FENWICK

The SEC's New Pay Versus Performance Rule: FAQ

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Section 1:
General

General

1. What is the Pay Versus Performance Rule?

See our Fenwick alert for a high-level overview of the Pay Versus Performance (PvP) Rule. See also the SEC fact sheet and adopting release.

Briefly, the PvP Rule adds a new Item 402(v) of Regulation S-K, requiring companies to disclose the relationship between executive "compensation actually paid" (CAP) and the company's financial performance. This will apply to any proxy and information statements requiring executive compensation disclosure for fiscal years ending on or after December 16, 2022. For many companies, this means the disclosure will first be required in the 2023 proxy statement.

There are three main components of the PvP Rule: (1) a new table with specified executive compensation and financial performance measures (the PvP Table) over a five-year lookback period; (2) a description of the relationship between CAP and certain financial performance measures, as well as a description of company performance against its peers, in each case over the five-year lookback period; and (3) a tabular list of the three to seven most important financial performance measures the company uses to link CAP to its performance (the Tabular List).

While the PvP Rule requires highly prescriptive disclosure, it does not explicitly require companies to modify its executive compensation policies or programs.

Certain aspects of the PvP Rule are open to interpretation. It is possible that the SEC Staff may provide additional guidance in the future.

2. What is the SEC's rationale for adopting the PvP Rule?

The Dodd-Frank Wall Street Reform and Consumer Protection Act required the SEC to adopt rules regarding disclosure of the relationship between executive compensation actually paid and a company's financial performance. The SEC noted in the adopting release that this new disclosure can be valuable for investors evaluating a company's executive compensation program—particularly when they are evaluating say-on-pay proposals, other compensation matters and director elections, or making investment decisions.

The SEC under the Gensler administration has generally pivoted toward more prescriptive disclosures, including for the PvP Rule, with the focus on achieving comparability across issuers and within the same issuer over time.

3. Which SEC filings does the PvP Rule impact?

PvP disclosure must be included in each proxy or information statement that is required to provide executive compensation disclosure in conjunction with a shareholder vote – not in all filings where Item 402 disclosure is required. This means companies will not need to include it in the Form 10-K (including in Part III) or any Securities Act registration statements. For calendar-year companies, the PvP disclosures will be first required with their upcoming 2023 proxy statements.

PvP disclosure will also not be deemed incorporated by reference into any filings under the Securities Act of 1933 (Securities Act) or the Securities Exchange Act of 1934 (Exchange Act) unless the company specifically incorporates it by reference. Accordingly, companies should include a legend that its PvP disclosure is not deemed to be incorporated by reference.

4. Are any companies excluded from the PvP disclosure requirements?

Yes. Emerging growth companies, foreign private issuers and registered investment companies do not need to provide the PvP disclosure.

Smaller reporting companies (SRCs) do have to provide the PvP disclosure, but on a scaled-back basis, as described in FAQ #2 of Section 5 below.

Companies that have recently become publicly traded will have a phase-in period, as described in FAQ #3 of Section 5 below.

Section 2:
Tabular Disclosure of Executive Compensation
and Financial Performance Measures

Tabular Disclosure of Executive Compensation and Financial Performance Measures

1. What does the PvP Table look like?

The PvP Rule requires a company to disclose a new table with columns for, among other things, "Compensation Actually Paid," "Total Shareholder Return," and a "Company-Selected Measure," all of which are discussed in detail below.

Below is an exemplar PvP Table provided by the SEC adopting release. The red asterisks indicate parts of the disclosure that SRCs are exempt from (as discussed in FAQ #2 of Section 5 below). The bracketed "Company-Selected Measure" column title gets replaced with the name of the actual Company-Selected Measure.

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	Value of Initial Fixed $100 Investment Based On:		Net Income	[Company-Selected Measure]*
					Total Shareholder Return	Peer Group Total Shareholder Return*		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Y1								
Y2								
Y3								
Y4*								
Y5*								

Tabular Disclosure of Executive Compensation and Financial Performance Measures

continued

2. Which executives does the PvP Rule cover?

This disclosure covers the "named executive officers" (NEOs) as defined in Item 402.

