PLAN DESIGN CONSIDERATIONS WITH PERFORMANCE SHARES USING RELATIVE TOTAL SHAREHOLDER RETURN

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There has been much discussion and debate on the appropriate performance measures to select regarding an executive equity plan. For equity plans based on Performance Shares, both abroad and in the United States, Relative Total Shareholder Return (referred to heretofore as "Relative TSR") is emerging as the most common performance metric. With more pressure to align shareholder and executive interests, Radford anticipates that more Relative TSR-based plans will be implemented for the following reasons:

- Internal performance metrics are challenging to oversee from a Board perspective. Boards are experiencing increasing pressure from shareholders to directly align executive rewards with performance in their equity plans more directly to shareholder value creation - Relative TSR plans achieve this objective. (In fact, some activist investors have insisted on Relative TSR; for example, former SEC Chairman Richard Breeden has specifically cited Relative TSR as a critical performance metric for determining incentive compensation to executives.[1])
- Relative TSR has more favorable accounting consequences in that the accounting charge is fixed, regardless of future payout. However, internal performance conditions are "marked-to-vest" and therefore can lead to volatile period-to-period accounting.
- Relative TSR plans are easier to administer than other internal performance conditions, and readily measurable at any time for regular and frequent feedback to plan participants and the Board.
- Relative TSR plans provide ongoing transparency for participants, with a clear line of sight into rewards as opposed to perhaps murkier internal performance measures.

Looking into the international markets where punitive accounting did not exist in years prior to 2006, close to 90% of companies use Relative TSR as one of the performance metrics to link executive rewards with shareholder value creation.

Perhaps the most important reason for the popularity of Relative TSR with Performance Shares is the reasonability of the future payout functions. For example, traditional stock options can create volatile payout functions – either creating a tremendous amount of wealth, or expiring "underwater" without creating wealth. However, with Performance Shares dependant on Relative TSR, future payout functions are leveled to create future wealth consistent with actual performance, but also in light of shareholder gains. In fact, the future payouts can be quite similar to traditional stock options (since many of the plans pay out at 200% or even 300% sometimes), except

[1] http://www.sec.gov/Archives/edgar/data/853665/000090342307000070/breedensc13daex99c_0126.htm

removing out the idiosyncratic behavior of stock movements. Therefore, participants only get paid for actual out-performance against the comparators, and mitigates the "rising tide lifts all boats" or the tragic "falling tide sinks all boats". For this reason, Relative TSR equity programs can be viewed as an effective substitute for stock options even to the rank-and-file over time.

As Relative TSR continues to emerge as a dominant performance metric (particularly in the US, as FAS 123(R) entrenches itself further into the equity design considerations), the intent of this paper is to highlight some of the important design considerations that maximize the incentive effect of the awards, and mitigate any administrative, accounting or tax challenges. There are a wide range of considerations[2] in design, each of which can have dramatic effects – including:

- Length of Performance Period
- Payout Schedules and Bendpoints
- Number and Type of Peer Companies
- Averaging Period on Total Shareholder Return
- Treatment of Dividend Equivalents
- Appropriate Calculation of Total Shareholder Return
- Appropriate Calculation of Percentile
- Communication of the Plan to Recipients

The following pages lay out each of these important design considerations and discuss any relevant accounting, tax, or administrative concerns. As mentioned above, Relative TSR plans are well into their evolutionary life cycle outside of the US and specifically in the United Kingdom. We will often refer to guidelines set by the Association of British Insurers (the ABI) in December 2006 on policies and practices[1] which have provided a framework for "best practices". Their guidelines may act as a roadmap in the design of performance equity within the US.

The article also refers to Appendix A which is a summary of recent companies who have publicly disclosed the use of Relative TSR in SEC filings, along with some of the disclosed provisions. Appendix B represents further definition of some of the mathematical computations within the calculation of TSR.

Design Considerations

Length of Performance Period

Nearly 90% of the companies Radford researched use a three-year performance period providing for the measurement of performance over time. Further, virtually all companies use cliff vesting with the Performance Shares rather than relying on a graded approach, largely to align vesting with completion of the performance period as well as to minimize the administrative challenges with respect to graded vesting schedules of shares.

Further, the ABI guidelines suggest that "*Vesting should therefore be based on performance conditions measured over a period appropriate to the strategic objectives of the company. This will not be less than, and may exceed, three years."*

We further believe that three years is an appropriate timeframe, and minimizes any short-term considerations to sacrifice for longer-term goals in addition to providing a time period for building sustainable performance. However, setting appropriate goals and selecting peer companies beyond that period of time are murky at best. Further, since the majority of awards are cliff vested, awards that vest in more than three years would not carry the same retentive effect.

