Proxy Rules (including Executive Compensation Disclosure)

1. Use of Non-GAAP Measures in Executive Summary to Compensation Discussion and Analysis. Instruction 5 to Item 402(b) of Regulation S-K states that disclosure of target levels that are non-GAAP financial measures are not subject to Regulation G and Item 10(e) of Regulation S-K. Our question at the 2011 meeting with Staff about the use of non-GAAP financial measures in other portions of the Compensation Discussion and Analysis (such as an “Executive Summary”) prompted the issuance of Compliance and Disclosure Interpretation (“C&DI”) 118.08 which addresses the situation in which non-GAAP financial information is provided in a proxy statement that does not relate to the disclosure of target levels.

Please confirm that the disclosure of non-GAAP financial information that reflects the registrant’s actual results with respect to the targets for the fiscal year “relate[s] to the disclosure of target levels” for purposes of Instruction 5 and does not require compliance with Regulation G or Item 10(e) of Regulation S-K. Also please confirm that this guidance applies without regard to where the disclosure of the actual results are presented in the proxy statement (for example, in an “Executive Summary”), so long as the non-GAAP financial information being disclosed represents the actual performance against the target levels.

Suggested Answer: Instruction 5 to Item 402(b) of Regulation S-K is intended to provide relief for the disclosure of both target levels and the actual results that relate to those target levels. The guidance in C&DI 118.08 was not intended to cover the disclosure of actual results versus target levels, even if that disclosure explains what the registrant means by “pay for performance” or provides a justification for levels of pay, so long as the non-GAAP financial information relates to the target levels applicable to awards granted to the registrant’s named executive officers.

SEC RESPONSE: The disclosure of non-GAAP financial information that reflects the registrant’s actual results with respect to the target levels for the non-GAAP financial measures applicable to the awards granted to a registrant’s named executive officers “relate[s] to the disclosure of target levels” for purposes of Instruction 5 and does not require compliance with Regulation G or Item 10(e) of Regulation S-K, provided that the context for the disclosure of the actual results is limited to a discussion about the registrant’s target levels.

2. Use of Non-GAAP Measures in Executive Summary to Compensation Discussion and Analysis. C&DI 118.08 goes on to state that, in the pay-related circumstances described in the C&DI only, the SEC Staff will not object if a registrant includes the required GAAP reconciliation and other information in an annex to the proxy statement or incorporates it by reference from the registrant’s annual report on Form 10-K,
provided the registrant includes a prominent and specific cross-reference to such annex or referenced information.

Instruction 5 to Item 402(b) of Regulation S-K provides that, if a registrant discloses target levels that involve non-GAAP financial measures, it must disclose how the non-GAAP financial measure target levels were calculated from its audited financial statements. May a registrant use the cross-reference technique described in C&DI 118.08 to satisfy this requirement by directing a reader to an annex to the proxy statement or the specific pages in the Form 10-K that describe how the non-GAAP financial measure target levels were calculated, or does this cross-reference technique only apply when the non-GAAP financial information being described does not relate to the disclosure of the non-GAAP target levels?

**Suggested Answer:** It is permissible for a registrant to use the cross-reference technique described in C&DI 118.08 to direct a reader to an annex to the proxy statement or the specific pages in the Form 10-K describing how the target levels that are non-GAAP measures were calculated, as well as when the non-GAAP financial information being described does not involve the disclosure of target levels.

**SEC RESPONSE:** No. Instruction 5 to Item 402(b) of Regulation S-K specifies how non-GAAP target levels should be disclosed in the CD&A. C&DI 118.08 applies only to the disclosure of non-GAAP financial information that is not related to non-GAAP target levels.

3. Stock Option Modification in Connection With Termination of Employment. In 2011, a registrant terminates the employment of its Chief Financial Officer. As part of the executive’s separation agreement, the registrant agrees to (a) accelerate the vesting of the remaining unvested portion of an outstanding stock option held by the executive and (b) extend the post-termination exercise period for the option from 90 days following the date of the termination of employment until expiration of the option’s contractual term. These changes to the outstanding stock option resulted in an incremental accounting charge of $400,000 for the registrant.

Please confirm that this amount should be reported in the Option Awards column of the Summary Compensation Table (column (f)) pursuant to Instruction 2 to Item 402(c)(2)(v) and (vi), while any amounts paid or accrued to the Chief Financial Officer pursuant to a plan or arrangement in connection with the termination of employment should be reported in the All Other Compensation column of the Summary Compensation Table (column (i)) pursuant to Item 402(c)(2)(ix)(D).