Companies must provide individual disclosure of the Principal Executive Officer's (PEO) compensation, including separate disclosures for the compensation of each PEO in a year where there are multiple PEOs. To do so, additional columns will be added to the PvP Table for each PEO. For more information on what a company should do for its PvP Table if it had multiple PEOs in a year, see FAQ #10 in Section 5 below.

Companies must also disclose the average of compensation for the other NEOs. Individual NEOs may change from year to year, but companies do not need to recalculate the five-year average compensation based on the latest fiscal year-end NEOs. Companies will need to identify, in a footnote to the PvP Table, the individual NEOs that comprise the average compensation amounts for each year. As discussed in FAQ #6 in this Section, one-time payments (such as new hire sign-on bonuses or severance payments) may not be excluded, which may result in a higher-than-expected NEO average for a given year. In such case, a company could consider providing this context in the corresponding footnotes.

3. What are the initial periods required to be covered by the PvP Rule?

For companies other than SRCs: Ultimately, these companies must provide the PvP disclosure for five years. However, for the first proxy or information statement that requires PvP disclosure, only three years of disclosure must be provided. Following the first disclosure, these companies must add another year of disclosure in each of the two subsequent years of its proxy or information statement filings.

For SRCs: Ultimately, SRCs must provide the PvP disclosure for three years. However, for the first proxy or information statement that requires PvP disclosure, SRCs need only provide two years of PvP disclosures, with subsequent filings containing three years of disclosure.

4. What is "Compensation Actually Paid"?

"Compensation actually paid" is the total executive compensation as reported in the Summary Compensation Table, as adjusted for amounts included for pension benefits and equity awards. The process for calculating "compensation actually paid" will be a significant change from simply reporting the grant date fair value, as is required in the Summary Compensation Table. Companies with complex equity programs, especially those that grant market-based performance equity or those with many disparate and frequent vesting dates, may want to work with their external valuation firms to perform, among other things, year-end or vesting date interim fair value calculations for outstanding equity awards during the fiscal year.

Once the company has the total compensation in column (b) or (d) of the PvP Table, the company will make the following calculations (for purposes of this calculation, both PEO and the remaining NEOs are referred to as NEOs below) to arrive at the "compensation actually paid" figure for the PEO and the NEOs:

Adjusting for equity awards:

To adjust for equity costs, ***subtract*** the grant-date fair value of any stock and option awards granted during that year and ***add*** the change in fair value of outstanding and unvested stock and option awards during that year (or as of the vesting date or the date the company determines the award will not vest, if within the year), as well as the fair value of new stock and option awards granted during that year as of year-end (or as of the vesting date or the date the company determines the award will not vest, if within the year). Specifically:

Tabular Disclosure of Executive Compensation and Financial Performance Measures

continued

Deduct the grant date fair value of stock and option award amounts reported in the "Stock Awards" and "Option Awards" columns of the Summary Compensation Table

Add or subtract (as applicable) the following amount for all stock and option awards (including awards that have subsequently been transferred), with or without tandem SARs:

- **add** the fair value as of the covered fiscal year-end of all awards granted during the covered fiscal year that are outstanding and unvested as of the end of the covered fiscal year;
- **add** the amount equal to the change as of the end of the covered fiscal year (from the end of the prior fiscal year) in fair value (whether positive or negative) of any awards granted in any prior fiscal year that are outstanding and unvested as of the end of the covered fiscal year;
- **add,** for awards that are granted and vest in the same covered fiscal year, the fair value as of the vesting date;
- **add** the amount equal to the change as of the vesting date (from the end of the prior fiscal year) in fair value (whether positive or negative) of any awards granted in any prior fiscal year for which all applicable vesting conditions were satisfied at the end of or during the covered fiscal year;
- **subtract**, for any awards granted in any prior fiscal year that fail to meet the applicable vesting conditions during the covered fiscal year, the amount equal to the fair value at the end of the prior fiscal year; and
- **add** the dollar value of any dividends or other earnings paid on stock or option awards in the covered fiscal year prior to the vesting date that are not otherwise included in the total compensation for the covered fiscal year.

