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Pay Versus Performance Final Rules - Item 402(v) of Regulation S-K
Frequently Asked Questions

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A. Companies Subject to the Final Rules

1. What companies are subject to the final rules?

All companies that are required to file reports under Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (Exchange Act) and the rules adopted thereunder by the Securities and Exchange Commission (SEC) are subject to the final rules, with the following exceptions:

- Emerging growth companies;
- Registered investment companies; and
- Foreign private issuers.

2. How do the final rules apply to smaller reporting companies?

The final rules include disclosure accommodations for smaller reporting companies that, when fully phased in, will permit smaller reporting companies to disclose information for three fiscal years rather than five, and permit smaller reporting companies to exclude some of the financial performance measures from their disclosure. These are described in more detail below. The final rules also permit smaller reporting companies to defer compliance with the Inline XBRL tagging and exhibit filing requirements.

3. How do the final rules apply to new reporting companies?

The final rules do not require a company to provide pay versus performance disclosure for fiscal years prior to the last completed fiscal year if the company was not required to report pursuant to Section 13(a) or 15(d) of the Exchange Act at any time during that year.

B. Effective Dates and Compliance/Transition Phase-In Dates

1. When will the final rules become effective?

The final rules will be effective on October 11, 2022.

2. What is the first filing that must include the new pay versus performance disclosure?

Companies must comply with the final rules in proxy and information statements that are required to include the executive compensation disclosure required by Item 402 of Regulation S-K for fiscal years ending on or after December 16, 2022. For most companies that have a December 31 fiscal year end, the first filing that will be subject to the final rules will be the proxy or information statement filed in 2023 for the company's annual meeting of shareholders.

3. How many years must be included in the new pay versus performance disclosure?

The Pay Versus Performance Table and the related "clear description" of pay versus performance relationships cover the five most recently completed fiscal years, subject to the phase-in periods described below. Smaller reporting companies can elect to provide disclosure for only the three most recently completed fiscal years, subject to the phase-in periods described below.

4. Is there a disclosure phase-in or disclosure transition provision?

Yes, the final rules require information for only the three most recently completed fiscal years in the first filing that is subject to the final rules. In each of the next two annual filings that are subject to the final rules, the company must include an additional year. Smaller reporting companies are initially required to present information for only the two most recently completed fiscal years, and are required to include an additional year in the next filing that is subject to the final rules. See Instruction 1 to Item 402(v).

C. Filings Subject to the Final Rules

1. What filings are subject to the final rules?

The final rules apply to proxy and information statements that are required to include the executive compensation disclosure required by Item 402 of Regulation S-K.

2. Do the final rules apply to a proxy statement for a special meeting at which shareholders will vote only on approval of a compensation plan?

Yes, the final rules apply to any proxy or information statement that is required to include executive compensation disclosure. In most cases, Item 402 executive compensation disclosure is required in proxy and information statements if action will be or has been taken to approve a compensation plan, regardless of whether any directors will be elected.

3. Do the final rules require pay versus performance disclosure to be included with the disclosure required by Item 11, Executive Compensation, in Part III of Form 10-K?

No, the final rules apply only to proxy and information statements that are required to include the executive compensation disclosure required by Item 402 of Regulation S-K. The final rules do not require pay versus performance disclosure in other filings where disclosure under Item 402 of Regulation S-K is required.

4. Do the final rules apply to registration statements filed under the Securities Act of 1933 (the Securities Act)?

No, the final rules apply only to proxy and information statements that are required to include the executive compensation disclosure required by Item 402 of Regulation S-K.

D. Inline XBRL

1. Do Inline XBRL requirements apply to the new pay versus performance disclosure required by the final rules?

Yes. The company must separately tag the values disclosed in the Pay Versus Performance Table in Inline XBRL, block-text tag the footnote and relationship disclosure and the Tabular List in Inline XBRL, and tag specific data points (such as quantitative amounts) within footnote disclosures in Inline XBRL.

The company must also provide the interactive data as an exhibit to the definitive proxy or information statement filed with the SEC, in addition to the Inline XBRL tagging in the proxy or information statement.

2. Do the final rules require smaller reporting companies to comply with Inline XBRL requirements when they file the new pay versus performance disclosure?

Yes, but smaller reporting companies are not required to comply with the Inline XBRL requirements until the third filing in which the company provides the pay versus performance disclosure required by the final rules.

E. Emerging Growth Company and Smaller Reporting Company Matters

1. Do the final rules apply to emerging growth companies or smaller reporting companies?

The final rules exempt emerging growth companies from the new pay versus performance disclosure. Smaller reporting companies are subject to the final rules, but can elect to take advantage of disclosure accommodations provided in the final rules, and can also elect to rely on different phase-in arrangements, both of which are discussed below.

2. Do the final rules provide disclosure accommodations for smaller reporting companies?

The disclosure accommodations for smaller reporting companies are contained in Item 402(v)(8) and described in this [Goodwin client alert](#). Smaller reporting companies are required to provide three, rather than five, years of information in the Pay Versus Performance Table. In the first applicable filing after compliance with the final rules is required, smaller reporting companies are permitted to provide two years of data, instead of three. In addition, the final rules permit smaller reporting companies to omit the following disclosure:

- The cumulative total shareholder return (TSR) for the company's peer group and the Company-Selected Measure in the Pay Versus Performance Table;
- The "clear description" of the relationships between (1) executive compensation actually paid and the Company-Selected Measure and (2) the company's TSR and the peer group TSR;
- The Tabular List of the three to seven most important financial performance measures used by the company to link executive compensation actually paid to company performance; and
- For purposes of calculating "executive compensation actually paid" for the Pay Versus Performance Table, amounts related to pensions.

Smaller reporting companies can also elect to take advantage of the transition provisions available for smaller reporting companies for the Inline XBRL tagging and exhibit requirements.

3. Will a company that will lose emerging growth company status at the end of 2023 be required to comply with the final rules in the company's 2024 proxy statement?

Yes. If the company qualifies as a smaller reporting company after losing emerging growth company status, it may elect to rely on the disclosure accommodations provided in the final rules.

4. What steps can an emerging growth company take now if it will be required to comply with the final rules when it files its 2024 proxy statement but does not know whether it will qualify as a smaller reporting company?

A disclosure mock-up is likely to be useful for many companies, whether or not the company is a smaller reporting company. Preparing a disclosure mock-up should assist the company to identify new disclosure data, sources, and controls and procedures that will be required by the final rules.

Another important step that a company should take if it has included any pay versus performance disclosure in its previously filed proxy statements is to identify and reconcile any pay versus performance disclosure in recent proxy statements to the pay versus performance disclosure required by the final rules. This could include the following steps:

- Identify all pay versus performance disclosures included in recent proxy statements;
- Compare those disclosures to the disclosure that the company anticipates including in compliance with the final rules; and
- Identify and reconcile or resolve any potential ambiguities or conflicts as a result of the pay versus performance disclosure required by the final rules.

As discussed in a separate section, companies should note that the SEC stated in the adopting release that although companies that have been providing pay versus performance disclosure in their proxy statements may generally continue to provide these disclosures in their existing format, the placement and presentation of the company's existing disclosures relative to the disclosure required by the final rules must not obscure the required disclosures, place the required disclosures in a less prominent position, or otherwise mislead or confuse investors.

