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Part II

Securities and Exchange Commission

17 CFR Parts 229 and 240
Pay Versus Performance; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 240

[Release No. 34–74835; File No. S7–07–15]

RIN 3235–AL00

Pay Versus Performance

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to Item 402 of Regulation S–K to implement Section 14(i) of the Securities Exchange Act of 1934 (the ''Exchange Act''), as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). Section 14(i) directs the Commission to adopt rules requiring registrants to disclose in a clear manner the relationship between executive compensation actually paid and the financial performance of the registrant. The proposed disclosure would be required in proxy or information statements in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required. The proposed disclosure requirements would not apply to emerging growth companies or foreign private issuers.

DATES: Comments should be received on or before July 6, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File Number S7–07–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–07–15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Eduardo A. Aleman, Special Counsel, in the Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to add new paragraph (v) to Item 402 of Regulation S–K.[1]

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I. Introduction

We are proposing amendments today as required by Section 953(a) of the Dodd-Frank Act.[2] Section 953(a) added Section 14(i)[3] to the Exchange Act,[4] which directs the Commission to adopt rules requiring registrants[5] to disclose in any proxy or consent solicitation material for an annual meeting of shareholders a clear description of any compensation required to be disclosed by the issuer under Item 402 of Regulation S–K[6] (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the registrant, taking into account any change in the value of the shares of stock and dividends of the registrant and any distributions. A report by the Senate Committee on Banking, Housing and Urban Affairs indicated that the rules mandated by Section 953(a) of the Dodd-Frank Act were 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.[7]

Section 953(a) was enacted contemporaneously with other executive compensation-related provisions in the Dodd-Frank Act that are ''designed to address shareholder rights and executive compensation practices.''[8] Section 951 of the Dodd-Frank Act enacted new Exchange Act Section 14A[9] which requires that not less than every three years a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to a non-binding shareholder vote to approve the

[1] 17 CFR 229.402.

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] 15 U.S.C. 78n(i).

[4] 15 U.S.C. 78a *et seq.*

[5] Section 102(a)(2) of the Jumpstart Our Business Startups Act (''JOBS Act'') amended Exchange Act Section 14(i) to exclude registrants that are ''emerging growth companies'' from the pay-versus-performance disclosure requirements. Public Law 112–106, 126 Stat. 306 (2012). Section 3(a) of the Exchange Act [15 U.S.C. 78c(a)] defines an ''emerging growth company'' as an issuer with total annual gross revenues of less than $1 billion during its most recently completed fiscal year.

[6] 17 CFR 229.402.

[7] *See* Report of the Senate Committee on Banking, Housing and Urban Affairs to accompany S. 3217, S. Rep. No. 111–176, at 135 (2010) (the ''Senate Report'') which stated with respect to Section 953(a): ''This disclosure about the relationship between executive compensation and the financial performance of the issuer may include a clear graphic comparison of the amount of executive compensation and the financial performance of the issuer or return to investors and may take many forms.''

[8] Dodd-Frank Act, H.R. Rep. 111–517, at 872 (2010).

[9] 15 U.S.C. 78n–1.

compensation of executives. Pursuant to the mandate in Section 14A, we adopted rules requiring a shareholder advisory vote to approve the compensation of the named executive officers (''NEOs''), as disclosed pursuant to Item 402 of Regulation S–K, at an annual or other meeting of shareholders at which directors will be elected and for which such executive compensation disclosure is required.[10]

We believe that the pay-versus-performance disclosure mandated by Section 953(a), and the disclosure of the ratio of the median annual total compensation of employees to the annual total compensation of the chief executive officer mandated by Section 953(b),[11] are intended to provide shareholders with information that will help them assess a registrant's executive compensation when they are exercising their rights to cast advisory votes on executive compensation under Exchange Act Section 14A. The Senate Report accompanying the statute references shareholder interest in the relationship between executive pay and performance as well as the general benefits of transparency of executive pay practices.[12]

In that regard, the disclosure mandated by Section 14(i) of the Exchange Act will give shareholders a new metric for assessing a registrant's executive compensation relative to its financial performance. Currently, Item 402 of Regulation S–K specifies the information that must be included when the applicable form or schedule requires executive compensation disclosure. Information on financial performance is required by other items throughout Regulation S–K, including in Item 201(e),[13] Item 301,[14] Item 302 [15] and Item 303.[16] There is currently no requirement to disclose specific information showing the relationship between executive compensation actually paid and the financial performance of the registrant. Instead, Item 402 of Regulation S–K contains detailed requirements for the disclosure of executive compensation and more principles-based disclosure requirements regarding the relationship between pay and performance. The Compensation Discussion and Analysis (''CD&A'') required by Item 402(b) of Regulation S–K requires registrants to provide an explanation of ''all material elements of the registrant's compensation of the named executive officers.'' [17] With respect to performance, Item 402(b)(2) includes non-exclusive examples of information that may be material, including (i) specific items of corporate performance taken into account in setting compensation policies and making compensation decisions; (ii) how specific forms of compensation are structured and implemented to reflect these items of the registrant's performance; and (iii) how specific forms of compensation are structured and implemented to reflect the NEO's individual performance and/or individual contribution to these items of the registrant's performance.[18]

The disclosure required by Exchange Act Section 14(i) can supplement the discussion in the CD&A as part of the shareholder's evaluation of the registrant's executive compensation practices and policies, including for purposes of the shareholder advisory vote on executive compensation. The proposed amendment provides a factual description of how the executive compensation actually paid related to the financial performance of the registrant.[19] This disclosure may provide a useful point of comparison for the analysis provided in the CD&A about a compensation committee's approach to linking pay and performance. We also believe that the proposed disclosure may provide relevant information to shareholders when voting in an election of directors. By helping to inform a shareholder's assessment of a registrant's executive compensation, the new disclosure may help shareholders evaluate the directors' oversight of this important area.

As with other Dodd-Frank Act rulemakings, we have sought comment from the public prior to the issuance of a proposing release.[20] We have considered the pre-proposal comment letters received to date. Commenters were divided on whether we should provide specific rules on how the proposed disclosure must be prepared or whether we should allow registrants flexibility in determining how to disclose the relationship between pay and performance. Some commenters believed that we should propose specific requirements to encourage consistency and comparability across registrants.[21] Other commenters were supportive of an approach to pay-versus-performance disclosure in which our rules would not provide specific requirements, but would allow registrants to determine the substance of such disclosure and how such disclosure should be presented.[22]

As discussed in more detail below, our proposed amendments would require registrants to provide disclosure that can be compared across registrants, while also continuing to allow registrants to supplement their disclosure about pay-versus-performance to reflect the specific situation of the registrant and its industry. Throughout the release we seek comment on this approach, and whether alternative approaches should be considered to accomplish the objectives of Section 14(i) of the Exchange Act.

II. Proposed Amendment

A. Introduction

We are proposing new Item 402(v) of Regulation S–K that would require a registrant to provide a clear description of (1) the relationship between executive compensation actually paid to the registrant's NEOs and the cumulative total shareholder return (TSR) of the registrant, and (2) the relationship between the registrant's TSR and the TSR of a peer group chosen by the registrant, over each of the

[10] *See Shareholder Approval of Executive Compensation and Golden Parachute Compensation,* Release No. 33–9178 (Jan. 25, 2011) [76 FR 6010] (Feb. 2, 2011).

[11] We proposed rules to implement Section 953(b), *see Pay Ratio Disclosure,* Release No. 33–9452 (Sept. 18, 2013) [78 FR 60560] (Oct. 1, 2013).

[12] The Senate Report includes the following with respect to Section 953 of the Dodd-Frank Act: ''It has become apparent that a significant concern of shareholders is the relationship between executive pay and the company's financial performance . . . The Committee believes that these disclosures will add to corporate responsibility as firms will have to more clearly disclose and explain executive pay.'' *See* Senate Report, *supra* note 7.

[13] 17 CFR 229.201(e), Performance Graph.

[14] 17 CFR 229.301, Selected Financial Data.

[15] 17 CFR 229.302, Supplementary Financial Information.

[16] 17 CFR 229.303, Management's Discussion and Analysis of Financial Condition and Results of Operations.

[17] 17 CFR 229.402(b)(1).

[18] 17 CFR 229.402(b)(2)(v)–(vii).

[19] We recognize that financial performance of the registrant is a broad term and can mean different things to different registrants. Throughout this release, we use the term ''financial performance'' to refer to the financial performance of the registrant as required to be disclosed by new Section 14(i) of the Exchange Act, which we propose to measure by cumulative total shareholder return as defined in Item 201(e) of Regulation S–K. *See* Section II.E below.

[20] Comments related to the executive compensation provisions of the Dodd-Frank Act are available at *http://www.sec.gov/comments/df-title-ix/executive-compensation/executive-compensation.shtml.*

[21] *See* letters from Pay Governance LLC (''Pay Governance''), Farient Advisors (''Farient''), Compensia, Inc. (''Compensia''), Meridian Compensation Partners (''Meridian''), MDU Resources, Inc. (''MDU'') and Shareholder Value Advisors, Inc. (October 4, 2010) (''SVA I'').

[22] *See* letters from the Center on Executive Compensation (September 1, 2010) (''CEC I''), American Bar Association (''ABA''), Protective Life Corporation (''Protective Life''), ClearBridge Compensation Group (''ClearBridge'') and Davis Polk & Wardwell LLP (''Davis Polk'').

registrant's five most recently completed fiscal years.

The proposed amendments would:

• Require that the executive compensation used in calculating the executive compensation actually paid be total compensation as disclosed in the Summary Compensation Table,[23] modified to exclude changes in actuarial present value of benefits under defined benefit and actuarial pension plans that are not attributable to the applicable year of service, and to include the value of equity awards at vesting rather than when granted, which adjustments are intended to capture the Section 953(a) required measure of ''executive compensation actually paid'';[24]

• Require registrants to measure financial performance using TSR, as defined in Item 201(e) of Regulation S–K, and TSR of a registrant peer group;

• Require registrants to provide the executive compensation actually paid, total compensation as disclosed in the Summary Compensation Table, TSR, and peer group TSR in a prescribed table;

• Require the executive compensation disclosure to be presented separately for the principal executive officer, and as an average for the remaining NEOs identified in the Summary Compensation Table;

• Require the disclosure of the relationship between (1) executive compensation actually paid and registrant TSR (for the same executives identified in the registrant's Summary Compensation Table), and (2) registrant TSR and peer group TSR, in each case over the registrant's five most recently completed fiscal years;

• For smaller reporting companies, require the disclosure of the relationship between executive compensation actually paid and TSR over the registrant's three most recently completed fiscal years, without requiring these companies to provide disclosure of peer group TSR;

• Require that the disclosure be provided in tagged data format using eXtensible Business Reporting Language (XBRL); and

• Provide a phase-in of the requirement.

We discuss each of these aspects of our proposal in detail below.

Foreign private issuers, as defined in Exchange Act Rule 3b–4 [17 CFR 240.3b–4], would not be subject to the proposed amendment. Because securities registered by a foreign private issuer are not subject to the proxy statement requirements of Exchange Act Section 14,[25] foreign private issuers would not be required to provide Item 402(v) disclosure. As proposed, registered investment companies would not be required to provide Item 402(v) disclosure. We believe that the management structure of, and the regulatory regime governing, registered investment companies differentiate them from issuers that are operating companies. Registered investment companies, unlike other issuers, are generally externally managed and often have few, if any, employees that are compensated by the registered investment company. Rather, such employees are generally compensated by the registered investment company's investment adviser. Furthermore, registered investment companies do not have named executive officers within the meaning of Item 402, and, therefore, are not required to conduct the shareholder advisory votes required by Exchange Act Section 14A.[26] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64]. As proposed, business development companies would be treated in the same manner as issuers other than registered investment companies and, therefore, would be subject to the disclosure requirement of Item 402(v).

B. New Item 402(v) of Regulation S–K

1. Application and Operation of Proposed Item 402(v)

Section 14(i) of the Exchange Act requires disclosure of the relationship of executive compensation actually paid and the financial performance of the registrant. Section 14(i) explicitly refers to Item 402 of Regulation S–K as the reference point for the executive compensation to be addressed by the new disclosure relating compensation to performance. Because the disclosure mandated by Section 14(i) relates specifically to executive compensation, we are proposing to require this new disclosure in a new Item 402(v) of Regulation S–K.

We are also proposing that the disclosure called for under new Item 402(v) of Regulation S–K be included in any proxy or information statement for which disclosure under Item 402 of Regulation S–K is required. Currently, Item 8 of Schedule 14A[27] and Item 1 of Schedule 14C[28] require registrants to furnish Item 402 information if action is to be taken with regard to: The election of directors; any bonus, profit sharing or other contract or arrangement in which any director, nominee or executive officer of the registrant will participate; any pension or retirement plan in which they will participate; or the granting or extension to them of options, warrants or rights to purchase securities on a pro rata basis.[29] By including the requirement in Item 402 and requiring this disclosure in proxy statements on Schedule 14A and in information statements on Schedule 14C,[30] shareholders would have available the pay-versus-performance disclosure,

[23] Item 402(c) of Regulation S–K [17 CFR 229.402(c)].

[24] The terms ''stock,'' ''option,'' ''stock appreciation right,'' ''equity,'' ''plan'' and ''incentive plan'' used in this release are generally as defined in Item 402(a)(6) of Regulation S–K [17 CFR 229.402(a)(6)]. Similarly, while we do not define the term ''defined benefit and actuarial pension plans,'' the term has the same meaning as in Item 402 of Regulation S–K.

[25] Exchange Act Rule 3a12–3(b) [17 CFR 240.3a12–3(b)] specifically exempts securities registered by a foreign private issuer from Exchange Act Sections 14(a) and 14(c).

[26] As noted earlier, we believe that the pay-versus-performance disclosure mandated by Section 953(a), together with the disclosure of the ratio of the median annual total compensation of employees to the annual total compensation of the chief executive officer mandated by Section 953(b), are intended to provide shareholders with information that will help them assess a registrant's executive compensation when they are exercising their rights to cast advisory votes on executive compensation under Exchange Act Section 14A. Further, as noted earlier, the Senate Report indicated that ''a significant concern of shareholders is the relationship between executive pay and a company's financial performance,'' and that the pay-versus-performance disclosure would ''add to corporate responsibility as firms will have to more clearly disclose and explain executive pay.'' *See* Senate Report, *supra* note 7.

[27] 17 CFR 240.14a–101.

[28] Schedule 14C [17 CFR 240.14c–101] works in conjunction with Schedule 14A to generally require the disclosure of information called for by Schedule 14A to the extent that the item would be applicable to any matter to be acted on at a meeting if proxies were to be solicited. Schedule 14C implements Exchange Act Section 14(c) [15 U.S.C. 78n(c)] which created disclosure obligations for registrants that choose not to, or otherwise do not, solicit proxies, consents, or other authorizations from some or all of their security holders entitled to vote.

[29] The executive compensation disclosure called for under Item 402 of Regulation S–K is also required in certain registration statements under the Securities Act and the Exchange Act, as well as in annual reports on Form 10–K. Most registrants satisfy the Form 10–K disclosure requirement by incorporating by reference the information contained in their annual proxy or information statement.

[30] Even though Section 14(i) does not expressly include information statements provided for under Section 14(c), we believe that the purpose of information statements under Section 14(c), which established disclosure obligations for registrants that do not solicit proxies, does not support excluding the disclosure from information statements. Although Section 14(c) and Schedule 14C concern the provision of certain information when no solicitation is involved, Section 14(c) provides an obligation relating to information statements to transmit to holders ''such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made . . . .'' 15 U.S.C. 78n(c).

along with all other executive compensation disclosures called for by Item 402, in circumstances in which shareholder action is to be taken with regard to an election of directors or executive compensation. Because the proposed pay-versus-performance disclosure would be provided pursuant to Item 402 of Regulation S–K, it would be subject to the say-on-pay advisory vote under Exchange Act Rule 14a–21(a).[31]

We note that the language of Section 14(i) requires that the pay-versus-performance disclosure be provided ''in any proxy or consent solicitation material for an annual meeting of the shareholders.'' Shareholder annual meetings are typically the venue in which directors are elected.[32] This statutory language, if construed narrowly, would require the pay-versus-performance disclosure in different instances than our rules currently require for other executive compensation disclosure.[33] In particular, under our current rules if a registrant solicits proxies[34] with respect to the election of directors or executive compensation matters, its proxy statement must include specified information required by Item 402 of Regulation S–K, whether the election takes place at an annual or special meeting.[35] We believe Item 402 disclosure, including the disclosure that would be required under proposed Item 402(v), is equally useful to shareholders without regard to the venue of the corporate action.

Consistent with our approach to other Item 402 disclosures, we are proposing to require pay-versus-performance disclosure in these instances because we believe that the proposed disclosure would be most useful to shareholders when they are deciding whether to approve the compensation of the NEOs through the say-on-pay advisory vote, as well as when making voting decisions on a compensation plan in which NEOs participate, and making decisions pertaining to the election of directors. The Senate Report accompanying the statute references shareholder interest in the relationship between executive pay and performance as well as the general benefits of transparency of executive pay practices.[36] Several commenters also noted that the mandate may help inform shareholders.[37] For example, one commenter stated a belief that the requirements of Section 953(a), if implemented appropriately, ''will help investors better understand the executive pay decisions of the company, and make more informed 'Say-on-Pay' votes.''[38]

By proposing to require the disclosure as a new Item 402 requirement, however, the pay-versus-performance disclosure, unless otherwise limited, also would be required in a registrant's Form 10–K and in Securities Act registration statements that require Item 402 disclosure. The language of Section 14(i) calling for the disclosure to be provided in solicitation material for an annual meeting of the shareholders suggests that the disclosure was intended to be provided in conjunction with a shareholder vote, and we believe that the disclosure would be most useful in this context. Therefore, we are proposing that Item 402(v) specify that the disclosure would only be required in a registrant's proxy or information statement. In addition, as proposed, the information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.[39]

2. Format and Location of Proposed Disclosure

Section 14(i) of the Exchange Act requires us to adopt rules requiring disclosure of ''information'' that shows the relationship between executive compensation actually paid and registrant financial performance, but it does not specify the format or location of that disclosure.

We are not proposing a specific location within the proxy statement or information statement for this new disclosure. We note that the proposed disclosure item is related to the CD&A because it would show the historical relationship between executive pay and registrant financial performance, and may provide a useful point of comparison for the analysis provided in the CD&A. However, including this disclosure as part of CD&A might suggest that the registrant considered the pay-versus-performance relationship, as disclosed, in its compensation decisions, which may not be the case. Consequently, we believe it is appropriate to provide flexibility for registrants in determining where in the proxy or information statement to provide the disclosure required by proposed Item 402(v), although we

[31] 17 CFR 240.14a–21.

[32] The Commission has previously recognized that directors ordinarily are elected at annual meetings. *See, e.g.,* Exchange Act Rule 14a–6(a) [17 CFR 240.14a–6(a)] (acknowledging that registrants soliciting proxies in the context of an election of directors at an annual meeting may be eligible to rely on the exclusion from the requirement to file a proxy statement in preliminary form). *See also,* Exchange Act Rule 14a–3(b) [17 CFR 240.14a–3(b)] (requiring proxy statements used in connection with the election of directors at an annual meeting to be preceded or accompanied by an annual report containing audited financial statements). The requirement for registrants to hold an annual meeting at which directors are to be elected, however, is imposed by a source of legal authority other than the federal securities laws. In Delaware, for example, where more than 50% of the publicly traded issuers are incorporated, according to the State of Delaware's official Web site, Delaware General Corporation Law (DGCL), Section 211(b) is viewed as requiring an annual meeting for the election of directors. *See* R. Franklin Balotti & Jesse A. Finkelstein, Delaware Law of Corporations & Business Organizations, § 7.1 (3d ed.), Edward P. Welch, Andrew J. Turezyn, & Robert S. Saunders, Folk on the Delaware General Corporate Law § 211.2 (2013), and the text of DGCL Section 211(b), which reads in relevant part, ''unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws.'' *See also* Charles R.T. O'Kelley & Robert B. Thompson, Corporations and Other Business Associations 167 (7th ed.) (explaining that the ''paramount shareholder function is the election of directors'' and that ''[m]ost corporation codes protect this right by specifying immutably that directors shall be elected at an annually held meeting of shareholders.''), California Corporations Code, Section 600(b), and 1969 Model Business Corporation Act (as amended through 1981), Section 7.01(a) (each requiring an annual meeting of shareholders for the election of directors).

[33] The language of Section 14(i) calls for the disclosure to be provided in connection with annual meetings, the meeting at which registrants generally provide for the election of directors. Depending on the circumstances, this construction could be narrower or broader than the scope of Item 8 of Schedule 14A, which requires executive compensation disclosure in circumstances where action is to be taken with regard to an election of directors or executive compensation. For example, a registrant could solicit proxies to approve a management contract or arrangement or other compensation plan at a special meeting instead of an annual meeting and, in this instance, Item 8 would require Item 402 executive compensation disclosure. By contrast, although an annual meeting ordinarily involves an election of directors, in the unlikely event that an annual meeting did not include an election of directors or other executive compensation actions, the proposed amendment would not require any Item 402 executive compensation disclosure.

[34] Rule 14a–1(f) [17 CFR 240.14a–1(f)] defines the term ''proxy'' to include every proxy, consent or authorization within the meaning of Section 14(a) of the Exchange Act. A solicitation of consents therefore constitutes a solicitation of proxies subject to Section 14(a) and Regulation 14A.

[35] *See* Item 8 of Schedule 14A.

[36] The Senate Report includes the following with respect to Section 953(a) of the Dodd-Frank Act: ''It has become apparent that a significant concern of shareholders is the relationship between executive pay and the company's financial performance . . . The Committee believes that these disclosures will add to corporate responsibility as firms will have to more clearly disclose and explain executive pay.'' *See* Senate Report *supra* note 7.

[37] *See* letters from American Federation of Labor and Congress of Industrial Organizations (Aug. 8, 2014) (''AFL–CIO''), PublicCitizen, ClearBridge and Pay Governance.

[38] *See* letter from Pay Governance.

[39] *See* Instruction 6 to proposed Item 402(v) of Regulation S–K. As proposed, the information would therefore not be subject to forward incorporation by reference under Item 12(b) of Form S–3 [17 CFR 239.13].

generally expect registrants would disclose it with the Item 402 executive compensation disclosure.