Payout Schedules and Bendpoints

The design of the payout schedule ultimately defines the future payout of the performance awards. Relative TSR plans afford a breadth of flexibility in designing the future payout schedules. Generally, we see companies define target performance equal to the median of the Peer companies. Therefore, if the company's performance is at the median, the employee will receive payout at target or 100% of plan. Generally, if a company outperforms the comparator companies, then the holders will receive increased payouts.

One of the significant capabilities of a Relative TSR plan is the ability to easily align the equity plan to the company's total rewards philosophy. For example, if a company believes in compensating their employees at the 60th percentile of the market (i.e. above average), then it is reasonable to expect that those employees should perform at that level as well. Congruently, a Relative TSR plan can be aligned to set the target payout at the 60th percentile, with upside or outperform payouts if the performance is above the 60th percentile, and lower payouts if the performance is less than the 60th percentile.

The ABI states that payout schedules that have "*sliding scales are a useful way of ensuring that performance conditions are genuinely stretching. They generally provide a better motivator for improving corporate performance than a 'single hurdle*'."

The most common outperform payout maximum or cap is set at 200% of target, however, some companies have used an outperform component of up to 300% of target[3]. Interestingly, an outperform payout of 300% yields payout functions similar to stock options. Considering typical restricted share/stock option conversion ratios of approximately three options to one restricted share (3:1), a payout function of 300% then yields the same number of awards as if issuing stock options. Generally, since TSR plans offer some more downside protection, they don't provide the upside reward of certain stock options. That "leveling" of the payout function has served as one of the great benefits of Relative TSR awards.

To generalize broadly, we have summarized companies that have disclosed their Average Performance (Median) Payout and Excellent Performance (Maximum) Payout in the chart below. Appendix A summarizes all companies.

Payout Targets	Minimum	Average	Median	Maximum
Average Performance	0.00%	80.07%	100.00%	110.00%
Excellent Performance	100.00%	175.58%	200.00%	300.00%

Number of Peer Companies

It is critical to select an appropriate comparator or peer group; otherwise, the relative performance is not effectively considered, and payouts will not be aligned appropriately to actual performance. Selecting an appropriate peer group also presents the most significant challenge – and opportunity for abuse – in designing performance equity plans.

Generally, there are two approaches to picking peer companies:

(a) **Picking a broad index of peer companies.** Some indexes that we have commonly seen in the marketplace are the S&P 500, the S&P Midcap 400, the NAREIT Equity Index, the Amex Biotech-Pharmaceutical Index, or the S&P Information Technology Index; or

(b) **Select a customized peer group of comparators.**

From Appendix A, note that only 40% of companies have used a custom peer group, while more than 50% have used a pre-defined index. Generally, if a company can appropriately select 15 or more custom peer companies, we believe it is preferable to use the custom group. Over a three-year (or more) performance period, a handful of companies may drop out of the peer group to corporate events such as acquisitions or bankruptcies, so it is important to have a sufficient number of companies in your comparator set to create a reasonable distribution of results. Without an appropriately-sized peer group, it would be preferable to create a relative comparator group against a broad index to have stability over the performance period.

Approach (a): Picking a broad index of peer companies

If a company elects to use a broad index of peer companies, it is critical to decide how to handle companies that move in and out of the index, within the below approaches.

Closed Group - The first approach is to limit the index of peer companies to the identical companies that are part of the index at the beginning of the Performance Period. As companies are removed from the closed group for various events, they may or may not be dropped from the closed group depending upon the facts and circumstances of the event. For example, if a company stops being publicly traded due to a bankruptcy, generally they would be left in the closed group as a negative return. However, if a company

[3] Among others, look to Allegheny Technologies, CBS, or Home Depot in their 2/27/2007, 3/16/2007, or 1/24/2007 SEC disclosures respectively.

stops being publicly traded due to an acquisition, generally it would be removed from the closed group. Therefore, the ending number of companies in the closed group would be less than the original starting group. Since the payouts are based on percentile rankings, it would not have an effect on the overall relative ranking, as the closed group had sufficient companies to keep an appropriate distribution even absent several companies.

The challenge of the Closed Group approach is that it creates an additional burden on an organization to track each company dropping out of the index and the reason, and for the Compensation Committee to make the decision whether to remove the peer organization from the Closed Group. An example of a Share Award Agreement that uses a Closed Group can be found with Goodrich Corporation from their 8K filing with the SEC[4] on December 10, 2007. See Appendix C, Example 1.