F. General Questions

1. Is the pay versus performance disclosure required by the final rules covered by the compensation committee report?

The compensation committee report covers the executive compensation disclosure contained in the Compensation Discussion and Analysis. To the extent that companies include the disclosure required by Item 402(v) in the Compensation Discussion and Analysis, the compensation committee report will cover this disclosure.

2. Is the new pay versus performance disclosure incorporated by reference into the company's registration statements under the Securities Act or other SEC filings?

No. The final rules provide that the Item 402(v) pay versus performance disclosure will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the company specifically incorporates it by reference.

G. Disclosure Changes and Transition Matters

1. What new metrics do the final rules require that companies have not previously been required to calculate?

The final rules require a new executive compensation metric that companies are unlikely to have previously calculated or disclosed. “Executive compensation actually paid” is derived from total compensation as reported in the Summary Compensation Table, but includes a variety of adjustments that are unlikely to have been made for internal purposes or disclosed publicly. Companies should review the adjustments required by the final rules and ensure that they understand how “executive compensation actually paid” will be calculated.

Existing disclosure requirements already require companies to calculate the other metrics required by the final rules, which include:

- Total compensation for the principal executive officer (PEO) and the average of total compensation for the other named executive officers (NEOs), as reported in the Summary Compensation Table in the company’s proxy or information statement;
- The company’s net income, as shown in its audited financial statements;
- The company’s cumulative TSR, calculated in the same manner as for the stock performance graph in the company’s annual report to shareholders; and
- For companies other than smaller reporting companies, the cumulative TSR for the peer group or index shown either in the stock performance graph or, alternatively, the peer group used for compensation benchmarking purposes, as disclosed in the Compensation Discussion and Analysis in the company’s proxy or information statement.

Although in most cases companies have not previously publicly disclosed these metrics in the format required by the final rules, the company’s financial performance metrics presented in the Tabular List, including the Company-Selected Measure, should be metrics already calculated and used by that company for purposes of tying company financial performance to executive compensation, assuming that the company incorporates pay for performance in its compensation program. Note that the final rules do not require smaller reporting companies to include either the Tabular List or the Company-Selected Measure in their pay versus performance disclosure. *(Revised November 30, 2022)*

2. What significant new disclosures do the final rules require?

The final rules require disclosure about the most important financial performance measures that companies use to link company performance to executive compensation actually paid. Although companies may have already been disclosing, calculating and using these financial performance measures, public disclosure regarding the importance of these measures and the relationship between these measures and executive compensation actually paid will be new for most, if not all, companies. This disclosure may require attention at various levels within a company, especially in the first year that the company is subject to the final rules. This disclosure may also require a company to review and modify the internal procedures related to the creation, review and approval of company disclosure.

Disclosure of the most important company financial performance measures is required by two parts of the final rules. First, the final rules require companies to disclose in the column for the “Company-Selected Measure” in the Pay Versus Performance Table the financial performance metric that, in the company’s assessment, is “the most important” financial performance measure used by the company to link executive compensation actually paid to company performance.

Second, the Company-Selected Measure must be selected by the company from a tabular list, which the final rules refer to as the “Tabular List,” of not less than three and not more than seven financial performance measures that are (again, in the company’s assessment) the most important financial performance measures used by the company to link executive compensation actually paid to company performance.

Disclosing a list of three to seven performance measures as the company’s “most important” pay versus performance financial performance measures, and selecting one of these measures as the company’s most important pay versus performance financial performance measure, will be new for many companies.

Performing the assessments required to identify the financial performance measures presented in the tabular list and to select one of these metrics as the Company-Selected Measure is likely to require action or review by the company’s compensation committee. Although the nature and extent of the compensation committee’s role in these assessments may vary as a result of different approaches to overall compensation policies and practices, especially those related to establishing performance goals and evaluating performance results, the nature of its responsibilities are such that the compensation committee is likely to be involved in these assessments. In addition, if a company includes the pay versus performance disclosure required by the final rules in the Compensation Discussion and Analysis section of the proxy statement, the compensation committee is likely to be involved because the Compensation Discussion and Analysis section is covered by the compensation committee report. Other participants in this

process may include certain senior executive officers, the full board of directors and the company's outside compensation consultant and legal counsel.

Finally, the final rules require a "clear description" of the relationship between the financial performance metrics presented in the Pay Versus Performance Table and executive compensation actually paid. This disclosure will be new for almost all companies. Depending to some extent on the format of the description, this disclosure may require attention at various levels within a company, especially in the first year that the company is subject to the final rules.

Potential questions related to the requirement of the final rules that the Tabular List and the Company-Selected Measure be selected because the company uses these metrics to link company performance to executive compensation actually paid are discussed below. *(Revised November 30, 2022)*

3. Is there a suggested framework for approaching the disclosure required by the final rules?

The following general principles may be helpful when drafting or reviewing a company's pay versus performance disclosure. As with many of the issues presented by the final rules, the procedures and disclosures that a company adopts should reflect its compensation policies and practices, as well as its internal reporting structures and disclosure controls and procedures.

- ***The disclosure required by the final rules is based on disclosure requirements that are different from the disclosure requirements for the Compensation Discussion and Analysis.*** As a general matter, companies should note that the specific disclosure required by the final rules may be both separate and different from the company's disclosure in its Compensation Discussion and Analysis. The most fundamental reason for this is that for most companies, the very specific disclosure required by the final rules may not align well with the company's narrative disclosure about its executive compensation policies and practices in the Compensation Discussion and Analysis, which are prescribed by different disclosure requirements.
- ***The final rules do not require the company to adopt or change any existing compensation policies or practices.*** The final rules do not require companies to adopt new compensation policies or modify existing compensation policies. The SEC clearly stated in the adopting release that the final rules do not require companies to use pay versus performance policies or practices of any kind. Companies remain free to calculate executive compensation in any way they choose and to use any measures of company performance, or no company performance measures at all, when making executive compensation decisions.

- The final rules do require the company to make the disclosures specifically required by Item 402(v).*** On the other hand, companies must provide the disclosure required by the final rules, including but not limited to the Pay Versus Performance Table, which companies must present in the form prescribed by the final rules. This includes disclosure of the compensation paid to the company’s CEO and average compensation paid to the other NEOs using the specific calculation methodologies required by the final rules: total compensation, as presented in the Summary Compensation Table required by Item 402(c)(2)(x) (or, for smaller reporting companies, Item 402(n)(2)(x)) of Regulation S-K, and “executive compensation actually paid,” calculated and presented as required by Item 402(v)(2) (or, for smaller reporting companies, Item 402(v)(8)). The final rules do not permit companies to modify or omit the compensation calculations required in the Pay Versus Performance Table, even if the company does not use one or both of them. Similarly, the final rules do not permit companies to modify or omit net income, TSR and (for companies that do not qualify as smaller reporting companies) peer group TSR, which are required in the Pay Versus Performance Table.
- Existing pay versus performance disclosure in the company’s proxy or information statement, and any new disclosure that supplements the pay versus performance disclosure required by the final rules, must not obscure the disclosures required by the final rules, place that disclosure in a less prominent position or otherwise mislead or confuse investors.*** “Prominence” includes, but is not limited to, which disclosure comes first in the proxy or information statement. Companies that retain any existing pay versus performance disclosure, or provide new disclosure that supplements the disclosures required by the final rules, should ensure that this disclosure satisfies the “prominence” requirement and the other requirements described in this paragraph.
- Consider using the Company-Selected Measure required in the Pay Versus Performance Table, as well as additional measures from the Tabular List, to tell the company’s compensation story.*** The final rules do not provide any flexibility with respect to how executive compensation is calculated and disclosed in the Pay Versus Performance Table, nor do the final rules provide any flexibility with respect to the disclosure of the company’s net income, the company’s TSR or the peer group TSR.