As proposed, Item 402(v) would require registrants to provide a table containing the values of the prescribed measures of executive compensation actually paid, TSR for the registrant and TSR for the selected peer group (see table below). For each amount disclosed as executive compensation actually paid in columns (c) and (e) of the prescribed table, proposed Item 402(v) would require footnote disclosure for both principal executive officer compensation and average NEO compensation of each amount deducted from, and added to the total compensation amount as provided in the Summary Compensation Table. As proposed, Item 402(v) also would require registrants to include in the table the total PEO compensation reported in the Summary Compensation Table (column (b), and, for NEOs, the average total compensation reported in the Summary Compensation Table (column (d)). Requiring disclosure of the Summary Compensation Table measure of total compensation together with our proposed measure of executive compensation actually paid would provide shareholders with disclosure of two measures in one single table and, we believe, would facilitate comparisons of the two measures of a registrant's executive compensation to the registrant's performance. To the extent that some shareholders may be interested in considering the relationship of performance with a measure of pay that excludes changes in the value of equity awards, they would be able to refer to the Summary Compensation Table measure of total compensation required alongside executive compensation actually paid in the tabular disclosure. Among other things, the Summary Compensation Table measure of total compensation reflects the grant date values of equity awards.

We are proposing that the disclosure provided in each column of the proposed table, including any footnote disclosure, be provided in interactive data format using XBRL.[40] The proposal would require registrants to tag separately the values disclosed in the required table, and to separately block-text tag the disclosure of the relationship among the measures, the footnote disclosure of deductions and additions used to determine executive compensation actually paid, and the footnote disclosure regarding vesting date valuation assumptions. The interactive data would have to be provided as an exhibit to the definitive proxy or information statement filed with the Commission, in addition to appearing with and in the same format as the rest of the disclosure provided pursuant to proposed Item 402(v) of Regulation S–K (*e.g.,* in ASCII or HTML). Registrants would be required to prepare their interactive data using the list of tags the Commission specifies and submit them with any supporting files the EDGAR Filer Manual prescribes.[41] We believe requiring the data to be tagged would lower the cost to investors of collecting this information, would permit data to be analyzed more quickly by investors and other end-users than if the data was provided in a non-machine readable format, and would facilitate comparisons among public companies. In addition, requiring the data to be tagged would facilitate analysis of how information related to a single issuer changes over time.

PAY VERSUS PERFORMANCE

Year (a)	Summary compensation table total for PEO (b)	Compensation actually paid to PEO (c)	Average summary compensation table total for non-PEO named executive officers (d)	Average compensation actually paid to non-PEO named executive officers (e)	Total shareholder return (f)	Peer group total shareholder return (g)

Because the statute requires disclosure of the *relationship* between executive compensation and registrant performance, we do not believe that simply disclosing the amount of executive compensation actually paid and the financial performance measure would satisfy this statutory requirement. Thus, using the values presented in the table, proposed Item 402(v) would require the registrant to describe (1) the relationship between the executive compensation actually paid and registrant TSR, and (2) the relationship between registrant TSR and peer group TSR. We believe disclosure about the relationship between registrant TSR and peer group TSR would provide information that investors can use to compare a registrant's performance with that of its peers, and may provide a useful point of comparison to assess the relationship between the registrant's executive compensation actually paid and its financial performance compared to the performance of its peers during the same time period.

The disclosure about the relationship would follow the table and could be described as a narrative, graphically, or a combination of the two, and, as proposed, would be required to be provided in interactive data format using XBRL. Disclosure of the relationship could include, for example, a graph providing executive compensation actually paid and change in TSR on parallel axes and plotting compensation and TSR over the required time period. Alternatively, disclosure of the relationship could include showing the percentage change over each year of the required time period in both executive compensation actually paid and TSR together with a brief discussion of that relationship. Under our proposed amendments, while the presentation format used by different registrants to demonstrate the relationship between executive compensation actually paid and TSR may vary, the table required by Item 402(v) together with existing disclosures would provide shareholders with clear information from which to determine the relationship between executive compensation actually paid and registrant performance so that shareholders could, if desired, compare the disclosure across registrants.

Exchange Act Section 14(i) provides that the disclosure about the relationship may include a graphic

[40] Data becomes interactive when it is labeled or "tagged" using a computer markup language such as XBRL that software can process for analysis.

[41] The EDGAR Filer Manual is available at: *http://www.sec.gov/info/edgar/edmanuals.htm.>*

representation of the information. Commenters provided varying views on whether to require a graphic presentation. Some commenters indicated that a graphic representation would help provide meaningful disclosure,[42] while other commenters supported a principles-based approach that would not include a specific requirement for a graphic representation.[43] Consistent with the language of Exchange Act Section 14(i), we are proposing to permit, rather than require, a registrant to comply with the new requirement to disclose the relationship between executive compensation actually paid and registrant performance by including a graphic presentation of the pay-versus-performance disclosure, in addition to the required table presenting the values of prescribed measures of executive compensation and TSR.

Request for Comment

1. Exchange Act Section 14(i) specifies that the pay-versus-performance disclosure must be provided in any proxy or consent solicitation materials that relate to annual shareholder meetings. For the reasons discussed above, we are proposing to require the disclosure in a registrant's proxy or information statement where Item 402 disclosure is required. Should we instead, or in addition, require the disclosure in any proxy or information statements relating to an annual shareholder meeting (or special meeting or written consent in lieu of a meeting)? Why or why not?

2. To retain consistency in the executive compensation disclosure provided in proxy statements and information statements, we propose that the Item 402(v) disclosure be included in information statements on Schedule 14C as well as proxy statements on Schedule 14A for which Item 402 disclosure is required. Is there any reason that the proposed disclosure mandated by Section 14(i) should be limited to registrants that are soliciting proxies or consents on Schedule 14A?

3. Should we also require the proposed disclosure in all other forms and schedules in which executive compensation disclosure is required? Would it be useful to shareholders to include the proposed disclosure in registration statements or annual reports as well? Why or why not?

4. Should the disclosure required by Exchange Act Section 14(i) be a separate requirement under Item 402 of Regulation S–K, as proposed? Alternatively, should we require the disclosure as part of the CD&A? If so, please explain why.

5. Should we require registrants to provide, as proposed, a table that includes the Summary Compensation Table total compensation, in addition to the values of the prescribed measures of executive compensation actually paid and registrant financial performance used for the pay-versus-performance disclosure? Why or why not?

6. Should we further prescribe the format of the proposed disclosure to promote comparability across registrants? For example, should we require that registrants present the percentage change in executive compensation actually paid and registrant/peer group financial performance over each year of the required time period graphically or in writing? Are there other format requirements we should consider? Should we provide further guidance on how to present the information in a way that promotes comparability? Are there ways our proposed table can be improved?

7. If we were to require a graphic presentation of the disclosure, should we specify requirements for this presentation so that each registrant provides comparable disclosure? Or should we allow registrants to determine the appropriate graphic presentation, if any? How should such a graph describe the relationship between executive compensation actually paid and registrant performance?

8. Should we provide sample charts or other examples of graphic presentations that would comply with proposed Item 402(v)? If so, please provide examples.

9. Would requiring disclosure of the values of the prescribed measures of executive compensation actually paid and registrant financial performance, without additional information about the ''relationship'' of those data points, satisfy Section 14(i) of the Exchange Act?

10. Would the stock performance graph required by Item 201(e) of Regulation S–K modified to add a line representing executive compensation actually paid provide meaningful disclosure about the relationship between executive pay and registrant performance? Why or why not? If so, should we require the stock performance graph, as so modified to be included in the proxy or information statement as well as, or instead of, in the annual report to security holders required by Exchange Act Rules 14a–3 and 14c–3 [44]? Would such disclosure satisfy Exchange Act Section 14(i)?

11. Under our current rules, unless specifically incorporated by reference, the disclosure required by Item 201(e) of Regulation S–K is not deemed to be ''soliciting material'' or to be ''filed'' with the Commission or subject to the liabilities of Exchange Act Section 18.[45] That same treatment is not afforded to the CD&A disclosure. Under the proposal, the pay-versus-performance disclosure, which would require disclosure of TSR as defined in Item 201(e) for the registrant and for a peer group used by the registrant for purposes of the CD&A or Item 201(e), would be filed in certain proxy or information statements. Should the disclosure about TSR be deemed to be filed, as proposed? Why or why not? Alternatively, should the TSR disclosure be deemed to be ''furnished''? If the disclosure was treated as ''furnished'', should such treatment only apply to peer group TSR? Why or why not?

12. Would the proposed tabular disclosure of the values of the executive compensation and registrant financial performance enhance comparability across registrants? Are there other formats that would be more useful in that regard?

13. Should we require that the data be tagged in XBRL format, as proposed? Should we require a different format, such as, for example, eXtensible Markup Language (XML)? [46] Should the proposed tabular disclosure be changed in any way to facilitate accurate and consistent tagging? If so, how? Should we require that, as proposed, disclosure about the relationship between executive compensation and registrant performance be tagged? Why or why not? Would tagging the relationship of executive compensation to financial performance enhance comparability among different registrants? Alternatively, instead of requiring that the disclosure about the relationship be tagged, should tagging this disclosure be optional? If a registrant chooses to add more information to the prescribed

[42] *See* letters from Farient, Meridian and Shareholder Value Advisors, Inc. (Apr. 27, 2012) (''SVA II'').

[43] *See* letters from ABA, CEC I, and Davis Polk.

[44] 17 CFR 240.14a–3 and 17 CFR 240.14c–3.

[45] 15 U.S.C. 78r; *see* Instruction 8 to Item 201(e) of Regulation S–K.

[46] Another possible alternative for providing the information in interactive data format would be Inline XBRL, which would allow registrants to file the required information and data tags in one document rather than requiring a separate exhibit for the interactive data. Commission rules and the EDGAR system do not currently allow for the use of Inline XBRL. To the extent that a determination is made in the future to accept Inline XBRL submissions, we expect to revisit the format in which this disclosure requirement is provided.

table, should we require this additional information to be tagged as well, even if registrant-specific extensions are necessary?

14. Should we require that the data be tagged in preliminary proxy statements and information statements, as well as in definitive proxy statements and information statements? Why or why not?

15. Should we exempt smaller reporting companies from the XBRL requirement, rather than require them to provide such data? Why or why not? Would the costs be different for smaller reporting companies to comply with the proposed requirement to provide the data in XBRL format as compared to other companies? What would be the impact of not requiring tagging for smaller reporting companies? Should we, as proposed, provide a phase-in for smaller reporting companies to tag the disclosure? Why or why not? Should the period be longer or shorter than three years?

16. Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S–K permits a registrant to omit disclosure in the Summary Compensation Table of the salary or bonus of an NEO if it is not calculable as of the latest practicable date.[47] Item 5.02(f) of Form 8–K [48] sets forth the requirements for the filing of information that was omitted from Item 402 disclosure in accordance with Instruction 1 to Item 402(c)(2)(iii) and (iv), including the requirement to include a new total compensation figure for the NEO. Should we consider permitting registrants to omit pay-versus-performance disclosure until those elements of the NEO's total compensation are determined and to provide the pay-versus-performance disclosure in the same filing under Item 5.02(f) of Form 8–K in which the salary or bonus is disclosed? Is such relief necessary given that, as proposed, registrants will not be required to incorporate the disclosure into the Form 10–K? If we were to provide the relief, should we require any additional or supplemental disclosure in connection with an amendment to Item 5.02(f)? If so, what would that disclosure entail?

C. Executives Covered

Exchange Act Section 14(i) does not specify which executives must be included in the disclosure of ''executive compensation actually paid.'' For registrants other than smaller reporting companies, we are proposing that the executives covered by the proposed Item 402(v) disclosure be the ''named executive officers'' as defined in Item 402(a)(3) of Regulation S–K.[49] For smaller reporting companies, we are proposing that the executives covered by the proposed Item 402(v) disclosure be the same as the ''named executive officers'' required to be disclosed under Item 402(m).[50] These are the executive officers for whom, under our current rules, compensation disclosure is required in the Summary Compensation Table and the other executive compensation disclosure requirements. In addition, we are proposing that, for each year, the compensation information be presented separately for the principal executive officer [51] and as an average for the remaining NEOs identified in the Summary Compensation Table.

We note that Section 14(i) specifically refers to compensation required to be disclosed under Item 402 of Regulation S–K. Because Item 402 of Regulation S–K requires disclosure of NEO compensation, we believe that Congress intended for the rules to provide disclosure about that group. We also believe that covering only the NEOs should help to mitigate some of the costs associated with the proposed disclosure because registrants are already required to make the determination of who is an NEO and to track information about their compensation. Commenters that addressed this issue were generally supportive of requiring that the pay-versus-performance disclosure cover the NEOs.[52]

We are proposing to require that the disclosure be provided separately for the PEO and as an average for the remaining NEOs identified in the Summary Compensation Table. Several commenters noted that shareholders have a particular interest in the compensation of the PEO.[53] We are further proposing that if more than one person served as the PEO of the registrant, then the disclosure for the persons who served as PEO of the registrant shall be aggregated for the years in which more than one person served as the PEO because this reflects the total amount that was paid by the registrant for the services of a PEO.

Finally, we are proposing to require disclosure of the average compensation actually paid for the remaining NEOs. We believe disclosure of the relationship of performance to average NEO compensation would be more meaningful to shareholders than individual or aggregate NEO compensation. There can be significant variability in the identity of the registrant's other NEOs over a five-year period. Moreover, the number of NEOs for whom Item 402 disclosure is required may fluctuate from year-to-year, which would make an aggregate total not comparable year over year.[54] We believe requiring disclosure of the average compensation would help make the information about these NEOs more comparable from year to year in spite of the variability in the composition and number of NEOs who are not the PEO

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[47] For smaller reporting companies, Instruction 1 to Item 402(n)(2)(iii) and (iv) is the corresponding instruction.

[48] 17 CFR 249.308.

[49] Item 402(a)(3) [17 CFR 229.402(a)(3)] defines the NEOs for whom Item 402 executive compensation is required as 1) all individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year (''PEO''), regardless of compensation level, 2) all individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year (''PFO''), regardless of compensation level, 3) the registrant's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year, and 4) up to two additional individuals for whom Item 402 disclosure would have been provided but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year. Because the pay-versus-performance disclosure is being proposed as new paragraph (v) to Item 402, the disclosure also would be required for the NEOs.

[50] For smaller reporting companies, Item 402(m)(2) [17 CFR 229.402(m)(2)] defines the NEOs for whom Item 402 executive compensation is required as 1) all individuals serving as the smaller reporting company's principal executive officer or acting in a similar capacity during the last completed fiscal year (PEO), regardless of compensation level, 2) the smaller reporting company's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year, and 3) up to two additional individuals for whom disclosure would have been provided but for the fact that the individual was not serving as an executive officer of the smaller reporting company at the end of the last completed fiscal year.

[51] The term ''principal executive officer'' used in this release has the same meaning as in Items 402(a)(3) and 402(m)(2) of Regulation S–K and would include an individual acting in a similar capacity.

[52] *See* letters from ABA, Baker, Donelson, Bearman, Caldwell & Berkowitz (''Baker Donelson''), ClearBridge, Compensia, Brian Foley & Company (''Foley'') and MDU.

[53] *See* letters from Farient, Johnson & Johnson (''J&J''), Meridian and Pay Governance. One such commenter recommended that we limit the disclosure solely to the PEO. *See* letter from Meridian. As discussed above, however, because Section 14(i) specifically refers to compensation required to be disclosed under Item 402, and Item 402 applies to a broader group of NEOs than the PEO, we believe the disclosure should be required about that group.

[54] For example, in any year, up to two additional individuals who were not serving as executive officers at the end of the year must be included if they otherwise would have been among the most highly compensated. Additionally, for registrants other than smaller reporting companies, if more than one person serves as principal financial officer during the year, each of them must be included in the Summary Compensation Table.

over the years for which disclosure is required.

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17. Should we require that the proposed disclosure cover the NEOs as defined in Item 402(a)(3) of Regulation S–K, or Item 402(m) for smaller reporting companies, as proposed? Alternatively, should we require disclosure for a different group of executives than the NEOs and, if so, how should such a group be defined? For example, would the appropriate group be all executive officers as defined in Rule 3b–7 under the Exchange Act? [55] What additional costs would registrants incur if they were required to provide information for executives not currently defined as NEOs?

18. Should we require registrants to provide the pay-versus-performance disclosure for NEOs other than the PEO as an average, as proposed, or should we specify that the disclosure must be made either in the aggregate (*i.e.,* the sum of all other NEOs' compensation) or on an individual basis for each NEO? How would these approaches affect, either positively or negatively, the comparability across registrants? Alternatively, should registrants provide tabular disclosure of the executive compensation actually paid on an individual basis for each NEO but only be required to demonstrate the relationship to financial performance for the PEO's individual compensation and the average compensation of the other NEOs? Are there ways other than using an average for the other NEOs to appropriately account for the possibility that the size and identity of the group of other NEOs could change each year? What impact would changes to the group of other NEOs have on the comparability and usefulness of pay-versus-performance disclosure?

19. Should we require separate disclosure for the PEO, as proposed? Should we require, in instances where a registrant had more than one PEO in a given year, that the amounts for each PEO be added together, as proposed? Under our executive compensation disclosure rules, if an individual served in the capacity of PEO during *any* part of a fiscal year for which executive compensation disclosure is required, information about the individual's compensation for the full fiscal year is required to be disclosed. Should the compensation amount for the pay-versus-performance disclosure include only compensation received as the PEO? Should we require separate disclosure for each individual who served as a PEO during the required time period of disclosure? Are there alternative approaches we should consider? For example, where a registrant had more than one PEO in a given year, should we permit registrants the flexibility to choose instead to annualize the compensation of the PEO serving at the end of the fiscal year?

20. Should we require disclosure for only the PEO? Would information about the non-PEO NEOs be meaningful or useful for investors? Would information about the PEO's compensation provide adequate information to investors about the pay-versus-performance alignment of other NEOs? Would limiting the scope of disclosure to the PEO result in meaningful cost savings to registrants, for example by limiting the extent to which they must perform recalculations of compensation actually paid (see Section II.D below) or average calculations? Would limiting the disclosure to the PEO affect the usefulness of the information for investors?

D. Determination of ''Executive Compensation Actually Paid''

Exchange Act Section 14(i) does not define the phrase ''executive compensation actually paid,'' but it does require a ''clear description of any compensation required to be disclosed by the registrant'' under Item 402 of Regulation S–K.[56] We are proposing that ''executive compensation actually paid'' under proposed Item 402(v) of Regulation S–K would be total compensation as reported in the Summary Compensation Table,[57] modified to adjust the amounts included for pension benefits and equity awards. We believe using as a starting point the total compensation that registrants already are required to report in the Summary Compensation Table and making adjustments to those figures reduces burdens to registrants and also may enhance comparability of the proposed disclosure across registrants.[58]

Although Exchange Act Section 14(i) refers to compensation required to be disclosed under Item 402 of Regulation S–K, it also uses the phrase ''actually paid,'' which differs from disclosure required under Item 402 of ''compensation awarded to, earned by or paid to'' the NEOs.[59] We believe that Congress intended executive compensation ''actually paid'' to be an amount distinct from the total compensation as reported under Item 402 because it used a term not otherwise referenced in Item 402. As such, we believe that adjustments to some of the elements in the Summary Compensation Table are appropriate to reflect executive compensation that is ''actually paid'' within the meaning of Section 14(i). Total compensation as reported in the Summary Compensation Table is the appropriate starting point and, as proposed, would be included in the table as discussed above, but registrants would need to adjust some elements of compensation determined according to the Summary Compensation Table reporting requirements to reflect amounts ''actually paid'' to the NEOs.

Some commenters were of the view that we should not prescribe the specific compensation elements to be covered [60] or the method of determination of when equity awards are ''actually paid.'' [61] Instead, these commenters suggested that registrants be permitted flexibility to determine which compensation elements should be included in pay-versus-performance disclosure.[62] While such an approach could benefit registrants by permitting them to determine the disclosure they believe best reflects the relationship between executive pay and the registrant's performance, we believe that such flexibility would limit comparability across registrants, making the disclosure less useful to shareholders.[63]

Other commenters recommended that we limit the compensation required to be disclosed for purposes of the pay-versus-performance disclosure to the amounts that are based on the financial performance of the company.[64] Some commenters supported particular

[55] 17 CFR 240.3b–7.

[56] 15 U.S.C. 78n(i).

[57] Item 402(c) of Regulation S–K. Smaller reporting companies provide the scaled Summary Compensation Table disclosure specified in Item 402(n) of Regulation S–K.

[58] We note that the pay ratio disclosure required by Section 953(b) of the Dodd-Frank Act is required to be based on total compensation as provided in the Summary Compensation Table. In light of the different language in Section 953(a), which references compensation that is ''actually paid,'' we believe it is appropriate to adjust the treatment of certain components of total compensation for the disclosure required by Section 953(a) of the Dodd-Frank Act.

[59] *See* 17 CFR 229.402(a)(2).

[60] *See* letters from ABA, CEC I, ClearBridge and Davis Polk.

[61] *See* letters from ABA, CEC I, Davis Polk, Protective Life and Society of Corporate Secretaries and Governance Professionals (''SCSGP'').

[62] *See* letters from ABA, CEC I and Davis Polk. One commenter stated that ''[a]n issuer should be able to determine which compensation elements are based on performance and explain the rationale for why it included those elements in this analysis, and excluded others.'' *See* letter from Davis Polk.

[63] *See, e.g.,* letters from AFL–CIO and Council of Institutional Investors (''CII'').

[64] *See* letters from Compensia and Center for Executive Compensation (Oct. 17, 2014) (''CEC II'').

definitions of ''actually paid'' covering specific compensation elements,[65] such as a measure including only the grant date fair value for all equity awards that are subject to performance-based vesting conditions and cash amounts awarded based on the financial performance of the registrant.[66] Some commenters suggested that change in pension value should be excluded from the Summary Compensation Table calculation in computing the new measure.[67] Other commenters, by contrast, recommended that the Commission define ''executive compensation actually paid'' as broadly as possible, regardless of whether a particular component of compensation is awarded based on performance.[68]

We are aware that a number of registrants have used the concepts of ''realizable pay'' and ''realized pay'' in their proxy statements as a means of comparing pay and performance.[69] While there continues to be work among various compensation constituencies to agree upon a consistent methodology for calculating ''realizable pay'' or ''realized pay,'' we are not aware that there has yet been broad agreement upon any particular formula. Registrants may choose to supplement the disclosure required by proposed Item 402(v) by providing pay-versus-performance disclosure based on a measure of ''realized pay,'' ''realizable pay,'' or another appropriate measure if they believe it provides useful information about the relationship between compensation and registrant performance, provided that the supplemental disclosure is not misleading and not presented more prominently than the required disclosure.