Rolling Index – The rolling index approach has performance measured against the components of the Index at the end of the Performance Period. Therefore, if a company drops out of the index due to a bankruptcy, then they would be replaced with another company, and the new company would become the comparator. Likewise, if a company is dropped from an index due to a loss in market capitalization, then it would be replaced. Further, if a company is dropped from an index due to an increase in market capitalization, then it would be replaced with another comparator.

When using a rolling index approach, it is critical to think about the index that you are comparing to. For example, the S&P 500 can have companies drop out due to a loss of market capitalization; however, it will *never* have companies graduate out with growth in market capitalization. Therefore indexes that can only have "exits out" would not be appropriate to use the Rolling Index approach.

On the other hand, the S&P 400 Mid-cap may have companies that drop out, as well as companies that graduate out. It is an example of an index that may create a normal distribution of exits and entrances, and may sufficiently create an equitable distribution of returns. We have specifically studied the companies joining and leaving the S&P Mid-cap 400 from 2000 to 2007[5], and that 360 companies in total have exited from the index, averaging 45 per year or approximately 11% per year.

Note that historically, more companies have "demoted out" of the index than "graduated out". Therefore, it appears that the use of a Rolling Index may competitively disadvantage management from reaching target performance. An example of a company with a Rolling Index can be found in Hubbell Corporation's SEC filing of February 9, 2007.[6]

Approach (b): Selecting a customized peer group of comparators

As mentioned before, if a company opts to select a customized peer group, then they should feel comfortable selecting at least 15 comparator companies. If this is the case, though, it is critical in your award agreements to specifically identify how the payout function changes with changes in the number of comparator companies. A very detailed disclosure of how to adjust for corporate events can be found with KB Home in their SEC filing of July 12, 2007[7]. See Appendix C, Example 2.

Further, the disclosure by Overseas Shipholding Group on January 17, 2007[8] specifically identifies the payout function as companies change in the peer group. Note that Overseas Shipholding Group initially starts with 19 peer companies, and they specifically identify payout based on the remaining number of companies in the peer group. See Appendix C, Example 3.

Another excellent example of a company specifying the payout schedule dependent on the number of remaining companies from their custom peer group can be found in the 8K filing of Pioneer Natural Resources Company in their filing on March 2, 2007[9]. Pioneer Natural builds a matrix of payouts dependent on the number of remaining peers at the end of the performance period. The chart on the next page summarizes the concept for Pioneer and their 11 peer companies.

[4] http://www.sec.gov/Archives/edgar/data/42542/000095013707018463/c22264exv10w3.htm

[5] http://www2.standardandpoors.com/portal/site/sp/en/us/page.topic/indices_400/2,3,2,2,0,0,0,0,0,3,1,0,0,0,0,0.html
[6] http://www.sec.gov/Archives/edgar/data/48898/000129993307000914/exhibit1.htm
[7] http://sec.gov/Archives/edgar/data/795266/000095013707010158/v32022exv10w33.htm
[8] http://www.sec.gov/Archives/edgar/data/75208/000007520807000004/janx10-3.htm
[9] http://sec.gov/Archives/edgar/data/1038357/000103835707000036/exhibit102.txt

Rank Against Peers	11 Peers Remaining	10 Peers Remaining	9 Peers Remaining	8 Peers Remaining	7 Peers Remaining
1	250%	250%	250%	250%	250%
2	200%	200%	200%	200%	200%
3	175%	175%	170%	166%	155%
4	250%	150%	140%	133%	110%
5	125%	125%	110%	100%	70%
6	110%	100%	80%	65%	30%
7	75%	75%	50%	30%	0%
8	50%	50%	25%	0%	0%
9	25%	25%	0%	0%	
10	0%	0%	0%		
11	0%	0%			
12	0%				

Note that it is highly unlikely that Pioneer Natural Resources would have less than seven peers, especially since they identified additional alternate peers to be included in the event of changes to the peer group.

Share Price Averaging Period

When calculating TSR, it is important to apply an averaging period to the calculation. The TSR calculation must be unbiased by any unique events, news releases, seasonal marketplace effects, or other events. To avoid this, the majority of companies use an averaging period on the TSR calculation ranging from a single day (a spot date) to as high as 200 days, as seen with Applebees International[10].

Since Institutional Shareholder Services (now RiskMetrics) applies a 200-day moving average[11] in developing recommended grant policies, there is consistency in applying a 200-day average with their governance policies. However, an averaging period as long as 200 days can lead to unexpected accounting consequences. This is discussed later with regard to FAS 123(R) accounting.

