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

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

CFA Institute[1] appreciates the opportunity to respond to Securities and Exchange Commission's proposed rule, *Pay Versus Performance* (the "rule"). CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

CFA Institute believes that investors are well served when they know about the methods and rationale for executive and director compensation. Compensation for senior company executives and incentive structures for asset managers should be explicitly linked to financial and operating performance. We believe that creating a link between executive compensation and fundamental performance best aligns executive and shareowner interests.

Summary

The proposed rule amends Item 402 of Regulation S-K to implement Section 14(i) of the Securities Exchange Act of 1934 (the "Exchange Act"), as added by Sections 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protections 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 require proxy or information statements in which executive compensation disclosure pursuant to Item 402 of Regulation S-K is required. The

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[1] CFA Institute is a global, not-for-profit professional association of more than 131,000 investment analysts, advisers, portfolio managers, and other investment professionals in 147 countries, of whom nearly 123,700 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 144 member societies in 69 countries and territories

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

We welcome the proposed rule by the SEC that requires increased disclosure about the long-term link between pay and performance. Although no one metric perfectly tells a compensation story, we believe that the Total Shareholder Return (TSR) metric chosen by the SEC can serve as a good baseline for disclosure. We welcome companies to make similar disclosures using other metrics if they believe such metrics better fit their compensation story.

Specific Comments

II. Proposed Amendment

A. Introduction

The SEC is 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 Named Executive Officers (NEOs) and the cumulative 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 registrant's five most recently completed fiscal years.

B. New Item 402(v) of Regulation S-K

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

The SEC is 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.

2. Format and Location of Proposed Disclosure

Because the statute requires disclosure of the relationship between executive compensation and registrant performance, the SEC does not believe that simply disclosing the amount of executive compensation actually paid and the financial performance measure would satisfy this statutory requirement. Thus, proposed Item 402(v) would require the registrant to describe (1) the relationship between the executive compensation actually paid and registrant TSR (total shareholder return), and (2) the relationship between registrant TSR and peer group TSR.

Q4. 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.

CFA Institute believes that the best place for this disclosure is as part of the CD&A. The CD&A is the main document investors us when reviewing a company's compensation practices. Therefore, it makes sense to locate this disclosure in the CD&A. We also encourage companies to expand on this disclosure and offer other metrics in addition to TSR if such disclosure helps the company tell its story. Therefore, such a section containing pay and performance measured against TSR and other metrics could become a very effective way for each company to tell their story.

Q6. 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?

We do not believe such a prescriptive disclosure regime is necessary or beneficial in this instance. We believe that by just providing basic requirements for disclosure concerning pay for performance, the SEC should allow issuers the freedom to tell their stories in the ways that they see fit.

Some investors may wish for a more prescriptive disclosure that makes their analysis easier, but we feel it is important to allow issuers flexibility in presentation. Over time best practices will emerge, and investors will encourage companies to follow those best practices. In particular, large institutional shareowners that drive voting decisions on pay generally have employees that are well trained in reading and understanding compensation disclosures. Investors also receive information concerning compensation from proxy advisers and other consultants. We therefore think that these mechanisms, together with say-on-pay votes, will encourage companies to develop produce and apply such best practices.

Q9. 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?

We believe that the additional information about the "relationship" of the data points discussed allows issuers to add important descriptive details to their overall compensation story, and wish to encourage issuers to do so. We therefore encourage the use of this additional data.

C. Executives Covered

For registrants other than smaller reporting companies, the SEC is proposing that 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.4

Q17. 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? What additional costs would registrants incur if they were required to provide information for executives not currently defined as NEOs?

We believe that the proposed disclosure should cover the NEOs currently required in the summary compensation table. We believe that this information will be of most use to investors and is for the most part, already gathered by issuers.

Q20. Should we require disclosure for only the Principle Executive Officer (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?

As stated above, we believe that the proposed disclosure should cover the NEOs currently required in the summary compensation table. Providing this information helps investors understand how compensation is better linked to the execution of strategy throughout the organization – not just whether the CEO's contract aligns pay with performance. *We believe that this information will be of most use to investors and is for the most part, already gathered by issuers.*

D. Determination of "Executive Compensation Actually Paid"

The SEC states that while there continues to be work among various compensation constituencies to agree upon a consistent methodology for calculating "realizable pay" or "realized pay," they 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.

CFA Institute agrees that the SEC should not look to define such terms at this time. We believe that allowing issuers to supplement disclosure with their own discussions of realizable pay, realized pay or other topics is the most prudent course of action at this time. The large institutional investors who drive the votes on pay have established their own definitions of such terms and are able to understand different interpretations of these and other terms provided by issuers.