Because the statute does not define ''executive compensation actually paid,'' we are using our discretion to define that term for the purpose of proposed Item 402(v) disclosure.[70] As indicated above, while we believe the Summary Compensation Table is the appropriate starting point, we believe some adjustments are appropriate to give effect to the statutory language and reflect executive compensation that is ''actually paid.'' Specifically, as discussed below, we propose to modify the amounts included for pension benefits and equity awards.[71] Moreover, we believe that the phrase ''executive compensation actually paid'' should include all compensation actually paid, regardless of whether the compensation is awarded based on the registrant's financial performance. In considering the relationship between executive compensation actually paid and the registrant's financial performance, we believe shareholders should be able to take into account components of compensation regardless of whether or not they are awarded based on the registrant's performance.

1. Changes in Actuarial Pension Value

We propose to deduct the change in the actuarial present value of all defined benefit and pension plans from the Summary Compensation Table total for purposes of proposed Item 402(v).[72] This Summary Compensation Table measure includes the change in actuarial present value of pension benefits previously accrued based on changes in interest rates, executive age, and other actuarial inputs and assumptions, which may introduce significant volatility into this measure, as well as the actuarial present value of accrued pension benefits earned by the executive based on an additional year of service.[73] Item 402(v) would require, however, that the actuarially determined service cost for services rendered by the executive during the applicable year be added back.[74] Thus, the portion of the total change in actuarial pension value that results solely from changes in interest rates, executive's age and other actuarial inputs and assumptions regarding benefits accrued in previous years would be excluded.

We believe that including only the service cost for services rendered by the executive during the applicable year is a more appropriate measure for purposes of determining compensation ''actually paid'' during the applicable year because it is limited to pension costs for benefits earned during that year. The amount we proposed to include may be viewed to approximate the value that would be set aside currently by the registrant to fund the pension benefits payable upon retirement for the service provided during the applicable year. We recognize that registrants may differ as to whether they use defined benefit or defined contribution retirement plans, and this proposed change to the amount disclosed in the Summary Compensation Table is intended to provide a more meaningful comparison across registrants of the amounts ''actually paid'' under both types of plan. For defined contribution plans, the Summary Compensation Table requires disclosure of registrant contributions or other allocations to vested and unvested defined contribution plans for the applicable fiscal year,[75] which will also be included in computing compensation actually paid for purposes of the new disclosure.

We do not expect that the proposed adjustments will require the collection of significant new data by registrants, or reveal significant new information to shareholders relative to the compensation disclosure that is currently required. The pension's annual service cost is not required to be reported separately, but can be calculated based on information reported in, and in footnotes to, the Pension Benefits Table. We believe that, for purposes of proposed Item 402(v), using the actuarially determined service

[65] *See* letters from ClearBridge and Pay Governance. ClearBridge and Pay Governance recommended using particular definitions of realizable pay.

[66] *See* letter from Compensia.

[67] *See* letters from Baker Donelson, Frederic W. Cook & Co., Inc. (''Cook''), and Meridian.

[68] *See* letter from CII. *See also* letter AFL–CIO (recommending that the Commission require disclosure of all forms of compensation as disclosed in the Summary Compensation Table).

[69] The concepts of ''realized pay'' and ''realizable pay'' are designed to provide different measures of alignment between a named executive officer's pay and performance, though there are no standard definitions of either term. Registrants can tailor the concepts resulting in amounts which generally differ from the amounts disclosed in the Summary Compensation Table because they exclude various types of compensation such as the value of unvested or unexercised equity awards. We note that some proxy advisory services have also begun to take into account some version of ''realizable pay'' or ''realized pay'' when making say-on-pay voting recommendations. *See, e.g.,* Institutional Shareholder Services, Inc., U.S. Corporate Governance Policy 2014 updates (Nov. 21, 2013).

[70] Proposed Item 402(v)(2).

[71] These terms have the same definitions as in Item 402 of Regulation S–K.

[72] The change in actuarial present value, generally, reflects the difference between the actuarial present value of accumulated benefits at the end of the fiscal year and at the end of the prior fiscal year. This amount would be deducted only if the value is positive, and therefore included in the sum reported in column (h) of the Summary Compensation Table. Where such amount is negative, and therefore reported only in a footnote to column (h), it should not be reflected for purposes of proposed Item 402(v). *See* Instruction 3 to Item 402(c)(2)(viii). Smaller reporting companies would not need to deduct this amount because the Summary Compensation Table requirements for smaller reporting companies do not require disclosure of the change in actuarial present value.

[73] While commenters were divided on which elements of compensation should be included, some commenters supported calculating compensation by excluding changes in pension value and above-market earnings on deferred compensation from the compensation in the Summary Compensation Table. *See* letters from Meridian, Baker Donelson, and Cook.

[74] Service cost is defined in FASB ASC Topic 715 as the actuarial present value of benefits attributed by the pension plan's benefit formula to services rendered by the employee during the period. The measurement of service cost reflects certain assumptions, including future compensation levels to the extent provided by the pension plan's benefit formula.

[75] Item 402(c)(2)(ix)(E).

cost rather than the Summary Compensation Table pension measure may increase comparability of compensation provided through defined benefit and defined contribution plans because of the variability of the actuarial inputs and assumptions among different registrants.

2. Earnings on Non-Qualified Deferred Compensation

Consistent with the current disclosure requirements of the Summary Compensation Table, the compensation calculation under proposed Item 402(v) would include above-market or preferential earnings on deferred compensation that is not tax-qualified because these amounts represent compensation accrued during the relevant year.[76] Above-market or preferential earnings on deferred compensation represent amounts accrued during the year based on the registrant's compensatory decision to pay an above-market return. Excluding this element from disclosure of compensation ''actually paid'' until its eventual payout would make disclosure contingent on an NEO's decision to withdraw or take a distribution from his or her account, rather than the registrant's compensatory decision to pay the above-market return. Such an approach would be inconsistent with the Summary Compensation Table disclosure of the underlying deferred amounts when earned,[77] which we would carry forward to proposed Item 402(v), and could result in the relationship of this amount to company performance never being disclosed.

3. Equity Awards

We are proposing that equity awards be considered actually paid on the date of vesting and valued at fair value on that date, rather than fair value on the date of grant as required in the Summary Compensation Table.[78] Before vesting, an executive does not have an unconditional right to an equity award. For example, the terms of both options and restricted stock awards typically provide for forfeiture of the award if the executive leaves the registrant's employment before the vesting date or if specified performance criteria are not met. Accordingly, we do not believe that an option or other equity award should be considered ''actually paid'' for purposes of this disclosure before the applicable vesting conditions are satisfied. Satisfaction of these conditions, which are determined by the registrant, can be viewed as representing payment by the registrant. Moreover, using vesting-date valuations will result in a compensation measure that includes, upon the vesting date, the grant-date value of equity awards plus or minus any change in the value of equity awards between the grant and vesting date. Such changes in the value of equity grants after the grant date represent a direct channel, and one of the primary means, through which pay is linked to registrant performance.

We do not believe that an award requiring exercise should be considered actually paid only upon its exercise, because once the award is vested the executive can control how and when the award is monetized, and thus could influence pay-versus-performance disclosure by controlling the fiscal year in which the executive receives the compensation. Changes in the fair value of the award after vesting generally reflect investment decisions made by the executive rather than compensation decisions made by the registrant.

The value of stock awards upon vesting is disclosed in the Option Exercises and Stock Vested Table.[79] Registrants are not currently required to report the value of option awards upon vesting if they are not exercised. However, registrants can apply existing models and methodologies to compute these values. Also, it is possible for shareholders to make reasonable estimates of these vesting-date fair values of options based on current disclosures.

In particular, the terms of unexercised option awards in a given year, including their exercise prices and expiration dates, are required to be disclosed (together with information about other outstanding awards) in the Outstanding Equity Awards at Fiscal Year-End Table.[80] Information about the valuation assumptions used by the registrant to calculate the grant-date value of option awards can be found in footnotes to the Summary Compensation Table (which may refer to disclosures made on Form 10–K) for the year corresponding to the grant date.[81] Disclosures about the vesting conditions that applied to the awards can be used to determine which of the option awards are newly vested.[82] The translation of the reported terms of these options into their fair values at vesting requires the choice of a valuation methodology and the use of public data and reasonable assumptions (potentially with reference to the registrant's disclosed grant-date valuation assumptions) to obtain the additional inputs required for option valuation at vesting date. Estimates thus computed by shareholders could differ from estimates computed by the registrant and, as mentioned above, current disclosure rules do not require registrants to compute and disclose their own estimates of these values.

Accordingly, for purposes of proposed Item 402(v), the amounts reported pursuant to Items 402(c)(2)(v) and (vi) would be subtracted from total compensation reported in the Summary

[76] These earnings are reported pursuant to Item 402(c)(2)(vii), or, for smaller reporting companies, Item 402(n)(2)(viii). These earnings, like the aggregate change in defined benefit plan actuarial present value also reported pursuant to Item 402(c)(2)(viii), or Item 402(n)(2)(viii), are excluded for purposes of a registrant's NEO determination pursuant to Instruction 1 to Item 402(a)(3), or, for smaller reporting companies, Instruction 1 to Item 402(n)(2)(viii). In adopting this Instruction, the Commission stated it was appropriate to exclude these items because their amounts generally are not determined by the Compensation Committee. Rather, they are ''compensation elements that principally reflect executives' decisions to defer compensation and wealth accumulation in pension plans, or are unduly influenced by age or years of service.'' *See Executive Compensation and Related Person Disclosure,* Release 33–8732A (Aug. 29, 2006) [71 FR 53158 (Sept. 8, 2006)], at Section II.C.6 (''Executive Compensation Release''). These reasons, however, do not seem relevant to a determination of whether such compensation is ''actually paid'' for purposes of the disclosure mandated by Section 14(i).

[77] Instruction 4 to Item 402(c), or, for small reporting companies, Instruction 4 to Item 402(n).

[78] Grant date fair value disclosure reflects compensation committee decisions during the relevant fiscal year relating to equity awards. *See Proxy Disclosure Enhancements,* Release No. 33–9089 (Dec. 16, 2009) at Section II.A.2 [74 FR 68334] (Dec. 23, 2009).

[79] *See* Item 402(g)(2)(v). Smaller reporting companies are not required to provide this table.

[80] *See* Item 402(f)(2)(v) and (vi). For smaller reporting companies, see Item 402(p)(2)(v) and (vi). Some options may be exercised in the same year as vesting. Whether an option award that was exercised had vested in the same year can be determined by comparing the Outstanding Equity Awards at Fiscal Year-End Table per Item 402(f) or, for smaller reporting companies, Item 402(p), to the same table for the prior year, and identifying as exercised options those that are no longer reported as outstanding. In such cases, the terms of these awards can be determined from the Outstanding Equity Awards at Fiscal Year-End Table and related footnotes for the prior year or, for options granted in the same year as exercise (which will not appear in disclosures for the prior year) in footnotes to the Summary Compensation Table for the same year.

[81] *See* Instruction 1 to Item 402(c)(2)(v) and (vi). For smaller reporting companies, *see* Instruction 1 to Item 402(n)(2)(v) and (vi).

[82] Registrants are required to describe the material conditions of awards, including a general description of the formula or criteria to be applied in determining the amounts payable, and the vesting schedule, in the narrative disclosure to the Summary Compensation Table and Grants of Plan-Based Awards table per Item 402(e) in the year in which an option award is granted. Smaller reporting companies are required to describe the material conditions of awards in the narrative disclosure to the Summary Compensation Table per Item 402(o) in the year in which an option award is granted. The vesting date of options held at fiscal-year end must be disclosed by footnote to the Outstanding Equity Awards at Fiscal-Year End table required by Item 402(f), or, for smaller reporting companies, Item 402(p), of Regulation S–K.

Compensation Table, and the following would be added in their place: [83]

• For awards of stock, that vested in the applicable year, the fair value at vesting date, computed in accordance with the fair value guidance in FASB ASC Topic 718; and

• For awards of options with or without tandem stock appreciation rights (''SARs'') that vested in the applicable year, the fair value at vesting date, computed in accordance with the fair value guidance in FASB ASC Topic 718. As proposed, a registrant would be required to disclose vesting date valuation assumptions if they are materially different from those disclosed in its financial statements as of the grant date.

We believe shareholders may be interested in vesting date valuation assumptions to the extent they believe that changes in the value of equity grants after the grant date are a primary channel through which pay is linked to performance. We believe that requiring disclosure of vesting date valuation assumptions would make these computations readily accessible to shareholders, which may be useful to shareholders to the extent they are interested in computing slightly different measures or using parts of the computations for other purposes. Further, if during the last completed fiscal year the registrant adjusted or amended the exercise price of previously vested options or SARs held by an NEO, whether through amendment, cancellation or replacement grants, or any other means, or otherwise has materially modified such awards, proposed Item 402(v) would require the registrant to include the incremental fair value, computed as the excess fair value of the modified award over the fair value of the original award upon vesting of the modified award. If the modified award is subject to multiple vesting dates, the pro rata incremental fair value would be determined and included in compensation actually paid at each vesting date.

For example, a registrant grants an option (''original award'') for 1,000 shares of common stock with an exercise price of $20 per share. By its terms, the original award vests upon completion of a two-year service period. Upon vesting, the then fair value of the original award is included in compensation actually paid. After the original award vests, assume the registrant modifies its terms to reduce the exercise price to $15 per share with 50% vesting immediately and 50% vesting upon completion of another two-year service period (''modified award''). The incremental fair value that is included in compensation actually paid will be computed at each of the modified award's two vesting dates based on the then excess fair value of the ratable 500 shares using the modified award terms compared with the original award terms. In this example, compensation actually paid would be determined three times, as the full fair value of the original award at its vesting and the pro rata incremental fair value amounts at each of the two vesting dates of the modified award.[84]

Request for Comment

21. Does our proposed definition appropriately capture the concept of ''executive compensation actually paid?'' Why or why not? Are there elements of compensation excluded by our proposed definition that should not be? Alternatively, does the proposed definition include any items that should be excluded? If so, which ones and why?

22. Our proposal is designed, in part, to enhance comparability across registrants. Is comparability across registrants relevant or necessary in determining which compensation elements should be covered by the pay-versus-performance disclosure? Why or why not?

23. Under our proposed approach, the disclosure may not necessarily align a particular executive's compensation with the time period during which the registrant's performance may be attributed to the executive. For example, this may be the case where a turn-around specialist is hired and provided a substantial incentive payment up front in order to assume the task of improving the company's performance. Should our approach account for this? If so, should we require this to be addressed in supplemental disclosure? Are there other approaches we should consider?

24. Instead of our proposal, should we permit a principles-based approach that would allow registrants to determine which elements of compensation to include, so long as they clearly disclosed how the amount was calculated? Why or why not? How should such a provision be structured? What requirements should we include?

25. Are there alternative methods of determining which compensation is relevant to pay-versus-performance disclosure that we should consider?

26. Instead of our proposal, should we require only the use of the total compensation reported in the Summary Compensation Table and permit registrants to supplement this disclosure as they determine best reflects how their compensation relates to company performance? How would this approach affect the usefulness, comparability and cost of the pay-versus-performance disclosure?

27. Does our proposal to require only the actuarial present value of benefits attributable to services rendered during the applicable fiscal year, rather than the change in actuarial present value of pension benefits that is required by the Summary Compensation Table, appropriately reflect compensation ''actually paid'' to NEOs during that year for purposes of the pay-versus-performance disclosure mandated by Section 14(i)?

28. Is our proposal to include in the Item 402(v) calculation only above-market or preferential earnings on deferred compensation that is not tax-qualified appropriate? Should the calculation instead include all earnings on deferred compensation that are not tax-qualified rather than just the above-market portion? Should the calculation only include the above-market portion once any vesting conditions applicable to those earnings have been satisfied?

29. Should we value equity awards at vesting date fair value as proposed? Should we instead value equity awards at grant date fair value as currently required by Item 402(c)(2)(v) and (vi) or fair value at some other point in time? If so, why? Should we require disclosure of vesting date valuation assumptions if they are materially different from those disclosed in a registrant's financial statements as of the grant date, as proposed? Would the disclosure of these assumptions provide meaningful information to shareholders?

30. What concerns, if any, are presented if we require equity awards to be valued at vesting date fair value as opposed to grant date fair value? Would any concerns be mitigated by the inclusion in the table of the total compensation amount as provided in the Summary Compensation Table?

[83] Proposed Item 402(v)(3) would require registrants to disclose in a footnote to the table required under paragraph (v)(1), the total compensation amount reported in the Summary Compensation Table for the covered fiscal year for each NEO as provided in paragraph (c)(2)(x), or, for smaller reporting companies, paragraph (n)(2)(x), and the individual amounts deducted from, and modifications to, the amounts reported in the Summary Compensation Table in generating the amounts disclosed pursuant to Item 402(v) for the PEO(s). For NEOs other than the PEO, proposed Item 402(v)(3) would require disclosure of these amounts as averages.

[84] *See* proposed Instruction 1 to Item 402(v). Note that if the original award had been modified before it vested, the compensation actually paid would be determined only twice, as the pro rata fair value of the modified award at each of its two vesting dates.

31. Should any other components of compensation, such as registrant contributions to defined contribution plans, also be included only after any applicable vesting conditions have been satisfied?

32. For equity awards that require exercise, is our proposal to consider them ''actually paid'' when vested the appropriate point in time for purposes of Item 402(v) disclosure? If not, please explain. Should we instead require that for an award that requires exercise to be considered ''actually paid,'' it must also be exercisable, making the valuation date the date on which the award is both vested and exercisable? Is there an alternative approach we should consider?

33. Are there other specific elements of compensation in the Summary Compensation Table that we should exclude or modify for purposes of the pay-versus-performance disclosure called for under proposed Item 402(v)?

E. Measure of Performance

We are proposing to require that registrants use TSR (as defined in Item 201(e) of Regulation S–K) as the measure of financial performance of the registrant for purposes of pay-versus-performance disclosure.[85] Exchange Act Section 14(i) does not specify how registrant financial performance is to be measured, although the language in the statute requires financial performance to take into account any change in the value of the shares of stock and dividends of the registrant and any distributions of the registrant. We believe using TSR as the measure of financial performance is consistent with this requirement and we received several comments that supported this approach.[86]

Several commenters in the pre-proposal stage indicated that absolute company performance may not be a sufficient basis for comparison and advocated disclosure of registrant performance relative to that of a peer group.[87] Consistent with these suggestions, we also are proposing to require registrants, other than smaller reporting companies, to disclose peer group total shareholder return, using either the same peer group used for purposes of Item 201(e) of Regulation S–K,[88] or, a peer group used in the CD&A for purposes of disclosing registrants' compensation benchmarking practices.[89] If the peer group is not a published industry or line-of-business index, the registrant would be required to disclose the identity of the issuers. A registrant that has previously disclosed the composition of issuers in its peer group in prior filings with the Commission would be permitted to comply with the proposed requirement by incorporation by reference to those filings. We believe this would avoid the potential for duplicative disclosure.

Requiring registrants to use a consistently calculated measure, such as TSR, should increase the comparability of pay-versus-performance disclosure across registrants. Using TSR also would provide a measure of financial performance that is objectively determinable from the share price of the registrant and not open to subjective determinations of performance. In addition, using a measure that registrants are already required to determine and disclose, and with which shareholders already are familiar, would reduce the burden of providing and analyzing pay-versus-performance disclosure as compared to requiring registrants to calculate and shareholders to review a new measure of financial performance.

Some commenters suggested permitting registrants to choose the performance measure best-suited for their company.[90] One commenter suggested that registrants should be required to present additional performance measures.[91] We note that, as with other mandated disclosures, registrants would be permitted to provide supplemental measures of financial performance so long as any additional disclosure is clearly identified, not misleading and not presented with greater prominence than the required disclosure.

Request for Comment

34. Should we require registrants to use TSR as the performance measure? Would the comparability across registrants resulting from this proposal benefit shareholders? Would prescribing the use of TSR hinder registrants from providing meaningful disclosure about the relationship between executive pay and financial performance? Would requiring the use of TSR result in shareholders or management focusing too much on this single measure of performance or emphasizing short-term stock price improvement over the creation of long-term shareholder value? If so, are there ways we could mitigate that risk?

35. Should we allow registrants flexibility in choosing the relevant measure of performance they are required to disclose? Besides TSR, what other measures of financial performance take into account any change in the value of the shares of stock and dividends and distributions of the registrant, as required by the statute? Are there metrics other than TSR that measure a company's performance and meet the requirements of the statute? If so, would they result in disclosures that are more or less meaningful than TSR? How is corporate performance measured today? How is this information incorporated into investment decisions?

36. If companies do not currently use TSR as a factor in determining executive compensation, could requiring disclosure of this relationship cause companies to change their compensation strategy to focus on this factor? If so, what would be the effect?

37. Does TSR, standing alone, provide sufficient information about a registrant's performance such that a registrant would provide only the information that would be mandated by this rule? Will registrants opt to provide additional information based on their own calculations or metrics to provide additional context for investors to consider the alignment of pay versus performance?

38. Should we permit voluntary use of other measures of performance in addition to TSR, as proposed? Should we instead include specific requirements relating to the use of alternative performance measures in the proposed rules?

39. Should we require disclosure of TSR on an absolute basis, as well as disclosure of peer group TSR, as proposed? Why or why not? Are there other parameters we should consider

[85] Item 201(e) of Regulation S–K, which prescribes disclosure for the stock performance graph included in the annual report to security holders required by Rules 14a–3 and 14c–3, provides that cumulative total shareholder return is calculated by ''dividing the (i) sum of (A) the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and (B) the difference between the registrant's share price at the end and the beginning of the measurement period; by (ii) the share price at the beginning of the measurement period.'' 17 CFR 229.201(e).

[86] *See* letters from ClearBridge, Compensia, Farient, Meridian and MDU.

[87] *See* letters from Farient, J&J, MDU, Pay Governance, Shareholder Value Advisors.

[88] 17 CFR 229.201(e)(1)(ii).

[89] *See* Item 402(b)(xiv) of Regulation S–K (17 CFR 229.402(b)(xiv)). We note that smaller reporting companies are not subject to Item 201(e) and that requiring disclosure of peer group total shareholder return would require smaller reporting companies to collect and disclose information that they are not currently required to disclose.

[90] *See* letters from ABA, CEC I, Davis Polk, Protective Life and SCSGP.

[91] *See* letter from Public Citizen (recommending that registrants be required to present the relationship of compensation with four performance measures: Total shareholder return, return on assets, return on equity, and the growth in earnings per share).

requiring registrants to implement for the selection of peer groups?