The final rules do allow (and require) that the Company-Selected Measure be, in the company’s assessment, “the most important” financial performance measure actually used by the company to link company performance to executive compensation actually paid. The final rules also permit companies to include additional financial performance measures from the Tabular List in additional columns in the Pay Versus Performance Table. The Company-Selected measure, as well as any additional company performance measures included in the Pay Versus Performance Table, offer an opportunity to bring the Item 402(v) disclosure into greater alignment with the company’s compensation policies and practices.

The final rules permit companies to adopt a structure that a company can use to present a more accurate picture of its pay versus performance policies and practices by including additional performance measures in the Pay Versus Performance Table and, as required by the final rules, if the company includes additional performance measures in this table, including these additional measures in the description of the relationships between executive compensation actually paid and the performance measures shown in the Pay Versus Performance Table during the company's five most recently completed fiscal years.

Evaluate alternative formats for the relationship description. The final rules require companies to describe the relationships between executive compensation actually paid and net income, company TSR and, for companies that are not smaller reporting companies, the Company-Selected Measure, but allow companies to present this description in written or graphical format, or a combination of both. The SEC specifically suggests in the adopting release that a line graph that presents the data could satisfy this requirement:

As discussed in the Proposing Release, the required relationship disclosure could include, for example, a graph providing executive compensation actually paid and change in the financial performance measure(s) (TSR, net income, or Company-Selected Measure) on parallel axes and plotting compensation and such measure(s) over the required time period. Alternatively, the 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.

As suggested elsewhere, companies should consider preparing a mock-up of the new pay versus performance disclosure, especially the relationship description, to aid in evaluating the best format for the relationship description. *(Added November 30, 2022)*

- ***Consider including an alternative pay versus performance table.*** Subject to any guidance that may be published by the staff of the SEC Division of Corporation Finance (the "staff"), and if relevant to the specific company, some companies may wish to consider including an alternative version of the Pay Versus Performance Table that presents a calculation of executive compensation that reflects how the company calculates compensation amounts for purposes of evaluating executive compensation, instead of the total compensation as reported in the Summary Compensation Table and executive compensation actually paid as such amount is calculated under the final rules. If accompanied by appropriate narrative disclosure, an alternative pay versus performance table could assist a company in providing a more accurate picture of the

company's compensation policies and practices, especially with respect to pay versus performance matters, and may be useful disclosure to investors.

If a company includes an alternative pay versus performance table, it should review the statements of the SEC in the adopting release about alternative and supplemental pay versus performance disclosures, which are discussed below. Among other things, an alternative table should not be presented with greater prominence than the Pay Versus Performance Table, and should be clearly identified as an alternative or supplemental table.

In the absence of staff guidance to the contrary, we believe that companies can include an alternative pay versus performance table that shows (1) an alternative presentation of executive compensation as calculated by the company when making executive compensation decisions and (2) any alternate financial performance measures shown on the Tabular List that the company selects to supplement the Company-Selected Measure.

If a company includes an alternative pay versus performance table, it may be appropriate to include a description of the relationship between company performance, as measured by the performance measures shown in the alternative table, to executive compensation, as shown in the alternative table, in a manner consistent with Item 402(v)(5).

- ***Consider adding contextual or clarifying disclosure where appropriate.*** The final rules are heavily prescriptive, rather than principles-based. In other words, the final rules require companies to provide the specified disclosures in their specified forms. The disclosure requirements of the final rules are not qualified in terms such as “if material” or “if applicable.”

This does not preclude a company from providing additional disclosure about the company's compensation policies and practices, especially about how the company uses company financial or other performance measures to link executive compensation to company performance. Even if — or perhaps especially if — the various compensation and performance metrics shown in the Pay Versus Performance Table do not reflect the company's actual policies and practices, it may be beneficial to include additional disclosure that puts the disclosure required by the final rules and the company's actual policies and practices into context.

In some cases, it may also be beneficial to add disclosure to clarify the disclosure required by the final rules. For example, if an event or change affects the comparability of any of the amounts or metrics in the Pay Versus Performance Table from one year to

another, the company could note that fact and explain the nature of the event or change and its impact in a footnote to the Pay Versus Performance Table.

As described below, companies should review any additional or supplemental disclosure to ensure that it is not more prominent than the disclosure required by the final rules, does not downplay or minimize the disclosure required by the final rules, and will not confuse or mislead investors.

4. Is there a suggested disclosure template for the new pay versus performance disclosure?

Other than the format of the Pay Versus Performance Table, which is required by the final rules, and the requirements that apply to the Tabular List, the final rules generally permit a company to present the disclosure required by the final rules in the format and location(s) of the company's choice. We expect that presentation of pay versus performance disclosure under the final rules will vary widely among different industries and among companies within a single industry because the compensation structures of companies differ from each other and each company will determine how it can best present this disclosure in light of the company's particular circumstances. In particular, we expect that there will be significant differences in the description of the relationship between company performance and executive compensation actually paid based on factors such as the following:

- The company's compensation policies and practices;
- The company's most important financial performance measures used to link company performance to executive compensation actually paid;
- How the company presents, explains and justifies its compensation philosophies and decisions; and
- The broad latitude that the company has to present this disclosure in whatever format and location it chooses. For example, the final rules specifically provide that the description of the relationship between executive compensation actually paid to the various company financial performance metrics may be in narrative or graphical format, or a combination of both. As another example, a company can choose whether it wishes to present this disclosure as part of the Compensation Discussion and Analysis section or separately elsewhere. *(Revised November 30, 2022)*

H. Issues Related to Supplemental and/or Additional Pay Versus Performance Disclosure

1. What potential disclosure concerns has the SEC identified that can arise when a company includes pay versus performance disclosure that supplements or is in addition to the disclosure required by the new rules?

The SEC stated in the adopting release that companies must clearly identify any supplemental measures of compensation or financial performance and other supplemental disclosures provided by a company as supplemental. As examples, a company could identify these disclosures by using a heading in the table to indicate that the disclosure is supplemental, or by including language in the text of the proxy or information that states that the disclosure is supplemental.

The SEC also stated in the adopting release that supplemental pay versus performance disclosures, including supplemental compensation and financial performance measures and any prior pay versus performance disclosures that the company includes in a proxy or information statement, must not:

- Obscure the required disclosures;
- Place the required disclosures in a less prominent position than the supplemental disclosures; or
- Otherwise mislead or confuse investors.

