

The background of the left side of the slide features a complex, abstract geometric pattern. It consists of overlapping, semi-transparent polygons in shades of deep red, magenta, and purple. These shapes are interconnected by thin, light-colored lines, creating a network-like structure. Scattered throughout this pattern are small, bright blue dots and white plus signs, giving the impression of a starry night sky or a digital data network. The overall effect is modern and tech-oriented.

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# SEC's Pay-Versus- Performance Rules – What Now and What's Next

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Moderated by Amy Wood

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# Overview

- **Setting the stage**
  - Overview
  - New terms and key definitions
- **New disclosure elements**
  - New table
  - Relationship disclosures
  - Tabular list
- **SRCs, newly public companies and EGCs**
- **Next steps**



# Setting the Stage

# High-Level Overview

- **Why did the SEC adopt these rules?** The Dodd-Frank Act (adopted in 2010) required the SEC to adopt rules requiring issuers to show the relationship between executive compensation actually paid and the financial performance of the issuer
- **What is the new disclosure?** Tabular and narrative/graphical disclosure focused on the relationship between compensation actually paid to NEOs and financial performance measures; must be tagged using Inline XBRL tagging requirements
- **Who is required to comply with the new disclosure rules?** Public companies that are not emerging growth companies, foreign private issuers or registered investment companies
- **When is the new disclosure required?** 2023 proxy statement for most companies (required in proxy and information statements that are required to include Reg. S-K Item 402 executive compensation disclosure for fiscal years ending on or after December 16, 2022)
- **Where is the new disclosure required?** Rule provides flexibility re where in proxy to include disclosure; not required in CD&A; likely to follow the executive compensation tables

# New Disclosure Elements

- 1. New table** – discloses specified executive compensation and financial performance measures for the five most recently completed fiscal years
- 2. Relationship disclosures** – clear description of (a) the relationships between each of the financial performance measures included in the table and the executive compensation actually paid and (b) the relationship between the registrant's TSR and its peer group TSR
- 3. Tabular list** – an unranked list of the most important three to seven financial performance measures used to link executive compensation actually paid to NEOs during the last fiscal year to company performance; may, but need not, include non-financial measures in the list in certain circumstances

*May voluntarily provide supplemental measures of compensation or financial performance (in the table or in other disclosure), and other supplemental disclosures, so long as any such measure or disclosure is clearly identified as supplemental, not misleading, and not presented with greater prominence than the required disclosure*

# New Terms & Key Definitions

- **Compensation actually paid** – total compensation reported in the Summary Compensation Table, with adjustments to amounts disclosed for equity awards and pension benefits (see slide 9 for additional detail)
- **Company-selected measure** – represents, in the company’s own assessment, the most important financial performance measure (that is not otherwise required to be disclosed in the table) used by the registrant to link compensation actually paid to the registrant’s named executive officers, for the most recently completed fiscal year
  - May be a non-GAAP financial measure, but must then describe how derived from financial statements
  - Must be taken from the financial performance measures included in the tabular list; if there is no tabular list, there will be no company-selected measure
  - Cannot be a non-financial performance measure

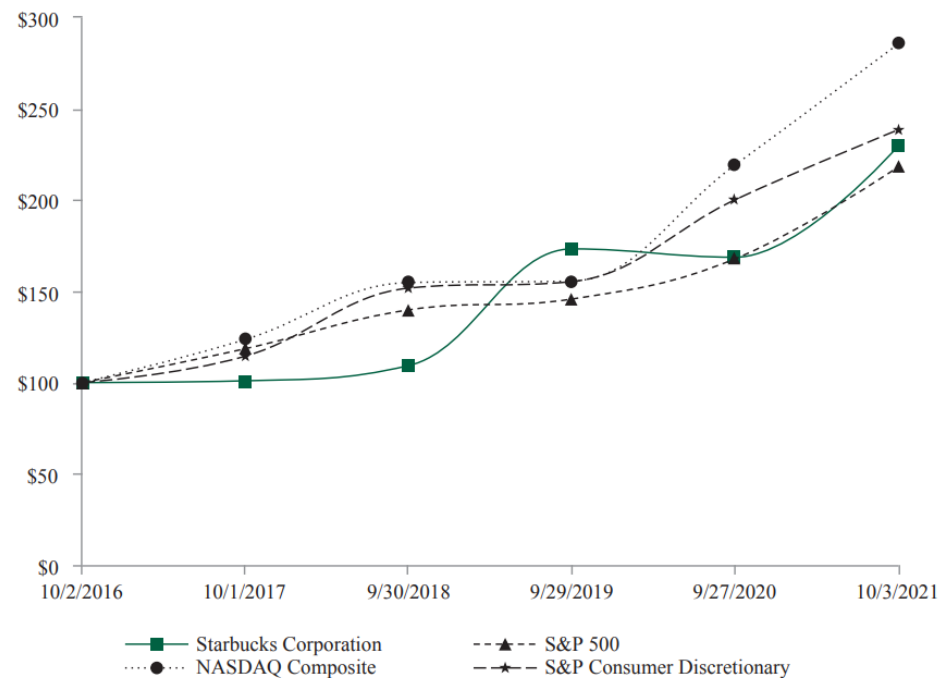
# New Terms & Key Definitions (cont'd)