"Fair value" amounts referenced above must be computed in a manner consistent with the fair value methodology used to account for share-based payments in the company's financial statements under GAAP. For any awards that are subject to performance conditions, a company can calculate the change in fair value as of the end of the covered fiscal year based upon the probable outcome of such conditions as of the last day of the fiscal year.

In addition, if at any time during the last completed fiscal year, a company adjusted or amended the exercise price of options or SARs held by a NEO, whether through amendment, cancellation or replacement grants, or any other means, or otherwise has materially modified such awards, the fair value determinations must take into account the excess fair value, if any, of any such modified award over the fair value of the original award as of the date of such modification.

The SEC did not adopt a safe harbor or simplified assumptions for fair value calculations of equity awards, other than those generally accepted under GAAP.

Adjusting for pension values:

To adjust for pension costs, ***subtract*** the change in the actuarial present value of pension benefits and ***add*** the pension service cost for the year (and for any plan amendments or initiations, the associated prior service cost, or less any associated credit). Specifically:

Deduct the aggregate change[1] in the actuarial present value of the NEO's accumulated benefit under all defined benefit and actuarial pension plans reported in the Summary Compensation Table

Add, for all defined benefit and actuarial pension plans reported in the Summary Compensation Table, the aggregate of:

1. the service cost[2] (which is calculated as the actuarial present value of each NEO's benefit under all such plans attributable to services rendered during the covered fiscal year), and

1 The change in actuarial present value would be deducted only if the value is positive (and therefore included in the sum reported in column (h) of the Summary Compensation Table).

2 "Service cost" must be calculated using the same methodology as used for the company's financial statements under GAAP.

Tabular Disclosure of Executive Compensation and Financial Performance Measures

continued

2. the prior service cost[3] (which is calculated as the entire cost of benefits granted (or credit for benefits reduced) in a plan amendment (or initiation) during the covered fiscal year that are attributed by the benefit formula to services rendered in periods prior to the amendment)

SRCs are not required to adjust for pension amounts and can ignore this step.

5. Are any footnote disclosures required regarding the calculation of CAP amounts?

Yes. There is required footnote disclosure for the following:

- **Adjustments made to calculate CAP**: The PvP Rule requires footnote disclosure of the amounts deducted from, and added to, the Summary Compensation Table total compensation in PvP Table's columns (b) and (d), to calculate the CAP amounts in columns (c) and (e), respectively.
- **Assumptions made in valuation of equity awards when calculating CAP:** The PvP Rule requires footnote disclosure of any valuation assumptions that materially differ from those disclosed at the time of grant.
  - The SEC illustrates that there may be a material difference in assumptions if a company made changes to key assumptions that would have materially changed the grant date fair value, if such assumptions applied as of the grant date.

6. Can signing bonuses or other one-time payments be removed from the CAP amounts?

No. Companies cannot remove signing bonuses, severance bonuses and other one-time payments from the CAP amounts.

3 "Prior service cost" must be calculated using the same methodology as used for the company's financial statements under GAAP.

7. What "Total Shareholder Return" information is required in the PvP Table?

Item 402(v) requires disclosure of the company's cumulative "total shareholder return" (TSR), as well as the TSR of the company's peer group. TSR is defined in Regulation S-K, Item 201(e), which section is better known as the stock performance graph that is included in the annual report. However, the SEC denotes specific meanings for "measurement period" and "peer group" under Item 402(v).

8. How should a company calculate its cumulative TSR?

Companies can calculate their cumulative TSR in substantially the same manner as under Item 201(e) of Regulation S-K.

The TSR should be calculated based on a fixed investment of $100 at the measurement point.

The "measurement point," for purposes of calculating the cumulative TSR figures in the PvP Table, will be "from the market close on the last trading day before the registrant's earliest fiscal year in the table through and including the end of the fiscal year for which TSR is being calculated (i.e., the TSR for the first year in the table will represent the TSR over that first year, the TSR for the second year will represent the cumulative TSR over the first and the second years, etc.)."

9. How should a company calculate peer group TSR, and what is the peer group?

A company can use either the same peer group used in the CD&A for purposes of disclosing the company's compensation benchmarking practices, or a peer group used for purposes of Regulation S-K Item 201(e).

