U.S. Chamber of Commerce

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June 25, 2025

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: June 26th Roundtable on Executive Compensation Disclosure

Dear Ms. Countryman:

The U.S. Chamber of Commerce ("Chamber") submits these comments for the Securities and Exchange Commission's ("SEC") roundtable regarding public company executive compensation disclosure. The Chamber commends the SEC for holding this roundtable on a timely issue and frequent topic of discussion within the SEC's corporate disclosure framework. We appreciate the Chairman's initiative to review disclosures with respect to the public company model to evaluate whether certain disclosures serve as impediments to companies accessing and remaining in the public markets.

As the SEC discusses this subject and considers potential reforms in this area, the Chamber provides the following recommendations, which are discussed in further detail below:

1. The SEC should fundamentally reassess current requirements under Item 402 of Regulation S-K (including Compensation Discussion & Analysis, or "CD&A") and adopt any changes or simplification necessary to ensure investors receive clear and decision-useful information regarding executive compensation;

2. The SEC should review current perquisite ("perk") disclosure requirements and exempt from perk disclosure certain expenses, including expenses for personal security;

3. The role and influence of proxy advisory firms should be assessed as part of any discussion about corporate decisions and disclosures regarding executive pay;

4. While the Chamber continues to support Congressional repeal of Section 953(b) of the 2010 Dodd-Frank Act (the "pay ratio" rule), the SEC should use

its existing authority to address compliance challenges that businesses continue to face under the final pay ratio rule adopted by the SEC in 2015;

5. The SEC should make changes to its 2022 rule implementing Section 953(a) of the Dodd-Frank Act (the "pay versus performance" rule) to adopt a more principles-based approach to the requirement;

6. The SEC, along with the federal banking regulators, National Credit Union Administration, and the Federal Housing Finance Authority, should abandon an overly prescriptive 2016 proposal to implement Section 956 of the Dodd-Frank Act ("incentive compensation" rule) and reassess Section 956 implementation;

7. The SEC's rule implementing Section 954 of the Dodd-Frank Act ("clawback" rule) should be revisited so that the rule reflects clawback policies that companies have enacted since 2010; and,

8. The SEC should seek further tailoring of executive compensation disclosure requirements for small issuers, including smaller reporting companies (SRCs) and emerging growth companies (EGCs).

Background

In his statement accompanying the announcement of the roundtable, Chairman Atkins noted that executive compensation disclosures "have become increasingly complex and lengthy" and questioned whether the "increased complexity and length have provided investors with additional information that is material to their investment and voting decisions."[1]

The complexity of executive compensation disclosures today is largely the result of multiple SEC rulemakings on the topic stretching back decades, SEC staff interpretations, and Congressional mandates for specific disclosures regarding executive compensation. Executive compensation disclosure mandates have been layered on top of each other over the years, and with each new rulemaking the SEC has done little aggregate analysis to determine whether the full scope of executive compensation disclosures provide investors with material information and a clear picture of executive pay at a particular company.

[1] Statement on the Upcoming Executive Compensation Roundtable. Chairman Paul Akins – May 16, 2025. (Atkins Statement)

In 2006, the SEC adopted rules on executive compensation, including new requirements for compensation discussion & analysis (CD&A) under Item 402 of Regulation S-K.[2] These rules were "intended to provide investors with a clearer and more complete picture of the compensation earned by a company's principal executive officer, principal financial officer, and highest paid executive officers and members of its boards of directors."[3] While principles-based in nature, continuously evolving staff views and interpretations of CD&A has contributed to a marked increase in the volume of information provided by companies regarding executive compensation.

Dodd-Frank Executive Compensation Rules

The complexity of existing SEC requirements was compounded by the 2010 Dodd-Frank Act, which contained a panoply of new executive compensation rules. As the Chamber has pointed out in previous comment letters to the SEC, the requirements under many of these mandates, when disclosed alongside CD&A and extensive tabular disclosure in proxy materials, can confuse - rather than clarify - executive compensation policies at public companies.

