LUSE GORMAN
attorneys

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LEGAL UPDATES AND NEWS

SEC Adopts Pay Versus Performance Disclosure Rules

On August 25, 2022, the Securities and Exchange Commission (the "SEC") adopted new rules requiring disclosure of executive pay versus performance. The new rules implement Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and reflect the SEC's continued focus on disclosure of executive compensation. The new disclosures will be required for public company proxy statements for fiscal years ending on or after December 16, 2022 (i.e., the 2023 annual meeting season) and will apply both to annual meeting proxy statements as well as special meeting proxy statements for the adoption of benefit plans.

New Disclosure Requirements

Public companies will be required to provide the following table in annual meeting proxy statements and certain special meeting proxy statements. Companies have flexibility as to where to include the disclosure; it is not required to be included in Compensation Discussion and Analysis, as companies may determine that they do not use the information to actually determine executive compensation.

					Value of Initial Fixed $100 Investment Based On:			
Year	Summary Compensation Table Total for PEO	Compensation Actually Paid to PEO	Average Summary Compensation Table Total for Non-PEO NEOs	Average Compensation Actually Paid to Non-PEO NEOs	Total Shareholder Return	Peer Group Total Shareholder Return	Net Income	[Company-Selected Measure]
1								
2								
3								
4								
5								

A company must identify in footnote disclosure the individual Named Executive Officers ("NEOs") whose compensation amounts are included in the average for each year. A company must then describe in a "clear" manner the relationship between (a) the executive compensation actually paid to the Principal Executive Officer ("PEO") and (b) the average of the executive compensation actually paid to the company's remaining NEOs to (1) the cumulative total shareholder return ("TSR") of the company, (2) the company's net income and (3) the company's Company-Selected Measure (as described below), in each case over the five most recently completed fiscal years. Companies are also required to provide a clear description of the relationship between the company's TSR and the TSR of a peer group chosen by the company, also over the five most recently completed fiscal years. The information can be provided by graph, narrative, or a combination of the two.

Tabular List

A company must also provide an unranked list (the "Tabular List") of at least three, and up to seven, of the most important financial performance measures it used to link executive compensation actually paid to the registrant's NEOs during the last fiscal year to company performance. However, if fewer than three financial performance measures were used for the most recently completed fiscal year, the Tabular List must include all such measures that were used, if any. Although a company may include non-financial performance measures in the list, it must select the Company-Selected Measure from the financial performance measures included in the list, which must be the financial performance measure that in the company's assessment represents the most important performance measure (that is not otherwise required to be disclosed in the table) used by the company to link compensation actually paid to the NEOs for the most recently completed fiscal year to company performance. A company may also provide separate lists for the PEO, NEOs as a group and/or individual NEOs.

Definition of "Compensation Actually Paid"

To calculate "Compensation Actually Paid," a company will make adjustments from the amounts reported in the Summary Compensation Table related to (1) defined benefit and actuarial pension plans and (2) equity awards, in each case to more accurately reflect income recognized by the reporting person during the fiscal year. The amounts added and subtracted must be disclosed by footnote to the table.

Calculation of Total Shareholder Return

A company's TSR will be calculated in the same manner as currently calculated for performance graph disclosure under Item 201 of Regulation S-K. The relevant period will be the start of the first fiscal year included in the table and the end of the relevant fiscal year in the table. The peer group TSR (weighted according to the peers' stock market capitalization at the beginning of each period for which a return is indicated) must be for the same peer group used in the performance graph disclosure or a peer group used in the CD&A for purposes of disclosing registrants' compensation benchmarking practices. If the peer group is not a published industry or line-of-business index, the identity of the companies composing the group must be disclosed in a footnote.

Definition of "Company-Selected Measure"

A "Company-Selected Measure" is a financial measure that, in the company's assessment, represents the most important performance measure (that is not already included in the table) used to link executive compensation actually paid during the most recent fiscal year to company performance, over the time horizon of the disclosure. As noted above, the Company-Selected Measure must be one included in the Tabular List. To the extent the Company-Selected Measure is already included in the table (such as net income), then a company must select its second-ranked financial measure, and would describe the selection accordingly. A Company-Selected Measure may be a non-GAAP financial measurement, in which case the company must provide how the measure is calculated from the GAAP financial statements.

eXtensible Business Reporting Language ("XBRL") Requirements

A company must separately tag each value disclosed in the table, block-text tag the footnote and relationship disclosure, and tag specific data points (such as quantitative amounts) within the footnote disclosures, all in Inline XBRL.

Additional Information

A company can choose to add additional information to the table or other required disclosures, so long as the required disclosure is given primary prominence, while the supplemental information must be identified as such. Supplemental information added to the table must be accompanied by the narrative disclosure applicable to information that is already required to be disclosed.

Phase-In Period

A company is only required to provide information in the table for years in which it was a public reporting company. In addition, the first required disclosure for a company will be limited to three years, with an additional year of disclosure added in each of the following years.

Smaller Reporting Companies and Emerging Growth Companies

A public company that qualifies as a "Smaller Reporting Company" is only required to provide information for three years (two years for the initial required filing), and is not required to include the columns for (1) the value of a $100 investment based on the peer group TSR and (2) a company-selected measure, as well as the related footnote disclosure for information in those columns. A Smaller Reporting Company is not required to provide the Tabular List of performance measures used in considering executive compensation in the last fiscal year. A Smaller Reporting Company is also not required to provide information in an XBRL format until the third required filing of the new disclosure.

The new disclosure rules do not apply to a company that qualifies as an "Emerging Growth Company."

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Please contact any of our attorneys below if you have any questions regarding the information contained in this newsletter.

John Gorman	■	(202) 274-2001	jgorman@luselaw.com
Lawrence Spaccasi	■	(202) 274-2037	lspaccasi@luselaw.com
Kip Weissman	■	(202) 274-2029	kweissman@luselaw.com
Marc Levy	■	(202) 274-2009	mlevy@luselaw.com
Benjamin Azoff	■	(202) 274-2010	bazoff@luselaw.com
Michael Brown	■	(202) 274-2003	mbrown@luselaw.com
Scott Brown	■	(202) 274-2013	sbrown@luselaw.com
Victor Cangelosi	■	(202) 274-2028	vcangelosi@luselaw.com
Jeffrey Cardone	■	(202) 274-2033	jcardone@luselaw.com
Thomas Hutton	■	(202) 274-2027	thutton@luselaw.com
Steven Lanter	■	(202) 274-2004	slanter@luselaw.com
Gary Lax	■	(202) 274-2031	glax@luselaw.com
Ned Quint	■	(202) 274-2007	nquint@luselaw.com
Max Seltzer	■	(202) 274-2038	mseltzer@luselaw.com
Gregory Sobczak	■	(202) 274-2026	gsobczak@luselaw.com
Agata Troy	■	(202) 274-2025	atroy@luselaw.com