The SEC further stated in the adopting release that companies should consider whether other pay versus performance disclosures, including disclosures the company has included in its proxy or information statements in earlier years, would duplicate any of the disclosures required by the final rules, and should consider reducing or eliminating any duplication.

2. If a company has previously included disclosure about its pay versus performance policies and practices in its proxy or information statements, what disclosure issues and concerns merit special attention when preparing the first proxy or information statement that will include the new pay versus performance disclosures required by the final rules?

As described above, in the adopting release the SEC identified a variety of issues that could arise when a proxy or information statement includes both the disclosure required by the final rules and other disclosure that supplements or is in addition to that disclosure. Given these potential concerns, we suggest that a company that has provided pay versus performance disclosure in prior years identify all of its existing pay versus performance disclosures and

review how these disclosures will interact with the location and contents of the disclosure required by the final rules before adding the new Item 402(v) disclosure to its proxy or information statement. The company should also review any new pay versus performance disclosure that is intended to supplement or augment the disclosure required by the final rules from the same perspective.

The SEC's statement that the disclosures required by the final rules should be more prominent than other pay versus performance disclosures includes ensuring that the required disclosures are placed before other voluntary or supplemental disclosures, but is not limited to location. The adopting release indicates that companies should review the question of disclosure prominence broadly, including issues such as the wording of titles and captions, type font and color, and how any graphic disclosure elements are designed and used. Narrative disclosure that suggests that the required disclosure may be less relevant or less useful than additional, supplemental or legacy disclosures provided by the company may also be viewed by the staff as making the required disclosures less prominent than the additional, supplemental or legacy disclosures, in addition to raising potential questions about whether such disclosures might obscure the required disclosures or confuse investors.

Companies that supplement the performance measures in the Pay Versus Performance Table should take care that any additional performance measures are not more prominent than the required information in this table. Companies should also take care that the narrative and/or graphic disclosure that describes the relationships between executive compensation actually paid and any of these supplemental company performance measures does not obscure or reduce the prominence of the disclosures about the company performance measures required by the final rules, and that such disclosure does not "otherwise mislead or confuse investors."

The considerations described above may also require review of how any pay versus performance disclosures contained in the Compensation Discussion and Analysis interact with the disclosures required by the final rules.

I. Executive Compensation Actually Paid

1. How is “executive compensation actually paid” calculated under the final rules?

At a high level, “executive compensation actually paid” to a company’s PEO and other NEOs is calculated by making the following adjustments to total compensation, as reported in the Summary Compensation table:

Add	Deduct
The actuarial present value of pension benefits attributable to the service during the covered fiscal year and prior service cost*	The aggregate change in the actuarial present value of pension benefits*
The fair value as of fiscal year-end of any equity awards granted during the covered year that are unvested at the end of the year	The grant date fair value of any equity awards granted during the year
The change, measured from the end of the prior fiscal year to the end of the most recently completed fiscal year, in the fair value of any equity awards granted in prior years that are unvested as of the end of the covered year	The fair value as of the end of the prior fiscal year for any awards granted in any prior fiscal year that fail to meet the applicable vesting conditions during the covered year
For awards that are granted and vest in the same year, the fair value as of the vesting date	
The change, measured from the end of the prior fiscal year to the vesting date, in fair value of equity awards granted in prior years that vested during the covered year	
The dollar value of any dividends or earnings paid on equity awards in the fiscal year prior to the vesting date that are not otherwise included in total compensation for the year	

* Not required for smaller reporting companies

The amounts added and/or deducted must be included in a footnote to the Pay Versus Performance Table. Refer to the text of the final rules for the full text of the adjustments summarized in the table above. *(Added November 30, 2022)*

2. Can companies exclude signing bonuses, severance and other one-time payments made to the CEO or other NEOs when calculating executive compensation actually paid?

No. Item 402(c) requires these payments to be included in total compensation in the Summary Compensation Table, and Item 402(v)(2) requires the Pay Versus Performance Table to include total compensation as shown in the Summary Compensation Table for the CEO and, as an average, for the other NEOs as a group. In response to comments submitted on the proposed rules suggesting that these payments should be excluded from the calculation of executive compensation actually paid because these payments do not represent “typical” annual compensation, the SEC stated in the adopting release that the amount of these payments may be relevant to shareholders and confirmed that the final rules require companies to include “signing bonuses, severance bonuses, and other one-time payments” when calculating executive compensation actually paid. *(Added November 30, 2022)*

J. The Company-Selected Measure

1. Must all companies disclose a Company-Selected Measure?

Disclosure of a Company-Selected Measure is required except in the following cases:

- The company does not use any financial performances measure to determine compensation;
- The company uses only the financial performance measures required by Item 402(v)(2) (*i.e.*, net income, the company's TSR or, if applicable, the company's peer group TSR) in the Pay Versus Performance Table; or
- The company is a smaller reporting company. (*Added November 30, 2022*)

2. If the most important company financial performance measure shown in the Tabular List is one of the performance measures required to be shown in the Pay Versus Performance Table, what financial performance measure should the company disclose as the Company-Selected Measure in the table?

If the company's most important financial performance measure is already required to be included in the Pay Versus Performance Table, the company should disclose its next-most important measure as its Company-Selected Measure. See footnote 13 in the [Re-Proposing Release](#). (*Added November 30, 2022*)

3. The final rules permit a company to include non-financial measures of the company's performance in the Tabular List, subject to several limitations specified in the final rules. If a company uses financial and non-financial performance measures to link executive compensation actually paid to company performance, can the Company-Selected Measure be a non-financial performance measure?

No. Although a company may include non-financial performance measures in the Tabular List, subject to the limitations contained in the final rules, the final rules require that Company-Selected Measure be a financial performance measure, as defined by the final rules. (*Added November 30, 2022*)

- 4. If a company determines that its Company-Selected Measure for the current fiscal year is different from the Company-Selected Measure used for the prior fiscal years shown in the Pay Versus Performance Table, should the column for the Company-Selected Measure show the new Company-Selected Measure for all of the years shown in the table, or should this column show the Company-Selected Measure that was actually used for each fiscal year?**

The “Company-Selected Measure” for the most recently completed fiscal year should be shown for *all* of the preceding fiscal years shown in the Pay Versus Performance Table. For example, if the Company-Selected Measure for the most recent fiscal year was EBITDA but the Company-Selected Measure for the preceding four fiscal years shown in the table had been Same-Store Sales, the company would title the column “EBITDA” and disclose EBITDA for each covered fiscal year, rather than showing EBITDA for the most recently completed fiscal year and Same-Store Sales for the preceding four fiscal years. *(Added November 30, 2022)*

- 5. Do the final rules require companies to disclose the methodology used to calculate the Company-Selected Measure?**

No, the final rules do not require companies to disclose the methodology used to calculate the Company-Selected Measure, although companies may cross-reference to other disclosures that describe the processes and calculations that go into determining NEO compensation as it relates to the Company-Selected Measure in other parts of the proxy or information statement, if they elect to do so. In addition, the final rules permit companies to supplement the Company-Selected Measure disclosure, so long as any additional disclosure is clearly identified as supplemental, is not misleading and is not presented with greater prominence than the required disclosure. *(Added November 30, 2022)*

