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Ms. Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Via email: *rule-comments@sec.gov*

March 4, 2022

Subject: Release Nos. 34-94074; File No. S7-07-15 Reopening of Comment Period for Pay Versus Performance

Dear Ms. Countryman,

On behalf of the California Public Employees' Retirement System (CalPERS), I write to once again express our support for the Securities and Exchange Commission's (SEC or Commission) proposed rules (Proposed Rules) to implement the pay versus performance requirement in Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).

As the largest public defined benefit pension fund in the United States, CalPERS manages approximately $480 billion in global assets on behalf of more than 2 million members. We seek long-term sustainable, risk-adjusted returns through efficient capital allocation and stewardship in line with our fiduciary duty. We are guided by CalPERS' Investment Beliefs[1] which recognize that "[l]ong term value creation requires effective management of three forms of capital: financial, physical and human."[2] Accordingly, our fiduciary duty requires that we proactively assess whether the companies that we hold in our portfolio are managing capital effectively. Moreover, we view robust governance practices as critical to long-term performance. Therefore, we expect fair, accurate, timely, and assured reporting about how companies manage their financial, physical, and human capital to generate sustainable returns, as well as how they identify, monitor, and mitigate risks to those three forms of capital.[3]

[1] CalPERS Investment Beliefs, https://www.calpers.ca.gov/page/about/organization/calpers-story/our-mission-vision#investment-beliefs.
[2] Id.
[3] Id.

CalPERS' Support of the Proposed Rules

We believe "well-designed compensation programs can be a powerful and effective tool to reward value-creating executives and employees and appropriately align their interests with those of providers of capital (shareowners) to achieve sustainable, long-term investment returns."[4] Based on our experience reviewing compensation plans, we believe there is room to improve the information that companies provide. Such information is essential so that investors can make informed decisions to vote for well-designed programs and against misaligned proposals. For instance, we voted against 51% of management's executive compensation proposals in 2020 for poor pay alignment (1349 of 2650 companies) and against 55% of such proposals in 2021 (1324 of 2386) for the same reason.

Consistent with these views and our comments on the Proposed Rules in 2015 (2015 Comment Letter),[5] we continue to support the Commission's efforts to require a description of how executive compensation actually paid by a registrant is related to the financial performance of that company. Currently, there is a substantial disconnect, so we support disclosures of the three additional measures under consideration in the Proposed Rules to bridge this gap: pre-tax net income, net income, and a measure specific to a particular registrant, chosen by said registrant (Company-Selected Measure (CSM)). Additionally, the Commission should consider rules improving the transparency of companies' performance measures used to determine named executive officer (NEO) compensation. Disclosure of all quantitative metrics, targets, and thresholds used to determine NEO compensation would help investors better assess governance and performance.

Disclosure Beyond Total Shareholder Return (TSR)

In our 2015 Comment Letter, we recommended that multiple performance metrics be used in design of long-term compensation plans and acknowledged the limitations of TSR.[6] In fact, our 2015 Comment Letter highlighted a 2013 study conducted by the Florida State Board of Administration with Farient Advisors which showed that 17.3% of the S&P 1500 achieved a positive TSR for years (2008-2012) while having a cumulative net negative economic profit and a five-year return on invested capital that was less than the weighted average cost of capital. TSR disclosures are important, but disclosures should go beyond TSR to facilitate investors' understanding how compensation and performance are related. As such, we welcome the proposal to disclose the additional three metrics. Specifically, we welcome the focus on net income and appreciate giving companies an opportunity to add a CSM in the interest of providing investors more transparent information to make voting and allocation decisions. Disclosure of the additional metrics enhances transparency and provides decision-useful information.

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[4] CalPERS Governance and Sustainability Principles at 23, https://www.calpers.ca.gov/docs/forms-publications/governance-and-sustainability-principles.pdf.
[5] CalPERS Comment Letter on Pay Versus Performance (July 6, 2015), https://www.sec.gov/comments/s7-07-15/s70715-64.pdf.
[6] Id.

Company-Selected Measure

The inclusion of the CSM is an elegant approach of getting a company to actually disclose the information it uses to determine executive compensation. To the extent that prescribed metrics do not produce the representative pay versus performance, the company should be able to disclose at least one metric that better represents the pay and performance connection. The Commission could use "the most important performance measure" as described, while fully leaving it to company discretion. If the company chooses to move to a different measure, there should be a brief roll-off period in which the company reports the old, as well as the newly adopted "most important" measure. This is consistent with our view that multiple performance metrics should be used. If the provided information is not adequate to show the pay and performance connection, companies could add additional metrics voluntarily, including other financial performance metrics, or any other metrics used by the company to determine compensation, including environmental, social and governance related metrics. Companies have no problem disclosing measures not recognized under Generally Accepted Accounting Principles to tell their stories and make marketing pitches. The Commission can move confidently in getting companies to disclose the executive pay and performance connection.

Revise Item 402

In addition to the Proposed Rules and the disclosure of the additional metrics, the Commission should revise Item 402 of Regulation S-K to explicitly require registrants to disclose all of the performance measures that actually determine NEO compensation. The current disclosures are complicated and difficult to analyze. Compliance is also suboptimal. The Commission could make the item less complicated by elevating the disclosures. Doing so would make NEO compensation more transparent.

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We believe that more meaningful disclosures will lead to market-based improvements and better pay and performance alignment or at least better explanations regarding pay decisions. The Proposed Rules take a step in the right direction.

Thank you for the opportunity to share our comments. If you have any questions or would like to discuss, please do not hesitate to contact James Andrus at James.Andrus@calpers.ca.gov.

Sincerely,

Marcie Frost
Chief Executive Officer

cc: James Andrus