Tabular Disclosure of Executive Compensation and Financial Performance Measures

continued

If the peer group is not a published industry or line-of-business index, the identity of the companies comprising the peer group must be disclosed in a footnote to the PvP Table.

If the company previously disclosed its peer group composition in prior SEC filings, the company can incorporate by reference such filings.

The PvP Rule requires disclosure of a "weighted" peer group TSR (unless the company is an SRC). To calculate weighted peer group TSR, the returns of each issuer in the peer group must be weighted according to stock market capitalization at the beginning of each period for which a return is indicated.

The TSR should be calculated based on a fixed investment of $100 at the measurement point, in the same way that it is calculated for the company, as described in FAQ #8 of this Section above.

10. What if the peer group changed from the previous fiscal year?

If a company changes the peer group used in its PvP disclosure from the one used in the previous fiscal year, it will be required to include disclosure of the TSR for that new peer group for all years in the PvP Table (not just for the year in which the peer group changed). There is no exception here—it does not matter whether a company was removed from the peer group due to a merger. However, the company must explain, in a footnote, the reason for the change, and compare the company's TSR to that of both the old and the new peer group.

11. What is a "Company-Selected Measure"?

A "Company-Selected Measure" is a "financial performance measure" which, in the company's assessment, represents the most important performance measure used by the company to link CAP, for the most recently completed fiscal year, to company performance. Since the PvP Table already includes TSR and net income, the Company-Selected Measure cannot be either of those measures.

The SEC defined "financial performance measures" for purposes of the PvP disclosures as measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, any measures that are derived wholly or in part from such measures, and stock price and total shareholder return. However, the financial performance measure need not be presented within the company's financial statements or otherwise included in an SEC filing to be a "Company-Selected Measure."

The Company-Selected Measure must be one of the measures that is disclosed in the Tabular List of the three to seven most important financial performance measures used by the company to link CAP to company performance. See Section 4, "Tabular List of Performance Measures," for additional information on the Tabular List disclosure requirements.

The PvP Table will include the numerically quantifiable performance of the company under the chosen Company-Selected Measure for each covered fiscal year. Note that the Company-Selected Measure is bracketed in the PvP Table template in FAQ #1 of this Section—that will need to be replaced with the actual name of the Company-Selected Measure.

The SEC notes that for example, if the Company-Selected Measure for the most recent fiscal year was total revenue, the company will need to relabel that PvP Table column as "Total Revenue." Then, the company would disclose its quantified total revenue performance in each covered fiscal year, not just the most recently completed fiscal year.

The PvP disclosure requirements provide flexibility for companies to change their Company-Selected Measure from one filing to the next—the company will need to assess which measure is the "most important" as to the most recently completed fiscal year. However, if the Company-Selected Measure is changed, the quantified disclosure of the new measure must be shown for all prior years covered by the PvP Table, as discussed in FAQ #16 of this Section below.

Tabular Disclosure of Executive Compensation and Financial Performance Measures

continued

Careful consideration should be given to the Company-Selected Measure, as well as the Tabular List (discussed in detail in Section 4 below), and how these measures are included (or not included) in a company's performance-based compensation programs and other public disclosures. If there is a disconnect, it may prompt questions regarding the design of the compensation programs.

12. What if Net Income or TSR is the most important measure?

If the company's "most important" measure is TSR or net income and, as such, is already included as a required column in the PvP Table, the company should select its next-most important measure as its Company-Selected Measure. If the company only uses net income or TSR measures, the company would not be required to disclose a Company-Selected Measure or its relationship to CAP—but needs to disclose that such company did not use any measures other than those already included in the PvP Table.

13. Does a company need to disclose its methodology for calculating its Company-Selected Measure?

No. However, companies should consider if disclosing the methodology would be helpful to investors to understand the PvP disclosures, or necessary to prevent the PvP disclosures from being confusing or misleading. Companies may voluntarily cross-reference to other disclosures in the proxy statement that describe the processes and calculations that go into determining executive compensation as it relates to the Company-Selected Measure.