- 6. Should a company’s Company-Selected Measure be determined by the company’s compensation committee or by management?**

In most cases, we expect that this will be determined by the compensation committee for the PEO. Who determines the Company-Selected Measure for the other NEOs may vary, potentially depending on the role of the CEO and/or other executive officers in establishing incentive compensation performance targets and awards and other relevant factors. *(Added November 30, 2022)*

K. Peer Group TSR

- 1. If a company uses a peer group for purposes of benchmarking executive compensation that differs from the peer group used in the stock performance graph, can the company use that peer group in the disclosures required by the final rules?**

Yes. For purposes of the peer group TSR shown in the Pay Versus Performance Table and the description of the relationship between the company TSR and the peer group TSR shown in the Pay Versus Performance Table, the final rules permit companies to use either (1) (a) the peer group of companies or (b) the published industry or line-of-business index used by the company for the stock performance graph required by Item 201(e) of Regulation S-K in the company's annual report to shareholders or (2) the peer group of companies it uses for purposes of benchmarking executive compensation, as disclosed in the company's Compensation Discussion and Analysis under Item 402(b) of Regulation S-K. Note that the final rules do not require smaller reporting companies to include peer group TSR in the Pay Versus Performance Table. *(Revised November 30, 2022)*

- 2. If a company uses a peer group of companies that is not a published index, what do the final rules require?**

If a company uses a peer group of companies that is not a published index, the final rules require the company to do the following:

- The returns of each company that is a component of the group must be weighted according to the respective company's stock market capitalization at the beginning of each period for which a return is indicated.
- The company must disclose the identity of the companies that compose the peer group in a footnote. If the company has previously disclosed the identities of the companies in the peer group in a prior SEC filing, the company can comply with this requirement by incorporating that previous disclosure by reference from that filing.
- If the company selects or otherwise uses a peer group of companies that is different than the peer group used by the company for the immediately preceding fiscal year, the company must (a) explain, in a footnote, the reason(s) for this change and (b) compare the company's cumulative TSR with that of both the newly selected peer group and the peer group used in the immediately preceding fiscal year. *(Added November 30, 2022)*

3. If a company uses a peer group in the Pay Versus Performance Table in its current proxy or information statement that is different from the peer group used in the Pay Versus Performance Table in its proxy statement for the immediately preceding year, what disclosure do the final rules require?

If the company selects or otherwise uses a peer group that is different from the peer group used for the immediately preceding fiscal year, the final rules require the company to provide the following disclosure:

- Explain, in a footnote to the Pay Versus Performance Table, the reason(s) for the change; and
- Compare the company's cumulative TSR with the TSR of both the newly-selected peer group and the peer group used in the immediately preceding fiscal year. (*Revised November 30, 2022*)

L. The Pay Versus Performance Table (Item 402(v)(2))

1. Do the final rules specify where the Pay Versus Performance Table and other disclosure required by the final rules must be located in a proxy or information statement?

No. The SEC stated in the adopting release that the final rules do not require companies to include pay versus performance disclosure in the Compensation Discussion and Analysis section because that would suggest that the company considered the pay versus performance relationship in its compensation decisions, which might or might not be true.

Depending on how the company presents its executive compensation disclosure in its proxy or information statement, it may make sense to locate the disclosures required by the final rules near, or in some cases within, the Compensation Discussion and Analysis section. Note that the compensation committee report will cover any pay versus performance disclosure that is included as part of Compensation Discussion and Analysis. *(Revised November 30, 2022)*

2. If a company does not use or calculate one or more of the compensation amounts and/or required performance measures shown in the Pay Versus Performance Table, can the company delete that column or, in the alternative, indicate that the amount in the column is “not applicable”?

No. Even if a company does not use or calculate one or more of the compensation amounts and/or required performance measures required by the Pay Versus Performance Table (*i.e.*, net income, company TSR and, for companies that do not qualify as smaller reporting companies, peer group TSR), the Pay Versus Performance Table must include those amounts and measures. The company can, however, use the accompanying discussion required by the final rules to explain that it does not use such amounts or measures in its executive compensation decisions and to provide context as to why that is the case.

3. What do the final rules require if there is a change in a company’s PEO during one of the years shown in the Pay Versus Performance Table?

In cases where the company has more than one PEO during a single year, the final rules require the company to include additional separate columns showing Summary Compensation Table total compensation and executive compensation actually paid for each PEO for each year shown in the table. In the rows for years during which a PEO did not serve as PEO, the company should indicate “N/A” or “not applicable,” as shown in the example on page 35 of the adopting release. As an example, if the company had two PEOs during the period covered by the Pay Versus Performance Table, the column headings would be as shown below.

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 Named Executive Officers	Average Compensation Actually Paid to Non-PEO Named Executive Officers	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)

(Added November 30, 2022)

4. What do the final rules require if there are changes in the individual NEOs, other than the PEO, from one year to another during the period covered by the Pay Versus Performance Table?

Because the compensation shown for NEOs other than the PEO is the average for each year, the final rules do not require (or permit) any changes in the Pay Versus Performance Table to reflect changes in NEOs. The final rules require that companies identify the individual NEOs for whom executive compensation actually paid is included in the average for each year in a footnote to the table. The SEC believes that this disclosure permits investors to consider whether changes in the average executive compensation actually paid for these NEOs from year to year were due to changes in the individual NEOs included in this group. *(Added November 30, 2022)*

5. What do the final rules require for years in which there are more than four non-PEO NEOs shown in the Summary Compensation Table?

The final rules are silent on how companies should deal with cases in which there are more than four non-PEO NEOs, but the adopting release does state that it is the SEC’s “understanding of the intent of Congress that all NEOs be included in the pay-versus-performance disclosure,” which suggests that average non-PEO NEO compensation actually paid for each fiscal year presented in the PVP Table should include compensation actually paid for all of the non-PEO NEOs shown in the Summary Compensation Table for each fiscal year. Although there is no specific guidance on how to calculate the average executive compensation paid to non-PEO NEOs in years when more than more than four non-PEO NEOs are shown in the Summary Compensation Table, the average would presumably be calculated based on the total executive compensation paid to these persons, who would be identified in the footnote required by the final rules. *(Added November 30, 2022)*

6. What do the final rules require if a person who was a non-PEO NEO shown in the Summary Compensation Table for that year served in that capacity for a portion of the fiscal year before ceasing to be an executive officer or ceasing to be an employee?

There is currently no guidance on how to average executive compensation actually paid to non-PEO NEOs under Item 402(v) when some of these persons served for only a portion of the fiscal year before they either ceased to be an executive officer or ceased to be an employee of the company. However, in the absence of specific guidance, [Compliance and Disclosure Interpretation 217.07](#) (“C&DI 217.07”) in the SEC’s Regulation S-K Compliance and Disclosure Interpretations may by analogy be helpful.

C&DI 217.07 states that an executive officer, other than the principal executive officer or principal financial officer (PFO), who ceased being an executive officer during a fiscal year but remained an employee of the company could be an NEO. To determine whether this person was an NEO, the company should consider the compensation this person received during the entire fiscal year. If this person qualifies as an NEO based on this basis, the company would disclose all of this person’s compensation for the fiscal year during which this person served as both an executive officer and a non-executive officer.

