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## SEC Proposes Pay-for-Performance Disclosure Rule

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### SEC Proposes Proxy Disclosure Rule on Relationship of Executive Compensation Actually Paid and Issuer Financial Performance

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As expected, this morning the SEC proposed a rule that would require reporting issuers to disclose the relationship between named executive officer “actual” pay and the issuer’s and its peers’ total shareholder return. This proposed rule would implement Section 953(a) of the Dodd-Frank Act. If finalized, the disclosure would be required in proxy statements and consent solicitations in which executive compensation disclosure is required. The proposed rule would apply to SEC registrants, other than foreign private issuers, registered investment companies and emerging growth companies. The proposal was approved by a 3 to 2 vote, with Chair White being joined by Commissioners Aguilar and Stein in voting for the measure while Commissioners Gallagher and Piovolar voted against the proposal.

The text of the proposed rule has not yet been published, but the materials accompanying the SEC’s proposal provide significant detail regarding the content of the proposed disclosure.

#### Substance of the Proposed Disclosure

The proposed rule will require covered issuers to disclose the following in a new required table:

- The CEO’s total compensation and the average of the other named executive officers’ total compensation as reported in the summary compensation table
- The CEO’s “actual” pay (described below) and the average of the other named executive officers’ “actual” pay
- The issuer’s and its peers’ annual total shareholder return, using the definition of total shareholder return from Item 201(e) of Regulation S-K (providing for a performance graph to be included in the annual report) and using either the peer group used in the Item 201(e) performance graph or the peer group reported in the compensation discussion and analysis

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(although smaller reporting companies will not be required to present a peer group total shareholder return at all)

The issuer will be required to describe through narrative description and/or graphic presentation the relationship of “actual” pay to its total shareholder return and its total shareholder return to that of its peers. Issuers also will be required to tag the disclosure in an interactive data format using XBRL to allow for more rapid comparison across issuers (to be phased in for smaller reporting companies). This would be the first table in proxy statements to be required to be in XBRL format.

The information will be required for the last five fiscal years, except that there will be a transition period as discussed below and smaller reporting companies will be limited to three fiscal years.

### Executives Covered

The proposed disclosure will relate to the named executive officers for whom disclosure is required in the *current* summary compensation table and would be presented separately for the CEO and as an average for the remaining named executive officers.

### Determination of “Actual” Pay

“Actual” pay will start with the total amount reported in the summary compensation table with the following adjustments:

- Equity awards will be considered actually paid on the date of vesting and at fair value on that date, rather than fair value on the grant date as required in the summary compensation table
- Change in pension value will be excluded and replaced with an actuarially determined service cost (although this would not be required for smaller reporting companies)

### Exempted Companies

Foreign private issuers, registered investment companies and emerging growth companies will be exempted from the proposed disclosure.

### Transition

For issuers other than smaller reporting companies, the proposed rule will be phased in over three years with three years of disclosure initially required and five years of disclosure eventually required. Smaller reporting companies will initially be required to disclose two years of information and three years of information thereafter.

### Comment

The proposed rule will be subject to comment for 60 days after publication in the Federal Register. We will provide updates as appropriate on publication.

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