- **Financial performance measures** – measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, any measures that are derived wholly or in part from such measures, and stock price and total shareholder return
- **Non-financial performance measures** – performance measures other than those that fall within the definition of financial performance measures
- **Performance graph** – the issuer's stock performance graph, which is required to be included in the annual report to security holders pursuant to Item 201(e) of Reg. S-K

# Sample Performance Graph

## Performance Comparison Graph

The following graph depicts the total return to shareholders from October 2, 2016, through October 3, 2021, relative to the performance of the Standard & Poor's 500 Index, the NASDAQ Composite Index and the Standard & Poor's 500 Consumer Discretionary Sector, a peer group that includes Starbucks. All indices shown in the graph have been reset to a base of 100 as of October 2, 2016, and assume an investment of \$100 on that date and the reinvestment of dividends paid since that date. The stock price performance shown in the graph is not necessarily indicative of future price performance.



	Oct 2, 2016	Oct 1, 2017	Sep 30, 2018	Sep 29, 2019	Sep 27, 2020	Oct 3, 2021
Starbucks Corporation	\$ 100.00	\$ 100.98	\$ 109.35	\$ 173.26	\$ 168.68	\$ 229.83
S&P 500	100.00	118.61	139.85	145.80	167.89	218.27
NASDAQ Composite	100.00	123.68	154.82	155.63	219.37	285.75
S&P Consumer Discretionary	100.00	114.52	151.78	155.36	200.25	238.59



# How to Calculate Compensation Actually Paid

**Step 1:** Start with the total compensation amount reported in the SCT

**Step 2:** Make the following adjustments with respect to amounts reported in the SCT for equity awards and pension values:

## Equity Awards

1. **Deduct** the amounts reported in the SCT for equity awards
2. For awards granted in the covered fiscal year:
  - a. **Add** the year-end fair value if the award is outstanding and unvested as of the end of the covered fiscal year;
  - b. **Add** the fair value as of the vesting date for awards that vested during the covered fiscal year; and
  - c. **Ignore** any such awards that were forfeited or determined to be ineligible to vest during the covered fiscal year
3. For awards granted in prior years:
  - a. **Add or subtract** any change in fair value as of the end of the covered fiscal year (compared to the end of the prior fiscal year) if the award is outstanding and unvested as of the end of the covered fiscal year;
  - b. **Add or subtract** any change in fair value as of the vesting date (compared to the end of the prior fiscal year) if the award vested during the covered fiscal year; and
  - c. **Subtract** the amount equal to the fair value at the end of the prior fiscal year if the award was forfeited during the covered fiscal year
4. **Add** the dollar value of any dividends or other earnings paid on equity awards in the covered fiscal year prior to the vesting date

