



Oct 25, 2022

# SEC Adopts Pay Versus Performance Disclosure Rules

## Intended to provide more comparable disclosures to evaluate executive compensation policies

### Summary

On August 25, 2022, the Securities and Exchange Commission (SEC) adopted amendments to Item 402 of Regulation S-K, *Executive Compensation*, to implement requirements mandated by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The [final rules](#) add Item 402(v) of Regulation S-K and will require registrants to disclose the relationship between executive compensation actually paid and financial performance of the registrant. The SEC initially proposed the amendments in 2015, though they were finalized in August after re-opening the comment period on the proposal earlier in 2022. The new disclosure requirements are intended to provide more transparent and readily comparable disclosures for investors to evaluate a registrant’s executive compensation policies. The press release is available [here](#) and the fact sheet is available [here](#).

### Key Highlights of S-K Item 402(v), *Pay versus performance*

S-K Item 402(v) requires registrants to provide a table (see Pay Versus Performance table below) to disclose executive compensation actually paid to executives for whom disclosure is currently required in the Summary Compensation Table (SCT)<sup>1</sup>, as well as the following financial performance measures:

- 🕒 Cumulative total shareholder return (TSR) for the registrant.
- 🕒 TSR for the registrant’s chosen peer group.
- 🕒 The registrant’s net income.
- 🕒 Measure used by registrant to measure financial performance (company-selected measure).

### Pay versus Performance Table

Year	Summary Compensation Table for Total Principal Executive Officer (PEO)	Compensation Actually Paid to PEO (a)	Average Summary Compensation Table Total for Non-PEO Named Executive Officers (NEOs)	Average Compensation Actually Paid to Non-PEO NEOs	Value of Initial Fixed \$100 Investment Based On:		Net Income	Company-Selected Measure (c)
					Registrant TSR (b)	Peer Group TSR		

<sup>1</sup> Persons covered under the named executive officers in the SCT are specified in Item 402(a)(3) of Regulation S-K.



- a. Executive compensation "actually paid" during a year is adjusted for certain amounts related to equity-based compensation and defined benefit and actuarial pension plans.
- b. TSR is defined in Item 201(e) of Regulation S-K (i.e., dividends plus or minus the change in share price over the measurement period).
- c. If a registrant does not compare executive compensation actually paid to any financial performance measures, or if it only uses a financial measure required by S-K Item 402(v), the registrant would not be required to disclose a company-selected measure.

Registrants are required to provide a clear description of the relationships between the financial performance measures and the compensation actually paid to the registrant's NEOs. The description, which may be presented narratively, graphically, or a combination of the two, should include a discussion of:

- ④ The relationship between the executive compensation actually paid and registrant's TSR, net income, and company-selected measure, and
- ④ The relationship between the registrant's TSR and peer group TSR.

In addition to the company-selected measure above, registrants are required to include a tabular list of three to seven financial performance measures that they believe to be the "most important"<sup>2</sup> to link executive compensation actually paid to the performance of the company for the most recently completed fiscal year.

### Scope and Effective Date

S-K Item 402(v) is effective for fiscal years ending on or after December 16, 2022, in proxy and information statements that require S-K Item 402 disclosures. The rule applies to all reporting companies except for:

- ④ Foreign private issuers.
- ④ Registered investment companies (other than business development companies).
- ④ Emerging growth companies.

While smaller reporting companies (SRCs) are not exempt from the requirements, they are permitted to scale their disclosures. SRCs may omit disclosures of the registrant's peer group TSR, company-selected metric, and the tabular list of the "most important" financial performance measures.

### Transition

Registrants are required to provide the pay versus performance disclosures for the five most recently completed fiscal years (three for SRCs) following a transition period. The transition period permits registrants to disclose:

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<sup>2</sup> The "most important" determination should be made considering only the most recently completed fiscal year. While disclosure of the measure's methodology is not required, registrants should consider whether it would be helpful to an understanding of the measure. If fewer than three measures were used by the registrant, the tabular list must include all measures used. If the registrant considers a non-financial measure to be one of the "most important" measures, the rule permits, but does not require, it to be included in the tabular list.



- ⑥ Three years of information (two for SRCs) in the first proxy or information statement that requires compliance with S-K Item 402(v); and
- ⑥ An additional year of information added to the disclosure in each of the next two annual proxy or information statement filings (next year's annual proxy filing for SRCs).

Newly public companies may provide the disclosures for the most recently completed fiscal year in their first proxy or information statement and add a subsequent year of information in future filings until all required years are presented.

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