LUSE GORMAN

May 2015

LEGAL UPDATES AND NEWS

SEC Proposes Rule on Pay-Versus-Performance Disclosure

On April 29, 2015, the U.S. Securities and Exchange Commission (the "SEC") proposed amendments to its executive compensation rules to require new proxy statement disclosure regarding the relationship between executive compensation "actually paid" and a registrant's financial performance. The proposed rule is required by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and would be incorporated into new Item 402(v) of Regulation S-K.

General Requirements

Under the proposed rule, an SEC reporting company would be required to present the following table displaying the "total" and "actually paid" compensation for its principal executive officer (PEO) and for its other named executive officers ("NEOs") as a group, along with the total shareholder return ("TSR") of the company and the TSR of the company's peer group, as identified in the proxy statement.

PAY VERSUS PERFORMANCE

Year (a)	Summary Compensation Table Total for PEO (b)	Compensation Actually Paid to PEO (c)	Average Summary Compensation Table Total for non-PEO Named Executive Officers (d)	Average Compensation Actually Paid to non-PEO Named Executive Officers (e)	Total Shareholder Return (f)	Peer Group Total Shareholder Return (g)

Executive compensation data would be presented individually for the PEO and as an average for the remaining NEOs as a group. The table would cover a company's five most recently completed fiscal years (a transition rule allows a company to present three years in its first proxy after the rule is adopted, four years in the second year, and five years thereafter). A company need only provide pay-versus-performance disclosure for years in which it was an SEC reporting company.

"Total" compensation for the PEO and the NEOs would be taken directly from the Summary Compensation Table ("SCT"). The company and peer group TSR would be the same as what is already required under Item 201(e) of Regulation S-K, which is typically included in the company's annual report on Form 10-K. "Actually paid" compensation would be calculated by subtracting from the "Total" column in the SCT: (i) the change in the actuarial present value of pension plans and (ii) the total grant date fair value of equity awards granted during the year, and adding back: (x) the pension service cost solely for the applicable year, and (y) the fair value on the vesting date of equity awards that vested during the year.

> **Note**: The value of stock awards that vest in a year is already disclosed in an existing proxy table, so this information is readily available. However, companies are not currently required to disclose the value of options upon vesting, which would now be required in order to compute these amounts on a "fair value" basis. A company would be required to disclose in a footnote to

the new table the vesting date valuation assumptions such as term and volatility if they are materially different from the assumptions at the date of grant.

Along with the new table, companies would be required to provide related disclosure concerning (a) the relationship between "actually paid" compensation and the company's TSR and (b) the relationship between the company's TSR and its peer group's TSR. Such disclosure could be presented as a narrative, or graph or a combination of the two. In addition, a company would be allowed to include supplemental pay-versus-performance disclosure if it believes such information would be useful, provided that such supplemental disclosure could not be presented more prominently than the required disclosure.

Companies may choose where to place the new disclosure within the proxy statement. The SEC acknowledged that companies may want to include it with the other executive compensation disclosure, rather than have it as part of the Compensation and Discussion & Analysis, to avoid the implication that the registrant considered the pay-versus-performance relationship in its compensation decisions, which may not be the case. The new disclosure would not be required as part of the Annual Report on Form 10-K and would not be deemed incorporated by reference into other filings under the Securities Act or the Exchange Act, unless otherwise specifically incorporated by reference. As part of Item 402 executive compensation disclosure, it would be part of and subject to the annual Say on Pay advisory vote.

The new disclosures would be required to be tagged using eXtensible Business Reporting Language ("XBRL") in order to permit data to be analyzed more quickly by investors and other users and to facilitate comparisons among companies. This is the first time XBRL tagging would be required for information presented in a proxy statement.

Smaller Reporting Companies

Scaled disclosure requirements would apply to smaller reporting companies (SRCs). Under the proposed rule, SRCs would only be required to provide pay-versus-performance disclosure for the three most recently completed fiscal years. SRCs would not be required to disclose amounts related to pensions for purposes of disclosing "actually paid" compensation. In addition, SRCs would not be required to present peer group TSR. In the first required filing, SRCs would be permitted to provide pay-versus-performance disclosure for two fiscal years, instead of three. Finally, SRCs would not be required to provide pay-versus-performance disclosure in XBRL format until the third filing in which they provide the new disclosure.

* * *

Luse Gorman is one of the leading firms nationally in advising financial institutions on capital-raising, mergers and acquisitions, corporate and securities, regulatory and executive compensation/employee benefits matters. Please contact any of the attorneys listed below if you would like to discuss any information contained in this newsletter.

Eric Luse	■	(202) 274-2002 eluse@luselaw.com
John J. Gorman	■	(202) 274-2001 jgorman@luselaw.com
Ned A. Quint	■	(202) 274-2007 nquint@luselaw.com
Lawrence M.F. Spaccasi	■	(202) 274-2037 lspaccasi@luselaw.com
Marc P. Levy	■	(202) 274-2009 mlevy@luselaw.com
Norma Sharara	■	(202) 274-2035 nsharara@luselaw.com
Beverly J. White	■	(202) 274-2005 bwhite@luselaw.com

www.luselaw.com