Q22. 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?

There is a balance between comparability of data, the mechanisms for paying senior executives, and allowing issuers to design and tell their compensation story in a way that is best for them – and gives the best information to investors. We believe the current rule as written strikes the right balance between requiring basic disclosure while allowing best practices to develop as issuers find the best ways to tell their compensation stories.

Q24. 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?

We encourage the SEC to allow issuers to include whatever metrics they feel helps them best tell their story about executive compensation. The discipline of an annual say-on-pay vote should keep companies from inundating investors with bad information or information that is meant to obfuscate. We encourage issuers to engage with investors to ask them about the type of information on pay and performance they would like to see.

Q27. 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)?

We believe the current proposal appropriately reflects compensation "actually paid." Sophisticated investors will make different adjustments to the compensation information and

different interpretations to the compensation information they are given when making their investment and voting decisions.

E. Measure of Performance

Q34. 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?

No measure of performance is perfect in that no such measure can tell the whole story of executive compensation for every issuer. Results from the execution of a strategy do not often come in a smooth upward sloping curve, but are often lumpy, and in such cases the stock price may lag behind the execution of a strategy. In such a case a management team may have expertly executed a strategy, and therefore deserve their bonuses, but the stock price may have not caught up with the moves of management. In such a case, management may seem to be overpaid, but in fact would have achieved all their goals.

In the opposite case, forces beyond the control of management may cause the rise in a sector or an entire market, overwhelming the impact of a management team. A management team that has not achieved its goals and whose bonuses are therefore justifiably limited by the board may seem underpaid in relation to TSR if a sector or market mania has "risen all boats" even if a management team has underperformed.

TSR will provide some interesting data on pay and performance, but investors should be wary not to rely on any one piece of data in which to judge the appropriateness of pay.

Q35. 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?

We are fine with the SEC choosing TSR as a measure against which to benchmark performance, as some measure has to be chosen and TSR is a measure used by many investors and companies alike to measure performance. However, we emphasize that companies should be encouraged to choose other performance measures in addition to TSR if they believe such a measure or

measures better explain their compensation stories. We encourage companies to be judicious with their use of such metrics, as investors making voting decisions on pay will likely not look kindly on companies that overburden them with a litany of performance metrics. That said, companies should be encouraged to use the metrics that they believe best tell their compensation story. We have found in talking with both issuers and investors that companies that engage their investors on compensation issues to get their input on appropriate compensation measures can often lessen investor dissatisfaction with the measures chosen.

Q36. 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?

If companies are using metrics other than TSR, they should be encouraged to continue to provide such information, especially if such information is specific to their industry or company. We are supporting the SEC's pay-for-performance rule because we believe it will be useful for all issuers to provide investors with a baseline of information concerning pay and performance. However, we encourage companies to go beyond disclosure of the bare minimum in order to best tell their story.

Q37. 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?

See our answers for 34 and 35. We encourage issuers to provide additional compensation metrics if such alternatives measures help them tell the story of their compensation strategies more effectively.

Q38. 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?

See our answers for 34 and 35.

F. Time Period Covered

Q42. 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?

We believe that the five-year disclosure period (for registrants other than smaller reporting companies) and a three-year disclosure period (for smaller reporting companies) will give investors sufficient information. We also wish to stress that if a company decides to disclose other metrics that they believe better tell their story, they should be required to use the same 3- or 5-year time period so that investors can best judge whether pay and performance are aligned over the long-term.

Q43. 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?

Providing a transition period for issuers until they reach the 3- or 5-year thresholds noted above seems reasonable as it will give firms time to refine their compensation strategies and the presentation of those strategies to their shareowners.

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?

Providing performance data years beyond the five years (or three years for smaller companies) is reasonable. However, we do not believe that companies should be allowed to only provide information for longer periods to the exclusion of a five-year period disclosure (or three-year period for smaller companies). Companies may wish to only highlight the longer-time period if they have performed very well over a longer period (say 10 years) but not very well over five years. In such a case a company should be allowed to present both 10- and 5-year data, but not only 10 year data.

Concluding Remarks

CFA Institute welcomes the proposed rule that would increase disclosures concerning pay and performance at corporate issuers. We also counsel issuers to use the rule as an opportunity to better tell their compensation story, and include a discussion of pay for performance metrics they may use that go beyond those required by the proposed rule.

Yours faithfully,

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