In the absence of staff guidance but based on C&DI 217.07, a company could calculate the average executive compensation actually paid as follows.

- Calculate executive compensation actually paid for each person who served as a non-PEO NEO during all or any portion of the fiscal year based on all compensation for the fiscal year, including compensation for any portion of the fiscal year during which any person served as a non-executive officer.
- Calculate the average by dividing total executive compensation actually paid to these persons by the number of individuals included in this group. Do not pro rate or make any adjustment for part-year service.
- For clarity, in the footnote disclosure to the Pay Versus Performance Table required by Item 402(v)(3), the company could include additional disclosure that (1) identifies each NEO who served for less than the full fiscal year (including any NEO who became PEO during any fiscal year, as discussed in response to the next question) and (2) states the number of months during which each of these non-PEO NEOs served as an NEO (i.e., the number of months of the fiscal year for which any part-year NEO’s compensation actually paid is included in the average). Showing dates of service and amounts of executive compensation actually paid on an individual basis would allow readers to quantify the impact of including persons who served for less than the full fiscal year on the average amount of executive compensation actually paid to non-PEO NEOs. *(Added November 30, 2022)*

7. What do the final rules require if a person who was an NEO for a portion of a fiscal year became the PEO during that fiscal year?

As stated earlier, the final rules require that the executive compensation actually paid to each person who served as PEO during a fiscal year be shown in a separate column.

The final rules do not address how to treat executive compensation actually paid to a person during a portion of a fiscal year if that person served as PEO for another portion of the same fiscal year. In the absence of staff guidance to the contrary, we believe that a company should include all compensation paid to or earned for the full fiscal year by each person who served as PEO during the fiscal year. This would be the case regardless of the reason for part-year service as PEO, including (1) the PEO becomes an executive officer (or vice versa), (2) the PEO becomes a non-executive officer (or vice versa) and (3) the PEO ceases to be an employee of the company.

This would be consistent with Item 402(a)(4) of Regulation S-K, which provides that if a PEO or PFO served in that capacity during any part of a fiscal year for which information is provided, information should be provided as to all of that person's compensation for the full year.

In such cases, a company could include disclosure in a footnote to the Pay Versus Performance Table about the dates of service in each capacity and the amounts of executive compensation actually paid attributable to the respective periods of service as an NEO and as the PEO. *(Added November 30, 2022)*

8. Should a company revise the title of the "Company-Selected Measure" column of the Pay Versus Performance Table to reflect the actual name of the measure of the company's financial performance shown in that column?

Yes, the title of column (i) of the Pay Versus Performance Table, "Company-Selected Measure," should be replaced with the name of the company's most important financial performance measure. This column should include the numerically quantifiable performance of the company, calculated using this measure, for each covered fiscal year. *(Added November 30, 2022)*

9. Can a company include columns to the Pay Versus Performance Table for additional company performance measures or rows for additional fiscal years?

Yes, the SEC stated in the adopting release that the final rules permit a company to add columns for additional company performance measures, and to add rows for additional fiscal years. Companies that chose to add columns or rows with additional information should review

the SEC statements in the adopting release that companies should not obscure the required disclosures, render the disclosure required by the final rules less prominent than other disclosure, or confuse or mislead investors.

10. Do the final rules limit the number of Company-Selected Measures that can be included in the Pay Versus Performance Table?

No, the final rules do not specify a maximum number of Company-Selected Measures that a company can include in the Pay Versus Performance Table. As a practical matter, however, each Company-Selected Measure(s) must be selected from the Tabular List, and the Tabular List cannot contain more than seven performance measures. Note also that the final rules require that the Company-Selected Measure(s) must be “the most important” financial performance measure included on the Tabular List, and the final rules require companies to describe the relationship between each Company-Selected Measure and executive compensation actually paid. Companies that are evaluating disclosure of multiple Company-Selected Measures in the Pay Versus Performance Table should consider whether each proposed Company-Selected Measure is one of the most important financial performance measures shown on the Tabular List and how the company will describe relationship between each of these measures and executive compensation actually paid. *(Added November 30, 2022)*

11. For purposes of the most important company financial performance measure disclosed as the Company-Selected Measure in the Pay Versus Performance Table and the list of the three to seven most important company financial performance measures used by the company to link executive compensation actually paid to the company’s performance shown in the Tabular List, does “most important” refer to the five year period (or three year period, for smaller reporting companies) shown in the table, or to the most recently completed fiscal year?

The final rules require companies to make the “most important” determination on the basis of the most recently completed fiscal year, not over the years shown in the Pay Versus Performance Table. *(Added November 30, 2022)*

12. A company has determined that the company’s TSR is the most important financial performance measure used to link executive compensation actually paid to company performance, but the compensation committee uses company TSR measured over a 12-month period from March 1 of the prior year through February 28 of the current year. How should the company present the Pay Versus Performance Table and the Tabular List?

In this case, the Pay Versus Performance Table must present in column (f) company TSR over the period beginning at the market close on the last trading day before the earliest fiscal year

shown in the table through the end of the fiscal year for which cumulative total TSR is calculated, as required by the final rules.

In addition, the company would present the following disclosure about its use of company TSR for the 12-month period from March 1 to February 28:

- the Tabular List would include company TSR for the 12-month period from March 1 through February 28, because this financial performance measure is one of the most important financial performance measures used to link executive compensation actually paid to company performance;
- the Pay Versus Performance Table would present company TSR for that period in column (i) as the Company-Selected Measure, because the company has determined that this is the most important financial performance measure used to link executive compensation actually paid to company performance; and
- the company would present a clear description of the relationship between (a) executive compensation actually paid by the company to the CEO, and the average of the executive compensation actually paid to the NEOs other than the CEO, and (b) company TSR for the period from March 1 through February 28 over the fiscal years shown in the Pay Versus Performance Table, because this financial performance measure is the Company-Selected Measure. *(Added November 30, 2022)*

13. What do the final rules require companies to disclose in the footnotes with respect to the equity part of the executive compensation actually paid calculation?

The final rules require companies to provide footnote disclosure of the amounts that are deducted from, and added to, the Summary Compensation Table total compensation amounts reported in columns (c) and (e) to calculate the amounts of executive compensation actually paid reported in columns (d) and (f), respectively. The final rules also require footnote disclosure of any valuation assumptions that materially differ from those disclosed at the time of grant. For example, there may be a material difference in assumptions if the registrant has made changes to key assumptions that would have materially changed the grant date fair value if the assumption(s) applied as of the grant date. *(Added November 30, 2022)*

M. The “Clear Description” of How the Company Links Executive Compensation Actually Paid to Company Performance (Item 402(v)(5))

- 1. How many years must be included in the “clear description” of the relationships between executive compensation actually paid and the specified financial performance measures?**

This section must cover the years included in the Pay Versus Performance Table, which is initially three years (two years for smaller reporting companies) and five years (three years for smaller reporting companies) when the final rules are fully phased-in.