14. What happens if the "Company-Selected Measure" is a non-GAAP measure?

If the Company-Selected Measure (or any additional measures included in the PvP Table) are non-GAAP financial measures, those will not be subject to Regulation G and Item 10(e) of Regulation S-K. However, the company must disclose how the non-GAAP number was derived from the company's audited financial statements, consistent with Instruction 5 to Regulation S-K Item 402(v) regarding CD&A disclosures of performance targets based on non-GAAP financial measures.

15. What if a company does not use financial performance measures to link CAP to company performance?

Companies that do not use any financial performance measures to link CAP to company performance would not be required to disclose a Company-Selected Measure or its relationship to CAP. Such companies should disclose that they do not have a Company-Selected Measure, and explain why not.

16. What if a company changes its Company-Selected Measure for the second year of PvP disclosures?

There is flexibility for companies to change their Company-Selected Measure from one filing to the next—the company will only need to assess which measure is the "most important" as to the most recently completed fiscal year. However, if the Company-Selected Measure is changed, the new measure must be shown for all prior years covered by the PvP Table.

For example, if a company chose "total revenue" as its Company-Selected Measure for the 2023 proxy statement, it would include the total revenue for each year covered by the PvP Table, and would describe the relationship between total revenue and CAP over the required lookback period. If the company then chooses "Adjusted Net Income" as its Company-Selected Measure for the 2024 proxy statement, the company would include the Adjusted Net Income disclosure for each year covered by the PvP Table and would remove the "total revenue" disclosure for each such year. In the 2024 proxy statement, the company would also describe the relationship between Adjusted Net Income and CAP over the required lookback period.

Section 3:
Description of Relationships Between Financial Performance Measures and Executive Compensation, and Company and Peer Group TSRs

Description of Relationships Between Financial Performance Measures and Executive Compensation, and Company and Peer Group TSRs

1. What is required to be disclosed about the relationships between financial performance measures and executive compensation, and company and peer group TSRs?

Companies must describe the following relationships (in each case with a five-year lookback, or three years for SRCs):

- a clear description of the relationship between the PEO's CAP and the average of the other NEOs' CAP with respect to each of (1) the company's cumulative TSR, (2) the company's net income and (3) the Company-Selected Measure; and
- a clear description of the relationship between the company's TSR and the peer group TSR.

There is some flexibility as to the format in which to present the descriptions of these relationships, whether graphical, narrative or a combination of the two.

Companies can also group any of the relationship disclosures together when presenting their relationship disclosure, but the SEC notes that any combined description of multiple relationships must still be "clear."

2. What are some examples for presenting descriptions of relationships?

The SEC noted in the adopting release that the "required relationship disclosure could include, for example, a graph providing executive compensation actually paid and change in the financial performance measures (TSR, net income, or Company-Selected Measure) on parallel axes and plotting compensation and such measure(s) over the required time period.

Alternatively, required relationship disclosure could include narrative or tabular disclosure showing the percentage change over each year of the required time period in both executive compensation actually paid and the financial performance measure(s) together with a brief discussion of how those changes are related."

Section 4:
Tabular List of Performance Measures

Tabular List of Performance Measures

1. What is required for the Tabular List disclosure?

In addition to the PvP Table and the description of various relationships, companies must provide a tabular list of three to seven of their most important "financial performance measures" used by the company to link CAP to company performance for the most recently completed fiscal year. As a reminder, the Company-Selected Measure that is included in the PvP Table must also be included in the Tabular List.

This list will be unranked, and companies do not need to provide the methodology used to calculate the measures included in the Tabular List. However, companies should consider if disclosing the methodology would be helpful for investors to understand the measures included in the Tabular List, or necessary to prevent the Tabular List disclosure from being confusing or misleading.

2. How does a company determine which measures are "most important"?

The "most important" determination should be made on the basis of the most recently completed fiscal year, not the full time horizon of the PvP disclosures.

3. What is a "financial performance measure" that a company can consider for PvP disclosures?

The SEC defined "financial performance measures" for purposes of the PvP disclosures as "measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, any measures that are derived wholly or in part from such measures, and stock price and total shareholder return."