40. Should we require disclosure about the registrant's selection of the peer group? For example, if a registrant using a peer group changes its peer group from one used in the previous fiscal year, should we require a brief narrative explaining the reasons for the change? [92]

41. Our proposal requires a registrant to use the same peer group used for purposes of Item 201(e) or the CD&A. Should a registrant be permitted to choose between these two options, or should we prescribe which peer group should be used? Why or why not? Should a registrant be permitted to choose a peer group different from that used for purposes of Item 201(e) or its CD&A? Please explain. Should there be any restrictions on how registrants select their peer groups?

F. Time Period Covered

Section 14(i) does not specify the time period that the pay-versus-performance disclosure must cover. Several commenters expressed concern that meaningful pay-versus-performance disclosure would need to address the time periods over which pay and performance are evaluated.[93] Commenters recommended a variety of solutions to provide meaningful disclosure, recommending varying types of disclosure over varying time periods.[94]

For registrants other than smaller reporting companies, we are proposing to require registrants to provide the pay-versus-performance disclosure for the five most recently completed fiscal years.[95] As noted above, several commenters supported a disclosure period of five years.[96] While the Summary Compensation Table required by Item 402(c) of Regulation S–K requires compensation disclosure for each of the last three completed fiscal years, we note that the stock performance graph required by Item 201(e) of Regulation S–K requires disclosure for the previous five fiscal years, although it does not include any compensation information. We believe that requiring disclosure of the relationship between executive compensation and registrant performance over the five most recently completed fiscal years is appropriate because it provides a meaningful period over which a relationship between annual measures of pay and performance over time can be evaluated.[97]

Smaller reporting companies would be required to provide the disclosure for the three most recently completed fiscal years.[98] Our executive compensation rules require smaller reporting companies to provide disclosure for only the last two completed fiscal years,[99] but we believe that requiring pay-versus-performance disclosure for three fiscal years, instead of two, provides more useful information from which investors can evaluate the relationship between a registrant's executive compensation actually paid and its financial performance, and provides a longer time horizon over which to observe any potential trends. We also are proposing to provide a transition period for registrants to provide the disclosure. Existing smaller reporting companies would be required to provide the disclosure for only the last two fiscal years in the first applicable filing after the rules become effective. In subsequent years such companies would be required to provide disclosure for the last three fiscal years.[100] Any other registrants would be required to provide the proposed Item 402(v) disclosure for three fiscal years, instead of five, in the first applicable filing after the rules become effective, and provide disclosure for an additional year in each of the two subsequent annual proxy filings where disclosure is required.

We are also proposing that a registrant provide pay-versus-performance disclosure only for years that it was a reporting company pursuant to Section 13(a) or Section 15(d) of the Exchange Act. Thus, a newly-reporting registrant would be required to provide pay-versus-performance disclosure for only the most recently ended fiscal year in any proxy statement or information statement in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required in its first year as a reporting company, and in the two most recently completed fiscal years in any proxy statement or information statement in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required in its second year as a reporting company. This treatment is consistent with the phase-in period for new reporting companies in their Summary Compensation Table disclosure.[101]

Request for Comment

42. Does a five-year disclosure period (for registrants other than smaller reporting companies) and a three-year disclosure period (for smaller reporting companies), as proposed, provide meaningful pay-versus-performance disclosure? Should the timeframes be shorter or longer? For example, should we require only three years of disclosure for all registrants consistent with the time period required by the Summary Compensation Table for registrants other than smaller reporting companies? What impact would a different time period have on the disclosure and its usefulness to shareholders?

43. Should we provide the proposed transition period for existing registrants? Why or why not? Should the transition period be shorter or longer? Does it depend on the type of registrant?

44. Should we permit registrants voluntarily to include fiscal years beyond the five-year period, as proposed? Please explain why or why not. Is there a risk that some registrants may choose the time period which is most favorable for performance? How could we mitigate this risk?

45. Is the proposed phase-in for new reporting companies appropriate? Is sufficient information readily available for these companies to provide adequate pay-versus-performance disclosure in any proxy statements or information statements requiring Item 402 disclosure in their first two years as a reporting company? If not, what are the costs of

[92] *See, e.g.,* Item 201(e)(4) of Regulation S–K, which provides that if a registrant chooses a different index for the stock performance graph than the one used in the previous fiscal year, then the registrant is required to explain the reason for the change and is also required to compare total return with both the old and the new index.

[93] *See, e.g.,* letters from ClearBridge, Pay Governance and SCSGP.

[94] *See* letters from Brian Foley & Company, ClearBridge and Pay Governance (supporting a one-year and a three-year aggregate disclosure to capture annual and long-term compensation); J&J (including a copy of their proxy materials in which they disclosed their PEO's annual compensation over five years in relation to total shareholder return and provided a separate table showing aggregate compensation over a three-year period relative to a peer group); and from Baker Donelson, Cook, Meridian, and MDU (supporting a five-year time period).

[95] *See* proposed Item 402(v)(2) of Regulation S–K.

[96] *See* letters from Baker Donelson, Frederic Cook, MDU (noting that a five-year measurement period moderates annual volatility and leads to more balanced comparisons), and Meridian.

[97] We are proposing to require smaller reporting companies to provide the disclosure over three years because they are not subject to Item 201(e) and provide Summary Compensation Table disclosure for two completed fiscal years. See Item 402(n) of Regulation S–K.

[98] *See* proposed Instruction 8 to Item 402(v)(2) of Regulation S–K.

[99] *See* Item 402(n) of Regulation S–K.

[100] *See* proposed Instruction 1 to Item 402(v).

[101] *See* Instruction 1 to Item 402(c) of Regulation S–K. Similarly, Item 201(e)(2) provides that if the registrant has been registered under Section 12 for a shorter period of time than the prescribed measurement period, the period covered by the performance graph may correspond to that time period.

developing this information? Would pay-versus-performance disclosure for only the most recently completed fiscal year in the first proxy statement filed by a newly-reporting company, as proposed, provide sufficient and meaningful information for shareholders to evaluate the executive compensation actually paid as compared to the registrant's financial performance, given the limited time period covered? Does the importance of the information to shareholders justify the costs of preparing the disclosure without a phase-in period?

46. Should the pay-versus-performance disclosure be required to use annual data from the five most recently completed fiscal years, as proposed, or aggregated data for the five most recently completed fiscal years? If the years are aggregated, should the relationship between pay and performance be demonstrated across peers because it can no longer be demonstrated over time? Alternatively, should the pay-versus-performance comparison be presented for both the last completed fiscal year and in aggregate for the five most recently completed fiscal years? If so, please explain why a different period and different level of aggregation than proposed would be more informative to shareholders or otherwise more appropriate.

47. Are there other transition issues or accommodations that we should consider? For example, should emerging growth companies[102] that are statutorily excluded from the requirements of Section 14(i) be provided the same phase-in period of pay-versus-performance disclosure applicable to other registrants when they first become subject to the proposed requirement to provide five fiscal years of pay-versus-performance disclosure?

G. Clear Description

Exchange Act Section 14(i) requires a ''clear description'' of the compensation disclosure required by Item 402 of Regulation S–K. We believe the requirement in Item 402(a)(2) of Regulation S–K[103] for ''clear, concise and understandable disclosure'' and the Plain English principles in Exchange Act Rules 13a–20[104] and 15d–20[105] give effect to the requirement in new Section 14(i) of the Exchange Act for clear compensation disclosure. When the current compensation disclosure requirements were adopted, we also amended Exchange Act Rules 13a–20 and 15d–20 so that the Plain English principles would apply to the amended compensation disclosure.[106] In adopting the Plain English requirement for compensation disclosure, we stated, ''clearer, more concise presentation of executive and director compensation . . . can facilitate more informed investing and voting decisions in the face of complex information about these important areas.''[107] We think this statement applies equally to pay-versus-performance disclosure. In addition, we noted that the Plain English principles applicable to compensation disclosure would permit registrants to ''include tables or other design elements, so long as the design is not misleading and the required information is clear, understandable, consistent with applicable disclosure requirements, consistent with any other included information, and not misleading.''[108] As a result, registrants are permitted to provide additional information beyond what is specifically required by our rules so long as the information is not misleading and does not obscure the required information.

Request for Comment

48. Are there changes to our rules that are necessary or appropriate in order to give effect to the requirement in Section 14(i) of the Exchange Act for a clear description of the Item 402(v) compensation disclosure?

49. Is it appropriate to apply the Plain English principles to the pay-versus-performance disclosure? If not, please explain why.

H. Smaller Reporting Companies

As proposed, smaller reporting companies as defined in Item 10(f)(1) of Regulation S–K[109] would be required to provide Item 402(v) disclosure. In an effort to minimize the reporting costs for these registrants, consistent with the Commission's treatment of smaller reporting companies in other areas (*e.g.,* executive compensation), these companies would be permitted to provide scaled disclosure, as follows:

- First, smaller reporting companies would be required to present Item 402(v) disclosure for the three most recently completed fiscal years, as opposed to the five most recently completed fiscal years required for other registrants. This is consistent with our general approach to scaling the requirements for executive compensation disclosure provided by smaller reporting companies.
- Second, smaller reporting companies would not be required to disclose amounts related to pensions for purposes of disclosing executive compensation actually paid because they are subject to scaled compensation disclosure that does not include pension plans.
- Finally, smaller reporting companies would not be required to present a peer group TSR. Smaller reporting companies are not subject to Item 201(e) and therefore are not otherwise required to present the TSR of a peer group, and they are not required to present a CD&A.

In addition, as proposed, the rule includes a transition period that would permit an existing smaller reporting company to provide two years of data, instead of three, in the first applicable filing after the rules become effective, and three years of data in subsequent proxy filings.

Smaller reporting companies are only required to provide Summary Compensation Table disclosure for the two most recently completed fiscal years. While the time period applicable for the proposed disclosure is longer than what smaller reporting companies currently are required to disclose in the Summary Compensation Table, we note that the information required to make the pay-versus-performance calculations for these additional years would be available in disclosures from prior years.

As proposed, smaller reporting companies would be required to provide the disclosure in the prescribed table in XBRL format, but we are proposing a phase-in under which smaller reporting companies would be required to provide the data in XBRL beginning with the third filing in which it provides pay-versus-performance disclosure.[110] This phase-in is intended to permit smaller reporting companies to plan and implement their data tagging with the benefit of the experience of other registrants that do not have a phase-in.

[102] Section 102(a)(2) of the JOBS Act excludes ''emerging growth companies'' from the requirements of Section 14(i). In accordance with this provision, we are not proposing to require an emerging growth company to provide pay-versus-performance disclosure.

[103] 17 CFR 229.402(a)(2).

[104] 17 CFR 240.13a–20.

[105] 17 CFR 240.15d–20.

[106] *See Executive Compensation Release, supra* note 76.

[107] *Id.*

[108] *Id.*

[109] 17 CFR 229.10(f)(1).

[110] Providing a phase-in for smaller reporting companies is consistent with how we have previously implemented certain new disclosure requirements applicable to these companies. *See, e.g., Interactive Data to Improve Financial Reporting,* Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)]; *Shareholder Approval of Executive Compensation and Golden Parachute Compensation,* Release No. 33–9178 (Jan. 25, 2011) [76 FR 6010 (Feb. 2, 2011)].

It also will give them a longer period of time over which to spread first-year data tagging costs. While we recognize that requiring this disclosure to be provided in interactive data format would impose additional costs and burdens on these companies, beyond what they currently incur in producing interactive data for other purposes in other filings, we anticipate that these expenses would be relatively lower than what they currently incur in producing interactive data for other purposes given the limited disclosures that would be required to be tagged.

We do not expect the compliance burden associated with providing this disclosure to be substantial given that much of the information required by the proposed rule is derived from information currently required under existing Regulation S–K. We also note that smaller reporting companies are subject to the say-on-pay advisory votes required under Exchange Act Rule 14a–21,[111] which the pay-versus-performance disclosure required under proposed Item 402(v) is intended to facilitate. We believe that shareholders of smaller reporting companies may benefit from having the proposed pay-versus-performance disclosure when casting their say-on-pay advisory votes and that such disclosure can be provided without imposing undue costs on smaller registrants.

Request for Comment

50. Would the proposed scaled disclosure requirements for smaller reporting companies provide meaningful disclosure to investors without imposing undue costs and burdens on these companies? Are there ways we could modify the proposed disclosure requirements to reduce the costs and still provide useful information for shareholders? For example, should we require only a two-year disclosure period for smaller reporting companies (similar to the timeframe for which they are required to provide disclosure in the Summary Compensation Table)?

51. Should we exempt smaller reporting companies from the proposed pay-versus-performance disclosure requirements? Why or why not? What impact, if any, would the absence of the proposed disclosure have on the ability of shareholders of smaller reporting companies to effectively exercise of their say-on-pay voting rights? Would shareholders be able to assess the relationship between the company's financial performance and the compensation paid absent the disclosure required under proposed Item 402(v)? Would the proposed disclosure be more or less meaningful to shareholders in the absence of CD&A and Item 201(e) performance graph disclosure? What are the burdens on smaller reporting companies of requiring pay-versus-performance disclosure and would the benefits of requiring this disclosure for smaller reporting companies justify the burdens? If not, please explain why not. Should registrants that exit smaller reporting company status be provided the same phase-in period applicable to other registrants when they first become subject to the proposed requirement to provide five fiscal years of pay-versus-performance disclosure?

III. General Request for Comments

We request and encourage any interested person to submit comments on any aspect of our proposals, other matters that might have an impact on the amendments, and any suggestions for additional changes. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

In addition, we request data to quantify the costs and the value of the benefits described in this release. We seek estimates of these costs and benefits, as well as any costs and benefits not already defined, that may result from the adoption of these proposed amendments. We also request qualitative feedback on the nature of the benefits and costs we have identified and any benefits and costs we may have overlooked.

To assist in our consideration of these costs and benefits, we specifically request comment on the following:

52. Would there be any significant transition costs imposed on registrants as a result of the proposal, if adopted? Please be detailed and provide quantitative data or support, as practicable.

53. Have we struck the appropriate balance between prescribing rules to satisfy the requirements of Exchange Act Section 14(i) and allowing registrants to disclose pay-versus-performance information most relevant to shareholders?

54. Are there alternatives to the proposals we should consider that would satisfy the requirements of Section 14(i) of the Exchange Act?

IV. Economic Analysis

A. Background

As discussed above, Section 953(a) of the Dodd-Frank Act added Section 14(i) to the Exchange Act, directing the Commission to require registrants to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders the relationship between executive compensation actually paid and the financial performance of the registrant. Section 14(i) of the Exchange Act does not define key terms, such as ''executive compensation actually paid'' or issuer ''financial performance,'' or prescribe a specific format for this disclosure. As a result, we apply discretion in our proposed implementation of the provision.

New Item 402(v) proposed by the Commission to satisfy the mandate of Section 14(i) requires the disclosure of information that is largely already required to be reported under current disclosure rules, but that is currently not computed or presented in the way the proposal would require. The proposal requires registrants to present the values of prescribed measures of executive compensation and performance for each of their five most recently completed fiscal years (three years for smaller reporting companies) in a standardized table. Registrants would be required to provide a clear description of the relationship between these measures, but would be allowed to choose the format used to present the relationship, such as a graph or narrative description. The proposal would also allow registrants to supplement the required elements of the disclosure with additional measures or additional years of data. The disclosure would be required to be provided in tagged data format using XBRL.

The proposed amendments would require that the compensation covered by the disclosure be ''executive compensation actually paid.'' Registrants would also be required to include the Summary Compensation Table measure of total compensation in the tabular disclosure for purposes of comparison. The proposal defines executive compensation actually paid as total compensation, as currently disclosed in the Summary Compensation Table, with modifications to the amounts disclosed

[111] *See* Release No. 33–9178, *supra* note 10 (''We do not believe that smaller reporting companies should be permanently exempt from the say-on-pay vote, frequency of say-on-pay votes and golden parachute and vote because we believe investors have the same interest in voting on the compensation of smaller reporting companies and in clear and simple disclosure of golden parachute compensation in connection with mergers and similar transactions as they have for other issuers.'').

for pension benefits (under all defined benefit and actuarial pension plans) and equity awards in order to better reflect amounts ''actually paid.''

Specifically, we propose that, instead of the total change in actuarial pension value, executive compensation actually paid include only the actuarial present value of benefits attributable to services rendered during the applicable fiscal year. That is, the measure would exclude that part of the change in actuarial pension value that results from any change in the actuarial value of benefits accrued in previous years, and should thus increase the comparability between compensation provided through defined benefit and defined contribution plans. This adjustment is also expected to reduce the volatility in measured pension compensation caused by changes in interest rates and other actuarial assumptions, and should thus make it easier to evaluate the relationship of pay-versus-performance. Because the scaled compensation disclosure that applies to smaller reporting companies does not include pension plans, this adjustment would not be required of smaller reporting companies. We also propose that executive compensation actually paid include the values of equity awards at the time of vesting rather than the date they are granted. Using vesting-date valuations would result in a compensation measure that includes, upon the vesting date, the grant date value of equity awards plus or minus any change in the value of equity awards between the grant and vesting date. As discussed below, such changes in the value of equity awards after the grant date represent a direct channel, and one of the primary means, though which pay is linked to registrant performance. We therefore believe that it is important that such changes in the value of equity awards be reflected in the pay-versus-performance disclosure.[112]

All of the individual components needed to calculate executive compensation actually paid must already be reported under current disclosure rules, with the exception of the values to be included with respect to pension benefits and option awards. The actuarial present value of pension benefits of an individual NEO attributable to services rendered during the applicable fiscal year is not currently required to be reported but can be estimated by shareholders based on existing disclosures with respect to pension benefits and pension valuation assumptions. The vesting-date values of option awards can similarly be estimated by shareholders using existing disclosures regarding the terms of option awards, their grant-date values and grant-date valuation assumptions, but arriving at such estimates could require shareholders to make vesting-date valuation assumptions that could differ from the grant-date valuation assumptions. The disclosure of executive compensation actually paid may therefore provide shareholders with marginal new information about the particular assumptions made by registrants in estimating vesting-date valuations.

The proposed amendments would require TSR to be the measure of financial performance used for the pay-versus-performance disclosure. Registrants other than smaller reporting companies would be required to include the TSR for a peer group as well as the registrants' own TSR in the required table. Registrants would also be required to provide a description of the relationship of their own TSR with executive compensation actually paid and, for registrants other than smaller reporting companies, of their own TSR with the reported peer group TSR. For this purpose, registrants may use the peer group used for their Item 201(e) performance graph in their annual report or the peer group used in their CD&A, if any.

The proposed amendments would permit registrants to present supplemental measures of both performance and compensation. Also, the proposed amendments would not prescribe the format in which the relationship between executive compensation actually paid and TSR is presented, though the amendment would require that the disclosure present this relationship over the five prior fiscal years (three years for smaller reporting companies). The proposal would also require footnote disclosure of the adjustments made to compute executive compensation actually paid and disclosure of the vesting date valuation assumptions, if materially different from the grant date assumptions.

We are proposing these amendments to satisfy the statutory mandate of Section 14(i) of the Exchange Act. The Senate Report that accompanied the statute references shareholder interest in the relationship between executive pay and performance as well as the general benefits of transparency of executive pay practices.[113] As discussed above, we believe that the statute is intended to provide further disclosures for shareholders to consider when making say-on-pay voting decisions, as well as when making other voting decisions on the compensation plans in which NEOs participate, and making decisions pertaining to the election of directors.

Exchange Act Section 3(f) requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of shareholders, whether the action will promote efficiency, competition and capital formation. Exchange Act Section 23(a)(2) requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The discussion below addresses the economic effects of the proposed amendments, including its anticipated costs and benefits, as well as the likely effects of the proposed amendment on efficiency, competition, and capital formation. The proposed amendments reflect the statutory mandate in Section 14(i) as well as the discretion we exercise in implementing that mandate. For purposes of this economic analysis, we address the costs and benefits resulting from the statutory mandate and from our exercise of discretion together, recognizing that it is difficult to separate the costs and benefits arising from these two sources. We also analyze the potential costs and benefits of significant alternatives to what is proposed. We request comment throughout this release on alternative means of meeting the statutory mandate of Section 14(i) of the Exchange Act and on all aspects of the costs and benefits of the proposed approach and of possible alternatives. We also request comment on any effect the proposed disclosure requirements may have on efficiency, competition and capital formation.

[112] To the extent that some shareholders may be interested in considering the relationship of performance with a measure of pay that excludes such changes in the value of equity awards, they would be able to refer to the Summary Compensation Table measure of total compensation required alongside executive compensation actually paid in the tabular disclosure. The Summary Compensation Table measure of total compensation reflects the grant date values of equity awards.

[113] The Senate Report includes the following with respect to Section 953(a) of the Dodd-Frank Act: ''It has become apparent that a significant concern of shareholders is the relationship between executive pay and the company's financial performance of the issuers . . . The Committee believes that these disclosures will add to corporate responsibility as firms will have to more clearly disclose and explain executive pay.'' *See* the Senate Report *supra* note 7.

B. Baseline

To assess the economic impact of the proposed amendments, we are using as our baseline the current state of the market without a requirement for registrants to disclose the relationship between executive compensation actually paid and the financial performance of the registrant. We consider the impact of the proposed amendment on shareholders, registrants, and their NEOs. The proposed amendments would apply to all companies that are registered under Section 12 of the Exchange Act and are therefore subject to the federal proxy rules, except emerging growth companies. The proposed amendments would also not apply to foreign private issuers or companies with reporting obligations only under Section 15(d) of the Exchange Act, which are not subject to the proxy rules. In addition, for some Section 12(g) registrants, such as limited partnerships, the disclosure requirement might not apply in some or all years because these registrants might not file either proxy or information statements every year.[114]

We estimate that approximately 6,075 registrants would be subject to the proposed amendments, including approximately 2,430 smaller reporting companies.[115] Among all registrants subject to the federal proxy rules, we estimate that there are approximately 360 emerging growth companies, of which approximately 230 are also smaller reporting companies, all of which would not be subject to the proposed amendments.[116]

The economic effects of pay-versus-performance disclosure will depend, in part, on whether new information that could not be derived from existing disclosures would be made available to shareholders. The proposed amendments are not expected to result in the provision of significant new information to shareholders, or to require registrants to collect significant new data, relative to disclosure requirements under the baseline. The registrants that would be subject to the proposed amendments must currently comply with Item 402 of Regulation S–K and, except in the case of smaller reporting companies, with Item 201(e). The underlying information required to provide the proposed pay-versus-performance disclosure is, with the exception of vesting-date valuation assumptions for options, already encompassed by these existing disclosure requirements and, for smaller reporting companies and for registrants that use a peer group from their CD&A, in the public availability of stock return data.