## Pension Values

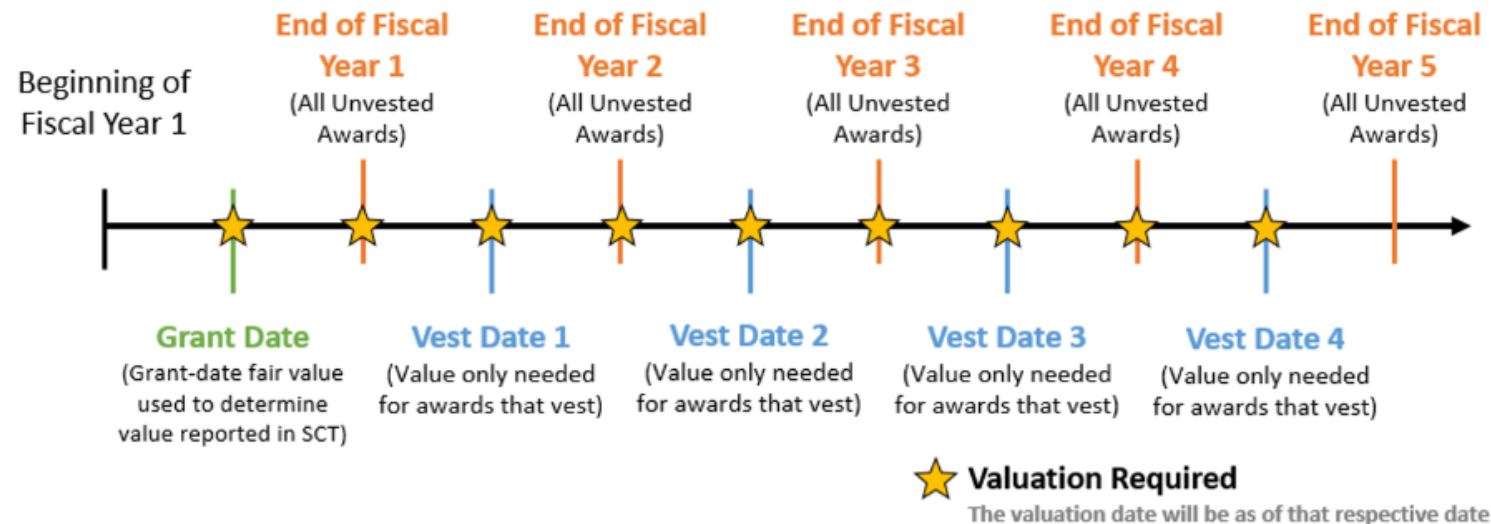
1. **Deduct** the aggregate change in the actuarial present value of all defined benefit and actuarial pension plans
2. **Add** the following two components:
  - a. **Service cost** (i.e., the actuarially determined service cost for services rendered by the executive during the applicable year), calculated in accordance with GAAP; and
  - b. **Prior service cost** (i.e., the entire cost of benefits granted in a plan amendment (or initial plan adoption) during the covered fiscal year that are attributed by the benefit formula to services rendered in periods prior to the plan amendment or adoption), calculated in accordance with GAAP

**Related Note:** If the prior service cost is a **negative** amount as a result of an amendment that reduces benefits relating to prior periods of service, then such amount would **reduce** the compensation actually paid

# Valuations Over the Life of an RSU Award to a Single PEO

(from Equity Methods blog entitled “Pay Versus Performance Is Here, Part 2: Understanding Compensation Actually Paid”)

- The graphic below is for a scenario with one PEO and no PEO turnover during the life of the award and pay-versus-performance table where one RSU vests in four annual installments
- RSU will be in the pay-versus-performance table for four years; will fluctuate in value each year until it vests or is forfeited
- Requires nine valuations over the life of the RSU



A collection of colorful origami flowers scattered on a light-colored surface. The flowers are in various colors: black, red, light blue, orange, dark blue, and purple. The text "New Table" is overlaid in the center in a black serif font.

**New Table**

# New Table

(a)	(b)	(c)	(d)	(e)	(f)		(g)	(h)	(i)
Year (1)	Summary Compensation Table Total for PEO	Compensation Actually Paid to PEO (2)	Average Summary Compensation Table Total for Non-PEO NEOs	Average Compensation Actually Paid to Non-PEO NEOs (2)	Value of Initial Fixed \$100 Investment Based On:		Net Income	[Company- Selected Measure] (5)	
					Total Shareholder Return (3)	Peer Group (4) Total Shareholder Return			
Y1									
Y2									
Y3									
Y4									
Y5									

- 1) Disclosure will be phased in, with the initial disclosure covering the past three fiscal years and increasing each year until the past five fiscal years are covered
- 2) Compensation actually paid is total compensation reported in the SCT, with adjustments to amounts disclosed for equity awards and pension benefits (see slide 9)
- 3) TSR calculated on a cumulative basis, measured from the market close on the last trading day before the company's earliest fiscal year in the table through and including the end of the fiscal year for which TSR is being calculated (i.e., the TSR for the first year in the table will represent the TSR over that first year, the TSR for the second year will represent the cumulative TSR over the first and second years, and so on); same methodology used for performance graph
- 4) Must use same peer group or published industry or line-of-business index used for purposes of Item 201(e) of Reg. S-K or a peer group used in the CD&A for purposes of disclosing compensation benchmarking practices
- 5) The title of this column will be replaced with the name of the company-selected measure (see slide 6), and this column will include the numerically quantifiable performance of the company under such measure for each covered fiscal year (e.g., if the company-selected measure for the most recent fiscal year was total revenue, the column would be titled "Total Revenue" and the company would disclose its quantified total revenue performance in each covered fiscal year)

