April 29, 2015

EXEQUITY

Independent Board and Management Advisors

Client Alert

SEC Proposes Pay Versus Performance Disclosure Rules

On April 29, 2015, the U.S. Securities and Exchange Commission (SEC) met and approved the issuance of proposed rules to implement Section 953(a) of the Dodd-Frank Act[1] regarding the disclosure of pay versus performance. This Client Alert is based on an SEC Fact Sheet that was released for the meeting, as disclosed by MNI News.[2]

New Tabular Disclosure

According to the Fact Sheet, the proposed rules will require a new tabular disclosure in proxy and information statements that are required to contain executive compensation disclosures.

The new table will set forth:

- Executive compensation actually paid to the Principal Executive Officer (CEO);
- The total executive compensation reported in the Summary Compensation Table (SCT) for the CEO and an average of the reported amounts for the other named executive officers;
- The company's annual total shareholder return (TSR); and
- The annual TSR of the peer group companies identified in the stock performance graph or the Compensation Discussion and Analysis (CD&A).

The disclosure will cover the last five (5) fiscal years, but smaller reporting companies will only be required to show the last three (3) fiscal years and will not be required to disclose peer group TSR.

Using the information identified in the new table, companies will have to describe the relationship between executive compensation actually paid and the company's TSR, and the relationship between the company's TSR and the TSR of its selected peer group. The proposed rules will permit this disclosure to be accomplished using narrative or graphical disclosure, or a combination of the two.

---

1 Dodd-Frank Wall Street Reform and Consumer Protection Act, available at: https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf.

2 US SEC Unveils 'Pay for Performance' Exec Compensation Proposal, MNI News, April 29, 2015 – 10:04 am, available at: https://mninews.marketnews.com/content/us-sec-unveils-pay-performanceexec-compensation-proposal.

Executive Compensation Actually Paid

Executive compensation actually paid will be determined using compensation that companies report in the SCT with adjustments relating to pension amounts and equity awards. Companies will be required to disclose what the actual adjustments were as well.

Pension amounts will be adjusted by deducting the change in pension value from the SCT and adding back the actuarially determined service cost for services rendered during the applicable year. Smaller reporting companies will not be required to make this adjustment.

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 date of grant as required in the SCT. Both amounts will be disclosed in the new table. Finally, companies will be required to disclose the date of vesting valuation assumptions if they are materially different from those disclosed in their financial statements as of the date of grant.

Companies Covered by Proposed Rules

The proposed rules will apply to all public companies except foreign private issuers, registered investment companies, and emerging growth companies.

Transition Period

A phase-in of the requirements is proposed. Companies that are not smaller reporting companies will have to provide the tabular disclosure for three (3) years in the first proxy or information statement in which they provide this disclosure, adding another year of disclosure in each of the two (2) subsequent years until the new table covers a full five (5) year period.

Smaller reporting companies will initially provide two (2) years of information in the new table and add one (1) year in their subsequent annual filings until the new table covers a full three (3) year period.

Next Steps

The SEC approved the proposed rules at the April 29, 2015 meeting. The proposed rules will be published in the *Federal Register*. The comment period for the proposed rules will run for 60 days after publication in the *Federal Register* (so until early July). The SEC will then need to meet again to consider the comments and finalize the new disclosure rules, but it is possible that these rules could be in place for the 2016 proxy season.

Once the SEC has published the proposed rules, Exequity will review and provide additional information and insight to our clients.

If you have any questions about this ***Client Alert***, please contact Ed Hauder ((847) 996-3990 or Edward.Hauder@exqty.com) or any of the following:

Ben Burney	(847) 996-3970	Ben.Burney@exqty.com
David Cahn	(847) 996-3965	David.Cahn@exqty.com
Robbi Fox	(847) 948-8655	Robbi.Fox@exqty.com
Mark Gordon	(925) 478-8294	Mark.Gordon@exqty.com
Jeff Hyman	(203) 210-7046	Jeff.Hyman@exqty.com
Lynn Joy	(847) 996-3963	Lynn.Joy@exqty.com
Stacey Joy	(847) 996-3969	Stacey.Joy@exqty.com
Chad Mitchell	(949) 748-6169	Chad.Mitchell@exqty.com
Jeff Pullen	(847) 996-3967	Jeff.Pullen@exqty.com
Dianna Purcell	(718) 273-7444	Dianna.Purcell@exqty.com
Bob Reilley	(856) 206-9852	Bob.Reilley@exqty.com
Mike Sorensen	(847) 996-3996	Mike.Sorensen@exqty.com
Ross Zimmerman	(847) 996-3999	Ross.Zimmerman@exqty.com

Illinois Office (Headquarters) – 1870 West Winchester Road, Suite 141 ● Libertyville, IL 60048
California Offices – 650 Town Center Drive, Suite 830 ● Costa Mesa, CA 92626
– 2840 Comistas Drive ● Walnut Creek, CA 94598
Connecticut Office – 108 Pine Ridge Road ● Wilton, CT 06897
New Jersey Office – 309 Fellowship Road, Suite 200 ● Mt. Laurel, NJ 08054
www.exqty.com

PUB/CA/SEC Pay vs Perf Rules_20150429