Frequently Asked Questions – Proposed SEC Executive Compensation Disclosure Reforms

Q. Can issuers use the proposed changes for the upcoming proxy season?
A. No. The Rule Proposal is not effective and provides no immediate relief. Issuers should continue complying with current requirements unless and until final amendments become effective. Under the proposed transition, issuers could elect to apply the new rules at any time after the effective date, but only if they comply with the amended item in its entirety; issuers could not select individual favorable changes. Mandatory compliance would begin with the first full fiscal year ending on or after the effective date.

Q. When would the new rules take effect, and how would they apply to proxy statements and registration statements?

A. The SEC has proposed that the amendments become effective on January 1 following publication of the adopting release in the *Federal Register*, with mandatory compliance for the first full fiscal year ending on or after that date. For example, if an adopting release were published in 2027, the amendments would become effective on January 1, 2028, and a calendar-year issuer would first be required to apply them to its fiscal 2028 compensation disclosure, typically in its 2029 proxy statement. However, after January 1, 2028, the issuer could elect to apply the new rules early, such as in its 2028 proxy statement covering fiscal 2027, provided it complies with the amended item in its entirety. For registration statements and prospectuses, the new rules would apply if, on its initial filing date, the registration statement or prospectus is required to include financial statements for a fiscal year ending on or after the effective date. In the example above, a registration statement initially filed when fiscal 2028 financial statements are required would be subject to the new rules, while one initially filed when financial statements are required only through fiscal 2027 generally would not, although the issuer could elect early application. The Rule Proposal also requests comment on whether phased-in transition relief is needed for the historical years presented in the new tables.

Q. Do we only need to cover the current CEO and CFO?
A. No. Disclosure would cover every individual who served as PEO or PFO, or acted in a similar capacity, during the last completed fiscal year. A CEO or CFO transition, interim appointment, or structure with individuals serving jointly as CEO could result in more than two NEOs. For an SRC or EGC, the CFO would become a required NEO regardless of compensation level. This would be a change for SRCs and EGCs, whose NEOs currently consist of the PEO and the two most highly compensated other executive officers, so that the CFO is included today only if among the most highly compensated.

Q. Would an SRC have less disclosure in every respect?
A. Not necessarily. SRCs would generally cover fewer executives and retain two years of disclosure and exemptions from CD&A and pay ratio disclosure, but would provide three primary tables rather than the two tables currently required. An SRC that is not also an EGC would remain subject to pay versus performance and golden parachute disclosure under this Rule Proposal. Broader relief would depend on the separate filer status proposal, which, if adopted as proposed, would extend SRC and EGC accommodations to all non-accelerated filers, including all current SRCs, and exempt them from pay versus performance and golden parachute disclosure and from say-on-pay and say-on-golden-parachute votes.

Q. Would the new compensation totals be comparable to current Summary Compensation Table totals?
A. Not directly. The Earned Compensation Table would recognize stock awards upon vesting

and options upon exercise. The Granted Compensation Table would emphasize compensation opportunities, including equity awards valued using target outcomes. For example, in the SEC's hypothetical, a CEO's 2027 total compensation would be approximately $25.4 million in the Earned Compensation Table, driven largely by $14 million realized on exercising options granted in 2020, but $15.6 million in the Granted Compensation Table, which reflects the target value of 2027 awards. Issuers would need to explain these differences when discussing annual changes in pay, particularly where large awards granted in prior years vest or executives exercise options. The new tables would not change the accounting treatment of awards in the financial statements.

Q. Would the $150,000 perquisite threshold eliminate the need to track benefits?
A. No. It would reduce disclosure and some tracking burdens, but issuers would still need sufficient information to determine whether covered perquisites reach the aggregate threshold. The proposed tracking exclusion would apply to benefits qualifying under the specified *de minimis* standard under tax law. Issuers would also need to retain information required for payroll, tax, expense controls, and other purposes.

Q. What benefits would cease to be reportable perquisites?
A. It depends on the facts. The Rule Proposal would permit an issuer to make a reasonable, good faith determination that a benefit is or is not *integrally and directly related* to an executive's duties. The Rule Proposal discusses personal security and personal aircraft use for security reasons as examples, but would not create a blanket exclusion for any category of benefits. Issuers should document the circumstances and rationale supporting their determinations.

Q. Would pay versus performance disclosure disappear?
A. No. However, for issuers subject to the requirement, it would be substantially simplified. Compensation would be measured using the Earned Compensation Table, required performance disclosure would be limited to company TSR, and the required period would be three years. EGCs would remain exempt. SRCs that are not EGCs would continue to be covered unless additional relief is adopted through the separate filer status proposal.

Q. Would the Rule Proposal eliminate clawback policies or limit recovery to the CEO and CFO?
A. No. The Rule Proposal would simplify disclosure, including removing the annual report cover page checkboxes and the explanation of why recovery was not required. It would not narrow the executive officer population subject to mandatory recovery under Rule 10D-1 and applicable exchange listing standards, or eliminate the obligation to maintain and apply a compliant recovery policy.

Q. Would issuers still calculate change in control payments?
A. Yes. The Rule Proposal would remove the prescribed hypothetical annual calculations, but covered transactions would still require quantitative golden parachute disclosure in a simplified format. Issuers may also continue preparing calculations for board review, transaction planning, contractual administration, or tax analysis, regardless of the annual disclosure requirement.

Q. Would non-GAAP compensation measures become easier to disclose?
A. It depends. Some aspects would remain flexible, but the Rule Proposal would add requirements. Non-GAAP target levels or company-selected measures based on historical financial results would require a quantitative reconciliation to the most directly comparable GAAP measure, which could be included in the filing or incorporated by reference from another filing. Projected non-GAAP targets, which are not based on historical results, would instead require a narrative description of how the measure is calculated from the issuer's audited

financial statements. Issuers would also be required to explain why the non-GAAP measure is more appropriate than a GAAP measure for the relevant purpose. Compensation teams should assess these requirements alongside any anticipated reduction in CD&A scope.

Q. How would the relief for registration statements work for an issuer with a calendar fiscal year?

A. Under the Rule Proposal, an issuer filing a Form S-1 shortly after December 31 could omit all Item 402 information for the most recently completed fiscal year, while still presenting the required number of preceding years, until the earlier of (A) the date the issuer otherwise files that information in an Exchange Act filing, typically its proxy statement or Form 10-K, or (B) 120 days after fiscal year-end. If the registration statement is expected to become effective after that deadline, whether automatically or at the issuer's request, the issuer would need to file a pre-effective amendment adding the Item 402 information for the most recently completed fiscal year before effectiveness. This relief would apply only to compensation disclosure; it would not extend financial statement staleness deadlines or excuse other required prospectus updates.

Q. Would foreign private issuers (FPIs) be required or eligible to use the new Item 402 tables?

A. FPIs would not be required to use the new tables. FPIs would continue to be deemed to comply with Item 402 by providing the compensation information required by Items 6.B, 6.E.2, and 6.F of Form 20-F, or paragraph (19) of General Instruction B to Form 40-F, with more detailed information if otherwise made public or required by the issuer's home jurisdiction or a market on which its securities trade. However, FPIs that elect to provide domestic Item 402 disclosure would use the new tables and would still be required to provide the clawback disclosure. The Rule Proposal would also make targeted changes to the clawback disclosure of U.S.-listed FPIs, including removing the cover page checkboxes for error corrections and recovery analyses from Forms 20-F and 40-F, eliminating the required explanation of why a restatement did not require recovery, and eliminating the requirement to break out, by executive, amounts for which recovery was impracticable.