dividends plus or minus the change in share price over the measurement period.

(d) The peer group may be either the peer group used for disclosures required by S-K Item 201(e), or a peer group used in Compensation Discussion and Analysis (CD&A) even if such peer group is not used for "benchmarking" purposes.[2] If the peer group is not a published industry or line-of-business index, the peer group must be disclosed and the cumulative TSR should be weighted based on the stock market capitalization of each selected peer at the beginning of each period for which the return is disclosed. If a registrant changes its peer group from the immediately preceding fiscal year, it must disclose the reason for the change, and compare its TSR to the TSR of the new peer group and the TSR of the peer group used in immediately preceding year.[3]

(e) If a registrant went public during the earliest year presented in the table (and registered a class of securities pursuant to Section 12 of the Exchange Act), the "measurement point" for purposes of calculating TSR and peer group TSR should begin on the registration date. If a registrant emerges from bankruptcy and issues a new class of stock pursuant to the bankruptcy plan, it may provide its cumulative TSR and peer group TSR using a measurement period starting from the date the new class of stock begins trading.

(f) Net income (loss) must agree to net income or loss reported in the audited financial statements. Registrants may not use adjusted net income or loss amounts.

(g) The Company-Selected Measure:

- May be any financial performance measure that differs from the financial performance measures otherwise required to be disclosed in the table, which includes measures derived from the registrant's net income or TSR (for example, it is acceptable to use earnings per share, gross profit, or relative TSR as the Company-Selected Measure).
- May not be the registrant's stock price if the registrant does not use the stock price to link compensation actually paid to company performance.
- May not be omitted even if the registrant uses a "pool plan" to determine its annual bonus awards,[4] and cannot be measured over a multi-year period.

[2] A registrant may not use a broad-based index as its peer group.

[3] A registrant is not required to compare its TSR to the TSR of both the new peer group and the peer group used in the immediately preceding year if an entity is removed from the new peer group solely because it is no longer in the index or the change in the peer group is due to applying pre-established objective criteria.

[4] Similarly, a registrant may not omit the tabular list of financial measures that are most important to the registrant or the related relationship disclosures.

- Is not required to be disclosed if a registrant does not use any financial performance measures to link executive compensation actually paid to performance, or if it only uses a financial measure required by S-K Item 402(v).

In addition to the Company-Selected Measure, registrants must include a tabular list of three to seven financial performance measures that they believe are "most important" to link executive compensation actually paid to the performance of the company for the most recently completed fiscal year. The Company-Selected Measure must be selected from this list and the "most important" determination should be made considering only the most recently completed fiscal year. A registrant is not required to disclose its method for determining the "most important" measures but should consider whether it would be helpful to an understanding of the measure. If the registrant uses fewer than three measures, the tabular list must include all measures used. If the registrant considers a non-financial measure to be one of the "most important" measures, the rule permits, but does not require, it to be included in the tabular list.

The registrant may present the tabular list as any of the following:

- A single list for all NEOs
- Separate lists, one for the PEO and one for all other NEOs
- Separate lists for the PEO and each NEO

The list does not require the registrant to rank the importance of each measure. SRCs may omit these disclosures.

Registrants must clearly describe the relationship between the financial performance measures and the compensation actually paid to the registrant's NEOs. The disclosures may be presented narratively, graphically, or a combination of the two, and must describe the relationship between the following:

- Executive compensation actually paid and registrant's TSR, net income, and company-selected measure
- Registrant's TSR and peer group TSR

BDO INSIGHTS — DISCLOSURE LOCATION

While many registrants may choose to include the pay versus performance disclosures in or near the CD&A, there is no required location for the disclosures. The SEC stated that mandating disclosure within CD&A may indicate the registrant considered the relationships disclosed in its determination of compensation, which may not be accurate.

SCALED DISCLOSURES APPLICABLE TO SMALLER REPORTING COMPANIES

SRCs may omit the following pay versus performance disclosures:

- Defined benefit and actuarial pension plan costs from the determination of compensation actually paid, which is consistent with the SCT disclosure requirements (S-K Item 402(c)) that do not require SRCs to calculate the actuarial change in pension value
- Peer group TSR and related discussion on the relationship to the company's TSR
- Company-Selected Measure and related discussion on the relationship to compensation actually paid
- Tabular list of three to seven financial performance measures that they believe to be the "most important" to link executive compensation actually paid to the performance of the company for the most recently completed fiscal year

Additionally, SRCs may provide three fiscal years, rather than five, and two fiscal years, rather than three, in the first proxy or information statement that requires compliance. Further, SRCs are not required to comply with Inline XBRL requirements until the third filing disclosing pay versus performance.