- 2. If a company included additional financial performance measures listed in the Tabular List in the Pay Versus Performance Table, is the company required to provide the description of the relationship between executive compensation actually paid and these additional measures?**

Yes. If a company includes additional measures in the table, the company must include a clear description of the relationship between executive compensation actually paid and each additional measure included in the Pay Versus Performance Table over the five most recently completed fiscal years (or such shorter period as is covered by the Pay Versus Performance Table). Companies should also note that such additional disclosures may not be misleading or obscure the required information, and the additional performance measures may not be presented with greater prominence than the required disclosure.

- 3. If the Company-Selected Measure for the most recently completed fiscal year is different from the Company-Selected Measure used for each of the preceding fiscal years shown in the Pay Versus Performance Table, do the final rules require the company to provide a clear description of the relationship between executive compensation actually paid for each of the fiscal years shown in the table and the new Company-Selected Measure, or should the description of this relationship be based on the Company-Selected Measure actually used for the prior fiscal years?**

If there is a change in the Company-Selected Measure, the company must use the new Company-Selected Measure for each of the fiscal years shown in the Pay Versus Performance Table when it describes the relationships between the Company-Selected Measure and executive compensation actually paid. This will require the company to evaluate the relationship of executive compensation actually paid in each prior fiscal year to the new Company-Selected Measure as calculated for each prior fiscal year. *(Added November 30, 2022)*

4. If a company does not use net income or TSR as a financial performance measure for purposes of making compensation determinations, how should the company describe the relationship between executive compensation actually paid and net income or TSR?

Explaining the requirement to describe the relationship of executive compensation actually paid to the required financial performance measures shown in the Pay Versus Performance Table in the adopting release, the SEC stated that

. . . we expect that the descriptions can be scaled depending on their relevance to a particular [company]. For example, if TSR or net income have little correlation, or only a spurious correlation, with pay at a particular registrant, and is not a metric used in their compensation plans, a simple statement to this effect may suffice.

(Added November 30, 2022)

5. Has the SEC provided other guidance about the relationship description?

Yes. The adopting release included the following statement by the SEC:

As discussed in the Proposing Release, the required relationship disclosure could include, for example, a graph providing executive compensation actually paid and change in the financial performance measure(s) (TSR, net income, or Company-Selected Measure) on parallel axes and plotting compensation and such measure(s) over the required time period. Alternatively, the 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. The required table, along with the required relationship disclosures, should provide investors with clear information from which to determine the relationship between executive compensation actually paid and some basic facets of registrant financial performance. *(Added November 30, 2022)*

6. Do the final rules require that the relationship descriptions be in a specific location in the proxy or information statement, or that the relationship descriptions be in a single location?

No. The final rules provide companies with flexibility to decide the location of this disclosure in the proxy or information statement and whether to group any of these relationship disclosures together in a single location or in different locations, provided that any combined description must be “clear.” *(Added November 30, 2022)*

N. The Tabular List (Item 402(v)(6))

1. Is the Tabular List required if a company does not use any financial performance measures to link executive compensation actually paid to company performance?

A company that does not use *any* financial performance measures to link executive compensation actually paid to company performance is not required to present a Tabular List, nor is the company required to disclose a Company-Selected Measure or to describe its relationship to executive compensation actually paid. In these cases, the company may consider including a statement that it does not use any financial performance measures to link executive compensation actually paid to company performance. *(Added November 30, 2022)*

2. What is a “financial performance measure”?

Item 402(v)(5) defines “financial performance measure” as follows:

For purposes of [Item 402(v) of Regulation S-K], “financial performance measures” means measures that are determined and presented in accordance with the accounting principles used in preparing the [company’s] financial statements, any measures that are derived wholly or in part from such measures, and stock price and total shareholder return. A financial performance measure need not be presented within the [company’s] financial statements or otherwise included in a filing with the Commission to be a Company-Selected Measure.

Performance measures that do not satisfy this definition are non-financial performance measures. This definition applies to use of “financial performance measure” throughout Item 402(v).

3. Does the definition of financial performance measure include stock price and TSR?

Yes, stock price and TSR are expressly included in the definition of financial performance measure. *(Added November 30, 2022)*

4. If a company uses fewer than three financial performance measures to link executive compensation actually paid to company performance, how should the company comply with the requirement in the final rules to include not less than three financial performance measures?

If a company uses fewer than three financial performance measures to link executive compensation actually paid to company performance, the final rules permit the company to

include only those measures actually used by the company in the Tabular List, but require that the Tabular List to include all such measures that were used, if any.

In order to avoid confusion in these cases, the company may include a statement that it uses only the measures shown in the Tabular List to link executive compensation actually paid to company performance.

Note that final rules address this situation only with respect to financial performance measures used to link *executive compensation actually paid*, as calculated under the final rules, to company performance. The final rules do not refer to calculations of compensation that the company actually uses for pay versus performance purposes. This distinction should be noted and, if necessary, addressed in any statement of this type.

5. Can a company include performance measures that are not financial performance measures in the Tabular List, such as operational or non-company economic measures?

Yes. The final rules permit companies to include non-financial performance measures in the Tabular List under the following circumstances:

- The company determines that these measures are among its three to seven most important performance measures;
- The company has disclosed its most important three (or fewer, only if the company uses fewer) financial performance measures;
- The Company selects the Company-Selected Measure from the financial performance measures included in the Tabular List; and
- The Company-Selected Measure 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 Pay Versus Performance Table) used by the company to link executive compensation actually paid to the company's NEOs, for the most recently completed fiscal year, to company performance. *(Added November 30, 2022)*

6. If a company includes performance measures that are not financial performance measures in the Tabular List, can the Tabular List include more than seven performance measures?

No. The final rules provide that the Tabular list cannot include more than seven performance measures, regardless of whether the company includes non-financial performance measures in the Tabular List.

7. Do the final rules require a company to rank the financial performance measures included in the Tabular List?

No, the SEC specifically stated in the adopting release that ranking is not required.

8. Do the final rules require financial performance measures to be presented within a company's financial statements or disclosed in a company's SEC filings?

No, the final rules provide that financial performance measures need not be presented within a company's financial statements or otherwise included in any report or other document filed with the SEC to be a Company-Selected Measure. *(Added November 30, 2022)*

9. Do the final rules require any additional disclosure about the financial performance measures included in the Tabular List?

Yes. The final rules require companies to describe how the company calculates any financial performance metric that is not a GAAP financial measure.

The final rules do not require companies to describe why the company selected these financial performance measures, why they are the "most important" pay versus performance metrics used by the company, or how the company applies these measures in making pay versus performance compensation decisions. Although the final rules do not require these disclosures, companies may wish to consider whether any voluntary disclosure of these types might provide a more accurate understanding of the company's pay versus performance policies and practices.

Note that, as discussed in a separate section of this FAQ, the final rules include an exemption from Regulation G and Item 10(e) of Regulation S-K for non-GAAP financial measures that are included in a company's Pay Versus Performance Table.

10. Do the final rules require companies to disclose the methodology used to calculate the company financial performance measures disclosed in the Tabular List?