# Required Footnotes

- **Identity of NEOs** – name of each NEO included as a PEO or in the calculation of the average remaining NEO compensation and the fiscal years in which they are included
- **How compensation actually paid is derived from SCT total compensation** – for PEO and average remaining NEOs, amounts deducted from and added to the SCT total compensation to result in compensation actually paid
- **New equity award valuation assumptions** – any assumption made in the valuation of equity awards that differs materially from those disclosed as of the grant date of such equity awards (note: this could include changes in probability of achievement of performance awards)
- **Peer group composition** – if the peer group is not a published industry or line-of-business index, the identity of the issuers composing the group
- **Changes to peer group** – if peer group is changed from the one used in prior pay-versus-performance disclosure, must explain, in a footnote, the reason for the change, and compare TSR to that of both the old and the new peer group



# Relationship Disclosures

# Elements of the Relationship Disclosures

- Use the information in the table to provide **clear descriptions** of the relationship between
  - (a) the compensation actually paid to the registrant's PEO and (b) the average of the compensation actually paid to the registrant's remaining NEOs to
  - (1) the cumulative TSR of the registrant, (2) the net income of the registrant, and (3) the registrant's Company-Selected Measure, in each case over the registrant's five most recently completed fiscal years (phased in; three years in first year of disclosure)
- Provide a clear description of the relationship between TSR and the peer group TSR, also over the registrant's five most recently completed fiscal years (phased in; three years in first year of disclosure)
- Format can be graphical, narrative or a combination of the two
- Flexibility to group any of these relationship disclosures together when presenting clear description disclosure, but any combined description of multiple relationships must be "clear"

# Format Flexibility

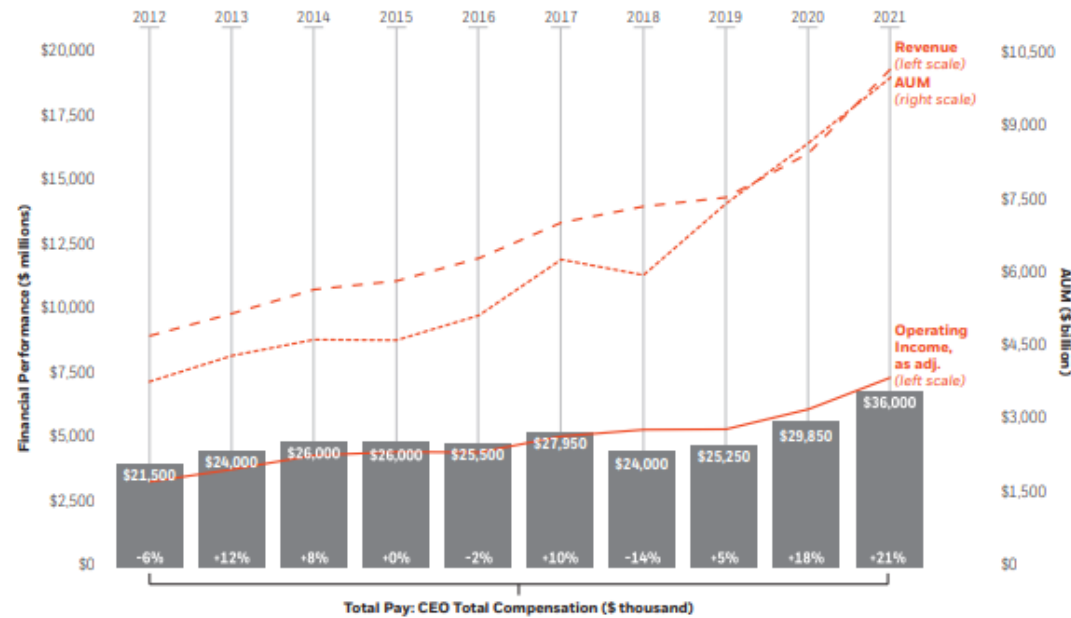
- SEC encourages using the format that most clearly provides information to investors about the relationships, based on the nature of each measure and how it is associated with compensation actually paid
- Examples:
  - Could include a graph providing compensation actually paid and change in the financial performance measure(s) (TSR, net income, or Company-Selected Measure) on parallel axes and plotting compensation and such measure(s) over the required time period
  - Alternatively, could include narrative or tabular disclosure showing the percentage change over each year of the required time period in both compensation actually paid and the financial performance measure(s) together with a brief discussion of how those changes are related
- Variable formats and descriptions intended to allow investors to understand more easily each registrant's perspective on these required relationship disclosures



