Executive Compensation Alert: SEC Proposes Pay Versus Performance Rules

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The Securities and Exchange Commission (the *"SEC"*) has proposed new rules required by Section 953(a) of the Dodd-Frank Act that would require companies to disclose the relationship between compensation actually paid to executives and the financial performance of the company.

Highlights of the Proposed Rules

In any proxy or information statement where executive compensation disclosure is required, companies would be required to disclose the following information in a new table:

- Executive compensation actually paid (i) to the principal executive officer, which is the same as the total compensation disclosed in the summary compensation table already required in the proxy statement, with adjustments to the amounts included for equity awards and pensions and (ii) to the remaining named executive officers calculated as an average with similar adjustments as in (i) above.
- The company's total shareholder return (TSR) on an annual basis, as defined in Item 201(e) of Regulation S-K; and
- The TSR on an annual basis of the companies in the peer group identified by the company in its compensation discussion and analysis.
- Disclosure would be required for the last five fiscal years, except that smaller reporting companies would only be required to provide disclosure for the last three fiscal years. ***Companies would also be required to tag the disclosure in an interactive data format using eXtensible Business Reporting Language (XBRL). This is the first time XBRL would be used for a proxy filing.*** The disclosure could be done in a narrative, graphically, or a combination of the two.

Timing

- It is unclear whether the proposed rules would be effective for the 2016 proxy season. We certainly hope not, but it is too soon to tell and it will depend on when the proposed rules are finalized.
- In the event the proposed rules are finalized, companies would be required to provide the information for three years in the first proxy statement in which they provide the disclosure, adding another year of disclosure in each of the two subsequent filings. Smaller reporting companies would initially provide the information for two years, adding another year of disclosure in its subsequent filing.

What's Next?

The comment period for the proposed rules will be 60 days after publication in the Federal Register.

The SEC's Fact Sheet describing the proposed rules can be found here: http://www.sec.gov/news/pressrelease/2015-78.html

The SEC release can be found here: http://www.sec.gov/rules/proposed/2015/34-74835.pdf

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