The most significant of these include:

- Section 951, requiring that every public company include a "say on pay" resolution with its proxy materials and disclosures regarding golden parachutes;
- Section 953(a), the pay versus performance rule;
- Section 953(b), the pay ratio rule;
- Section 954, the clawback rule; and,
- Section 956, a requirement that the federal financial regulators jointly prescribe rules governing incentive compensation agreements at financial institutions.

Some of these rules (e.g. pay versus performance and the clawback rule) were only recently finalized by the SEC – more than ten years after the Dodd-Frank Act was signed into law and nearly fifteen years after the 2008 financial crisis which precipitated the Dodd-Frank Act. Moreover, many of the rules recently finalized were done without adequate comment periods and cost-benefit analysis. Others (e.g. Section 956) have yet to be finalized.

Materiality Standard

As with any other area of corporate disclosure, the traditionally employed definition of materiality must remain the guidepost to determine what information regarding

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[2] Executive Compensation and Related Person Disclosure – Sep. 8th, 2006. (SEC 2006 Rule)
[3] SEC 2006 Rule at 1

executive compensation must be disclosed by public companies.[4] Since the securities laws were first enacted, materiality has been the standard to determine what information public companies must disclose to investors. In the 1976 *TSC Industries Inc. vs. Northway* decision, the Supreme Court established a meaningful standard of materiality that was designed to provide investors with the significant information they need to make informed voting and investment decisions. Importantly, the Court provided further guidance but noted that the "disclosure policy" under the federal securities laws "is not without limit" because investors should be safeguarded from being overwhelmed with information that runs counter to the goal of rational investor decision-making.

The Court operationalized this principle in its decision – subsequently affirmed by the Court in *Basic, Inc. v. Levinson* – by explicitly rejecting the notion that information is material if it "might" be important to an investor in favor of the following test: information is material for purposes of federal securities regulation if "there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote" or invest.

The Court has noted its concern that absent a defined materiality standard, investors could be buried "in an avalanche of trivial information – a result that is hardly conducive to informed decision making." The materiality standard has served investors well for decades and has been a bedrock of corporate disclosure in the United States.

We welcome Chairman Atkins' recognition of the importance of materiality and his statement that the SEC should engage in retrospective review of rules to ensure that investors do not receive "an overload of immaterial information."[5] The prioritization of the materiality standard is especially critical when it comes to executive compensation disclosure given the often technical nature of executive compensation arrangements at public companies.

Recommendations

1. **The SEC should fundamentally reassess current requirements under Item 402 of Regulation S-K (including Compensation Discussion & Analysis, or "CD&A") and adopt any changes or simplification necessary to ensure investors receive clear and decision-useful information regarding executive compensation.**

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[4] *See*: U.S. Chamber of Commerce. "Essential Information: Materiality." Winter 2017. Available at: https://www.uschamber.com/ccmc-migration/wp-content/uploads/2013/08/U.S.-Chamber-Essential-Information_Materiality-Report-W_FINAL.pdf?x48633

[5] Atkins Statement

A 2013 SEC staff report noted that requirements for executive compensation disclosure have been amended by the SEC more often than any other disclosure topic[6] and that executive compensation requirements often result in "lengthy, technical disclosure." The report recommended that the SEC evaluate current requirements to ensure they remain useful to investors.[7]

A previous report from the Chamber summarized that CD&A provided by most companies is laden with technical jargon and information that is immaterial to investors.[8] Recent estimates place the average CD&A in a company's proxy statement at roughly 10,000 words, or 15 pages with a 10-point font.[9] For many companies, CD&A may be significantly longer, covering dozens of pages alongside every other piece of information that companies are required to include every year with their proxy materials.

Despite all of the information provided by companies that stems from CD&A and other rules, even sophisticated *institutional* investors have difficulty understanding executive compensation disclosures. A 2015 Stanford Business School survey found that only 38% of institutional investors found executive compensation disclosure "clear and easy to understand."[10] Notably, this survey was conducted before several of the executive compensation rules contained in the Dodd-Frank Act were implemented.