TSR and Net Income may be included in the Tabular List if they are among the company's three to seven most important financial performance measures, even though they are also included in the PvP Table.

Tabular List of Performance Measures

continued

4. What if a company has fewer than three financial performance measures to consider?

If the company has fewer than three financial performance measures used to link CAP during the most recently completed fiscal year to company performance, the company will be required to disclose only the number of financial performance measures it actually considers.

5. Can a company include non-financial performance measures in the Tabular List?

Yes, if those measures are among the three to seven most important performance measures, and if the company already disclosed at least its three (or fewer, if the company uses fewer) most important financial performance measures.

If a company does not use any financial performance measures to link CAP to company performance, it may be possible for it to omit the Tabular List; however, additional SEC guidance is required on this point.

6. What if a company has more than seven financial performance measures to consider?

The Tabular List cannot include more than seven measures—and it does not matter whether non-financial performance measures are part of that list.

7. Can a company provide more than one Tabular List?

Under the PvP Rule, there are three different ways to present the Tabular List:

- **One list:** Companies may present one list with the three to seven most important performance measures used to link CAP, for the most recently completed fiscal year, to company performance.
- **Two lists:** Companies may have two separate lists—one for the PEO and one for the remaining NEOs.
- **List for each NEO:** Companies may break up the Tabular List disclosure into separate lists for the PEO and each of the other NEOs.

If the company discloses multiple lists, each list must include three to seven financial performance measures (or such lesser amount that the company actually considers).

Section 5:
Miscellaneous Questions

Miscellaneous Questions

1. Who should be involved in preparing PvP disclosures?

Companies should be working closely with management and senior leadership, compensation consultants, outside legal counsel and, depending on the design of their equity programs, outside equity valuation specialists to prepare the PvP disclosures. With the potentially heightened attention to these disclosures by various stakeholders, companies may also want to engage their IR team early. Those managing the internal annual meeting timelines should also start building in time to gather all of the data required for the PvP disclosures, including peer group data and equity award calculations. Companies should also be reviewing and adjusting their disclosure controls to account for the new PvP disclosures.

Members of a company's compensation committee should be made aware of this new disclosure requirement and be prepared to assess which financial performance measures are the most important for purposes of the Tabular List, which measure will be the Company-Selected Measure and whether there should be any supplemental measures disclosed. Companies should plan to increase the amount of time provided to the compensation committee for their standard review of other executive-related disclosures to review this new PvP disclosure.

2. What are the requirement differences for Smaller Reporting Companies?

SRCs have to provide PvP disclosures. However, they are subject to scaled-back requirements for such disclosure as follows:

- SRCs need only include three years of PVP disclosure instead of five.
- However, for the first filing in which SRCs provide PvP disclosure, SRCs need only include two years of PvP disclosure instead of three.
- SRCs do not need to disclose peer group TSR. See FAQ #9 of Section 2 above for more information on peer group TSRs.
- SRCs do not need to disclose a Company-Selected Measure. See FAQ #11 of Section 2 above for more information on the Company-Selected Measure.
- SRCs do not need to disclose amounts relating to pensions for purposes of disclosing CAP amounts.
- SRCs do not need to disclose a Tabular List. See FAQ #1 of Section 4 above for more information on the Tabular List.
- Inline XBRL tagging for PvP disclosure would first be required starting with the third filing in which the SRC provides PvP disclosures.

Miscellaneous Questions

continued

3. What happens if a company is newly public?

Information for fiscal years prior to the last completed fiscal year will not be required if the company was not a reporting company pursuant to Section 13(a) or 15(d) of the Exchange Act at any time during that year. *See Instruction 2 to Item 402(v)*. For example, if a calendar year company went public in 2022, then in its proxy statement for its 2023 annual shareholder meeting, it would need to disclose PvP information for the 2022 fiscal year, but not for years prior to that. The company would then add an additional year of disclosure for each subsequent annual proxy filing until five years of disclosure are included (or three years for SRCs).

4. What happens when a company loses EGC status?

A company losing EGC status will first need to comply with the PvP disclosure requirements in the year following the loss of EGC status. For example, if a calendar year company loses EGC status at the end of 2023, it will need to provide PvP disclosure for the first time in its proxy statement for its 2024 annual shareholder meeting. However, if the company is an SRC, it may take advantage of the lighter SRC PvP disclosure requirements.