Specifically, Item 201(e) requires the disclosure of the TSR for the registrant as well as a peer group (a published industry or line-of-business index, peer issuers selected by the registrant, or issuers with similar market capitalizations), for the past five years, in annual reports.[117] The proposed amendments mandate that TSR of the registrant and a peer group be the primary measures of performance used in the pay-versus-performance disclosure. While registrants may instead choose to use the peer group disclosed in their CD&A, if they use a peer group in benchmarking their compensation, the components of such a peer group would be disclosed in the CD&A and the shareholder returns of these companies would be publicly available from many sources, if not already reported in the CD&A.

Similarly, while smaller reporting companies are not required to comply with Item 201(e) or CD&A disclosure requirements and yet would still have to report their own TSR under the proposed rules, data about their returns is publicly available. The proposal does not require smaller reporting companies to present the performance of a peer group.

Further, Item 402 currently requires the affected registrants to disclose extensive information about the compensation of NEOs. For example, registrants subject to Item 402 are required to report the value of total compensation and each of its components,[118] including, for the affected registrants other than smaller reporting companies, the total change (if positive) in actuarial present value of pension benefits and, for all of the affected registrants, the grant-date value of equity awards, for all NEOs in the Summary Compensation Table. Item 402 requires further disclosure in additional related tables, footnotes, and/or the accompanying textual narrative. Based on this information, it would be possible in the absence of the proposed disclosure for shareholders to estimate the proposed measure of executive compensation actually paid by deducting the current values reported with respect to pension and equity awards from total compensation and then estimating and adding to this value the proposed revised values with respect to these two components where applicable.

Specifically, the proposed definition of executive compensation actually paid for a fiscal year is total compensation as reported in the Summary Compensation Table for that year (i) less the change in the actuarial present value of pension benefits,[119] (ii) less the grant-date value of any stock and option awards granted during that year that are subject to vesting, (iii) plus the actuarial present value of benefits attributable to services rendered during the applicable year,

[114] Registrants subject to the proposed amendments would be required to make pay-versus-performance disclosure under proposed Item 402(v) when they file proxy statements or information statements in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required. Proxy statement disclosure obligations only arise under Section 14(a) when a registrant with a class of securities registered under Section 12 chooses to solicit proxies. Whether or not a registrant has to solicit proxies is dependent upon any requirement under its charter and/or bylaws, or otherwise imposed by law in the state of incorporation and/or stock-exchange (if listed), not the federal securities laws. For example, NYSE, NYSE Market, and NASDAQ require the solicitation of proxies for annual meetings of shareholders. A Section 12(b) registrant is listed on a national securities exchange, and therefore likely would solicit proxies and be compelled to provide the disclosure identified in proposed Item 402(v) annually. Registrants with reporting obligations under Section 12(g), but not Section 12(b), would not be subject to any obligation to solicit proxies under the listing standards of an exchange, but may nevertheless solicit proxies as a result of an obligation under their charters, bylaws, or law of the jurisdiction in which they are incorporated. When Section 12 registrants that do not solicit proxies from any or all security holders are nevertheless authorized by security holders to take a corporate action at or in connection with an annual meeting or by written consent in lieu of such meeting, disclosure obligations also would arise under proposed Item 402(v) due to the requirement to file and disseminate an information statement under Section 14(c).

[115] These estimates are based on a review of calendar year 2013 EDGAR filings.

[116] *Id.*

[117] Item 201(e) disclosure is only required in an annual report that precedes or accompanies a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). As discussed above, an annual meeting could theoretically not include an election of directors, such that Item 201(e) disclosure would not be required, although pay-versus-performance disclosure would still be required in such years if action is to be taken with regard to executive compensation.

[118] For registrants that are not smaller reporting companies, total compensation consists of the dollar value of the executive's base salary and bonus, plus the fair market value at the grant date of any new stock and option awards, the value of any non-equity incentive plan awards, the change (if positive) in actuarial value of the accumulated benefit under all defined benefit and pension plans, any above-market interest or preferential earnings on deferred compensation and all other compensation. The all other compensation component includes, among other things, the value of perquisites and other personal benefits (unless less than $10,000 in aggregate) and registrant contributions to defined contribution plans.

[119] If the change in actuarial value of pension plans is not positive, it is not currently included in total compensation and therefore need not be deducted for the purpose of this adjustment.

and (iv) plus the value at vesting of stock and option awards that vested during that year. Adjustments (i) and (iii) with respect to pension plans would not apply to smaller reporting companies as they are not otherwise required to disclose executive compensation related to pension plans. As discussed above, the amounts to be subtracted in this computation, as well as the value of stock awards at vesting (which must be added back), must be reported under existing Item 402 requirements. The other amounts that must be added back in this computation are not required to be directly reported under existing disclosure requirements but can be estimated based on existing disclosures. While the time period applicable for Item 402 disclosures (two years for smaller reporting companies and three years for other affected registrants) is shorter than would be required for the pay-versus-performance disclosure (three years for smaller reporting companies and five years for other affected registrants), the information required to make these computations for the additional years would be available in disclosures from previous years.

Thus, under the baseline, shareholders already have the required data to compute a reasonable estimate of the proposed measure of executive compensation actually paid, even though registrants are not required to compute or disclose this measure. In particular, as discussed above, the actuarial present value of benefits attributable to services rendered during the applicable fiscal year can be computed using the detailed existing disclosures of pension plan terms and valuation assumptions. It is also possible for shareholders to make reasonable estimates of the vesting-date fair values of options based on existing compensation disclosures and public data. However, as discussed above, estimates of vesting-date valuations computed by shareholders could differ from estimates computed by the registrant. Under the baseline, because registrants are not currently required to disclose vesting-date valuation assumptions (which may differ from grant-date assumptions), shareholders may not know how the registrant would apply its discretion in choosing from a range of reasonable assumptions to compute vesting-date valuations.

For the affected registrants other than smaller reporting companies, Item 402 also requires a description in the CD&A of how the registrant's compensation policy relates pay to performance, if material to the registrant's compensation policies and decisions. However, registrants are not currently required to report the actual historical relationship between any measures of compensation and financial performance. Some registrants voluntarily provide such disclosures, which are generally limited to analyses of the compensation of the PEO and which vary with regard to the compensation and performance measures used.[120] The comparability of these voluntary disclosures is therefore limited, and observers have raised concerns that registrants have selected measures that make the alignment of pay and performance appear more favorable.[121]

Certain shareholders also may have access to analyses of historical pay-versus-performance data produced by third parties, such as proxy advisory firms and compensation consultants. These analyses are based on compensation and performance information disclosed by registrants, and they may apply more consistent methodologies across registrants, but the computations and analytical approaches used vary across the third-party information providers.[122] Some other shareholders may generate their own pay-versus-performance analyses, but we do not have access to information about the computations or approaches that they find to be useful.

An important factor to consider when analyzing the effects of the proposed pay-versus-performance disclosure requirements is the variation in compensation structures that is likely to exist among the affected registrants. In particular, because the proposed amendments require that equity awards and compensation related to pension plans be valued differently, and (in the case of equity awards) in different years than as valued in the Summary Compensation Table, the variation in usage and design of these items in executive compensation packages may affect the comparability of the disclosures and the burden involved in making the required calculations to provide the disclosures.

The proposed amendments require that executive compensation actually paid include the vesting-date values of stock grants, which are provided in the Option Exercises and Stock Vested Table but likely differ from the grant date values included in total compensation in the Summary Compensation Table. The use of stock grants, and the frequency of such grants to the CEO, by some of the potentially affected registrants is reported in the table below.[123]

TABLE 1—USE OF EXECUTIVE STOCK GRANTS BY REGISTRANTS COVERED BY EXECUCOMP

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Firms in Sample	1,812	496	396	598
Stock Grants to 2012 CEO:				
% of CEOs Granted Stock in 2012	80.2	88.9	87.4	76.8

[120] A compensation consulting firm found that, of 250 large public companies examined, 27% provided tabular or graphical information on the relationship between pay and performance in the CD&A of their 2013 proxy statements, and the majority of these provided such information only with respect to the PEO's compensation. *See 2013 Corporate Governance & Incentive Design Survey,* Meridian Compensation Partners, Fall 2013, *available at http://www.meridiancp.com/images/uploads/Meridian_2013_Governance_and_Design_Survey.pdf.* In a study of the 300 largest companies filing proxy statements in the year ended April 2013, another consulting firm found over half a dozen different approaches to realizable pay-versus-performance disclosures. *See Executive Compensation 2013,* Hay Group, Feb. 2014, *available at http://www.haygroup.com/downloads/us/exec_comp_2013.pdf.*

[121] *See, e.g.,* Dave Michaels, *Misleading CEO Pay-for-Performance Numbers Target of SEC,* Bloomberg, Dec. 17, 2013, *available at http://www.bloomberg.com/news/2013-12-17/misleading-ceo-pay-for-performance-numbers-target-of-sec.html.*

[122] *See, e.g., http://www.issgovernance.com/file/publications/evaluatingpayforperformance.pdf,* and *http://www.glasslewis.com/issuer/pay-for-performance* for detail on quantitative analyses of pay for performance used by Institutional Shareholder Services Inc. and Glass Lewis & Co., LLC, respectively.

[123] These statistics are based on staff analyses of compensation data from the Standard & Poor's Execucomp database, which in turn is sourced from company proxy statements. Execucomp covers firms in the S&P Composite 1500 Index (which includes the S&P 500, S&P MidCap 400, and S&P SmallCap 600) as well as some firms that were previously removed from the index but are still trading and some client requests. Years mentioned refer to fiscal years, under the convention that companies with fiscal closings after May 31 in a given year are assigned to that fiscal year while companies with fiscal closings on or before May 31 in a given year are assigned to the previous fiscal year. Use of the term ''CEO'' is based on the use of this term in the Execucomp database, and is believed to be equivalent to the term ''principal executive officer'' used in this release.

TABLE 1—USE OF EXECUTIVE STOCK GRANTS BY REGISTRANTS COVERED BY EXECUCOMP—Continued

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Among firms for which 2012 CEO was also CEO in 2011 and 2010:				
% of CEOs Granted Stock 1 out of Past 3 Years (2010–2012) [124]	7.8	3.6	6.0	10.6
% of CEOs Granted Stock 2 out of Past 3 Years (2010–2012) [125]	10.3	7.0	7.9	11.6
% of CEOs Granted Stock 3 out of Past 3 Years (2010–2012) [126]	70.1	81.1	79.6	62.2
Stock Grants to Other 2012 NEOs:				
% of Firms that Granted Stock to Any NEO other than CEO in 2012	86.9	94.4	93.9	83.4
Among Firms that Made Such Grants, Average Number of Other NEOs Granted Stock in 2012	4.1	4.3	4.2	3.9

The proposed amendments require that executive compensation actually paid include the vesting-date values of option grants, values that are not currently reported and likely differ from the grant date values included in total compensation in the Summary Compensation Table. The use of option grants, and the frequency of such grants to the CEO, by some of the potentially affected registrants is reported in the table below.[127]

TABLE 2—USE OF EXECUTIVE STOCK OPTION GRANTS BY REGISTRANTS COVERED BY EXECUCOMP

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Firms in Sample	1,812	496	396	598
Option Grants to 2012 CEO:				
% of CEOs Granted Options in 2012	50.3	64.1	49.0	43.1
Among firms for which 2012 CEO was also CEO in 2011 and 2010:				
% of CEOs Granted Options 1 out of Past 3 Years (2010–2012) [128]	10.6	6.5	11.0	12.2
% of CEOs Granted Options 2 out of Past 3 Years (2010–2012) [129]	12.3	9.8	11.6	12.2
% of CEOs Granted Options 3 out of Past 3 Years (2010–2012) [130]	42.4	59.8	40.9	34.3
Option Grants to Other 2012 NEOs:				
% of Firms that Granted Options to Any NEO other than CEO in 2012	57.8	68.5	55.8	51.3
Among Firms that Made Such Grants, Average Number of Other NEOs Granted Options in 2012	3.9	4.2	4.0	3.6

In addition, because the proposed amendments require the valuation of equity awards as of their vesting dates, it is also important to consider the variation in time-based vesting schedules. In particular, the proposed measure of executive compensation actually paid includes the vesting-date value of equity awards that vested during the applicable year. The measure as of vesting reflects the grant-date valuation as well as changes in value of the award between the grant and vesting date, such as those related to gains and losses of the underlying stock since the award was granted. The proposed measure of executive compensation actually paid may thus increase sharply in any year during which significant equity awards vest. The degree of volatility in the executive compensation actually paid measure that may result is likely to be higher when grants vest all at once or when vesting dates are less frequent.

A compensation research and services firm estimates that 34% of stock grants and 6.8% of option grants awarded by S&P 1500 firms in 2012 are scheduled to vest in full at the end of their vesting period (''cliff vesting'') while the remaining are scheduled to vest in increments over the period of vesting (''graded vesting'').[131] Considering grants awarded over a longer horizon, an academic study that explored the vesting of option grants of some of the potentially affected registrants from 1997 to 2008 found that 32% of the grants studied cliff vested, 55% vested in equal installments over the period of vesting, and 13% had an alternative, irregular vesting pattern.[132] Some equity

[124] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued this individual stock in only one fiscal year from 2010 through 2012.

[125] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued this individual stock in two fiscal years from 2010 through 2012.

[126] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued this individual stock every fiscal year from 2010 through 2012.

[127] *See supra* note 123.

[128] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued these individual options in only one fiscal year from 2010 through 2012.

[129] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued these individual options in two fiscal years from 2010 through 2012.

[130] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued these individual options every fiscal year from 2010 through 2012.

[131] *See* Equity Vesting Schedules for S&P 1500 CEOs, a 2013 report by Equilar, *available at http://www.equilar.com/corporate-governance/2013-reports/equity-vesting-schedules-for-s-p-1500-ceos.*

[132] *See* B. Cadman, T. Rusticus, and J. Sunder, *Stock option grant vesting terms: Economic and financial reporting determinants,* Review of

awards may also be subject to performance-based vesting conditions, where the performance conditions may be based on the registrants' stock prices, their accounting performance, one or more nonfinancial measures, or some combination of these. A preliminary academic study finds that performance-based vesting conditions have become more prevalent in recent years, such that in 2012 just under 70% of large U.S. firms utilized such a provision in a grant to one or more executives, compared to approximately 20% of such firms in the year 2000.[133]

Another component of compensation that is measured differently in the proposed definition of executive compensation actually paid as compared to total compensation in the Summary Compensation Table is, for the affected registrants other than smaller reporting companies, compensation related to pension plans. The use of pension plans and the years of credited service at some of the potentially affected registrants are reported in the table below.[134]

TABLE 3—USE OF PENSION PLANS BY REGISTRANTS COVERED BY EXECUCOMP

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Firms in Sample	1,812	496	396	598
2012 Pension Plans				
% of CEOs with Pension Plans	33.7	54.0	37.6	21.9
Among Firms with CEO Plans, Median Years of Credited Service in Pension Plan	20	23	19	19
% Firms with Pension Plans for any NEO other than CEO	38.9	59.9	41.2	26.4
Among Firms with Other NEO Plans, Average Number of Other NEOs with Pension Plans	3.3	3.6	3.2	3.0

For the affected registrants other than smaller reporting companies, the proposed amendments require that executive compensation actually paid include only the actuarial present value of benefits attributable to services rendered during the applicable fiscal year, a value which is not currently required to be reported and will usually differ from the total change in actuarial value of pension benefits included, if positive, in total compensation reported in the Summary Compensation Table. In particular, the value currently included in total compensation reflects the change in actuarial pension value related to changes in the value of benefits accrued in prior years as well as the value of benefits attributable to services rendered during the applicable fiscal year. As such, the value currently included with respect to pensions in total compensation reported in the Summary Compensation Table will generally be more volatile (because of changes in interest rates and other actuarial assumptions) than the value to be included with respect to pensions in the proposed executive compensation actually paid measure. The degree of difference between these two computations will generally increase with an executive's total number of years of credited service (and thus the extent of benefits already accumulated) under the pension plan.

C. Discussion of Economic Effects

Compensating executive officers with pay that varies with registrant performance is widely considered to be a tool that can be used to encourage executive officers, through the financial incentives provided by such compensation plans, to exert effort and make decisions that create value. However, there are also downsides of such compensation plans. For example, some such plans may cause executives to focus overly on short-term performance to the detriment of long-term performance, or may make some executives less likely to take on risky but (from a typical shareholder's perspective) valuable investments if they are unwilling to take the chance that the investment could fail and result in lower compensation than would result from less risky projects.

An optimal compensation policy is generally considered to be one that maximizes shareholder value in the long term by balancing the need to provide executives with the incentive to perform well against the monetary costs and potential detrimental effects of the compensation policy. What constitutes an optimal compensation policy, including which performance metrics should be considered and how much compensation should vary with these metrics, is difficult to ascertain and will vary with a registrant's individual circumstances. Academic research has been mixed as to whether prevailing compensation structures are optimal, are too closely linked to company performance, or should be more sensitive to performance.[135] Thus, it is unclear whether changes that would more closely link executive pay with registrant performance than current compensation structures would have a positive, negative, or no impact on firm value creation.

In addition to uncertainties about the optimality of pay-versus-performance alignment, there are challenges in measuring such alignment. For example, the available performance statistics may not adequately measure a given executive's contribution to a registrant's performance, such as when registrant performance is strongly related to market moves, sector opportunities, commodity prices, or other factors unrelated to managerial effort or skill.[136] Even if the performance measure were not subject to such concerns, it could be

Accounting Studies, Vol. 18, No. 4, (Dec. 2013), at 1159–1190. Because this paper uses data from 1997 to 2008, it might not accurately reflect current practices.

[133] *See* J. C. Bettis, J. Bizjak, J. Coles, and S. Kalpathy, *Performance-Vesting Provisions in Executive Compensation,* working paper (Dec. 2013), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2289566.*

[134] *See supra* note 122.

[135] *See, e.g.,* Alex Edmans and Xavier Gabaix, *Is CEO Pay Really Inefficient? A Survey of New Optimal Contracting Theories.* Eur. Fin. Mgmt, Vol. 15, No. 3, (June 2009), at 486–496, Michael Jensen and Kevin Murphy, *Performance Pay and Top-Management Incentives.* 98 J. Pol. Econ., No. 2, 225 (Apr. 1990), and Lucian Bebchuk and Jesse Fried, Pay Without Performance: The Unfulfilled Promise of Executive Compensation, Harvard University Press, Oct. 2006.

[136] *See, e.g.,* Marianne Bertrand and Sendhil Mullainathan, *Are CEOS Rewarded for Luck? The Ones without Principals Are,* 116 Q. J. of Econ., No. 3, 901 (2001). Other situations in which registrant performance statistics may differ from an executive's performance include cases in which the statistics measure managerial effort but not of the particular manager in question (which may be particularly likely in the case of NEOs other than the PEO) and situations in which other factors such as registrant size affect the translation of a given level of managerial effort into the measured statistics.

difficult to match performance with associated compensation because of timing differences. For example, an executive may be rewarded with extra compensation for an accomplishment in the year it is made, even though expected profits related to this performance (such as an investment or restructuring decision) might not follow until several years later. Similarly, a registrant's stock price may rise at the announcement of a new PEO who is expected to add significant value to the firm, even though he or she may not commence employment and begin receiving compensation until the following year. Pay-versus-performance alignment can also be difficult to evaluate without also considering holdings of vested equity which link an executive's wealth to the performance of the company even if they were not obtained as compensation or, if they were provided as compensation, even after they have been "actually paid." [137] Such issues may lead to concerns with any standardized approach to evaluating pay-versus-performance alignment.

Despite these challenges, shareholders may evaluate executive compensation packages and consider the optimality of pay-versus-performance alignment when making voting decisions relating to the compensation of the NEOs and the election of directors, as well as when making investment decisions.[138] As discussed above, shareholders currently have access to detailed information disclosed by registrants with respect to executive compensation and financial performance. For example, substantial detail on compensation packages is currently required in proxy statements where action is to be taken with regard to the election of directors, including the specific terms of performance-related awards as well as information in the CD&A (for affected registrants other than smaller reporting companies) regarding how the compensation policy relates pay to performance, to the extent it is considered material. However, data from the required, standardized tables and accompanying information may require further computation and analysis before shareholders can evaluate actual historical pay-versus-performance alignment. Also, CD&A disclosures that may, on a voluntary basis, provide more direct measures of the historical pay-versus-performance relationship lack standardization and comparability, as discussed above. In this vein, the introduction of quantitative analyses of pay-versus-performance alignment by the major proxy advisory firms in recent years may be a sign of shareholder demand for additional computations regarding this relationship, beyond existing disclosures.[139]

The proposed amendments mainly require registrants to repackage in one location information that is disclosed in various other locations under existing rules. The anticipated benefits and costs of the proposed amendments are therefore driven by the impact that this additional format for presenting information may have on shareholders. The economic benefits and costs of the proposed amendments, including impacts on efficiency, competition and capital formation, are discussed below. We also discuss the relative benefits and costs of significant, reasonable implementation alternatives to the amendments as proposed.

1. Benefits

As discussed above, for the most part, the proposed amendments require a different presentation of certain existing information rather than the disclosure of new information. The primary benefits of the proposed amendments relative to the baseline will therefore depend on the extent to which the computations provided or the format used for the proposed disclosure is useful to shareholders.

Shareholders may benefit from the proposed amendments to the extent that the new presentation of data required by these amendments lowers their burden of analysis in evaluating the executive compensation policies of the affected registrants. Shareholders may evaluate executive compensation when making decisions relating to the say-on-pay vote and other votes relating to the compensation of the NEOs and the election of directors, as well as when making investment decisions. As part of this process, shareholders likely spend time and other resources to analyze current disclosures, including making computations that enable them to understand how compensation is related to performance. Existing disclosures regarding compensation are quite detailed, often lengthy, and, in some portions, subject to considerable variation. If the repackaging of some of this information into the required pay-versus-performance disclosure allows shareholders to more quickly or easily process the information accurately, the proposed amendments may generate efficiencies by preventing duplicative analytical effort by shareholders. Also, requiring that the disclosure be provided in a tagged data format may facilitate the extraction and analysis of any or all of this information across a large number of registrants or, eventually, across a large number of years. If the proposed disclosure is of interest to shareholders, it may be particularly beneficial to those shareholders who do not have access to third-party analyses, have fewer analytical resources, or are less adept at interpreting current disclosures on their own. If the disclosure helps shareholders process and understand compensation data faster, this information may also be more quickly incorporated in market prices, marginally increasing the informational efficiency of markets.