Specific Item 402 Recommendations

- The number of named executive officers (NEOs) for which executive compensation disclosures are required should be reduced to include the chief executive officer (CEO), chief financial officer (CFO), and the one highest paid employee. Disclosure severance compensation of former NEOs should also be included in the CD&A rather than compensation tables.

- CD&A currently requires complex and voluminous disclosure about how the compensation committee utilized peer groups, benchmarking and market studies to arrive at pay decisions. The focus of CD&A should be on the actual pay decisions and not on the process that the compensation committee utilized to arrive at those decisions. In addition, CD&A also requires significant and

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[6] Report on Review of Disclosure Requirements in Regulation S-K. SEC Staff Report – December 2013. (Staff S-K Report)
[7] Staff S-K Report at 101
[8] Corporate Disclosure Effectiveness: Ensuring a Balanced System that Informs and Protects Investors and Facilitates Capital Formation – U.S. Chamber Report (Spring 2014)
[9] Preparing for Proxy Season 2022 – Equilar Report (November 2021)
[10] 2015 Investor Survey: Deconstructing Proxy Statements – What Matters to Investors. D. Larcker, R. Schneider, B. Rayan, A. Boyd - Rock Center for Corporate Governance, Stanford University. (February 2015)

voluminous disclosures about payments that may be made under a variety of employment termination circumstances, most of which may never occur. Focusing on disclosing events that have actually occurred is much more likely to be useful to investors.

- The SEC should address the timing mismatch that currently exists between bonus and equity disclosure that is reported in the summary compensation table (SCT). Current rules stipulate that non-equity incentive payments must be reported for the relative performance year, but equity incentive payments are reported for the year in grant. This is at odds with the way that compensation committees typically consider compensation for a given performance year.

- The SEC should also determine whether certain details required to be included in compensation tables under Item 402 are necessary or of use to investors. One example that stands out is the "grants of plan-based awards" table. Much of the information currently included in these tables can be found either in Section 16 filings or elsewhere in the proxy statement.

- Because change in pension value included in the SCT is based upon changes in interest rates (not realized compensation), the SEC should consider eliminating this component from the SCT.

2. **The SEC should review current perquisite ("perk") disclosure requirements and exempt from perk disclosure certain expenses, including expenses for personal security.**

Item 402 of Regulation S-K generally requires that companies disclose personal benefits ("perks") given to an NEO if the total value of all perks exceeds $10,000. Item 402 contains a two-step test for companies to determine whether certain benefits should be disclosed as a perk. This test stipulates that 1) an item is not a perk or personal benefit if it is integrally and directly related to the performance of the executive's duties; and 2) an item is a perk or personal benefit if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees.

The SEC has issued previous guidance regarding this requirement to assist companies in determining what benefits may constitute a perk. However, the two-step test remains difficult in practice for even the most experienced of companies as it requires a level of nuanced judgment that is overly burdensome. This reality is the opposite of the SEC's goal of promoting clear and consistent disclosure. The $10,000 threshold is also outdated and extremely low, which can result in disclosures that may not be material to investors.

While the Chamber agrees that the types and amount of perks an executive receives can be important information to investors, the SEC should review whether certain expenses should be considered as personal “benefits” to executives.

For example, in light of recent events and the threats that many top executives at public companies receive, expenses related to personal security of NEOs are not, in the Chamber’s view, a “perk” as defined under Item 402. There are various costs related to security that the SEC should make clear are not perks for purposes of Item 402. While travel-related costs are fairly common amongst companies, depending on the executive some companies also provide home security systems, protection from cyberthreats, bodyguards, or access to apartments when traveling. Disclosure of this specific information is not only likely to be immaterial to investors, but it can also give potential threat actors access to highly sensitive information.

3. **The role and influence of proxy advisory firms should be assessed as part of any discussion about corporate decisions and disclosure regarding executive pay.**

While the SEC’s June 26th roundtable is focused specifically on executive compensation disclosures, the Chamber believes that any discussion regarding public company executive pay and pay disclosure must examine the influence of proxy advisory firms in executive compensation structures.