**Suggested Answer:** Pursuant to Instruction 2 to Item 402(c)(2)(v) and (vi), the amount resulting from the changes to the outstanding stock option resulting in an incremental accounting charge should be reported in the Option Awards column of the Summary Compensation Table (column (f)). Further, to avoid “double counting,” this amount does not need to be reported in the All Other Compensation column as part of the amounts
paid or accrued to the named executive officer pursuant to a plan or arrangement in connection with the termination of employment.

**SEC RESPONSE:** The SEC Staff agreed with the suggested answer to this question. In the event that, in connection with the termination of employment of a Named Executive Officer, the terms of an outstanding equity award are amended in a manner that is considered a “modification” for financial reporting purposes, resulting in an incremental accounting charge for the registrant, the amount of this incremental charge should be reported in either the Stock Awards column or the Option Awards column, as applicable, of the Summary Compensation Table (column (e) or (f)) pursuant to Instruction 2 to Item 402(c)(2)(v) and (vi), and not in the All Other Compensation column of the Summary Compensation Table (column (i)) pursuant to Item 402(c)(2)(ix)(D), although it would be appropriate to disclose in a footnote to the All Other Compensation column that the applicable equity award column(s) reflected the specified amounts recorded in connection with a termination of employment.

Further, the SEC noted that the registrant is also required to report the amount of the incremental charge in column (l) of the Grants of Plan-Based Awards Table and to provide the appropriate disclosure required by Item 402(j) of Regulation S-K.

**4. Reporting for NEOs.** At the SEC Staff’s 2010 meeting with the JCEB, the Staff indicated that it was reconsidering the need for C&DI 119.01, which reads as follows:

**Question:** If a person that was not a named executive officer in fiscal years 1 and 2 became a named executive officer in fiscal year 3, must compensation information be disclosed in the Summary Compensation Table for that person for all three fiscal years?

**Answer:** No, the compensation information only for fiscal year 3 need be provided in the Summary Compensation Table. [Jan. 24, 2007]

Please confirm that, notwithstanding the Staff’s comment at the 2010 meeting that it was re-evaluating the need for C&DI 119.01, this C&DI continues to apply to situations where an individual qualifies as a Named Executive Officer for the first time, even if the individual has served as an executive officer of the registrant in one or both of the fiscal years preceding the last completed fiscal year covered by the Summary Compensation Table.

**Suggested Answer:** While C&DI 119.01 was intended to provide transitional guidance during the implementation of the revised executive compensation disclosure requirements of Item 402 of Regulation S-K during the 2007 proxy season, it is still applicable in situations where an individual qualifies as a Named Executive Officer for the first time. In other words, it requires that compensation information for the individual be provided in the Summary Compensation Table only for the last completed fiscal year, even if the individual has served as an executive officer of the registrant in one or both of the fiscal
years preceding the last completed fiscal year covered by the Summary Compensation Table.

SEC RESPONSE: The SEC Staff indicated that it has determined not to change CDI 119.01 at this time. Accordingly, this CDI continues to apply to situations where an individual qualifies as a Named Executive Officer for the first time, even if the individual has served as an executive officer of the registrant in one or both of the fiscal years preceding the last completed fiscal year covered by the Summary Compensation Table. In addition, the Staff confirmed that CDI 119.18 (which provides that, in the case of a person who was a Named Executive Officer in year 1, but not in year 2, and who will again be a Named Executive Officer in year 3, compensation information for this person must be disclosed in the Summary Compensation Table for all three fiscal years), continues to be in effect.

5. Bonus Payable in Stock. At the SEC Staff’s 2008 meeting with the JCEB, the Staff indicated that the preferred reporting treatment of the following transactions was uncertain. Has the Staff had an opportunity to revisit these situations since that time? If so, how should the following situations be reported in the Summary Compensation Table, and the Grant of Plan-Based Awards Table?

A bonus opportunity is initially denominated in cash (such as a percentage of base salary) but subsequently paid in the form of equity compensation in the following situations:

(a) A registrant establishes an annual bonus opportunity under a non-equity incentive plan as a dollar amount. After the fiscal year is over, the Compensation Committee of the registrant’s Board of Directors decides to pay all or a portion of the bonus in fully vested shares of the registrant’s stock.

(b) After the fiscal year is over, the Compensation Committee of the registrant’s Board of Directors decides to pay the bonus in shares of restricted stock or using a restricted stock unit award subject to an additional service-based vesting requirement. Ultimately, the award will be settled in shares of the registrant’s stock.