The size of this potential benefit depends on the extent to which the proposed disclosure approximates or contributes to any of the calculations and analyses that sophisticated shareholders would choose to perform on their own in order to process the existing disclosures, which is difficult to ascertain. The proposed requirement that registrants use standardized measures of compensation and performance would likely increase the comparability of disclosures specifically addressing the relationship of pay and performance relative to the broad variability under the baseline in the narrative discussion that may be provided in the CD&A and in voluntary pay-versus-performance disclosures.

To the extent that shareholders are interested in the prescribed measures, this enhanced comparability would likely enable more efficient processing of the information. In particular, standardization should reduce the time that shareholders would spend to learn what different measures represent: For example, once they understand what executive compensation actually paid reflects, they can understand what that measure means in other pay-versus-performance disclosures without having to examine each registrant's own

[137] *See, e.g.,* Kevin J. Murphy, *Executive Compensation: Where We Are, and How We Got There,* August 12, 2012, forthcoming in George Constantinides, Milton Harris, and René Stulz (eds.), Handbook Econ. Fin., at 24–25, *available at* SSRN: *http://ssrn.com/abstract=2041679* (stating that incentive compensation is negatively correlated with manager's vested equity interests, reflecting the redundancy of granting further equity awards to executives whose wealth is already substantially tied to the company's equity).

[138] *See, e.g., 2015 Investor Survey: Deconstructing Proxy Statements—What Matters to Investors,* February 2015, Stanford University, RR Donnelley, and Equilar, February 2015, *available at http://www.sec.gov/comments/4-681/4681-3.pdf* (providing survey evidence that 64% of institutional investors surveyed indicated that their firms used pay-for-performance alignment information from proxy statements to make voting decisions; 34% of those surveyed indicated that this information was used to make investment decisions).

[139] *See, e.g., supra* note 122.

definition. In addition, prescribing these measures reduces the ability of registrants to only disclose measures of pay and performance that lead to more favorable pay-versus-performance disclosures, which may allow shareholders to spend less time interpreting the choice of measures in the disclosure. Comparability may also allow shareholders to more easily evaluate a pay-versus-performance disclosure in the context of the pay-versus-performance disclosure of other registrants. Requiring disclosure of the annual values of the prescribed measures in a table should enhance such comparability of the disclosure across registrants by facilitating comparisons of the underlying content of the disclosures even when the format in which the relationship between the prescribed pay and performance measures is presented differs across registrants.

As noted above, these benefits of standardization would apply only to the extent that shareholders find the prescribed measures to be useful. Whether or not shareholders will be interested in the prescribed measures is unclear. For example, as discussed above, there are challenges associated with measuring an executive's contribution to registrant performance that may lead to concerns with any performance measure. However, TSR reflects information from a variety of underlying performance metrics, including market expectations of the future impact of current executive actions, and may thus be a useful metric in this context. While a registrant's own TSR as well as relative performance information will generally be available in Item 201(e) disclosures in annual reports for registrants other than smaller reporting companies, including peer performance in the pay-versus-performance disclosure may be useful to shareholders as it would enable them to evaluate the performance of a registrant relative to peers without requiring shareholders to refer to other disclosure documents.

Similarly, while the prescribed compensation measure would provide little incremental information beyond existing disclosures, the measure would reflect new required computations based on this existing data that may be particularly relevant in the context of evaluating the relationship of pay-versus-performance. These computations, and the tagging of the disclosure, may make information of interest to shareholders more readily available than it is under the baseline. For example, shareholders may be interested in the vesting-date valuations of options because academic studies indicate that changes in the value of equity awards after the grant date are a primary channel though which pay is linked to registrant performance.[140] For this reason, we believe that shareholders may be particularly interested in such post-grant changes in the value of equity awards when evaluating the relationship of pay-versus-performance. Shareholders may also be interested in the actuarial present value of benefits attributable to services rendered during a given year because these amounts may be more comparable to registrant contributions to defined contribution plans than the total change in actuarial pension value. The proposed adjustment with respect to pension plans is also expected to reduce the volatility in measured pension compensation caused by changes in interest rates and other actuarial assumptions, and should thus make it easier to evaluate the relationship of pay-versus-performance. Although shareholders could estimate the amounts proposed to be included in executive compensation actually paid with respect to equity awards and pension plans using existing disclosures, they may benefit from these computations becoming readily available in the prescribed compensation measure.

In addition, some shareholders may be interested in computing slightly different measures or using parts of the required computations for other purposes, in which case they are likely to benefit from the proposed footnote disclosure of the adjustments made to compute executive compensation actually paid and the disclosure of vesting date valuation assumptions, if materially different from the grant date assumptions. Also, as discussed above, requiring that the disclosure be provided in tagged data format may benefit shareholders interested in extracting and analyzing some or all of the data in the disclosure across a large number of filings.

On the other hand, if the prescribed measure of executive compensation actually paid is significantly different from measures that shareholders would choose to construct on their own in order to evaluate compensation alignment, benefits may be limited and some shareholders may be confused by the disclosures, as discussed in more detail below. For example, the potential benefit of more efficient data processing is likely to be tempered by the fact that the proposed measure of executive compensation actually paid may be subject to substantial potential volatility due to its sensitivity to equity award vesting schedules, which may reduce the meaningfulness of relating the variation in the measure over time to stock price performance. Also, while tabular disclosure of the underlying data will provide some degree of comparability, benefits to shareholders may be either mitigated or enhanced by the proposed latitude in format for presenting the relationship between the prescribed pay and performance measures. The impact of this flexibility depends on whether the usefulness of more customized formats outweighs any added complexity in interpreting the disclosure and the reduction in comparability across registrants.

The proposed amendments could also have indirect benefits if the required disclosures lead to more optimal compensation policies, perhaps as a result of increased attention on the level or structure of NEO compensation and/or registrant performance. Specifically, if, by virtue of the disclosure, NEOs become less likely to demand, and/or boards become less likely to approve, a compensation level or structure that is not optimal (in that, as discussed above, it does not maximize long-term shareholder value),[141] then benefits will arise to shareholders and registrants. The resulting pay packages may represent either a benefit or a cost to the NEOs depending on whether or not the more optimal compensation structure, including the level of compensation as well as the risk exposure, is preferred by the executives.

The likelihood of such indirect effects is difficult to estimate because the ideal pay-versus-performance analysis for shareholders, as well as the optimal pay structure, is uncertain and may vary by company, and because reactions to the repackaging of information are difficult to predict. As discussed above, the proposed disclosure is intended to facilitate shareholders' consideration of the alignment between pay and performance when making related voting decisions. However, because the proposal does not require the disclosure of significant new information, and given high levels of existing attention to pay practices, we believe that it is unlikely that the proposed amendments

[140] *See, e.g.,* Kevin J. Murphy, *Executive Compensation: Where We Are, and How We Got There,* (stating that studies show that virtually all of the sensitivity of pay to corporate performance for the typical CEO is attributable to the direct link between stock price performance and the CEO's portfolio of stock and options).

[141] It is important to note that, as mentioned above, a closer link between executive pay and stock performance than the current status of compensation could be either beneficial or detrimental to firm value creation.

would play a significant role in encouraging more optimal pay packages. We therefore believe that the proposed amendments are likely to have no material beneficial effects on competition or capital formation.

We believe that the only incremental information that the required disclosures under the proposed amendments would provide relative to existing public information is related to the calculation of option values as of the vesting date instead of the grant date. Registrants are also not currently required to disclose the actuarial present value of benefits attributable to services rendered during the applicable year, but they must disclose the pension plan terms and assumptions that could be used to compute this value. In contrast, while the valuation of options also involves certain assumptions, registrants are not currently required to disclose vesting-date valuation assumptions for option grants.

Using existing disclosures, shareholders can themselves make estimates of the vesting-date values based on the disclosed option terms, by using publicly available data to make reasonable valuation assumptions.[142] A vesting-date valuation provided directly by the registrant would reflect its discretion in choosing a valuation methodology and estimating the inputs required, particularly the expected option life and the expected volatility of the stock.[143] The grant-date valuations provided by registrants already demonstrate, to some extent, how the registrants choose to apply their discretion in the valuation process.[144] It is unclear to what extent shareholders would find the additional disclosure of a vesting-date valuation, which would similarly reflect registrant discretion, to provide meaningful new information. Also, shareholders may be concerned that such discretion could be used to understate compensation actually paid, affecting the reliability of registrant valuations. We therefore believe that the potential benefits of the proposed amendments derive primarily from the manner in which the information is presented rather than the disclosure of any significant new information.

2. Costs

We believe that the costs to registrants of complying with the proposed amendments likely would be relatively low, given that the required disclosures do not require the collection of any significant new information relative to the baseline and the required additional computations are straightforward. The valuation of options as of a different date and the required computations with respect to pension plans can be accomplished by entering new inputs into the existing valuation models used to calculate currently disclosed values. These costs will also be limited by phasing in the time periods for the disclosure for both new and existing registrants, thereby reducing the computations required when first producing the disclosure, and phasing in the tagging requirement for smaller reporting companies. The primary costs of complying with the proposed amendments include the time and expense to make the required computations, to design and apply a format for the disclosure, to apply XBRL data tagging, and to ensure appropriate review, such as by management, in-house counsel, outside counsel and members of the board of directors. As discussed above, registrants would be required to file the pay-versus-performance disclosure in certain proxy or information statements. While much of the disclosure would be based on information that is otherwise disclosed, the new computations and new presentation of this underlying information, as well as the inclusion of existing measures—TSR and peer group TSR—that are otherwise ''furnished'' but not ''filed,'' may create an incremental risk of litigation under Section 18 of the Exchange Act. However, we note that Section 18 does not create strict liability for ''filed'' information.[145]

The compliance costs are likely to vary somewhat among registrants depending on the complexity of their compensation structures. For example, the computation of executive compensation actually paid from total compensation reported in the Summary Compensation Table involves adjustments to the treatment of equity awards and pension benefits. As shown in the baseline section above, while a relatively higher proportion of large companies have pension plans and grant stock and option awards to executives, a significant fraction of mid-sized and smaller companies feature these components in their compensation plans as well. Thus, while the compliance costs are likely to be low, these costs may be slightly more burdensome for those affected registrants which have complex compensation packages and are small enough that the costs of the disclosure are relatively more consequential in comparison to their size. Smaller reporting companies would be subject to scaled requirements consistent with their existing disclosure requirements, including fewer years of disclosure, no requirement to report peer group performance, and the exclusion of items related to pension plans in computing executive compensation actually paid. Smaller reporting companies are not currently required to comply with Item 201(e), so they may face a small incremental burden of computing their own TSR for the purpose of this disclosure as compared to other affected registrants.

Based on analysis for purposes of the Paperwork Reduction Act (''PRA''), as discussed in Section V of this release, we estimate that the total incremental burden on all registrants of the proposed amendments would be, annually, 67,500 hours for internal company time, and $9,000,000 for the services of outside professionals. Certain registrants—such as those that have infrequent equity grant vesting dates or other compensation structures that result in a more volatile measure of executive compensation actually paid—may be more likely to voluntarily supplement the disclosure with additional measures, explanations, or analyses in order to explain the patterns in the required disclosure, and may thus face higher overall costs. However, we do not believe that any of the variation in the compliance burden will be large enough to have a material detrimental effect on competition or capital formation.

[142] Such data might include financial statement footnote disclosures relating to significant assumptions made by the registrant in arriving at disclosed grant-date valuations and information regarding the past exercise behavior at the registrant or a broader group of firms, as well as market information on bond and dividend yields and stock price volatilities.

[143] While FASB ASC Topic 718 requires that the assumptions used shall not represent the biases of a particular party, there will generally be a range of assumptions that could be considered to be reasonable, and so the choice of particular assumptions will reflect registrant discretion.

[144] An academic study of executive compensation among firms in the S&P 1500 from 1996 to 2001 found that the grant-date valuations of option awards by these registrants were, on average, understated. However, because this paper uses data from 1996 to 2001, it might not accurately reflect current practices. *See* David Aboody, Mary E. Barth and Ron Kasznik, *Do Firms Understate Stock-Based Compensation Expense Disclosed under SFAS 123?* 11 Rev. of Acc. Stud., No. 4, 429 (2006). Notably, when evaluating executive compensation, two major proxy advisory firms each use their own, standardized set of methodologies and assumptions to value option grants rather than relying on each registrant's estimate of grant-date value. *See, e.g., http://www.issgovernance.com/policy/ExecutiveCompensationFAQ,* and *http://www.glasslewis.com/issuer/stock-option-model-details.*

[145] *See* Exchange Act Section 18 [15 U.S.C. 78r]. A plaintiff asserting a claim under Section 18 would need to meet the elements of the statute to establish a claim, including purchasing or selling a security in reliance on the misstatement, and damages caused by that reliance.

Shareholders may bear additional information processing costs as a consequence of the proposed amendments if they increase the length and complexity of existing disclosures without significantly adding to the ease of interpretation. The likelihood and extent of such costs may be a function of the potential confusion resulting from the proposed disclosure, as discussed in more detail below, and the related increase in supplementary disclosures that may result, as well as the complexity of and variation in presentation formats, as discussed above. If the proposed disclosure were to confuse rather than help shareholders and therefore complicate the task of understanding executive pay policies, it may marginally decrease the informational efficiency of markets.

The proposed amendments may confuse shareholders about the optimality of pay practices if it brings attention to a particular relationship that may not be meaningful in the context of a given registrant. As discussed above, there are challenges in measuring pay-versus-performance alignment which are likely to impact any standardized approach to presenting this relationship. Including peer group performance in the disclosure may help shareholders to identify when registrant performance could be driven by market moves, sector opportunities, commodity prices, or other factors unrelated to managerial effort or skill. However, the proposed disclosure may be less meaningful if the disclosed performance, even relative to peers, is different from the contribution of the given NEO to performance, or if the disclosed relationship between compensation and performance does not (because of timing considerations or vested equity holdings) accurately capture the economic relationship between the company's performance and the financial rewards to the NEO.

In addition to the general concerns raised above, the proposed definition of executive compensation actually paid may be particularly subject to volatility based on the vesting pattern of equity awards, because the measure includes in the year of vesting the original grant-date value and all gains (or losses) related to returns in all years since the grant was made. In particular, the proposed measure is likely to increase sharply in any year during which significant equity awards vest, and gains or losses on equity awards are likely to be reflected in different years than the stock performance that generated them. Such volatility could make it difficult to understand the relationship, or lead to incorrect inferences about the relationship, between pay and performance.

The treatment of equity awards may also reduce the comparability of the compensation measure across registrants. The exclusion of grant date values in the year of grant may make it difficult to compare the total value of compensation packages. For example, for a given fiscal year, if one PEO is paid $1 million in cash and another PEO is paid $1 million in restricted stock that vests after one year, the executive compensation actually paid for the year will be $1 million in the first case and zero in the second case. This measure would be accompanied in the proposed tabular disclosure by the Summary Compensation Table measure of total compensation, which reflects the grant date values of equity awards, and may thus contribute to a more complete view of a compensation package. However, the reduced comparability resulting from the exclusion of the grant date values of equity awards from the proposed measure may still complicate the task of interpreting the disclosure.

The sensitivity of the proposed measure of executive compensation actually paid to vesting schedules may also reduce comparability. For example, consider two NEOs who are granted large, one-time awards of restricted stock that vest in full after one year, but with vesting dates that are one day apart—on the last day of a fiscal year versus the first day of the next fiscal year. The pattern in compensation actually paid may look very different for these two executives because the award of stock will be reflected in different years.

The potential for confusion is particularly of concern given that the proposed disclosure may be of most interest to less sophisticated shareholders, who may be less likely to have access to third-party pay-versus-performance analyses or may be less adept at conducting their own such analyses. The possibility of confusion is mitigated by allowing registrants to provide supplemental measures of pay and performance in the proposed disclosure, as well as the ability of registrants to provide further explanatory disclosures (such as in the CD&A for affected registrants other than smaller reporting companies). However, such clarifying disclosures may be more likely to be provided when the proposed disclosure is perceived by the registrant to incorrectly indicate the misalignment of pay and performance than when the proposed disclosure is perceived to incorrectly indicate strong alignment.

The proposed amendments could also lead to indirect costs if the required disclosures lead to changes in compensation packages that are not beneficial. Registrants may make changes to avoid disclosure that they perceived to correctly or, because of the limitations of the standardized approach, incorrectly indicate the misalignment of pay-versus-performance. For example, by virtue of the disclosure, boards may become more likely to approve compensation structures that more strongly link pay to stock price performance, even in situations in which this would not be optimal.[146] More subtle changes in compensation structures may also be made to improve the appearance of pay-versus-performance alignment. For example, registrants may choose to apply shorter or more graduated equity award vesting schedules to generate a less volatile measure of executive compensation actually paid. However, such changes in the design of compensation packages could harm shareholder value creation by, for example, placing more than the optimal weight on short-term performance.[147] Thus, if such changes are indirectly encouraged by the proposed amendments, they may entail costs to registrants and their shareholders. The resulting pay packages may represent either a benefit or a cost to the NEOs depending on whether or not the less optimal compensation structure, including the level of compensation as well as the risk exposure, is preferred by the executives.

As in the case of the potential benefits outlined above, many of these costs are difficult to quantify because the ideal pay-versus-performance analysis for shareholders, as well as the optimal pay structure, is uncertain and may vary by company and because reactions to the repackaging of information are difficult to predict. Still, because the proposal does not require the disclosure of significant new information, and given high levels of existing attention to pay practices, we believe that it is unlikely that the proposed amendments would play a significant role in encouraging poor pay practices. We therefore believe that the proposed amendments likely would have no material detrimental effects on competition or capital formation.

[146] *See supra* notes 135 and 136 regarding academic studies that find that a stronger link between pay and stock price performance may not be optimal.

[147] *See, e.g.,* Alex Edmans, Vivian Fang and Katharina Lewellen, *Equity Vesting and Managerial Myopia,* NBER Working Paper No. 19407, (Sept. 2013), *available at http://www.nber.org/papers/w19407.*

3. Implementation Alternatives

In this section, we present significant implementation alternatives that have been considered and a discussion of their benefits and costs relative to the amendments as proposed.

a. Registrants and Filings Subject to the Disclosure

An alternative to the amendments as proposed would be to require that pay-versus-performance disclosure would accompany any Item 402 disclosure, including in Form 10–K or Form S–1. Such an approach would make pay-versus-performance disclosures more consistently available for Section 12(g) registrants subject to the amendments and broaden the disclosure requirement to include Section 15(d) registrants other than emerging growth companies. As discussed above, we believe that the proposed disclosure would be most useful to shareholders when they are deciding whether to approve the compensation of the NEOs through the say-on-pay vote, voting on the election of directors or acting on a compensation plan. The proposed approach would require pay-versus-performance disclosure in proxy statements in each of these cases. Nonetheless, shareholders making voting decisions at a particular registrant may benefit from broader and more consistent availability of pay-versus-performance disclosures on an annual basis at other registrants. Specifically, these disclosures may allow shareholders to more easily compare pay practices across registrants when deciding how to vote at a particular registrant, particularly, for example, in the case of smaller companies whose peers may be more likely to be Section 12(g) or Section 15(d) registrants. Such disclosures may also be of use to some shareholders in making investment decisions, irrespective of any matters that are up for a vote.

However, registrants with reporting obligations only under Section 12(g) or Section 15(d) do not have securities that are registered on national securities exchanges, so the markets for their shares are likely to be comparatively less liquid. Estimates of share values and therefore of total shareholder return for such registrants may be less precise and less readily available, potentially making pay-versus-performance comparisons based on this metric less meaningful across such registrants. Also, as in the case of smaller reporting companies, Section 15(d) registrants are not subject to Item 201(e) requirements for stock price performance disclosure. Similarly, Section 12(g) registrants may not be required to disclose Item 201(e) information in some or all years, so Section 15(d) registrants and some Section 12(g) registrants would bear an additional burden of calculating their own TSR and, except in the case of smaller reporting companies, the TSR of a peer group for this purpose.

An alternative that would narrow the applicability of the disclosure would be to exempt smaller reporting companies from the proposed disclosure requirement. Exempting smaller reporting companies generally would be consistent with the overall scaled disclosure requirements that apply to smaller reporting companies. While the proposal would subject smaller reporting companies to scaled requirements in order to limit the incremental burdens such companies may face relative to other registrants, some such burdens remain. For example, smaller reporting companies are currently not required to disclose their TSR in annual reports, so they would face a higher burden than other registrants to include this measure in the pay-versus-performance disclosure. We note, also, that requiring only a scaled version of the pay-versus-performance disclosure for smaller reporting companies may limit the benefits to shareholders by reducing the content and comparability of the disclosures. Also, in the absence of CD&A disclosure, shareholders would have less information with which to interpret pay-versus-performance disclosures from these registrants.

On the other hand, it is possible that some shareholders may benefit from the proposed pay-versus-performance disclosure for these registrants, particularly because these registrants currently provide less extensive disclosure about compensation and the data that they do disclose is unlikely to be available in aggregate form from data vendors that collect such data from the proxy statements of larger companies. For example, shareholders who believe that the long-term performance of younger, high growth companies may be particularly sensitive to the design of compensation structures may benefit from smaller reporting company pay-versus-performance disclosures, even if these disclosures are not directly comparable with the disclosures of other affected registrants. Shareholders that are interested in comparing executive compensation across smaller reporting companies would benefit from this data being tagged, particularly because of the lack of commercial databases collecting executive compensation information for such registrants. The proposal would permit smaller reporting companies to present fewer years of information in the disclosure, to not include peer group performance, and to exclude items related to pension plans in computing executive compensation actually paid. While the scaled requirements for smaller reporting companies may limit the potential benefits to shareholders interested in executive compensation at such registrants, these scaled requirements should substantially limit the incremental burdens faced by smaller reporting companies in providing pay-versus-performance disclosure.

b. Disclosure Requirements

We have considered several reasonable alternatives to the proposed disclosure requirements.

Some commenters recommended a more principles-based approach that would permit registrants to determine which measures of pay and performance to disclose and how to disclose the relationship between these measures based on what they deem to be appropriate for their individual situations.[148] Such an approach could have the potential to allow shareholders to more directly observe how management views the alignment of pay and performance at a given registrant, and might reduce reporting costs because registrants need only report what they believe to be appropriate given their unique circumstances. To the extent that the prescribed measures may be less meaningful at particular registrants, a principles-based approach could reduce shareholder confusion in understanding the relationship between pay and performance at a particular registrant. A principles-based approach would also reduce the risk that the disclosure requirements could lead registrants to change their compensation structures in ways that are less than optimal for the sake of achieving what they perceive to be more favorable pay-versus-performance disclosure. However, such an approach may reduce comparability of the disclosure across registrants and could increase shareholder confusion because the choice of pay and performance measures, and the disclosure horizon, may vary significantly. Also, a principles-based approach may allow registrants to selectively choose the measures or horizon that result in the most favorable disclosure. The proposed approach of specifying some uniform requirements for the disclosure and permitting supplemental disclosure

[148] *See* letters from SCSGP, ABA, CEC I, ClearBridge, Protective Life, and Davis Polk.

should promote comparability while preserving flexibility to tailor the disclosure to a registrant's individual situation.