Proxy advisors hold tremendous influence over the outcome of shareholder votes at public companies, and the industry is controlled by two firms – Institutional Shareholder Services (ISS) and Glass Lewis. ISS and Glass Lewis are riddled with conflicts of interest and both have a track record of making significant errors with respect to company information or employing flawed analysis during annual proxy seasons. Both proxy advice firms have also tended towards adopting “one size fits all” policies regarding executive compensation and corporate governance that do not take into account the specific profiles of each public company. Concerningly, most companies do not have an opportunity to review proxy advisor recommendations in order to address any errors or flaws in analysis committed by a proxy advisor before the information is used to formulate a voting recommendation.

Within the context of executive compensation, a glaring example of both proxy advisor influence and conflicts of interest are the positions taken by ISS and Glass Lewis regarding Section 951 of the Dodd-Frank Act (“say on pay” votes). Congress made it abundantly clear in Section 951 that every public company is required to hold a regular nonbinding shareholder vote on approval of executive compensation, but that such vote could occur every year, every two years, or every three years, per a company's discretion.

Soon after the Dodd-Frank Act passed, ISS and Glass Lewis both adopted policies that *every* public company should hold their say on pay vote annually. The proxy advisors did this without any evidence regarding whether a particular frequency of voting cycle would provide better information to shareholders than a different cycle, or whether differences among companies and their circumstances might warrant a frequency cycle longer than one year. The firms also did not consider the shareholder cost that would result from companies having to go through the say on pay process every year when holding a vote every two or three years might be in the best interest of shareholders and companies. Perhaps more to the point, under this policy institutional investor clients would have to retain ISS and Glass Lewis' services every year to help them decide how to vote on say on pay resolutions.

The actual voting outcomes regarding say on pay and other resolutions also highlights the large influence that ISS and Glass Lewis continue to wield. One recent study showed that support for say on pay resolutions at S&P 500 companies was 28% less when ISS issued an "against" recommendation.[11] There is little question that public companies must take into consideration how ISS or Glass Lewis will recommend on a vote regarding executive compensation when they go about designing pay and incentive plans, and also when deciding how to disclose these programs. As a result, public companies often write their disclosures with ISS and Glass Lewis – not their direct investors – as the primary audience.

Furthermore, proxy advisors will sometimes demand action on a compensation-related matter, which may entail a significant investment of resources by the company, even if the resolution passes but is perceived as not garnering sufficiently high support (usually approximately 70% of the vote). This means that companies can win the vote but still effectively rhetorically lose, further magnifying the proxy advisors' sway in this space. The SEC should consider whether the outsized influence of conflicted third parties is ultimately good for shareholders.

The Chamber continues to strongly support changes to the rules governing proxy advice that incorporate many of the reforms included in a 2020 SEC rulemaking.[12] These reforms included a mechanism that allows public companies to provide feedback and point out any errors in analysis within a proxy advisor recommendation

[11] Say On Pay and Proxy Vote Results. Semler Brossy (January 2025) at 2.
[12] Exemptions from the Proxy Rule for Voting Advice (July 2020) https://www.sec.gov/files/rules/final/2020/34-89372.pdf

before a vote takes place, and accountability under the SEC's antifraud rules when a proxy advisor makes false or misleading statements.

4. **While the Chamber continues to support Congressional repeal of Section 953(b) of the 2010 Dodd-Frank Act (the "pay ratio" rule), the SEC should use its existing authority to address compliance challenges that businesses continue to face under the final pay ratio rule adopted by the SEC in 2015.**

The SEC's finalized pay ratio rule is a fundamentally flawed regulation that seemingly provides little benefit for investors, adversely impacts the ability of American companies to compete in a global economy, makes it more difficult for businesses to engage in efficient capital formation, and damages the public company model by making public companies subject to activist attacks and criticisms that are based upon misleading data. The intent behind the pay ratio rule has always been overtly political, as the rule attempts to address a problem that should be addressed through the political system and Americans' elected representatives; the rule has never been about providing investors with material, decision-useful information. Pay ratio disclosures under the current rules do not accurately reflect internal pay or labor practices and are too simplistic to provide meaningful insights into how pay ratios compare across companies.