# Sample Graphical Presentations of CEO Pay and Financial Performance Measures

## Pay-for-Performance – Chairman and CEO

The graph below reflects BlackRock's financial growth as well as CEO total compensation decisions during the period from 2012 to 2021.

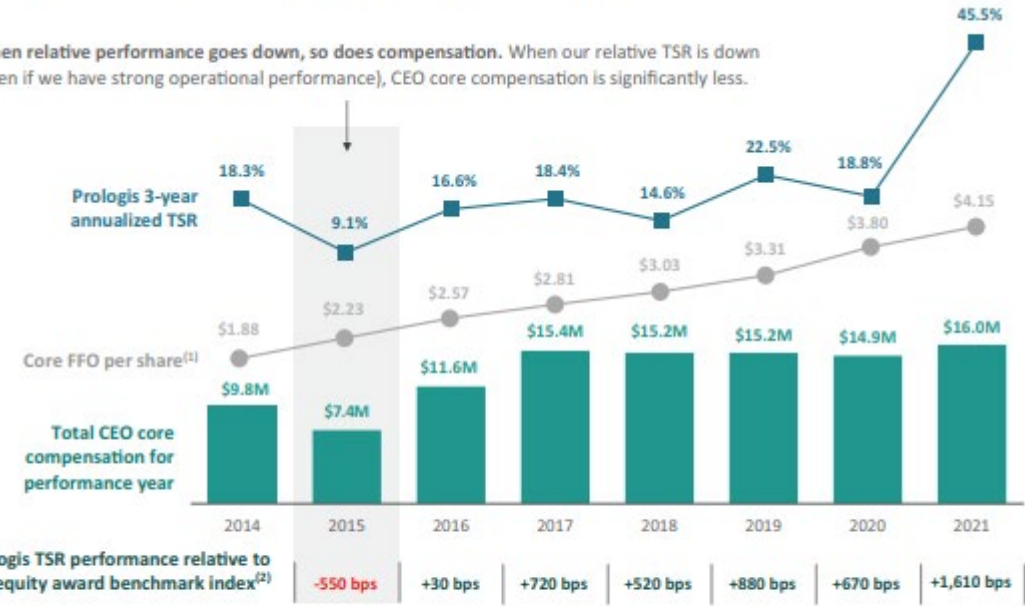


Average year-over-year growth since 2011				
CEO Total Pay	NEO Total Pay	AUM	Revenue	Operating Income, as adjusted <sup>(1)</sup>
5%	5%	11%	8%	8%

(1) For a reconciliation with GAAP, please see Annex A.

## CORRELATION OF CEO CORE COMPENSATION WITH RELATIVE TSR

When relative performance goes down, so does compensation. When our relative TSR is down (even if we have strong operational performance), CEO core compensation is significantly less.



- (1) Core FFO per share is a non-GAAP measure. Please see Appendix A for a discussion and reconciliation to the most directly comparable GAAP measure.
- (2) Represents the difference between PLD's 3-year annualized TSR and the 3-year annualized weighted TSR index of logistics and large cap REITs of our equity award formula used to determine our annual LTI awards (for the 2015 through 2021 performance years). For the 2014 performance year, the benchmarks of logistics and large cap REITs that were used in our equity award decisions were not aggregated into one weighted benchmark. We instituted our equity award formula starting with the 2015 performance year.