COMPENSATION "ACTUALLY PAID"

Compensation "actually paid" is determined by adjusting the "Total" column in the SCT for the following:

- **Defined benefit and actuarial pension plans** (not required for SRCs):

  Add:

  - Actuarial "service cost" for services rendered during the fiscal year
  - "Prior service cost," as determined in accordance with U.S. GAAP, of benefits granted during the fiscal year, whether by amendment or initiation of a plan, for services rendered in prior fiscal years

Deduct:

- The increase in the actuarial present value from prior fiscal year[5]

- **Equity awards:** The fair value (FV) of equity-based awards is determined using the methodologies and assumptions required by U.S. GAAP. Examples of methodologies that are inconsistent with U.S. GAAP include using an expected term that:
  - Subtracts the elapsed life of the award from the expected term at the grant date
  - Is based on the "simplified" method[6] for awards that are not "plain vanilla" (such as for out-of-the-money awards at the valuation date)

  The following adjustments are required for equity-based awards:

  Add:

  - For awards granted during the fiscal year, FV of the following:
    - Outstanding and unvested awards as of the end of the fiscal year
    - Vested awards, as of the vesting date
  - For awards granted in prior fiscal years, the change in FV of the following:
    - Outstanding and unvested awards from the end of the prior fiscal year
    - Vested awards from the end of the prior fiscal year to the vesting date
  - The dollar value of any dividends (or dividend equivalents) or other earnings paid on unvested awards during the fiscal year that are not otherwise reflected in the FV of the award or in any other component of total compensation
    - Dividends to be paid at a future date are excluded from the compensation actually paid as the FV of the award reflects that expectation.
    - Dividends that have been paid are included in compensation actually paid (separate from the FV of the equity award) when the FV of the award no longer reflects the expectation of paying that dividend.

  Deduct:

  - The FV, as of the end of the prior fiscal year, of awards granted in prior fiscal years that do not meet vesting conditions (awards forfeited) during the current fiscal year
    - Awards that vest based on performance or market conditions are not deducted until the award is forfeited, even if the condition is not met during the fiscal year.
  - The equity award amounts presented in the SCT ("Stock awards" and "Option awards")

The equity award adjustments must consider the following:	
Awards granted prior to an equity restructuring or Initial Public Offering (IPO)	- Outstanding awards modified in connection with an equity restructuring (for example, a spinoff), or otherwise retained after the transaction, are included in the computation. - The change in FV of awards granted before an IPO is calculated using the FV as of the end of the prior fiscal year, which may precede the IPO date.
Newly appointed NEO	- The change in FV of awards granted in a period before the appointment as NEO are included in the calculation of compensation actually paid.
Market or performance-based conditions	- Although a market condition is not a vesting condition under U.S. GAAP, the computation considers the change in FV of an award with a market condition until the condition is satisfied. - When other parties are required to certify that a performance-based condition was met and the certification is a substantive vesting condition, the award is not considered vested in the computation until

[5] A decrease in the actuarial present value from the prior fiscal year is excluded from the calculation in the SCT and is therefore excluded from the determination of compensation actually paid.
[6] The SEC staff's view on using the "simplified" method for "plain vanilla" options is in [Staff Accounting Bulletin 14.D.2](#).

The equity award adjustments must consider the following:	
	such certification occurs, even if the performance condition itself is met at year-end.
Accelerated vesting upon retirement eligibility	When retirement eligibility accelerates vesting of an award and is the only vesting condition, it is satisfied when the holder reaches retirement age.

Required Disclosures

Footnote disclosure for each adjustment in the compensation actually paid calculation is required for each fiscal year presented in the table in the year the pay versus performance disclosures are first provided (a registrant may not aggregate equity award adjustments and pension value adjustments for disclosure). Footnote disclosure for adjustments made in later years is only required if the information is material to an investor's understanding of the information presented.