Full statutory repeal of the pay ratio rule is the only way to adequately protect investors from this harmful and costly regulation. Unfortunately, when the SEC finalized the pay ratio rule in 2015, it missed an opportunity to implement Section 953(b) without placing unnecessary burdens upon public companies and their shareholders. Even without congressional repeal, the SEC has adequate authority under Section 953(b) to implement a differently-contoured rule to meet Congress' directive.

In 2017, then-Acting Chairman Mike Piwowar solicited comments on potential changes to the pay ratio rule. Because the 2015 rule remains intact, the Chamber reiterates several of our recommendations provided in response to Chairman Piwowar's request, including:

- The SEC should exclude all non-U.S. employees as well as seasonal and part time employees from the median employee calculation or, at a minimum, allow the foreign data privacy exemption and the de minimis exemption to operate independently of each other;

- The SEC should create a safe harbor to allow issuers the option of using industry median compensation data compiled by the Bureau of Labor Statistics;

- The SEC should rely on and adopt prevailing standards regarding the definition of independent contractors; and,

- The SEC should exclude employees who are on a leave of absence or have been furloughed from the median employee calculation.[13]

5. **The SEC should make changes to its 2022 rule implementing Section 953(a) of the Dodd-Frank Act (the "pay versus performance" rule) to adopt a more principles-based requirement.**

When Congress adopted Section 953(a) in 2010, there was an underlying argument that the only way for investors to begin receiving disclosure about the relationship of executive pay to company performance was through a new regulatory mandate. By the time the SEC ultimately adopted a rule to implement Section 953(a) twelve years later in 2022, that argument was obsolete given the volume and detail of disclosure being provided by public companies at their own initiative on matters related to executive compensation, including the relationship between pay and performance.

Moreover, the SEC's 2022 final rule contains provisions that compound the problems that arise from imposing a new requirement on top of existing mandates. For example, the rule permits – and, some may argue, encourages – companies to include nonfinancial performance metrics as part of their pay versus performance calculation. Not only is this at odds with the text of Section 953(a) – which makes clear that companies should use *financial* performance metrics for comparison – it also creates new threats to shareholders as companies are encouraged to align executive pay with objectives that are unrelated to shareholder return.

Additionally, the requirement to disclose "compensation actually paid" (CAP) alongside existing calculations of compensation paid to executives necessitates further explanatory disclosure from companies to address any confusion that multiple and potentially conflicting amounts create for investors. In fact, the description of depicted amounts as CAP is inherently misleading because a large portion of the amounts shown include hypothetical valuations of equity awards that in many cases have not yet been earned or paid.

Companies also experience challenges in the calculation of CAP, including mark-to-market expense calculations for valuing equity awards which typically necessitates the engagement of an outside accounting firm. Using SCT compensation or W2

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[13] https://www.sec.gov/comments/pay-ratio-statement/cll3-1664896-148926.pdf

compensation as an alternative to CAP would alleviate these burdens and provide investors with more accurate information.

Instead of the prescriptive and unnecessary components of the 2022 pay versus performance, investors would be better served if the SEC instead adopted a simpler rule to carry out the intent of Section 953(a), including by amending or eliminating the current CAP disclosure requirement. Doing so would allow companies to explain pay versus performance in their own way and based upon their unique circumstances. It would also recognize that many companies were already disclosing information about pay versus performance before the 2022 rule went into effect based upon their own materiality analysis and communication with their investors.

6. **The SEC, along with the federal banking regulators, National Credit Union Administration, and the Federal Housing Finance Authority, should abandon an overly prescriptive 2016 proposal to implement Section 956 of the Dodd-Frank Act ("incentive compensation" rule) and reassess Section 956 implementation.**

Section 956 of the Dodd-Frank Act requires that six agencies – the SEC, Office of the Comptroller of the Currency (OCC), Federal Reserve, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Housing Finance Authority (FHFA) – jointly prescribe regulations or guidance regarding incentive compensation agreements at financial services firms. These agencies together proposed rules twice – in 2011 and 2016 – but have yet to enact a regulation implementing Section 956.