In particular, the proposed disclosure promotes a level of comparability by requiring standardized measures of compensation and performance that are consistent across registrants. Similarly, the proposed requirement that the disclosure cover, at minimum, a five-year (three-year for smaller reporting companies) time period after the initial phase-in should also increase the comparability and usefulness of the disclosure compared with the alternative of allowing the registrant to potentially choose a shorter time period for disclosure. Registrants will be permitted to present supplemental measures of compensation and performance and additional years of data in the pay-versus-performance disclosure, will have flexibility as to the format in which to present the relationship between pay and performance, and will continue to have significant latitude in presenting additional compensation analyses (such as in the CD&A, for affected registrants other than smaller reporting companies), all of which should help registrants to clarify their unique circumstances and considerations in evaluating compensation.

Conversely, we also have considered increasing the comparability of pay-versus-performance disclosures by prescribing a uniform format or some minimum requirements for the presentation format of the relationship. Under the proposal, registrants may apply a wide range of formats when presenting the relationship between the measures that might not be directly comparable, particularly as some registrants may present the relationship between the prescribed measures using percentage changes or ratios while others may present the levels of these measures. However, the tabular disclosure of the annual values of executive compensation actually paid and registrant and peer group performance should allow shareholders to compare the content of the disclosures across registrants using different formats. Still, shareholders' ability to easily compare the disclosure across registrants may be further increased by requiring a uniform format for presenting the relationship, such as a standardized graphical presentation, or some minimum standards for the presentation format, such as a requirement that the disclosure be in the form of a graph. The cost of these more prescriptive approaches would be the restrictions on the ability of registrants to tailor the format of the required disclosures to best reflect their individual circumstances, which may vary significantly.

A further alternative would be to require registrants to provide an analysis of the presented information in narrative accompanying the factual disclosure. For example, registrants could be required to explain which compensation decisions or which elements of compensation, if any, were most responsible for the patterns in the presented relationship between executive compensation actually paid and total shareholder return. Such supplementary analysis may help shareholders to interpret the disclosures, particularly in cases where, as discussed above, the presented relationship may be distorted by issues such as timing mismatches and factors unrelated to managerial performance that may affect stock prices. The proposed amendments permit such explanations to be provided on a voluntary basis but, as discussed above, such clarifying disclosures may be more likely to be provided when the proposed disclosure is perceived by the registrant to incorrectly indicate the misalignment of pay and performance than when the proposed disclosure is perceived to incorrectly indicate strong alignment. However, making the provision of such narrative disclosure mandatory may increase the compliance burden and might suggest that the registrant considered, or should consider, the pay-versus-performance relationship in its compensation decisions.

We have also considered increasing or decreasing the minimum information required to be included in the disclosures. With respect to increasing the minimum information, we considered requiring the inclusion of additional measures of pay or performance or requiring that the disclosure cover a longer time period. Shareholders may find expanded disclosures to be beneficial. For example, a longer time period (*e.g.,* the entire service period of the executive)[149] for the disclosure may provide shareholders with additional context with which to evaluate the disclosure. In particular, requiring a longer horizon may help shareholders to understand timing mismatches that the disclosures may be subject to, as discussed above, by increasing the likelihood that the disclosures include pay (or performance) that may appear in a different time period than the corresponding performance (or pay). Mandating the inclusion of additional measures of pay and performance (such as relative pay measures and accounting measures of performance) may increase the usefulness of the disclosure in some cases by summarizing more information that could be relevant in evaluating pay versus performance alignment. Also, requiring more years of data or more prescribed measures may increase the comparability of the disclosures if, under the proposed requirements, some but not all registrants choose to provide such additional information.

However, such extended requirements would impose a higher compliance burden while potentially requiring registrants to include information that they do not believe to be relevant to their circumstances, and/or which shareholders may not find to be relevant. Also, requiring additional measures may also make the disclosure of the relationship between pay and performance more difficult to process quickly, while not adding to the total amount of underlying information available to shareholders from public disclosures.

With respect to decreasing the minimum required information, we also considered reducing the required disclosure period to three years, excluding Summary Compensation Table total compensation from the required tabular disclosure, or not requiring TSR for a peer group. On the one hand, these alternatives could reduce the compliance burden on registrants by limiting the total amount of information that would need to be included in pay-versus-performance disclosures, while continuing to provide flexibility to registrants to include additional information if they find it to be appropriate. On the other hand, decreasing the minimum required information could reduce the benefits to shareholders discussed above and may not substantially reduce compliance costs given that, for example, the excluded information would generally still be required to be disclosed in other years, other parts of the proxy or information statement, or other filings. Overall, we believe that the proposed minimum required information appropriately balances a level of comparability and usefulness against the costs of complying with the requirements of pay-versus-performance disclosure.

One commenter[150] recommended that registrants subject to the amendments be required to present relative pay compared to relative performance, each measured with respect to a group of peer companies.

[149] *See* letter from CII.

[150] *See* letters from SVA.

While performance information for a peer group would be required to be included under the proposal, also incorporating pay information for a peer group in order to produce relative pay-versus-performance disclosures may be useful to shareholders as it would provide further context in which to evaluate the pay-versus-performance alignment of a registrant. Using a relative approach would also permit the relationship of pay and performance to be presented across registrants using, for example, an aggregate three-year compensation measure, rather than the relationship being presented across time for an individual registrant using annual measures.[151] The use of aggregate measures, recommended by several commenters, may reduce the potential timing mismatches and volatility in executive compensation actually paid.[152] However, requiring further comparisons to a peer group may reduce the comparability of disclosures because of registrant discretion in selecting the peer group or variation in the availability of a closely comparable peer group. There are also practical implementation considerations, as peer compensation for the last fiscal year is not likely to be available at the time a registrant is compiling the disclosure. Further, even if these practical considerations could be mitigated (*e.g.,* by permitting peer information to be excluded when unavailable), requiring relative pay-versus-performance would most likely impose higher compliance costs.

Requiring peer performance but not peer compensation information as in the proposal should help shareholders to understand when registrant performance could be driven by market moves, sector opportunities, commodity prices, or other factors unrelated to managerial effort or skill. Under the proposed amendments, registrants that prefer to include information about peer pay-versus-performance will be permitted to present relative measures of pay and alternative measures of relative performance as additional measures in the pay-versus-performance disclosure and will continue to have the ability to present relative compensation analyses in the CD&A. Because registrants might only choose to present this information when they perceive the comparison to peers to appear favorable, allowing such voluntary disclosure would not provide the full benefits of mandating relative pay-versus-performance disclosure. However, shareholders could also construct relative pay-versus-performance analyses on their own by comparing the separate pay-versus-performance disclosures of each of a registrant's peers, based on the peer group reported by a registrant under Item 201(e) or in the CD&A.

Another commenter recommended that the pay-versus-performance disclosure be limited to the PEO's compensation.[153] This alternative may focus the disclosure on the information that is likely to be of most interest to shareholders. Also, as discussed above, the contribution of NEOs other than the PEO to firm performance is less likely to be adequately measured by overall registrant performance statistics such as the TSR. This alternative would marginally reduce compliance costs as compared to requiring disclosures regarding the average compensation of the other NEOs as proposed. However, limiting the disclosure to the PEO may also reduce the benefits to shareholders, to the extent they would use the proposed disclosures to evaluate the compensation of the other NEOs.

We could require pay-versus-performance disclosure for each individual NEO, rather than or in addition to the average of the other NEOs as a group. Disclosure with respect to the individual NEOs could be required only in the required tabular disclosure of the prescribed measures or in both the disclosure of these measures and in the disclosure of the relationship between the measures. Such approaches would allow shareholders to more directly compare pay-versus-performance for NEOs with the same or similar titles across different registrants. Also, some shareholders may be interested in the pay-versus-performance alignment of particular NEOs other than the PEO and would thus benefit from such individual disclosures. Since the computations required to produce individual disclosures would already be made in order to produce disclosure on an average basis for all of the NEOs, the incremental burden of producing such individual disclosures may be low.

However, while some shareholders may be interested in such disclosure, variability in the composition and number of other NEOs over the horizon of the disclosure may complicate the interpretation of the relationship between pay and performance over the years for which disclosure is required. The roles of individual NEOs might not be comparable, and their titles might not be consistent, across registrants, limiting the benefits to shareholders interested in comparing pay alignment for particular roles across registrants. Also, firm-level performance measures may be less likely to adequately measure an NEO's contribution to a registrant's performance than that of the PEO, given the more focused roles (such as division head or chief technology officer, among many other possibilities) of individual NEOs, so individual disclosures for the NEOs could be of limited benefit in many cases. Because of these limitations, and the increase in the length and complexity of the disclosure required to present individual NEO information, requiring pay-versus-performance disclosures for each individual NEO could increase the time required for a shareholder to analyze and process the information and increase the likelihood of shareholder confusion.

We are proposing to require XBRL tagging of the disclosure because some shareholders may be interested in extracting and analyzing the information in the table across large numbers of registrants or, eventually, a large number of years, and would thus benefit from the proposed tagging requirement.[154] The proposal would require registrants to tag the numerical data disclosed in the required table, and to separately block-text tag, as three blocks, the disclosure of the relationship among the measures, the disclosure of deductions and additions used to determine executive compensation actually paid, and the disclosure regarding vesting date valuation assumptions. We have considered alternatives with respect to the proposed XBRL tagging requirement, including not requiring that the underlying data disclosed in tabular form be provided in an interactive data

[151] Aggregating compensation over a three-year period would result in a single number representing executive compensation actually paid for this full period. Such aggregation would thus make it impossible to demonstrate the relationship between pay and performance over time, and so this relationship could only be demonstrated across another dimension, such as across peers. The proposed amendment requires the use of an annual measure so that registrants can present the relationship of pay and performance over time at the particular registrant.

[152] *See* letters from ClearBridge, Pay Governance, and SVA.

[153] *See* letter from Meridian.

[154] Some shareholders that are interested in analyzing compensation data across a large number of filings may also wish to analyze the substantial amount of other information regarding compensation in the proxy statement. Because this other data is not currently provided in an interactive data format, such shareholders would have to continue to purchase such data from a data vendor that aggregates this data or to electronically parse or hand-collect such data from filings. The incremental benefit of the proposed data tagging requirement is likely to be lower for such shareholders than for those primarily interested in the data proposed to be tagged.

format, requiring more or less of the information to be tagged, allowing supplementary information to be tagged, or requiring a different tagging format.

The affected registrants are familiar with data tagging because they are required to provide information in other filings in interactive data format, but the exact specifications differ and they are not required to provide any interactive data in proxy or information statements.[155] Requiring an interactive data format would impose additional costs and burdens on registrants, beyond what they currently spend on producing interactive data for other purposes, because their contracts with outside data tagging vendors and/or the responsibilities of their in-house staff that works on data tagging would have to be expanded to include the new tagging requirement. Despite these costs, some shareholders may benefit from the data tagging requirement to the extent that it is helpful in extracting the tagged data across large numbers of filings.

We considered not requiring registrants to tag, as a block, the graphical and/or narrative disclosure that would follow the tabular disclosure. While the nature and potential variation in format of this disclosure may make it less suitable for large-scale analysis than the numerical data required to be tagged under the proposal, the incremental costs of tagging this disclosure as block-text should be low and such tagging could benefit shareholders interested in extracting this part of the disclosure from a large number of filings. We also considered not requiring registrants to tag, as blocks, the disclosures of deductions and additions used to determine executive compensation actually paid and the disclosure regarding vesting date valuation assumptions. The cost of block tagging these disclosures should be low and shareholders interested in this information may find such tagging to be useful. Alternatively, we could require that each numerical item in the deductions and additions used to determine executive compensation actually paid and the vesting date valuation assumptions be tagged separately. While such tagging may benefit shareholders interested in using this data, it would require some incremental compliance costs. Another alternative would be to allow registrants to tag any supplemental measures of pay and performance that they include in the disclosure beyond the prescribed measures. While some shareholders may benefit from such tagging, the supplemental measures included, if any, are likely to vary across registrants and such data may thus be less suitable for large-scale analysis than the prescribed measures.

We also considered requiring registrants to provide the data in XML format rather than XBRL. An XML format could be appropriate given the fixed structure of the proposed tabular disclosure and would permit the use of existing EDGAR applications that can convert submitted information to XML. This could increase the ease with which registrants could implement the structured formatting requirement, and could thus reduce costs, particularly for smaller registrants. However, XBRL is more appropriate for capturing information that is not well suited for tabular disclosures; in particular, standard XML is not able to tag large blocks of information without customization, whereas this function is standard in XBRL. XBRL is therefore more suitable for implementing the proposed requirements for block tags. In determining to propose a requirement to tag the data in XBRL format as opposed to XML format, we also considered the fact that XBRL allows for more flexibility to implement, for example, potential extensions to the data to be tagged as discussed above.

c. Definition of Executive Compensation Actually Paid

We have also considered several reasonable alternatives for the definition of executive compensation actually paid.

Incremental Compensation Earned

One approach would be to define ''executive compensation actually paid'' as the incremental compensation earned by an executive in a given year over those amounts that had already been earned in previous years. In this case, executive compensation actually paid would, as in the proposed measure, include all of the components included in the Summary Compensation Table (such as salary and cash bonuses) but with adjustments to the amounts included for equity awards and pension plans. In contrast to the proposal, the measure based on the incremental compensation earned would include in a given fiscal year the grant-date values of any new equity awards granted that year together with the annual change in value (whether positive or negative) of any outstanding, unvested option and stock grants. The change in values of these grants would be included in each fiscal year until their vesting date. In the case of options, these changes in value would be measured by applying the registrant's chosen option valuation methodology (*e.g.,* Black-Scholes or lattice valuation). This treatment of equity awards is similar to an approach used by one commenter.[156]

The corresponding treatment for pension plans would be to include the present value of those benefits that were earned in the last fiscal year, which may differ from the actuarial present value attributable to services rendered during the applicable fiscal year. In particular, the latter may be based on estimates of future benefits that include the impact of assumptions about future levels of compensation. The former, on the other hand, is intended to capture the present value of the impact on future benefits that can be directly linked to the change in inputs to the benefit formula (including compensation levels as well as years of service) over the last fiscal year.

A potential benefit to shareholders of applying these alternative adjustments to equity and pension plans in presenting executive compensation actually paid is that, with respect to equity awards, it would reduce the volatility in executive compensation actually paid, which, as discussed above, could reduce the comparability of the disclosures and the meaningfulness of relating the variation in the compensation measure over time to stock performance. In particular, this alternative approach would limit the value attributed to equity-based awards in any year to the change in value that is directly related to the stock return over that year, rather than including in the year of vesting the gains related to returns in all years since the grant was made. This approach may therefore allow shareholders to more readily interpret the relationship between variation in the compensation measure over time and stock performance. It may also reduce the unintended, indirect encouragement of shorter or more graduated vesting schedules in order to smooth executive compensation actually paid under the proposed definition.

In addition, this alternative approach would limit potentially significant differences in the measured executive compensation of registrants that provide very similar equity awards but with vesting schedules that are not synchronized. As discussed above, if

[155] Business development companies are not currently required to provide their financial statements and financial statement footnotes in XBRL format, and may thus be less familiar with data tagging than other registrants. We estimate that there are approximately 13 business development companies that would be subject to the proposed amendment.

[156] *See* letter from J&J.

two NEOs receive one-time awards of restricted stock that vest in full after one year, but with vesting dates that are one day apart—on the last day of a fiscal year versus the first day of the next fiscal year—the proposed approach would reflect the full value of the award in different years for the two NEOs. The alternative approach based on the incremental compensation earned would reflect any change in the value of each award over a given fiscal year in that same fiscal year, generally resulting in a more similar annual measure of compensation for the two NEOs in this example than the proposed measure.

Finally, including the value of equity awards at the grant date and then reflecting changes in this value in the years until vesting would increase the comparability of the disclosures across registrants that rely on equity awards to different extents while still demonstrating the performance sensitivity of unvested equity awards. For example, consider the example above, in which, for a given fiscal year, one PEO is paid a $1 million salary in cash and another PEO is paid $1 million in restricted stock that vests after one year, each of which comprises their total compensation. In contrast to the proposed approach, which would reflect executive compensation actually paid of $1 million and zero, respectively, for the two executives in that year, this alternative would reflect the same level of compensation for the two PEOs in that year, while still presenting any changes in the value of the second PEO's stock grant over the next year. It is important to note that these changes in value could be negative. For example, if the price of the stock granted to the second PEO were to fall significantly thereafter, or if the vesting conditions were not satisfied, this alternative approach could result in a large negative adjustment to that PEO's executive compensation actually paid in the year of such price change or failure to vest.

With respect to pensions, this alternative approach would provide a measure of future benefits that may be more directly tied to changes over the last fiscal year. Pension benefits may be a function of compensation levels, as in the case of pay-related, final-pay, final-average-pay, or career-average-pay plans. In the proposed approach, the values included for pensions are based on estimates that may already incorporate projections about future compensation levels. As a result, the effect of actual changes in current compensation levels on the value included for pensions in the proposed measure may be dampened. Because actual changes in current compensation may be related to performance, and these changes in compensation may be magnified by pension benefits that are a function of compensation levels, the alternative approach may be more useful in evaluating the relationship between pay and performance. The alternative approach may also further increase the comparability between compensation provided through defined benefit and defined contribution plans, since registrant contributions to defined benefit plans may also be directly related to current compensation levels or other such metrics with respect to the last fiscal year.

However, interpreting compensation "actually paid" as the incremental compensation earned by an executive in a given year would increase the reporting burden for registrants, because equity awards would have to be revalued in each year from the grant date until the time of vesting, rather than only at the grant date (for the purpose of the Summary Compensation Table and related disclosures) and at any vesting dates (for the purpose of the proposed pay-versus-performance disclosure). Also, the calculations to be made with respect to pensions may be less directly related to the values already calculated for the purpose of financial statement reporting, and could therefore be more burdensome. Overall, this approach may provide some benefits but could result in additional costs.

Other Alternative Definitions

Some commenters suggested excluding components of pay that may be considered to be unrelated to performance—such as perquisites, values related to retirement benefits, or even base salaries—from the definition of executive compensation actually paid.[157] We believe that restricting the definition of executive compensation actually paid in such a way would not provide shareholders with a complete understanding of compensation and how it relates to financial performance. While compensation committees may rely mainly on particular components of compensation in order to provide performance incentives, other components of compensation (such as perquisites, registrant contributions to defined contribution plans, and life insurance premiums paid by the registrant) may or may not vary with company performance and, even if they do not vary with performance, may be important to consider in order to understand how sensitive the totality of compensation is to performance. Restricting the types of compensation included in executive compensation actually paid may also reduce the comparability of disclosures across registrants that rely more heavily on types of compensation that are excluded from the prescribed measure versus those that rely more heavily on compensation types that are included.

The proposal would require registrants to include the Summary Compensation Table measure of total compensation together with executive compensation actually paid in the tabular disclosure of pay and performance measures, but some commenters have suggested that executive compensation actually paid also be defined to be more similar to this existing measure. For example, four commenters supported the use of grant-date values for equity awards in executive compensation actually paid.[158] Such an approach would reduce the costs of compiling the required disclosure and would result in a compensation measure that, because of its comprehensiveness, would be reasonably comparable across registrants. However, this approach would not reflect the performance sensitivity of unvested equity awards. As discussed above, because academic research has demonstrated that the empirical relationship between pay and performance is driven by changes in the value of executive stock and option holdings, considering only grant-date values may ignore one of the primary channels for relating pay and performance.[159] We note that this concern was raised by one commenter.[160] Some commenters have

[157] *See* letters from CEC II (recommending that the measure exclude one-time special make-whole awards because they are non-performance-based), Compensia (recommending that the measure only include items that "are paid and awarded based on the financial performance of the company," which are listed as amounts paid under both short-term and long-term incentive compensation plans and performance-based equity awards for which the performance measures are based on financial criteria), Cook (recommending that that measure exclude changes in actuarial pension value, above-market earnings on deferred compensation, and the All Other Compensation category "because these figures have nothing to do with performance"), Davis Polk (recommending that the measure only include "items that an issuer believes are based in some measure on attainment of company performance objectives" and exclude items such as pension accruals, deferred compensation earnings, issuer contributions to tax-qualified and non-qualified deferred compensation plans and perquisites and welfare benefits), and Foley (recommending that the measure reflect "performance-based pay (with or without base salary added in).")

[158] *See* letters from Compensia, Cook, MDU, and Meridian.

[159] *See supra* note 140.

[160] *See* letter from SCSGP.

also suggested that the definition of executive compensation actually paid follow total compensation in its approach to pension plans, by including the total change in actuarial pension value in the measure.[161] As in the case of the treatment of equity awards, mirroring the approach in total compensation in this way would reduce compliance costs. However, this alternative would introduce additional volatility to the compensation measure for registrants whose NEOs have large pension balances, as the actuarial values of the previously accumulated benefits are likely to be strongly impacted by factors such as changes in interest rates.

D. Request for Comment

Throughout this release, we have discussed the anticipated costs and benefits of the proposed amendments. We request and encourage any interested person to submit comments regarding the proposed amendments and our analysis of the potential effects of the amendments. We request comment from the point of view of registrants, shareholders, and other market participants. With regard to any comments, we note that such comments are particularly helpful to us if accompanied by quantified estimates or other detailed analysis and supporting data regarding the issues addressed in those comments. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we have overlooked.

55. We seek comment and data on the magnitude of all of the costs and benefits identified as well as any other costs and benefits that may result from the adoption of the proposed amendments. In addition, we seek views regarding these costs and benefits for particular types of covered registrants, including small registrants, and for particular types of shareholders.

56. Would the proposed disclosure facilitate shareholders' evaluation of a registrant's executive compensation practices? Are there alternative definitions of executive compensation actually paid and financial performance, or other types of computations or compensation data, which would be more useful to shareholders in evaluating pay-versus-performance alignment, while still satisfying the mandate of Exchange Act Section 14(i)? Would limiting the applicability of the amendments to PEO compensation rather than that of all NEOs affect the benefit to shareholders? Would requiring the disclosure separately for each NEO affect this benefit?

57. How would the proposed treatment of equity awards, particularly the valuation and inclusion of such awards in executive compensation actually paid at the time at which they meet all vesting conditions, affect compliance costs and the comparability of the disclosure across registrants? Would the registrant's valuation of equity awards as of their vesting date provide new data of use to shareholders, relative to the compensation data currently required to be disclosed? What are the costs and benefits of alternative approaches to treating equity awards in the definition of executive compensation actually paid?