(c) After the fiscal year is over, the Compensation Committee of the registrant’s Board of Directors decides to pay the bonus in phantom stock or using a restricted stock unit award subject to an additional service-based vesting requirement. Ultimately, the award will be settled in cash.

Suggested Answer: By analogy to C&DI 119.03 (which deals with an election by the executive to convert a cash bonus to stock), the full amount of the bonus should be reported as Non-Equity Incentive Compensation (in both the Summary Compensation Table and the Grants of Plan-Based Award Table) since there was no right to receive stock within the scope of Financial Accounting Standards Board Accounting Standards Codification No. 718 at the time of grant (that is, there was no right to receive stock
embedded in the terms of the award). The form of payment in shares of the registrant’s stock should be disclosed in a footnote to the Non-Equity Incentive Plan Compensation column (column (g)).

**SEC RESPONSE:** Yes. In each of the situations outlined in (a), (b) and (c) above, the full amount of the award should be reported as Non-Equity Incentive Compensation (in both the Summary Compensation Table and the Grants of Plan-Based Award Table) because there was no right to receive stock within the scope of Financial Accounting Standards Board Accounting Standards Codification No. 718 at the time of grant (that is, there was no right to receive stock embedded in the terms of the award). The form of payment in shares of the registrant’s stock should be disclosed in a footnote to the Non-Equity Incentive Plan Compensation column (column (g)). In addition, in the case of situations (b) and (c), where payments are subject to additional vesting requirements, the registrant would report the resulting equity awards in the Outstanding Equity Awards at Fiscal Year-End Table as outstanding as of the last day of the last completed fiscal year, with appropriate footnote disclosure of the ultimate method of settlement of the awards.

**6. Reporting of Equity Incentive Plan Awards with Multi-Year Performance Periods.** In the fall of 2011, in connection with a review of the Exchange Act filings of Verizon Communications, Inc. the SEC Staff objected to the registrant’s reporting of an equity incentive plan award with a multi-year performance period where the board compensation committee reserved the discretion to adjust the award payout based on its assessment of non-objective criteria.

Specifically, the terms of the award provided for the grant of a target number of performance stock units (“PSUs”), with each PSU representing one share of the registrant’s common stock and settlement in cash based on the value of the registrant’s common stock on the last trading day of the performance period. The number of PSUs to be actually earned and paid was to be determined based on the registrant’s total shareholder return (“TSR”) over a three-year performance period compared to the performance of a designated peer group of companies. In addition, the board compensation committee had the authority to recommend to the board of directors that it increase the award payout based on its assessment of the recipient’s performance against a series of quantitative and qualitative strategic criteria (subject to a maximum total payout of 200% of the PSUs initially awarded). The board compensation committee did not assign a particular weight to the strategic criteria and reserved the discretion to recommend to the board of directors whether and to what degree the award should be increased. Finally, the terms of the award provided that, if the registrant’s relative TSR performance during the performance period did not warrant any payout of the PSUs, the award recipient would not receive any payout with respect to the award (including any portion relating to the strategic criteria).

Initially, the registrant reported the value of the award in the Stock Awards column of the Summary Compensation Table for the year of grant based on the registrant’s accounting expense consistent with the then-existing version of the Instruction to Item 402(c)(2)(v) and (vi) of Regulation S-K (and the probable outcome of the specified performance
conditions). While this reporting did not assign any value for the discretionary portion of the award subject to the assessment of the strategic criteria, the registrant, in accordance with Instruction 3 to Item 402(c)(2)(v) and (vi), reported the value of the award, determined at the grant date assuming that the highest level of performance conditions will be satisfied, in a footnote to the Stock Awards column of the Summary Compensation Table.

Following extensive back and forth with the Staff, the registrant agreed to report the portion of the award that was subject to the strategic criteria separately as a discretionary award in the fiscal year earned. Specifically, this portion of the award was to be reported in the Stock Awards column of the Summary Compensation Table for the fiscal year earned, rather than for the fiscal year in which the award was granted.