The Chamber submitted previous comments outlining serious concerns with both proposed rulemakings. The Chamber has been concerned that the approach outlined in those rules is overly prescriptive and entirely at odds with the purpose of Section 956. We have cautioned the agencies from enacting anything similar to what has been proposed.

Instead, as the Chamber wrote in 2024,[14] interagency guidance adopted in 2010 provides a more appropriate framework for Section 956 implementation. Section 956 provides clear authority to the six agencies to issue guidance instead of a prescriptive rulemaking. The 2010 guidance was carefully developed by the federal banking regulators and has enabled these agencies to achieve their regulatory goals in their supervision of the banking industry without significantly impeding competition for talent. These agencies should consider if guidance is the more appropriate path and

[14] *See*: U.S. Chamber of Commerce Letter on Section 956. June 3, 2024. Available at: https://www.uschamber.com/finance/u-s-chamber-of-commerce-letter-on-section-956

potential principles-based modifications to the 2010 guidance rather than a highly prescriptive regulation.

7. **The SEC's rule implementing Section 954 of the Dodd-Frank Act ("clawback" rule) should be revisited so that the rule reflects clawback policies that companies have enacted since 2010.**

Properly calibrated stock exchange listing standards are an integral component of good corporate governance for America's publicly listed companies, and executive compensation clawbacks are a means to help drive good governance practices if done in a balanced and responsible manner. However, the Chamber remains concerned that the SEC's final clawback rule from 2022 is unnecessarily prescriptive and fails to take into account proactive clawback policies that have been implemented by companies over the last 15 years.

The SEC's 2022 final rule inappropriately encompasses reporting errors that were not material to previous reporting periods ("little r") restatements – something that is at odds with Congressional intent under Section 954. The SEC's 2022 rule also provides for clawback of compensation on a pre-tax basis, an approach that is not required by the Dodd-Frank Act and is unnecessarily burdensome on individuals who may not have committed any type of fraud or misconduct to trigger the clawback. The SEC should amend the clawback rule so that it does not encompass reporting errors that were immaterial to previous reporting periods ("little r") restatements and so that recovery of compensation is done on a post-tax rather than pre-tax basis.

8. **The SEC should seek further tailoring of executive compensation disclosure requirements for small issuers, including smaller reporting companies (SRCs) and emerging growth companies (EGCs).**

Congress and the SEC have typically recognized that certain reporting requirements can create an overly costly burden for smaller public companies and have either exempted such companies from certain requirements altogether or permitted them to provide scaled disclosure.

For example, smaller reporting companies (SRCs) – generally defined by the SEC as a company with a public float less than $250 million or a company with less than $100 million in annual revenue and a public float less than $700 million – are subject to tailored disclosures under the structure of certain rules. Under the pay versus performance rule, SRCs can disclose pay over a 3-year period (as opposed to 5 years for larger companies), and are not required to include comparisons to total shareholder return (TSR) of a peer group. SRCs can also provide executive compensation disclosures for a total of 3 NEOs, compared to 5 NEOs for larger companies.

Additionally, emerging growth companies (EGCs) – defined as growth stage companies with less than $1.235 billion in annual revenue – are exempt from the Dodd-Frank Act's say on pay, pay ratio, and pay versus performance rules. EGCs can also provide similar scaled disclosure as SRCs regarding other requirements.

These regulatory accommodations allow EGCs and SRCs to focus their resources on growth and become more mature companies before they are subject to enhanced regulatory mandates. The SEC should seek further tailoring for small public companies, including any current requirements under Item 402 that may be inappropriate or unnecessary for smaller companies.

Conclusion

We commend the SEC for holding this important discussion and re-focusing the agency on an area of SEC regulation in great need of examination and reform. Attached as an addendum are comment letters and reports from the Chamber in recent years regarding several topics related to executive compensation. The Chamber and our members stand ready to provide subsequent information, insights, and feedback based upon the discussion at the June 26th roundtable. We look forward to working closely with SEC commissioners and staff as this initiative moves forward.

Sincerely,

Evan Williams
Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce