BURNS & LEVINSON LLP

SECURITIES LAW
UPDATE

May 2015

PAY-VERSUS-PERFORMANCE: SEC'S PROPOSED RULES

On April 29, the SEC proposed rules that would require most publicly traded companies to describe in detail the relationship between their financial performance and executive compensation actually paid.

HIGHLIGHTS

The rules, which were designed to comply with the Dodd-Frank Act, would require securities issuers to use a new table for disclosure of:

- Executive compensation actually paid to the principal executive officer, as well as the average compensation paid to other "named executive officers," with specified adjustments for pension benefits and equity awards.
- Total shareholder return ("TSR"), which is a function of annual dividends and share price appreciation.
- TSR for similar securities issuers in a peer group that each disclosing registrant must identify.

Each registrant would also need to describe the relationship between TSR and executive compensation, as well as the relationship between its own TSR and that of its peer group, using narrative text and/or graphic measures.

All securities issuers would have to include disclosures in proxy or information statements in which executive compensation disclosure is mandated, including proxies for director elections or annual meetings, Form 10-K annual reports and all registration statements.

OTHER KEY ASPECTS

Some of the other key features of the new rules are as follows:

- Companies would have to tag disclosures using XBRL interactive formats.
- The rules would apply to all reporting companies, except for foreign private issuers, registered investment companies and emerging growth companies, as defined by the SEC.
- Pertinent disclosures would be required for the last five fiscal years, except that smaller reporting companies would only be required to cover the last three years.
- Existing smaller reporting companies would be required to provide only two years of data in their first required disclosure, and other existing issuers would be required to provide only three years of data in their first disclosure (and four years of data in their second reporting year).
- Smaller reporting companies would not be required to present TSR peer group data and would only have to use XBRL formatting starting with their third required disclosure filing.

For a more detailed examination of the entire "pay versus performance" regulatory plan, please see SEC Release 34-74835 at http://www.sec.gov/rules/proposed/2015/34-74835.pdf.

COMMENT PERIOD: The SEC has invited public comment on its proposals. Comments must be received on or before July 6, 2015, therefore making it possible that the final rules could be adopted by the SEC in time for the 2016 proxy season. ■

SECURITIES LAW GROUP:

Burns & Levinson's Securities Law Group represents public and private companies, underwriters and investment banks, venture capital and investment funds, real estate investment funds, investment advisors, broker-dealers, stockholder groups and individuals in public and private securities offerings and transactions, SEC, FINRA and stock exchange compliance, corporate governance, fund formation and offerings, SEC enforcement and securities litigation.

EXPLANATORY NOTES:

This update is intended to call your attention to various statements by the SEC of possible interest and relevance to you, but it is not intended to constitute a legal opinion or definitive summary of all interpretations and legal information that could be material to you. Please contact a member of the Securities Law Group at Burns & Levinson if you have any questions about these interpretive statements or if you want to learn more about our expertise in this area.

FOR MORE INFORMATION:

Josef Volman — Co-Chair
617.345.3895 | jvolman@burnslev.com

Andrew Merken — Co-Chair
617.345.3740 | amerken@burnslev.com

To learn more about our **Securities Law** practice, visit **burnslev.com.**

BURNS & LEVINSON LLP