

CLIENT MEMORANDUM

SEC Proposes Pay-for-Performance Disclosure Rules

May 1, 2015

AUTHORS

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On April 29, 2015, the Securities and Exchange Commission, by a 3-to-2 vote, proposed new rules that would require reporting companies (other than foreign private issuers, registered investment companies, and emerging growth companies) to disclose the relationship between executive compensation and the company's financial performance. In any proxy or information statement for which executive compensation disclosure under Item 402 of Regulation S-K is required, the proposed rules would also require inclusion of a new *Pay Versus Performance* table containing the following information:

- *Summary Compensation Table Total.* Represents the amount reported in the "Total" column in the Summary Compensation Table, presented separately for the company's principal executive officer and as an average for the remaining named executive officers.
- *Compensation Actually Paid.* Represents the amount included in the "Total" column in the Summary Compensation Table adjusted to (i) replace the grant date fair value of stock and option awards granted in the applicable year with the fair value of stock and option awards that vested in the applicable year, and (ii) replace the change in pension value with an actuarially determined service cost for services rendered during the applicable year for companies required to report such information (*i.e.*, issuers other than smaller reporting companies), presented separately for the company's principal executive officer and as an average for the remaining named executive officers.

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- *Total Shareholder Return.* Represents the company's total shareholder return ("TSR") determined using the same methodology required to be used in the stock performance graph included in the company's annual report.
- *Peer Group Total Shareholder Return.* Represents the TSR of the company's peer group using either the company's peer group identified in the company's stock performance graph or in its Compensation Discussion and Analysis (CD&A). Smaller reporting companies would not be required to include any disclosure regarding the TSR of its peer group.

As proposed, additional disclosure would be required for each of the five (or, for smaller reporting companies, three) most recently completed fiscal years, or the number of years in which it was a reporting company, if less. Under a transition rule, companies would be required to provide the proposed disclosure for the three (or, for smaller reporting companies, two) most recently completed fiscal years in the first applicable filing after the rules become effective, and include an additional year in each subsequent annual filing in which disclosure is required until in full compliance.

In addition to the new required tabular disclosure, the proposed rules would require companies to provide a clear description of the relationship between (i) the compensation actually paid and the company's TSR, and (ii) the company's TSR and the TSR of the company's peer group through narrative and/or graphical means.

The public has 60 days following publication of the proposed rules in the Federal Register to provide comments to the proposed rules. We will continue to monitor these proposed rules and comments and will provide updates to the extent that the proposed rules are materially changed or finalized.

If you have any questions concerning the foregoing or would like additional information, please contact: Mark A. Holdsworth (212-728-8286, mholdsworth@willkie.com), Michael A. Katz (212-728-8204, mkatz@willkie.com), Jordan A. Messinger (212-728-8799, jmessinger@willkie.com), Andrew E. Shapiro (212-728-8913, ashapiro@willkie.com) or the Willkie attorney with whom you regularly work.

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