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[1]? 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.[2] 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

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1 17 CFR 240.14a-3 and 17 CFR 240.14c-3.

2 15 U.S.C. 78r; *see* Instruction 8 to Item 201(e) of Regulation S-K

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

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[3] 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.

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.[4] Item 5.02(f) of Form 8-K[5] 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

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

[5] 17 CFR 249.308.

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?

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?[6] 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

[6] 17 CFR 240.3b-7.

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?

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?

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)?

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 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?[7]

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?

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[7] *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.

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 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 [8] 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?

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[8] 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.

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.

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?

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?

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)?