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2013 PROXY DISCLOSURE TRENDS: PAY-FOR-PERFORMANCE

Notable Pay-for-Performance Disclosures Made By Energy Companies This Year

Posted by Michael Brittian on April 18, 2013

The 2013 proxy season is now in full swing, with dozens of energy industry companies having filed their latest proxy. One of the areas of significant attention this year is pay-for-performance disclosure.

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So far in 2013, we've already seen some interesting examples of pay-for-performance charts and graphs, including depictions of executives' "realized" pay (i.e., actual total take-home pay for the year) and "realizable" pay (i.e., potential take-home pay as of the end of the year).

Below are just a few notable examples of pay-for-performance disclosures within the industry so far this year.

- Cimarex Energy's proxy includes charts similar to a typical ISS proxy research report. However, the company uses CEO realizable pay rather than ISS's standard definition of pay from the Summary Compensation Table (see pages 29-31). The result is a more sophisticated analysis of the alignment of CEO pay and TSR performance, including both absolute and relative pay and performance depictions.
- Ensco's proxy shows CEO 2010-2012 realizable pay as a percent of target against a composite of Ensco's 2010-2012 TSR and ROCE performance relative to peers (see pages 30-31). The company includes both a chart Illustrating the company's performance (top quartile) and the CEO's realizable compensation (133% of target), and a table describing the assumptions. The visual delivers the company's message in a concise and effective manner.

Pay-for-performance disclosures are increasing in prevalence, depth, and variety. One clear takeaway is that there are many ways for companies to tell their unique stories to shareholders. If you are thinking about developing a pay-for-performance chart for your proxy, we suggest considering the following:

- Ensure the analysis aligns with the company's unique situation and that it reinforces your story in a clear and concise way;
- Carefully consider the definitions of pay and performance, as well as the timeframe over which to measure (it's helpful to clearly disclose your assumptions);
- Determine the appropriateness of showing an internal company perspective only versus making relative comparisons of pay and performance against peers; and
- Understand that any disclosure approach may set a precedent for future company disclosures.

The complexity and dynamics of the energy industry make it even more important that companies carefully evaluate the approach that best suits their unique situation. I expect we'll see more interesting examples in upcoming filings.