58. How would the proposed treatment of pension plans in executive compensation actually paid for registrants other than smaller reporting companies affect the costs and benefits of the proposed amendments, including any effects on compliance costs and the comparability of the disclosure across registrants? Would the inclusion in this compensation measure of only the actuarial present value of benefits attributable to services rendered during the applicable fiscal year provide new data of use to shareholders, relative to the pension information currently required to be disclosed? Would the adjustment provide a computation that makes information of interest to shareholders more readily available to them, even if this information is already disclosed in another form? What are the costs and benefits of alternative approaches to treating pension plans in the definition of executive compensation actually paid?

59. Would the proposed scaled disclosure requirements for smaller reporting companies reduce the compliance burden for such registrants while not adversely impacting shareholders? Could the disclosure be otherwise scaled for smaller reporting companies to minimize the incremental burden on smaller reporting companies while preserving the benefits to shareholders?

60. What effect would the proposed amendments have on the incentives of boards, senior executives, and shareholders? Would the proposed amendments be likely to change the behavior of these parties, registrants, shareholders, or other market participants? Should we alter the proposed requirements to address that impact? If so, describe any changes that would address that impact and discuss any related costs and benefits that would arise from such a change.

61. Is the proposal likely to lead to shareholder confusion, such as about the optimality of current pay-versus-performance alignment? Is the proposed ability to provide additional, alternative measures of compensation and performance, as well as the proposed flexibility in presentation format, sufficient to offset potential shareholder confusion? Would such additional measures or variation in formats meaningfully limit the comparability of the disclosure across registrants or otherwise affect the benefits of Exchange Act Section 14(i)? Is there additional information that we could require of all registrants, or particular minimum standards for the presentation format, that would enhance comparability and the benefits to shareholders at a reasonable cost to registrants?

62. What effect would the proposed amendments have on competition? Would the proposed amendments put registrants subject to the requirements or particular types of registrants subject to the requirements at a competitive disadvantage? If so, what changes to the proposed requirements could mitigate the impact while still satisfying the mandate of Exchange Act Section 14(i)?

63. What effect would the proposed amendments have on market efficiency? Are there any positive or negative effects of the proposed amendments on efficiency that we should consider? How could the amendments be changed to promote any positive effect or to mitigate any negative effect on efficiency, while still satisfying the mandate of Exchange Act Section 14(i)?

64. What effect would the proposed amendments have on capital formation? How could the amendments be changed to promote capital formation or to mitigate any negative effect on capital formation resulting from the amendments, while still satisfying the mandate of Exchange Act Section 14(i)?

V. Paperwork Reduction Act

A. Background

Certain provisions of the proposed amendments contain a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[162] The Commission is submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[163] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:

[161] *See* letters from MDU and SVA.

[162] 44 U.S.C. 3501 *et seq.*

[163] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

''Regulation S–K'' (OMB Control No. 3235–0071);[164]
''Regulation 14A and Schedule 14A'' (OMB Control No. 3235–0059); and
''Regulation 14C and Schedule 14C'' (OMB Control No. 3235–0065).

We adopted all of the existing regulations and schedules pursuant to the Securities Act or the Exchange Act. The regulations and schedules set forth the disclosure requirements for registration statements and proxy and information statements filed by registrants to help shareholders make informed investment and voting decisions. Our proposed amendments to existing schedules and regulations are intended to satisfy the requirements of Section 14(i) of the Exchange Act.

The hours and costs associated with preparing, filing and sending the schedule constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the amendments is mandatory. Responses to the information collections will not be kept confidential and there is no mandatory retention period for the information disclosed.

B. Summary of Collection of Information Requirements

We are proposing to add new Item 402(v) to Regulation S–K. This item would require registrants to provide a table containing the values of the prescribed measures of executive compensation actually paid and the Summary Compensation Table measure of total compensation for the PEO and as an average for the other NEOs, as well as TSR both for the registrant and the peer group. The data in the table, including the footnote disclosure of the amounts deducted and added to the Summary Compensation Table measure, would be required to be tagged in XBRL. Proposed Item 402(v) also would require a registrant to provide a clear description of the relationship between executive compensation actually paid to its NEOs and the registrant's TSR for each of the five most recently completed fiscal years. A registrant also would be required to disclose the relationship between its TSR and peer group TSR. This disclosure about the relationship between a registrant's executive compensation actually paid and its TSR, and the disclosure about a registrant's TSR and peer group TSR would be required to be tagged in XBRL. Emerging growth companies and foreign private issuers would not be required to provide the disclosure. Smaller reporting companies would be subject to scaled disclosure requirements. The proposed disclosure would be required in proxy statements on Schedule 14A and information statements on Schedule 14C in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required.

We have proposed to base much of the information required in the pay-versus-performance disclosure on items that are already required elsewhere in the executive compensation disclosure provided by registrants. We believe that using as a starting point the total compensation that registrants already are required to report in the Summary Compensation Table and making adjustments to those figures will help reduce the burden on registrants in preparing the disclosure required by new Item 402(v) of Regulation S–K. As discussed above, the proposed amendments are not expected to result in the provision of significant new information to shareholders, or to require registrants to collect significant new data, relative to current disclosure requirements. All of the individual components and assumptions needed to calculate executive compensation actually paid already must be reported under existing disclosure requirements, with the exception of vesting-date valuation assumptions for options.

We arrived at the estimates discussed below by reviewing our burden estimates for similar disclosure and considering our experience with other tagged data initiatives. We believe that the proposed amendments regarding pay-versus-performance disclosure would enhance the already required compensation disclosure. In addition, we believe that much of the information required to prepare the pay-versus-performance disclosure would be readily available to registrants because it is required to be gathered, determined or prepared in order to satisfy the other disclosure requirements of Item 402 of Regulation S–K.

We estimate that the average incremental burden for a registrant to prepare the pay-versus-performance disclosure would be 15 hours. This estimate includes the time and cost of preparing disclosure that has been appropriately reviewed, including, as applicable, by management, in-house counsel, outside counsel and members of the board of directors as well as tagging the data in XBRL format. Because this estimate is an average of all companies, the burden could be more or less for any particular company, and may vary depending on a variety of factors, such as the degree to which companies use the services of outside professionals, or internal staff and resources to tag the data in XBRL. This burden, as discussed in more detail below, would be added to the current burdens for Schedule 14A and Schedule 14C.

As a result of the estimates discussed above, we estimate for purposes of the PRA that the total incremental burden on all registrants of the proposed amendments would be 67,500 hours for internal company time and $9,000,000 for the services of outside professionals. For the proxy and information statements on Schedule 14A and Schedule 14C, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. There is no change to the estimated burden of Regulation S–K because the burdens that this regulation imposes are reflected in our revised estimates for the forms.

C. Paperwork Reduction Act Burden Estimates

We derived our new burden hour and cost estimates by estimating the total amount of time it would take a registrant to prepare and review the disclosure requirements contained in the final rules. This estimate represents the average burden for all registrants, both large and small. Because it is difficult to determine the precise number of emerging growth companies, we have not adjusted the estimates to back the number of these companies out of our estimate, even though emerging growth companies would not be subject to the proposed amendments. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the size and complexity of their executive compensation arrangements. We believe that some registrants will experience costs in excess of this average in the first year of compliance with the amendments and some registrants may

[164] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S–K.

experience less than the average costs.[165]

A summary of the proposed changes is included in the table below.

TABLE 1—CALCULATION OF INCREMENTAL PRA BURDEN ESTIMATES[165]

	Current annual responses (A)	Proposed annual responses (B)	Current burden hours (C)	Increase in burden hours (D)	Proposed burden hours (E) = C+D	Current professional costs (F)	Increase in professional costs (G)	Proposed professional costs = F+G
Schedule 14A	5,446	5,446	714,586	61,268	775,854	$85,664,277	$8,169,000	$93,833,277
Schedule 14C	554	554	66,784	6,232	73,016	7,952,549	831,000	8,783,549
Total	....	....	....	67,500	....	....	9,000,000	....

D. Solicitation of Comments

We request comments in order to evaluate: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and (5) whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.[166]

Any member of the public may direct to us any comments about the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. ________ . Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. ________, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') [167] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedures Act,[168] to consider the impact of those rules on small entities. Section 603(a) of the RFA [169] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed amendments to determine the impact of such rulemaking on ''small entities.''

A. Reasons for, and Objectives of, the Proposed Action

The proposed amendments are designed to implement Exchange Act Section 14(i), which was added by Section 953(a) of the Dodd-Frank Act and would exempt certain reporting companies. Specifically, the proposed amendments would require registrants, other than emerging growth companies and foreign private issuers, to disclose in any proxy or information statement for which disclosure under Item 402 of Regulation S–K is required, the relationship between executive compensation actually paid to the NEOs and the financial performance of the registrant for the three most recently completed fiscal years, taking into account any change in the value of the shares of stock and dividends of the registrant and any distributions.

B. Legal Basis

We are proposing the amendments pursuant to Section 953(a) of the Dodd-Frank Act and Sections 3(b), 14, 23(a) and 36 of the Exchange Act.

C. Small Entities Subject to the Proposed Amendments

The proposed amendments would affect some companies that are small entities. For purposes of the RFA, under our rules, an issuer, other than an investment company,[170] is a ''small business'' or ''small organization'' if it has total assets of $5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed $5 million.[171] We estimate that there are approximately 428 issuers that may be considered small entities. The proposed amendments would affect small entities that have a class of securities that are registered under Section 12 of the Exchange Act. An investment company, including a business development company, is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[172] We believe that the proposal would affect some small entities that are business development companies who have a class of securities registered under Section 12 of the Exchange Act. We estimate that there are approximately five business development companies that may be considered small entities.[173]

D. Duplicative, Overlapping or Conflicting Federal Rules

As noted above, much of the information required by the proposed

[165] The number of responses reflected in the table equals the three-year average of the number of schedules filed with the Commission and currently reported by the Commission to OMB.

[166] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

[167] 5 U.S.C. 601 *et seq.*

[168] 5 U.S.C. 553.

[169] 5 U.S.C. 603(a).

[170] For purposes of the RFA, an investment company is a ''small business'' or ''small organization'' that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. [17 CFR 270.0–10].

[171] *See* Securities Act Rule 157 [17 CFR 230.157]; Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

[172] 17 CFR 270.0–10(a).

[173] We estimate that there are 13 business development companies that would be subject to the proposed amendment, five of which may be considered small entities for purposes of the RFA.

amendments is derived from information currently required to be reported under existing disclosure rules. Nevertheless, we believe that the repackaging of this information in the required pay-versus-performance disclosure may allow shareholders to more quickly and easily process the information accurately and thereby lower the burden on shareholders, including shareholders of smaller entities, of evaluating executive compensation packages. We do not believe that the proposed amendments would conflict with other federal rules.

E. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Use of performance rather than design standards; and
- Exempting small entities from all or part of the proposed amendments.

The proposed amendments would require clear disclosure of prescribed measures of executive compensation actually paid and the company's financial performance and the relationship between these measures. All of the individual components needed to calculate executive compensation actually paid already must be reported under current disclosure rules, with the exception of the values to be included with respect to pension benefits and options. Given the straightforward nature of the proposed disclosure, we do not believe that it is necessary to exempt small entities from the proposed requirements. However, we have proposed scaled disclosure requirements for smaller reporting companies in an attempt to limit the compliance burden that would be imposed on such companies.[174] Entities that are smaller reporting companies would be subject to the proposed amendments, but would provide only three years of disclosure, instead of the proposed five years for all other registrants. Also, the proposed amendments would require smaller reporting companies to disclose absolute TSR, but they would not be required to disclose peer group TSR. In addition, because the scaled compensation disclosure that applies to smaller reporting companies does not include pension plans, the pension plan adjustment would not apply to smaller reporting companies. To the extent that a small entity is a registrant, we believe that there are few, if any, small entities that do not qualify as smaller reporting companies because it is unlikely that an entity with total assets of $5 million or less would have a public float of $75 million or more. A small entity, therefore, would likely be subject to the scaled disclosure requirements described above that are proposed for smaller reporting companies. We believe this will minimize any adverse impact on these companies of providing new disclosures which they do not currently provide.

With respect to compliance timetables, the proposed rules provide smaller reporting companies with transitional relief whereby such companies would be required to provide two years of data, instead of three, in the first proxy filing after the rules become effective, and three years of data in subsequent proxy filings. The proposed rules also provide smaller reporting companies with a phase-in of the requirement to provide the disclosure in XBRL format.

Although the proposed amendments would require disclosure of prescribed measures of executive compensation actually paid and financial performance, they would permit issuers significant flexibility in presenting the relationship between these measures. For example, issuers, including small entities, could describe the relationship in narrative form or by means of a graph or chart. In this respect, the proposed amendments make use of both design and performance standards as a means of balancing the need for uniform disclosure across registrants with the desire to provide registrants with flexibility to describe their pay-versus-performance relationship in a format that is best suited to their particular circumstances.

Commenters are asked to described the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[175] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- any potential increase in costs or prices for consumers or individual industries; and
- any potential effect on competition, investment, or innovation.

VIII. Statutory Authority and Text of Proposed Amendments

We are proposing the amendments contained in this document under the authority set forth in Section 953(a) of the Dodd-Frank Act and Sections 3(b), 14, 23(a) and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 229 and 240

Reporting and recordkeeping requirements; Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The general authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l*, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11,

[174] A smaller reporting company is an issuer, other than certain classes of issuers (including an investment company), that had a public float of less than $75 million as of the end of its most recently completed second fiscal quarter, or in the case of an initial registration statement under the Securities Act or Exchange Act for the shares of its common equity, had a public float of less than $75 million as of a date within 30 days of the date of the filing of the registration statement. See Securities Act Rule 405 [17 CFR 230.405]. In the case of an issuer whose public float was zero, an issuer could qualify as a smaller reporting company if it had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

[175] Public Law 104–121, Title II, 110 Stat. 857 (1996).

and 7201 *et seq.*, and 18 U.S.C. 1350 unless otherwise noted.

* * * * *

■ 2. Amend § 229.402 by adding paragraph (v) to read as follows:

§ 229.402 Executive compensation.

* * * * *

(v) *Pay versus performance.* (1) Provide the information specified in paragraph (v)(2) of this item for each of the registrant's last five completed fiscal years in the following tabular format:

PAY VERSUS PERFORMANCE

Year (a)	Summary compensation table total for PEO (b)	Compensation actually paid to PEO (c)	Average summary compensation table total for non-PEO named executive officers (d)	Average compensation actually paid to non-PEO named executive officers (e)	Total shareholder return (f)	Peer group total shareholder return (g)

(2) The Table shall include:

(i) The fiscal year covered (column (a));

(ii) The PEO's total compensation for the covered fiscal year as reported in the Summary Compensation Table pursuant to paragraph (c)(2)(x) of this Item, or paragraph (n)(2)(x) for smaller reporting companies (column (b)), and the average total compensation reported for the remaining named executive officers reported pursuant to those paragraphs (column (d));

(iii) The executive compensation actually paid to the PEO (column (c)) and the average executive compensation actually paid to the remaining named executive officers (column (e)). If more than one person served as the registrant's PEO during a fiscal year, include in column (c) the aggregate compensation actually paid for the persons who served as PEO. For purposes of columns (c) and (e) of the table required by paragraph (v)(1) of this Item, executive compensation actually paid shall be the total compensation for the covered fiscal year for each named executive officer as provided in paragraph (c)(2)(x) of this Item, or paragraph (n)(2)(x) for smaller reporting companies, adjusted to:

(A) Deduct the aggregate change in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans reported in the Summary Compensation Table in paragraph (c)(2)(viii)(A) of this Item;

(B) Add the service cost under all defined benefit and actuarial pension plans reported in the Summary Compensation Table in paragraph (c)(2)(viii)(A) calculated as the actuarial present value of each named executive officer's benefit under all such plans attributable to services rendered during the covered fiscal year, consistent with ''service cost'' as defined in FASB ASC Topic 715; and

(C) Deduct the amounts reported in the Summary Compensation Table pursuant to paragraphs (c)(2)(v) and (vi) of this Item and add in their place the fair value on the vesting date of all stock awards, and all options awards, with or without tandem SARs (including awards that subsequently have been transferred), for which all applicable vesting conditions were satisfied during the covered fiscal year.

(iv) For purposes of columns (f) and (g) of the table required by paragraph (v)(1) of this Item, for each year disclose the cumulative total shareholder return of the registrant (column (f)) and peer group cumulative total shareholder return (column (g)) calculated in the same manner, and over the same measurement period, as under Item 201(e) of Regulation S–K. The term ''measurement period'' shall be the period beginning at the ''measurement point'' established by the market close on the last trading day before the registrant's earliest fiscal year in the table, through and including the end of the registrant's last completed fiscal year. The closing price of the measurement point must be converted into a fixed investment, stated in dollars, in the registrant's stock (or in the stocks represented by the peer group). For each fiscal year, the amount included in the table shall be the cumulative total shareholder return as of the end of that year. The same methodology must be used in calculating both the registrant's total shareholder return and that of the peer group.

(3) For each amount disclosed in columns (c) and (e) of the table required by paragraph (v)(1), disclose in a footnote to the table for the PEO and the average remaining named executive officer compensation each of the amounts deducted and added pursuant to paragraph (v)(2)(iii). For disclosure of the executive compensation actually paid to named executive officers other than the PEO, provide the amounts required under this paragraph as averages.

(4) For the value of equity awards added pursuant to paragraph (v)(2)(iii)(C), disclose in a footnote to the table required by paragraph (v)(1) any assumption made in the valuation that differs materially from those disclosed pursuant to Instruction 1 to Item 402(c)(2)(v) and (vi), or for smaller reporting companies, Instruction 1 to Item 402(n)(2)(v) and (vi).

(5) In proxy or information statements in which disclosure is required pursuant to this Item, use the information provided in the table required by paragraph (v)(1) to provide a clear description of the relationship between:

(i) The executive compensation actually paid by the registrant to the PEO (column (c)) and the average of the executive compensation actually paid to the named executive officers other than the PEO (column (e)) listed in the Summary Compensation Table, and

(ii) The cumulative total shareholder return of the registrant (column (f)), for each of the registrant's last five completed fiscal years. This description shall also include a comparison of the cumulative total shareholder return of the registrant (column (f)) and cumulative total shareholder return of the registrant's peer group (column (g)) over the same period.

(6) The disclosure required to be provided pursuant to this paragraph (v) shall appear with, and in the same format as, the rest of the disclosure required to be provided pursuant to paragraph (v) and, in addition, shall be electronically formatted using the eXtensible Business Reporting Language (XBRL) in accordance with the EDGAR Filer Manual (17 CFR 232.11) as an exhibit to definitive Schedule 14A (17 CFR 240.14a–101) or definitive Schedule 14C (17 CFR 240.14c–101). Each amount required to be disclosed in

the table pursuant to paragraph (v)(1) must be tagged separately. The disclosure required to be provided pursuant to paragraphs (v)(3) through (5) of this Item must be block-text tagged.

Instructions to Item 402(v)

1. *Transitional relief.* A registrant may provide the disclosure required by paragraph (v) for three years, instead of five years, in the first filing in which it provides this disclosure, and provide disclosure for an additional year in each of the two subsequent annual filings in which this disclosure is required.

2. *Repricings and other modifications.* If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of previously vested options or SARs held by a named executive officer, whether through amendment, cancellation or replacement grants, or any other means, or otherwise has materially modified such awards, the registrant shall include in the compensation reported under paragraph (v)(2)(iii)(C) of this Item the incremental fair value, computed as the excess fair value of the modified award over the fair value of the original award upon vesting of the modified award. If the modified award is subject to multiple vesting dates, the registrant shall include in the compensation reported under paragraph (v)(2)(iii)(C) the pro rata incremental fair value paid at each vesting date.

3. *Fair value.* Fair value amounts shall be computed in a manner consistent with the fair value measurement guidance in FASB ASC Topic 718.

4. *Presentation.* If more than one person served as the PEO of the registrant during the covered fiscal year, then the compensation for all persons who served as the PEO of the registrant for that year shall be aggregated.

5. *Exempted registrants.* A registrant is not required to comply with paragraph (v) of this Item if it is an emerging growth company, as defined in Section 3(a) of the Exchange Act (15 U.S.C. 78c(a)).

6. *New registrants.* Information for fiscal years prior to the last completed fiscal year will not be required if the registrant was not required to report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year.

7. *Peer group.* For purposes of determining the total shareholder return of the registrant's peer group, the registrant shall use the same index or issuers used for purposes of Item 201(e)(1)(ii) or, if applicable, the companies it uses as a peer group for purposes of Item 402(b). If the peer group is not a published industry or line-of-business index, the identity of the issuers comprising the group must be disclosed. The returns of each component issuer of the group must be weighted according to the respective issuers' stock market capitalization at the beginning of each period for which a return is indicated.

8. *Smaller reporting companies.* A registrant that qualifies as a ''smaller reporting company,'' as defined by § 229.10(f)(1), may provide the information required by paragraph (v) for three years, instead of five years. A smaller reporting company may provide the disclosure required by paragraph (v) for only two fiscal years in the first filing in which it provides this disclosure, and is not required to provide the disclosure required by paragraph (v)(5) with respect to the total shareholder return of its peer group. For purposes of paragraph (v)(2)(iii) of this Item with respect to smaller reporting companies, executive compensation actually paid shall be the total compensation for the covered fiscal year for each named executive officer as provided in paragraph (n)(2)(x) of this Item, adjusted to deduct the amounts reported in the Summary Compensation Table pursuant to paragraphs (n)(2)(v) and (vi) of this Item, and to add in their place the fair value on the vesting date of the amounts added in paragraph (v)(2)(iii)(C). Disclose in a footnote to the table required pursuant to paragraph (v)(1) for the PEO and average remaining named executive officer compensation the amounts deducted from, and added to, the Summary Compensation Table pursuant to this instruction. A smaller reporting company is required to comply with paragraph (v)(6) in the third filing in which it provides the disclosure required by paragraph (v).

9. *Incorporation by reference.* The information in paragraph (v) of this Item will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7210 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5521(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

■ 4. Amend § 240.14a–101 by adding Item 25 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 25 Exhibits. Provide the information required to be disclosed by Item 402(v)(1) of Regulation S–K (17 CFR 229.402(v)(1)) in an exhibit to this Schedule 14A electronically formatted using the eXtensible Business Reporting Language (XBRL) interactive data standard.

By the Commission.

Dated: April 29, 2015.

Brent J. Fields,

Secretary.

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