# Tabular List

# Tabular List Content

- Provide an unranked list of the most important **three to seven financial performance measures** used to link compensation actually paid to NEOs *during the last fiscal year* to company performance
  - If **fewer than three financial performance measures** are considered when linking compensation actually paid during the last fiscal year to company performance, required to disclose only the number of measures actually considered
  - If **no financial performance measures** are used to link compensation actually paid to company performance, a tabular list is not required
- May, but need not, include **non-financial measures** in the list if they are among the three to seven most important measures
  - May do so only if such measures are included in the three to seven most important performance measures and at least three (or fewer, if the registrant only uses fewer) most important financial performance measures are disclosed

# Tabular List Format

- Tabular list may be disclosed in three different ways:
  - One list for all NEOs
  - One list for the PEO and one for the remaining NEOs
  - Separate lists for the PEO and each NEO

# SRCs, Newly Public Companies & EGCs

# Definitions

- **Smaller reporting company** – in the case of issuers required to file reports under Sections 13(a) or 15(d) of the Exchange Act, an issuer that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company and that: (1) had a public float of less than \$250 million (as of the last business day of the issuer's most recently completed second fiscal quarter); or (2) had annual revenues of less than \$100 million (as of the most recently completed fiscal year for which audited financial statements are available) and either: (i) no public float (as of the last business day of the issuer's most recently completed second fiscal quarter); or (ii) a public float of less than \$700 million (as of the last business day of the issuer's most recently completed second fiscal quarter)
- **Emerging growth company** – an issuer that had total annual gross revenues of less than \$1.235 billion during its most recently completed fiscal year; an issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of: (i) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1.235 billion or more; (ii) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933; (iii) the date on which such issuer has, during the previous three year period, issued more than \$1 billion in non-convertible debt; or (iv) the date on which such issuer is deemed to be a large accelerated filer

# Scaled Disclosure for Smaller Reporting Companies

- Only required to include last three (rather than five) completed fiscal years in new table (two years in first table)
- In calculating compensation actually paid, not required to make pension adjustments
- No company-selected measure or tabular list required
- Not required to provide clear descriptions of relationship between compensation actually paid and company performance or relationship between company TSR and peer group TSR
- XBRL tagging not required until third filing in which new disclosure is provided

# EGCs & Newly Public Companies

- **EGCs**

- If a company that has a December 31 fiscal year end will no longer be an EGC after December 31, 2022, the company must comply with the final rules in its 2023 proxy statement
- If the company qualifies as an SRC after losing EGC status, it may elect to comply with scaled disclosure

- **Newly public non-EGCs**

- New disclosures are not required in registration statements and therefore do not have to be provided during the IPO process
- Requirements apply only for years in which a registrant was subject to reporting requirements under the Securities Exchange Act of 1934 (i.e., years in which the company was public)
- When calculating TSR for newly-public companies, begin with closing market price at end of first trading day
- E.g., if a non-EGC registrant completes its IPO in 2022, the proxy statement for fiscal year 2022 would provide disclosure for only fiscal year 2022; the registrant would add subsequent years to each annual proxy filing until it includes five years





# Next Steps

# What's Next?

- **Form team** with key internal departments (e.g., finance/accounting, legal, human resources, investor relations, public relations) and outside advisers (e.g., compensation consultant, valuation expert and legal counsel)
- **Preview new disclosure for compensation committee**
- **Gather information**
  - List of NEOs for 2020, 2021, 2022 (when possible)
  - Equity awards, including information about equity awards granted or vested at any time during 2020, 2021 and 2022 and outstanding and unvested as of the end of 2020, 2021 and 2022 (when available)
  - Pension values, if applicable
- **Calculate compensation actually paid for 2020 and 2021** (and 2022 when available)
- **Determine:**
  - Which peer group (maybe)
  - Performance measures for tabular list and format of tabular list
  - Company-selected measure for table
  - Relationship disclosures – form and content
  - Whether to include voluntary additional measures in the required table and/or other supplemental disclosure

# Compensia's Pay-Versus-Performance Webcast

- Tomorrow!
- Wednesday, October 26<sup>th</sup> from 11am-12pm PDT
- <https://compensia.com/events/>



A large collection of keys of various shapes and sizes, including house keys, car keys, and keys with colorful plastic heads, are hanging on a wooden board. The background is a colorful, multi-colored wall with shades of purple, green, and red. The keys are arranged in a somewhat organized but dense pattern, filling most of the frame. In the bottom right corner, a portion of a desk lamp is visible, suggesting a workspace or office environment.

# Key Takeaways

The background of the slide is a dark blue field with a network of red lines connecting various points, creating a geometric, low-poly pattern. Scattered throughout are small, glowing blue and white dots, some of which are accompanied by small white plus signs. The overall aesthetic is futuristic and data-oriented.

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