

# KIRKLAND ALERT

May 2015

## SEC Proposes Pay Versus Performance Proxy Disclosure Rules

On April 29, 2015, the SEC proposed [disclosure rules](#) pursuant to Section 953(a) of the Dodd-Frank Act that address the relationship between executive compensation actually paid and the financial performance of the registrant. All registrants, other than foreign private issuers and registered investment companies, would be required to include an additional table in any proxy or information statement soliciting the election of directors or the approval of compensation or benefits plans showing (i) executive compensation actually paid to the registrant's named executive officers (NEOs) over each of the registrant's five most recently completed fiscal years (three years for smaller reporting companies), (ii) the registrant's cumulative total shareholder return (TSR) for the same period, and (iii) other than for smaller reporting companies, the TSR of a peer group chosen by the registrant for the same period. Consistent with other disclosures required by Item 402, the proposed pay-versus-performance disclosure would be subject to the say-on-pay advisory vote on executive compensation.

The proposed rules require the disclosure of compensation actually paid to be presented separately for the principal executive officer (PEO) and as an average for the remaining NEOs. If the registrant has more than one PEO, the compensation provided for all PEOs would be aggregated for the years in which more than one person served, rather than separately listed (as is the case with other tabular proxy disclosure). The proposed rules provide for calculation of compensation "actually paid" by beginning with the value used for "total compensation," as disclosed in the Summary Compensation Table, and (i) excluding changes in actuarial present value of benefits under defined benefit and actuarial pension plans that are not attributable to the applicable year of service and (ii) substituting the fair value of equity awards calculated on the vesting date of such awards, rather than the grant date or date of exercise. The proposed rules further provide that amounts deducted from, and added to, "total compensation" should be disclosed in a footnote to the new table for both the PEO and the other NEOs. Registrants other than smaller reporting companies must also disclose the TSR of a peer group, which may be the same peer group used in the registrant's Item 201(e) disclosure or the peer group used in the CD&A for benchmarking compensation practices. The additional table, as proposed, appears at the end of this alert. Notably, the SEC notes that the proposed rules will not reveal significant new information to shareholders relative to the disclosure already available. Rather, the SEC believes that the new disclosure will supplement the existing compensation disclosure to assist shareholder evaluation of the registrant's executive compensation practices.

In addition to the new summary table, the proposed rules require the table to be supplemented with additional disclosure describing the relationship between the ex-

**Proposed SEC rules would require disclosure of actual compensation paid to named executive officers relative to registrant's and its peers' performance.**

ecutive compensation actually paid and the TSR of the registrant and the relationship between the registrant TSR and the peer group TSR. The additional disclosure may be presented as a narrative, graphically or a combination of the two.

If adopted, the proposed rules include a phase-in period of two years for smaller reporting companies and three years for all other registrants. A registrant must provide pay-versus-performance disclosure only for years in which it was a reporting company, permitting newly public companies to phase disclosure in over three or five years, as applicable. The SEC release does not indicate when the proposed rules would go into effect.

### Pay Versus Performance

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

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