The unique facts of this situation have generated a number of questions by practitioners as we seek to understand the rationale for, and scope of, this result. We would like to discuss this matter with the Staff at this year’s meeting, including the following questions:

a) We note that, in its response to the initial Staff inquiry with respect to the reporting treatment of the PSU award, the registrant cited Financial Accounting Standards Board Accounting Standards Codification 718, Compensation – Stock Compensation (“ASC 718”), and specifically ASC 718-10-15-3(a) and ASC 718-10-25-5, as the relevant authority for determining the reporting treatment of both “components” of the award. Subsequently, the Staff stated its belief that, with respect to the second “component” of the award only, a mutual understanding of the key terms and conditions occurred between the registrant and the award recipient in the fiscal quarter in which the award was granted in accordance with the definition of a “grant date” in ASC 718-10-20 and the additional guidance in ASC 718-10-55-81 through 55-83. Following further discussion with the registrant, the Staff maintained its view that, due to the qualitative nature of several of the performance conditions established by the board of directors for the vesting of the second “component” of the award, as well as the discretion involved in evaluating the achievement of those performance conditions, there was not a mutual understanding of the key terms and conditions of the award until the board compensation committee evaluated the achievement of those performance conditions.

We would like to understand the extent to which the Staff’s views were predicated in whole or in part on the application of the relevant accounting provisions of ASC 718 to the terms and conditions of the award for purposes of establishing a “grant date” for financial statement reporting purposes to what the Staff regarded as a totally separate award based on the strategic criteria, as well as the extent to which its views represent an interpretation of the application of Item 402 of Regulation S-K to an equity incentive plan.
award with a discretionary component.

b) Is it appropriate to interpret the Staff’s views on this matter as guidance that, where the amount to be paid under an equity incentive plan award contains both an objective component and a discretionary component, each component should be analyzed separately for purposes of determining the proper reporting treatment under Item 402(c) of Regulation S-K? Would the analysis be the same where it is the objective component, rather than the discretionary component, involves decisions that the board compensation committee must make in its reasonable discretion?

c) C&DI 119.24 addresses the reporting treatment under Item 402 of Regulation S-K of an equity incentive plan award with a multi-year performance period that allows the board compensation committee to exercise its discretion to decrease (but not increase) the amount earned pursuant to the award, consistent with Section 162(m) of the Internal Revenue Code. Noting that an award’s “service inception date” may precede its grant date if the equity incentive plan award is authorized but service begins before a mutual understanding of the key terms and conditions is reached, the Staff took the position that, where a board compensation committee’s right to exercise “negative” discretion may preclude, in certain circumstances, a grant date for the award during the year in which the terms of the award and performance targets were communicated to the executive officer and in which the service inception date begins, the award should be reported in the Summary Compensation Table and Grants of Plan-Based Awards Table as compensation for the year in which the service inception date begins.

We note that, in the instant matter, even though the service inception date for both “components” of the award appears to have begun in the year in which the PSU award was approved by the board of directors and even though there may not have been a mutual understanding of the key terms and conditions of the award until the board compensation committee evaluated the achievement of the strategic criteria, the ability of the board compensation committee to exercise its discretion to increase the amount of the award based on its assessment of the level of achievement of the strategic criteria resulted in the reporting of the second “component” of the award based on its actual “grant date” rather than the “service inception date.” Can the different reporting treatment set forth in C&DI 119.24 and the instant matter be explained by the difference in the type of discretion reserved to the board compensation committee in each situation (that is, “negative” discretion in the former instance and “positive” discretion in the latter instance)?

d) If “negative” discretion is considered to not affect the determination of a service inception date for purposes of reporting an equity incentive plan award under Item 402 of Regulation S-K, does that suggest that a compensation recovery (so-called “clawback”) policy that complies with the requirements of
Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act will not affect the reporting of such awards in the fiscal year of the service inception date despite any decision for purposes of ASC 718-10-20 that the existence of the “clawback” precludes accounting for the award in the year of the service inception date?

SEC RESPONSE: The SEC Staff’s analysis and related communications with Verizon Communications, Inc. concerning the registrant’s reporting of an equity incentive plan award with a multi-year performance period where the board compensation committee reserved the discretion to adjust the award payout based on its assessment of non-objective criteria were based on the specific facts and circumstances relating to the design and operation of that award.

The SEC Staff reminded the participants at the meeting that, as specified in Items 402(c)(2)(v) and (vi) of Regulation S-K, the reporting of equity incentive plan awards is to be analyzed based on the application of the principles set forth in Financial Accounting Standards Board Accounting Standards Codification Topic 718, Compensation – Stock Compensation. In addition, the SEC staff will carefully examine the economic substance of an award in determining how it should be reported.

Securities Act Rule 144

Securities Registration
No questions at this time

Form S-8
No questions at this time

Rule 701
No questions at this time

Form 8-K

Exchange Act Rule 14a-21

Regulation BTR
No questions at this time

Section 16
No questions at this time