

Rosebud Nau, Alexandria Pencsak in Corporate Compliance Insights: ‘Are You Ready for Stepped-Up Pay vs. Performance Requirements in 2023 Proxy Season?’

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Haynes Boone Partner [Rosebud Nau](#) and Associate [Alexandria Pencsak](#) authored an article in *Corporate Compliance Insights*. Read an excerpt below.

In August, the SEC adopted Release No. 34-95607 implementing pay versus performance disclosures called for under Section 953(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As set forth in new paragraph (v) of Item 402 of Regulation S-K, covered public companies will be required to include significant new information reflecting the relationship between executive compensation “actually paid” (as defined in the rule) by the company and the company’s performance.

The new rule applies to public reporting companies, except emerging growth companies, foreign private issuers and registered investment companies. The new rule also applies to smaller reporting companies (SRCs) but with scaled disclosure requirements described below.

Covered public companies must include this disclosure in proxy or information statements covering fiscal years ending on or after Dec. 16, 2022 — for calendar year-end companies, this means a proxy or information statement filed in 2023. Notably, the new disclosure is not required in an annual report on Form 10-K or in any registration statement.

We expect that covered public companies (including compensation committees) will need significant lead time to prepare for the upcoming disclosures outlined below, especially with respect to determining the compensation “actually paid” to the principal executive officer (PEO) and other named executive officers (NEOs). The new disclosure will require companies to prepare valuations of historical equity awards and pension benefits as well as a “clear description” of how the compensation “actually paid” to the PEO and the other NEOs compares to the company’s cumulative total shareholder return (TSR), net income and the company-selected measure.

To read the full article, click [here](#).