Additionally, footnote disclosure is required when valuation assumptions used to calculate compensation actually paid materially differ from the assumptions used to determine the grant date FV of the award. To determine if assumptions materially differ, a registrant must consider whether applying the updated assumptions would result in a material change from the FV of the award on the grant date. When footnote disclosure is required, it may be appropriate to disclose the range of assumptions or the weighted average assumptions and include a discussion of the effect of the performance condition (if any) on the FV. Disclosure of quantitative or qualitative performance conditions that subject a registrant to competitive harm may be omitted.[7]

TRANSITION

Registrants are required to provide the pay versus performance disclosures for the five most recently completed fiscal years (three years for SRCs) after a transition period. Certain disclosure relief is available for registrants that lose SRC or EGC status in their most recent fiscal year.

Transition Period

The transition period allows registrants to disclose the following:

- Three years of information (two for SRCs) in the first proxy or information statement that requires compliance with S-K Item 402(v)
- Another year of information in each of the next two annual proxy or information statement filings (next year's annual proxy filing for SRCs)

Newly public companies may provide the disclosures for the most recently completed fiscal year in their first proxy or information statement and add another year of information in future filings until all required years are presented.

The following table summarizes how many fiscal years of information are required to be presented, depending on the transition year and the status of the registrant:

TRANSITION YEAR	REGISTRANT (a)	SRC	NEWLY PUBLIC (b)
1	3	2	1
2	4	3	2
3	5	3	3
4	5	3	4 (c)
5	5	3	5 (c)

(a) Excludes SRCs, newly public companies, and those exempt from compliance with the rule.

[7] See Instruction 4 to Item 402(b) of Regulation S-K.

(b) Excludes emerging growth companies.
(c) SRCs are not required to provide more than three years of information.

Loss of SRC Status

Registrants may forward incorporate Part III information into their Form 10-K from their definitive proxy statement filed within 120 days of year-end. If the registrant's Form 10-K for the fiscal year in which it loses SRC status forward incorporates Part III information from its definitive proxy statement, the SEC staff will not object to the registrant's use of SRC scaled pay versus performance disclosures in that definitive proxy statement. Subsequent proxy or information statements must comply with non-scaled disclosures, except:

- There is no requirement to revise prior year disclosure to conform to non-SRC status
- Each year presented should include:
  - Peer group TSR, as it is calculated cumulatively
  - The numerically quantifiable performance under the Company-Selected Measure
- The SEC staff will not object if a registrant does not present a year prior to those included in the registrant's first filing requiring pay versus performance disclosures

EXAMPLE 1

FACTS

Registrant A is a calendar year-end registrant that lost its SRC status in fiscal 2023. Registrant A's 2023 Form 10-K forward incorporates Part III information from its definitive proxy statement filed in April 2024.

ANALYSIS

The SEC staff will not object to Registrant A using SRC scaled pay versus performance disclosures in its definitive proxy statement filed in April 2024.

EXAMPLE 2

FACTS

Assume the same facts as Example 1, except Registrant A's 2024 Form 10-K forward incorporates Part III information from its definitive proxy statement filed in April 2025. Registrant A's first filing disclosing pay versus performance presented the years 2022 and 2021.

ANALYSIS

Registrant A must include non-scaled disclosures for 2024 in its definitive proxy statement filed in April 2025. Registrant A is not required to revise 2023, 2022, and 2021 to conform to the non-scaled disclosures. The SEC staff will not object if Registrant A does not include disclosure for 2020. However, Registrant A should present peer group TSR and the numerically quantifiable performance under the Company-Selected Measure for 2024, 2023, 2022, and 2021. As a non-SRC, Registrant A will include five years of information in its definitive proxy statement filed in April 2026.

Loss of EGC Status

A registrant that loses its EGC status must comply with pay versus performance disclosures in its first proxy or information statement filed following the loss of status. Registrants may follow the transition period relief and provide three years of information, rather than five (two, rather than three, if the registrant is a SRC).

EXAMPLE 3

FACTS

Registrant B is a calendar year-end registrant that lost its EGC status on December 31, 2024. Registrant B is not an SRC.

ANALYSIS

Registrant B is required to provide pay versus performance disclosures in its proxy statement filed in 2025. Disclosure is required for 2024, 2023, and 2022. Registrant B must provide five years of information in its proxy statement filed in 2027.

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