No, the final rules do not require companies to disclose the methodology used to calculate the company financial performance measures disclosed in the Tabular List. However, the final rules require companies to describe how the company calculates any financial performance metric that is not a GAAP financial measure. As permitted for the Company-Selected Measure,

companies may cross-reference to other disclosures that describe the processes and calculations that go into determining NEO compensation as it relates to the measures shown in the Tabular List in other parts of the proxy or information statement. *(Added November 30, 2022)*

11. If a company uses different groups of financial performance measures for the PEO and the other NEOs, how should the company comply with the Tabular List requirements?

The final rules permit companies to disclose the Tabular List in three different ways, depending on how it uses company financial performance measures to link executive compensation actually paid to the PEO and the other NEOs to company performance:

- A single Tabular List for the PEO and the other NEOs, if the company uses the same financial performance measures for the PEO and all of the other NEOs;
- Two separate Tabular Lists, one for the PEO and one for all NEOs other than the PEO, if the company uses one group of company financial performance measures for the PEO and a different group of financial performance measures for the other NEOs; or
- Separate Tabular Lists for the PEO and each of the other NEOs, if the company uses different groups of financial performance measures for the PEO and each of the other NEOs.

In the second and third cases, each Tabular List should include at least three (unless the company uses fewer than three) and no more than seven company financial performance measures. In addition, each Tabular List may include non-financial performance measures if such measures are among the most important company performance measures used to link executive compensation actually paid to company performance for the relevant NEO or group of NEOs, but in no event may more than seven performance measures be included in any Tabular List. *(Revised November 30, 2022)*

12. If a company provides more than one Tabular List, how many financial performance measures must each Tabular List include?

Each Tabular List must include at least three, but not more than seven, financial performance measures that in the company's assessment represent the most important financial performance measures used by the company to link company performance to the executive compensation actually paid to the PEO and/or the specific NEO or NEOs for the most recently completed fiscal year.

However, if the company uses fewer than three financial performance measures for pay versus performance purposes, the final rules permit the company to include only those measures actually used by the company in the Tabular List, but require that the Tabular List to include all financial performance measures that were used, if any.

O. Non-GAAP Financial Measures

- 1. The Company-Selected Measure and any additional financial performance measures included by a company in the Pay Versus Performance Table are non-GAAP financial measures, as are several of the other financial performance measures shown in the Tabular List. Is the company required to comply with Regulation G and/or Item 10(e) of Regulation S-K because the Pay Versus Performance Table and the Tabular List include non-GAAP financial measures?**

The final rules include an exemption from Regulation G and Item 10(e) of Regulation S-K for non-GAAP financial measures that are included in a company's Pay Versus Performance Table.

Although the exemption refers only to presentation of a Company-Selected Measure and any additional measures that the company elects to provide in the Pay Versus Performance Table, in the absence of any staff guidance to the contrary, we believe that this exemption would also apply to presentation of non-GAAP financial measures in the description of the relationships between company performance and the Company-Selected Measure and any additional measures shown in the Pay Versus Performance Table because the requirement to describe these pay versus performance relationships arises because these financial performance measures were shown in the Pay Versus Performance Table, which is covered by this exemption.

For the same reason, we also believe that, in the absence of staff guidance to the contrary, the exemption for non-GAAP financial measures would apply to any non-GAAP financial measures included in the Tabular List because the Company-Selected Measure and any additional measures shown in the Pay Versus Performance Table must be included in the Tabular List.

P. Other Topics: Regulation FD and Potential Impacts on Proxy Advisory Services and Financial Analysts

1. Could non-public disclosure of the company’s pay versus performance metrics be subject to Regulation FD?

Materiality depends largely on the facts and circumstances of specific situations, so it is difficult to provide a definitive answer. Companies should be aware that disclosure that includes or suggests non-public information about the company’s financial condition or results of operations or the conduct or development of its business could be material. Unless the non-public information is not material or disclosure of material non-public information to the recipient of the information would be exempt under Regulation FD, the company should either disclose the information in a manner that complies with Regulation FD or abstain from non-public disclosure of the information.

2. Will the pay versus performance disclosure required by the final rules affect how proxy advisory services apply their voting recommendation policies or calculate corporate governance ratings, or how institutional investors with their own voting and governance policies view the company?

At the time these FAQs were published in November 2022, the impact of the pay versus performance disclosure required by the final rules on the voting policies and corporate governance ratings of proxy advisory services is unknown. The impact on how institutional investors view executive compensation policies and payments is also unknown.

The leading proxy advisory services and many institutional investors have developed policies and positions on pay for performance that are based on compensation and performance measures that differ from those required by the final rules. A [post](#) on the Glass Lewis Blog on October 19, 2022 essentially takes a wait-and-see position on the value of “executive compensation actually paid” as a compensation measure, noting that Glass Lewis and others have developed their own compensation measures and analytic frameworks in the years since Congress enacted the 2012 statutory mandate and the SEC published the proposed pay versus performance rules in 2015.

It is unlikely that any meaningful assessment of the impact of the SEC-mandated pay versus performance disclosure on the voting policies and corporate governance ratings issued by proxy advisory services and the policies and voting of institutional investors will be possible until most companies with a December 31 fiscal year end have filed their proxy statements, and a full assessment may require more time and information. *(Revised November 30, 2022)*

3. How will financial market participants other than institutional investors use the company's pay versus performance disclosure under the final rules?

It is possible that, in some cases, the disclosures in the Tabular List could affect the metrics that analysts use to evaluate and predict the company's financial performance. The discussion of the relationship between executive compensation actually paid by the company and these company performance measures could also affect how analysts evaluate future company disclosures. Companies may wish to consider the potential impact of the new pay versus performance disclosures on the views of financial analysts when assessing the financial performance measures that the company will include in the Tabular List and in the Pay Versus Performance Table.

Q. Links to Pay Versus Performance Materials

1. What materials have been published by the Securities and Exchange Commission related to the pay versus performance rules?

The following materials are available on the website of the SEC:

Final Rules:

Final rules: [Pay Versus Performance](#), Release No. 34-95607 (August 25, 2022)

Small Entity Compliance Guide: [Pay Versus Performance](#) (Modified October 11, 2022)

Fact sheet: [Pay Versus Performance](#) (August 25, 2022)

Press release: [SEC Adopts Pay Versus Performance Disclosure Rules](#) (2022-149, August 25, 2022)

Statements by the Chair and Commissioners:

[Statement on Final Rule Regarding Pay Versus Performance](#) (Chair Gary Gensler, August 25, 2022)

[Neither Pay nor Performance](#) (Commissioner Hester M. Peirce, August 25, 2022)

[Statement on Pay versus Performance](#) (Commissioner Jaime Lizárraga, August 25, 2022)

Reopening of Comment Period:

Reopening of comment period: [Reopening of Comment Period for Pay Versus Performance](#), Release No. 34-94074 (January 27, 2022)

Fact sheet: [Pay Versus Performance: Reopening of Comment Period](#) (January 27, 2022)

Press release: [SEC Reopens Comment Period for Pay Versus Performance](#) (2022-11, January 27, 2022)

Proposed Rules:

Proposed rules: [Pay Versus Performance](#), Release No. 34-74835 (April 29, 2015)

Press release: [SEC Proposes Rules to Require Companies to Disclose the Relationship Between Executive Pay and a Company's Financial Performance](#) (2015-78, April 29, 2015)

(Revised November 30, 2022)