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## **SEC Adopts Pay Versus Performance Disclosure Rules**

Yesterday the SEC adopted final rules requiring public companies to disclose executive pay versus performance information. Pay versus performance disclosure was originally mandated in 2010 by the Dodd-Frank Act. The SEC first proposed rules in 2015, then reopened the comment period earlier this year, substantially changing and expanding the 2015 proposal.

The new rules will require public companies to provide a table disclosing certain executive compensation and financial performance measures for their five most recently completed fiscal years. Required financial measures of performance include total shareholder return (TSR), the TSR of the company's peer group, net income, and a financial performance measure of a company's choice. Companies will be required to describe the relationships between executive compensation and each of the performance measures, as well as the relationship between TSR and the TSR of its peer group. Companies must also provide a list of three to seven financial performance measures that they believe are their most important performance measures for linking executive compensation to company performance. Smaller reporting companies will be subject to scaled disclosure requirements.

The final rules will become effective 30 days following publication in the Federal Register. The new disclosure requirements will be provided by companies in proxy and information statements that are required to include Item 402 executive compensation disclosure for fiscal years ending on or after December 16, 2022.

In an increasingly politically polarized SEC, the vote was again along party lines with Chair Gensler and the Democratic-appointed commissioners voting for, and the Republican-appointed commissioners voting against.

The dissenting commissioners expressed concerns about the complicated and prescriptive nature of the rule, the limited added value compared to information already available, the additional costs companies will incur, and that the new rules could ultimately drive compensation decisions rather than simply providing information. They also expressed concerns that given the length of time and substantial changes to the final rule compared to the 2015 proposal, the SEC did not follow normal administrative rule procedures including requirements in the Administrative Procedure Act, Paperwork Reduction Act and the Regulatory Flexibility Act.

NIRI formally advocated in comment letters [in 2015](#) and [in 2022](#), and through in-person meetings, for a more principles-based approach that would provide greater flexibility to explain how executive compensation practices correspond to performance. NIRI is disappointed that the SEC adopted very few of the recommendations by public company commenters regarding the Commission's "one-size-fits-all" approach to this rulemaking.

NIRI encourages members interested in advocating on behalf of the investor relations profession to volunteer as NIRI chapter Advocacy Ambassadors. NIRI also holds an annual Legislative and Leadership Fly-In which includes

meetings with the SEC and Congress. The 2022 Legislative and Leadership Fly-In will be held September 21-22 in Washington DC. More info and registration is available at [www.niri.org/flyin2022](http://www.niri.org/flyin2022).

### **Resources**

SEC Fact Sheet: <https://www.sec.gov/files/34-95607-fact-sheet.pdf>

SEC Final Rule: <https://www.sec.gov/rules/final/2022/34-95607.pdf>

### **About Niri: The Association for Investor Relations**

Founded in 1969, Niri is the professional association of corporate officers and investor relations consultants responsible for communication among corporate management, shareholders, securities analysts, and other financial community constituents. Niri is the largest professional investor relations association in the world with members representing over 1,500 publicly held companies and \$12 trillion in stock market capitalization.