5. Do the PvP disclosures need to go in the CD&A section of the proxy statement?

The PvP Rule does not contemplate a specific location for the PvP disclosures in the proxy statement. The disclosures are not required to be included in the CD&A, with the SEC noting commenters' previous concerns that companies may not necessarily consider pay-versus-performance information when making compensation decisions. However, if a company does prefer to place the disclosure in the CD&A, such disclosure will be covered by the Compensation Committee report.

6. Do the disclosures need to be tagged in Inline XBRL?

Yes. Companies must separately tag the disclosures in Inline XBRL. Specifically, the following would need to be tagged in Inline XBRL: each value disclosed in the PvP Table; block-text tag the PvP Table footnotes and the relationship disclosure; and any specific data points (i.e., quantitative amounts) within the footnote disclosures. The disclosures also need to be provided as an Interactive Data File exhibit.

There is a phase-in period for Inline XBRL, but only for SRCs. For SRCs, Inline XBRL tagging for PvP disclosure is first required starting with the third filing in which they provide PvP disclosures.

7. Can the company provide supplemental disclosures?

Yes, a company can voluntarily include supplemental disclosures of compensation or financial performance, including supplemental measures in the PvP Table. However, those supplemental measures or disclosures need to be clearly identified as supplemental, cannot be misleading and cannot be presented with greater prominence than the required disclosure.

If a company chooses to present additional supplemental measures in the PvP Table, the company must also discuss the relationship between CAP and such supplemental measures.

Miscellaneous Questions

continued

8. What happens if a company was already providing pay versus performance disclosure in its proxy statements?

Some companies may already include a comparison of their executive compensation versus company performance (or similar "pay for performance" disclosure) in the CD&A. These existing pay versus performance discussions are unlikely to satisfy the technical disclosure requirements of the new PvP Rule. To the extent there's overlap, the company should reconcile the differences and ensure that they are complying with the new PvP Rule as the priority. To the extent the company wants to use its existing pay versus performance disclosures as an alternative or supplemental disclosure to the PvP disclosures, the company must clearly treat such disclosure as supplemental. See FAQ #7 in this Section above for more detail on the requirements for supplemental disclosures.

9. How are clawbacks handled?

The approach will be consistent with reporting clawbacks in the Summary Compensation Table. The adopting release says that "[W]hen any portion of an executive officer's compensation for a fiscal year that is included in the table is clawed back, the amounts of executive compensation disclosed in response to Item 402(v) as the Summary Compensation Table Total and as the Compensation Actually Paid initially reported for such year should be adjusted to reflect the effects of the claw-back, with footnote disclosure of the amount(s) recovered, when applicable."

10. How does this impact the upcoming proxy season?

While ISS and Glass Lewis haven't released their updated policies for the upcoming proxy season, companies should note that the proxy advisors may use additional data from the PvP disclosures as part of their pay-for-performance analysis. For example, ISS may use a different peer group than the company's chosen peer group as part of its quantitative assessment of CEO pay and TSR. The increased amount of disclosure also increases the potential for ISS to highlight additional issues to investors.

11. What if a company had multiple PEOs in a year?

The company should not aggregate the compensation of PEOs in years when it had multiple PEOs. Instead, the company needs separate columns for (1) Summary Compensation Table total compensation and (2) CAP, for each PEO. Here is the SEC's example of a PvP Table with two PEOs in "Year 2":

Year	Summary Compensation Table Total for First PEO	Summary Compensation Table Total for Second PEO	Compensation Actually Paid to First PEO	Compensation Actually Paid to Second PEO	Average Summary Compensation Table Total for non-PEO NEOs	Average Compensation Actually Paid to non-PEO NEOs	Value of Initial Fixed $100 Investment Based On:		Net Income	[Company-Selected Measure]
							Total Shareholder Return	Peer Group Total Shareholder Return		
(a)	(b)	(b)	(c)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Y1										
Y2										
Y3										
Y4										
Y5										

FENWICK