Further, the ABI recently recommended that the averaging period should be *"over a short period of time at the beginning and end of the performance period. Lengthy averaging periods should be avoided."* While an averaging period mitigates share price volatility, there is concern that a longer averaging period may result in TSR that does not adequately reflect genuine returns to shareholders.

The chart below summarizes the averaging periods seen in the US marketplace.

Averaging Period	Percentage
1 Day	12.3%
2-19	8.8%
20-29	15.8%
30-59	8.8%
60-89	2.6%
90-179	6.1%
180 or Greater	3.5%
Not Disclosed	42.1%
Total	100.0%

Generally we recommend that the averaging period range from 30 to 90 days, and hopefully incorporating one quarterly report with the SEC. We believe that this would lead to non-biased stock volatility. However, we believe the least appropriate approach is through the use of a spot TSR calculation, which is subject to day-to-day volatility and fluctuation.

Treatment of Dividend Equivalents

The treatment of dividend equivalents are one of the most challenging aspects of Relative TSR equity plans. Generally, we have observed three approaches for the handling of dividend equivalents in the marketplace:

[10] http://www.sec.gov/Archives/edgar/data/853665/000085366507000068/tentwopvrs.txt

[11] http://www.issproxy.com/issgovernance/policy/2007compensationFAQ.html#I6b

(1) Payout accumulated dividends at future Performance Multiplier

This is the most common approach, by which the actual accrual of payout and dividends is done based upon the actual number of awards paid out at the end of the performance period. If the future award is paid out at 200%, then additional dividend equivalents will be paid out at the end of the Performance Period. Likewise, if the future award is paid out at 0%, then no dividend equivalents will be paid out. This approach links the dividend equivalents to the actual shares. An example of this approach can be found in the SEC filing from Edison International on February 22, 2007[12]. See Appendix C, Example 4.

One of the challenges with this approach is that if dividends are paid during the Performance Period, and payout is *less than* target, then dividends would need to be returned. Generally, to avoid this, dividend equivalents are accumulated during the performance period, and not paid out until the end. Therefore, there would be no obligation to recoup the dividend payouts, if necessary.

(2) Payout of dividends at target

Some companies have opted to use this approach for paying dividends. This approach decouples the dividend accruals from the original award. Since the dividend accruals are not subject to the FAS 123(R) market condition, it needs to be valued and accrued for separately than the regular performance share. However, this approach simplifies some of the administrative responsibilities, since you no longer need to track target payout awards simply to accrue for dividend equivalents.

A benefit of this approach is that if dividends are paid during the performance period, then dividends would not need to be returned or considered. Anheuser Busch illustrated this approach in their November 21, 2006 filing with the SEC[13]. See Appendix C, Example 5.

(3) No dividend equivalents

Similar to the prior scenario, if the payment of dividends is de-coupled from the payout of shares, then it simplifies the administration of the awards. Similarly, dividends should not be factored into the FAS 123(R) valuation of the award. However, for purposes of determining TSR, dividends should continue to be considered. An example of a company that does not provide dividend equivalents during the vesting period is Xcel Energy (July 29, 2005).[14]

Appropriate Calculation of Total Shareholder Return

In the marketplace, we have observed many different approaches for calculating TSR. However, some approaches - perhaps created to "simplify" the administrative aspect of the calculation - yield flawed representations of TSR, including companies not re-investing dividends, averaging annualized returns (therefore not compounding returns), or looking at average returns. Given the sophistication of programming, we believe that companies should appropriately be calculating TSR, re-investing dividends similar to the approach described below.

The three steps below will calculate the TSR during a performance period, at each stock price *i* using an averaging period of *x* days. Note that time 0 represents the Grant Date.

Step 1: Since dividends are assumed to be re-invested, it is required to calculate the number of shares purchased with dividends and accumulate the purchased shares until the measurement date *t*. Generally, it should be assumed that dividends are paid on the ex-dividend date. Therefore for each ex-dividend date at time *t,* (D_t) then the number of shares purchased, P_t , at time *t* can be calculated as $P_t = \frac{D_t}{S_t}$. The total accumulated shares purchased through dividends from the Grant Date to the measurement date at any time *t* can be calculated as $AP_t = \sum_{t=0-x}^{t} P_t$. Note that the averaging period

[12] http://www.sec.gov/Archives/edgar/data/827052/000082705207000025/ex991.htm

[13] http://sec.gov/Archives/edgar/data/310569/000106880006001489/ex10_21.htm

[14] http://www.sec.gov/Archives/edgar/data/72903/000110465905035130/a05-12523_1ex10d04.htm

before the Grant Date should also include dividends, since the ex-dividends are also part of the underlying asset of the share price at that time.

Step 2: Next, it is required to calculate the *x*-day Average Stock Price at the date of Grant. At the date of grant, it can simply be calculated as $AS_0^x = \frac{\sum_{t=0-x}^{0}(S_t + AP_t \times S_t)}{x}$, and AS_t^x, can be generalized at any time *t* (including the Terminal measurement at the end of the Performance Period) as follows:

$$AS_t^x = \frac{\sum_{t=t-x}^{t}(S_t + AP_t \times S_t)}{x}$$

Step 3: Finally, the TSR with an x-day averaging period at any time *t*, TSR_t^x, can be calculated as

$$TSR_t^x = \frac{AS_t^x}{AS_0^x}$$

This approach for calculating TSR should yield consistent and equitable results from one company to the next. Anheuser Busch does an effective job of disclosing their provisions in their Share Award Agreement[15], although their calculation is simplified absent an averaging period. See Appendix C, Example 6.

Appropriate Calculation of Percentile

One of the most overlooked and most important calculations for companies with Relative TSR plans is the actual calculation of Percentile performance. We are currently aware of several acceptable mathematical methods of calculating percentile rank; however, there is no definitively correct methodology. Below we have highlighted four alternative and reasonable approaches to calculating the percentile, $P\%$, each causing dramatically different payouts at the end of the Performance Period, depending on the number of comparator companies.

(1) *"Floor"* Percentile – This approach is probably the easiest to calculate. It has been briefly named the "floor" approach because it allows for a 0% percentile. To calculate the $P\%$ given a rank, R, based on N observations (therefore N-1 comparators):

$$P\% = 1 - \frac{R}{N}$$

(2) *"Ceiling"* Percentile – Similarly, this approach has been briefly named the "ceiling" approach because it allows for a 100% percentile. It is calculated as follows:

$$P\% = \frac{(N - R + 1)}{N}$$

(3) Average Percentile – Another common approach is to use the average of the "Floor" and the "Ceiling" calculations. This is calculated as follows:

$$P\% = \frac{(N - R + \frac{1}{2})}{N}$$

[15] See Footnote 8 regarding Anheuser Busch

(4) *Microsoft Excel* Percentile Function – This is based on the Microsoft Excel function PERCENTRANK, and is calculated as follows:

$$P\% = 1 - \frac{(R-1)}{(N-1)}$$

Please note that the "squeeze theorem" [16] dictates that the methods will converge as N approaches infinity. Therefore, with a large number of comparator companies, the difference will be immaterial. However, with a smaller number of peer companies (20 or less), then significant differences in the Percentile calculation can occur.

Consider Occidental Petroleum Company[17] with only eight peers. The results below illustrate the various methods for calculating the percentile for each rank.

Rank	1-(*rank* / N) [1]	(N-*rank* +1) / N [2]	(N-*rank* +1/2) / N [3]	1-(*rank* -1) / (N-1) [4]
1	88.89%	100.00%	94.44%	100.00%
2	77.78%	88.89%	83.33%	87.50%
3	66.67%	77.78%	72.22%	75.00%
4	55.56%	66.67%	61.11%	62.50%
5	44.44%	55.56%	50.00%	50.00%
6	33.33%	44.44%	38.89%	37.50%
7	22.22%	33.33%	27.78%	25.00%
8	11.11%	22.22%	16.67%	12.50%
9	0.00%	11.11%	5.56%	0.00%

[1] - Percentile Floor

[2] - Percentile Ceiling

[3] - Average Percentile

[4] - Based on the PERCENTRANK function with X variable "Rank"

The method for calculating percentile rank has a direct correlation to the calculated payout. Therefore, no matter the method used to calculate percentile rank, we believe it to be essential for companies to fully disclose their method for calculating percentile rank in their Stock Award Agreement. This is not the case with the overwhelming majority of plan documents we have observed.

Radford believes that the "Average" and Microsoft Excel methodologies give the most reasonable results, and will evolve to "best practice" amongst companies with Relative TSR plans as the approach for determining percentile performance.

Change-In-Control/Re-capitalization Provisions

It is also critical to specify the exact provisions upon a Change-In-Control or a spin-off. Generally, we see four (4) different approaches applied upon Change-In-Control:

(a) Payout at target;
(b) Payout at target, and pro-rated upon service from grant to Change-In Control;
(c) Final Measurement of payout at Change-In-Control;
(d) Final Measurement of payout, and pro-rated upon service from grant to Change-In-Control

An example of a company who pays out at target can be found in the SEC filing of Equity Inns on December 31, 2006[18]. This approach would not consider the performance from grant date to the Change-In-Control date. However, it also negates the effect of the premium due to the Change-In-Control.

[16] Asserts that if two functions approach the same limit at a point, and if a third function is "squeezed" between those functions, then the third function also approaches that limit at that point.
[17] http://www.sec.gov/Archives/edgar/data/797468/000079746807000104/ex102-20070718.htm
[18] http://www.sec.gov/Archives/edgar/data/916530/000091653007000002/exhibit10_3.htm

An example of a company that pays out at target, but then pro-rates the amount based on service, can be found in the SEC filing of Duke Energy on March 8, 2007[19]. Similarly, this approach would not consider the performance from grant date to the Change-In-Control date.

Another common approach upon Change-In-Control is to have a final measurement through the date of Change-In-Control. For example, Pioneer Natural Resources uses a final measurement date on the Change-In-Control as disclosed in their February 26, 2007 SEC filing.[20] This approach does capture any appreciation or performance after the Grant Date through the Change-In-Control date.

The ABI has suggested that *"where share incentive awards vest early as a consequence of a change of control, awards should vest on a time pro-rata basis i.e. taking into account the vesting period that has elapsed at the time of change of control."*

We have not seen any significant prevalence of any of the above approaches. However, we believe that best practice will evolve to a final measurement at Change-In-Control along with a pro-ration for service, consistent with the ABI recommendation on executive remuneration.

Termination/Retirement Provisions

Generally, most companies have special vesting provisions for Retirements, Death, and Disability. The most common approaches for qualifying retirements, death, or disability is to:

(a) Payout at target; or
(b) Payout at target, however, pro-rated upon service from grant to termination

An example of a company who pays out at target can be found with Chubb Corporation, as disclosed in their March 7, 2007 SEC filing.[21] Alternatively, both Alliant Energy and Avaya summarize a service pro-ration in their December 12, 2007[22] and December 21, 2006[23] SEC filings respectively.

With regard to voluntary termination, the Performance Awards would be forfeited. With a pre-vesting forfeiture, the company would generally be able to re-capture any expense recognition already incurred under FAS 123(R).

The ABI states that "i*n other circumstances of cessation of employment, it is to be expected that some portion of the award will vest, to the extent of the service period that has been completed but subject to the achievement of relevant performance criteria. In general the originally stipulated performance measurement period should continue to apply."*

Similarly, Radford believes that best practice in Retirement/Death/Disability provisions will evolve to a final measurement at the end of the performance period, followed by a pro-ration based on the service at the termination date.

Note that the treatment of equity due to involuntary termination can have an effect on the tax status of the awards. In Private Letter Ruling #200804004[24], the IRS states that if an employment agreement provides for an award to vest other than for 'cause' or by Executive for 'good reason,' then the awards will not be considered performance-based compensation exempted from the $1 million cap on deductions under §162(m).

FAS 123(R) Considerations

Outside of the general plan design considerations, it is critical to thoroughly understand the FAS 123(R) accounting implications. Any award based on Total Shareholder Return is considered a "market condition", and therefore "the effect of a market condition is reflected in the grant-date fair value of an award".[25] With respect to FAS 123(R), there are important considerations both on the valuation and the subsequent amortization of compensation.

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[19] http://sec.gov/Archives/edgar/data/1326160/000110465907017433/a07-7549_1ex10d2.htm
[20] http://sec.gov/Archives/edgar/data/1038357/000103835707000036/exhibit102.txt
[21] http://sec.gov/Archives/edgar/data/20171/000110465907017136/a07-7406_1ex10d2.htm
[22] http://www.sec.gov/Archives/edgar/data/52485/000010783207000194/form8k121207exh10pt2.htm
[23] http://www.sec.gov/Archives/edgar/data/1116521/000110465906083275/a06-26280_1ex10d1.htm
[24] http://www.irs.ustreas.gov/pub/irs-wd/0804004.pdf
[25] Paragraph 19 of FAS123(R), http://www.fasb.org/pdf/fas123r.pdf

FAS 123(R) Valuation

The most common technique used to value performance shares based on TSR measurement is a Monte Carlo simulation. A Monte Carlo simulation model will generally project future stock prices based upon a risk-neutral stock price framework for the granting company, and similarly project future stock prices for each of the comparator companies. In order to capture the complex nature of future stock prices movements, it is required to estimate an expected volatility (similar to the volatility calculation used in traditional option pricing, and applied to the Black-Scholes model). Further, it is required to estimate a correlation between stock price movements for each member of the peer group with the modeled company. Thereafter, the simulated future stock prices are not only used to determine the relative rank at the end of the performance period and the expected number of awards to vest, but further should be used to determine the fair value as the grant date present value of future cash flows for the modeled company. This approach captures the convexity of positive returns yielding greater number of awards vesting.

Each of the aforementioned design considerations needs to be reflected in the Monte Carlo simulation process. Highlighted below are some design decisions that need to be factored in the valuation:

- **The averaging period can have a significant effect on the valuation**.
Since the award ultimately needs to be valued based on the stock price at the Grant Date, then if there is a longer averaging period, there is greater probability of a significant variance on the Grant Date as compared against the x-day average TSR. The variance on the Grant Date can be thought of as a "head start", or a "competitive disadvantage" compared against the TSR of each peer. Therefore, the FAS 123(R) grant date values can be significantly different as compared to initial estimates.

- **The effect of dividend equivalents need to be considered.**
If the payout multipliers of the dividend equivalents do not match the payout multipliers of the Performance Shares, then a separate valuation needs to be done for the dividend equivalents, since a separate market condition/service condition applies to the dividends. Therefore, if dividends will have their own FAS 123(R) valuation, they should not be considered in the valuation of the underlying performance shares (however they should be included in the calculation of TSR).

FAS 123(R) Accounting

Since awards with market conditions consider the effect of the market condition in the fair value, it is required to recognize the compensation expense regardless of the ultimate future payout. For example, if no awards are ultimately paid out, the company is not allowed to reverse any prior recognized expense. Likewise, and more importantly, if more awards than anticipated are paid out (i.e. 200%), there is no additional compensation cost required. Therefore, the initially recognized compensation expense will never be affected by the ultimate outcome of the TSR condition. Since most performance equity plans also have an underlying service condition, it is required to still estimate the effect of pre-vesting forfeitures, and therefore true-up/ true-down the effect of forfeitures based on the underlying service condition.

This accounting underscores the relative attractiveness of a TSR program, because it leads to very stable and predictable expense recognition patterns. Rather than being forced to recognize further expense for additional share payouts, or reverse out prior recognized expense, it leads to less volatile compensation expense.

Conclusions

A confluence of several events in the US – specifically regarding the adoption of FAS 123(R), and corporate trends to align executive compensation with shareholder returns – have led to a marked increase in the use of performance-based equity and specifically Relative TSR Performance Share programs. We anticipate that Relative TSR will become even more prevalent as companies become more comfortable with the concept. Consideration must be made to all of the plan design nuances that can have a significant impact on the accounting, tax, and participant value, which need to be considered prior to an effective implementation.

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Appendix A
Summary of Relative TSR Provisions

	Company Name	SEC Filing Date	Performance Period	Ranked to	Number of Peers	Stock Price Averaging Period	Payout Max Bendpoint	50% Bendpoint	Dividend Equivalents	Change In Control Provisions	Termination Provisions
1	A Schulman		3	Custom		Not Disclosed					
2	Advanced Medical Optics		2			Not Disclosed					
3	AES Corporation	2/28/2007	3	S&P 500	500	Not Disclosed	150%	75%	Not disclosed	Not disclosed	Not disclosed
4	Agilent Technologies					Not Disclosed					
5	Allegheny Technologies	2/27/2007	3	Custom	Not Disclosed	30	300%	100%	Not disclosed	Not disclosed	Not disclosed
6	Alliant Energy	12/18/2007	3	S&P 400 Midcap Utilities Index	400	Not Disclosed	2	Not disclosed	Not disclosed	Not disclosed	Not disclosed
7	Ameren Corporation	2/15/2007	3	Utility Peer Group	Not Disclosed	Not Disclosed	200%	Not disclosed	yout accumulated dividends during two-year holdback peri	Not disclosed	Not disclosed
8	American Express	1/26/2007	3	S&P 500	500	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed
9	AmerisourceBergen Corporation	11/13/2007	3	S&P 500	500	Not Disclosed	150%	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed
10	AMR Corporation	1/17/2007	1	Custom	6	90	175%	75%	Not disclosed	Not disclosed	Not disclosed
11	Anheuser-Busch Inc.	11/27/2006	3	S&P 500	500	Not Disclosed	100%	80%	Not disclosed	Payout at Final Measurement; Prorated with Service	Continued vesting for Death, Disability, and Retirement; Prorated with Service
12	Applebees	3/20/2007	4	Bear Stearns Index	Not Disclosed	200	150%	100%	out accumulated dividends at the future performance multi	Determined By Board	Full or Partial Accelerated Vesting
13	Avaya Incorporated	12/21/2006	3	S&P IT Index	Not Disclosed	1	200%	Not Disclosed	Not disclosed	Not disclosed	Continued vesting for Death and Disability; Prorated with Service
14	Bank of Montreal	1/30/2008	3	Custom	5	90	150%	100%	Not disclosed	Not disclosed	Not disclosed
15	BearingPoint	2/8/2007	3	S&P 500	500	20	250%	Not Disclosed	Not disclosed	Not Disclosed	Not Disclosed
16	Best Buy	5/16/2007	3	S&P 500	500	90	150%	100%	out accumulated dividends at the future performance multi	Not Disclosed	Not Disclosed
17	Brinker Interantional Inc	8/27/2007	3	Custom	Not Disclosed	90	Not Disclosed	Not Disclosed	out accumulated dividends at the future performance multi	Payout at least equal to target	Full or Partial Accelerated Vesting
18	Cadbury Schweppes	4/10/2007	3	Custom	27	30	100%	30%	out accumulated dividends at the future performance multi	Not Disclosed	Not Disclosed
19	Capital One Financial Corporation	12/11/2007	3	Custom	Not Disclosed	Not Disclosed	200%	Not Disclosed	Not Disclosed	Performance Period ends with CIC	Pro rata based on service
20	CBS Corporation	3/16/2007	3	S&P 500	500	10	300%	100%	Not Disclosed	Not Disclosed	Not Disclosed
21	Chart Technologies	8/7/2007	3	Custom	20	1	150%	35%	Not Entitled to Dividends or Dividend Equivalents	Greater of Target or Final Measurement	Pro rata based on service
22	Chesapeake Corporation	3/23/2007	3	Custom	18	1	200%	100%	Not Disclosed	Not Disclosed	Not Disclosed
23	Chesapeake Utilities	1/24/2008	3	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not disclosed	Payout at Maximum	Continued vesting for Death, Disability; Prorated with Service
24	Chevron Corporation	3/23/1995	3	Custom	5	20	200%	Not Disclosed	out accumulated dividends at the future performance multi	Not Disclosed	Not Disclosed
25	Chubb Corporation	3/7/2007	3	S&P 500	500	15	200%	100%	Not Disclosed	Performance Period ends with CIC	If Qualified, receives amount earned, otherwise, forfeits
26	Cimnet Incorporated	5/3/2007	3	Custom	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed
27	Conseco	5/9/2007	3	Life and Health / Russell 3000 Life and He	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed
28	Corn Products International	1/29/2007	3	Custom	30	Not Disclosed	200%	Not Disclosed	Not Entitled to Dividends or Dividend Equivalents	Performance Period ends with CIC	After first year, Payout at Target, Prorated with Service
29	Dollar Thrifty Automotive	2/6/2007	3	Russell 2000 Index	2000	30	200%	Not Disclosed	Not Disclosed	Target Paid out based on Pro Rata	Pro rata of actual based on service
30	Dominion Resources	1/30/2008	3	Custom	10	1	200%	100%	Not disclosed	Greater of Target or Final Measurement	Continued vesting for Death, Disability, and Retirement; Prorated with Service
31	Domtar Corporation	5/24/2007	3	Custom	Not Disclosed	Not Disclosed	150%	Not Disclosed	Not Entitled to Dividends or Dividend Equivalents	Units vest, or continue as set forth in Plan	Continued vesting for Death, Disability, and Retirement; Prorated with Service
32	Dow Jones	1/23/2007	3	Custom	Not Disclosed	Not Disclosed	150%	100%	Not Disclosed	Not Disclosed	Not Disclosed
33	Duke Energy Corp	3/8/2007	3	Philadelphia Utility Index	20	Not Disclosed	150%	100%	Payout of dividends at Target	Determined By Board	Continued vesting for Death, Disability, and Retirement; Prorated with Service
34	Edison International	2/27/2007	3	Philadelphia Utility Index	20	20	200%	100%	out accumulated dividends at the future performance multi	Full or Partial Accelerated Vesting	Full or Partial Accelerated Vesting
35	Equity Inns	1/5/2007	3	NAREIT	15	1	150%	100%	out accumulated dividends at the future performance multi	Payout at Final Measurement; Prorated with Service	Not disclosed
36	Equity One, Inc.	10/24/2007	4	Custom	6	180	Not Disclosed	Not Disclosed	out accumulated dividends at the future performance multi	Payout at Final Measurement; Prorated with Service	Full or Partial Accelerated Vesting
37	Essex Property Trust	12/28/2007	3	Custom	11	Not Disclosed	100%	Not Disclosed	Not disclosed	Not disclosed	Full or Partial Accelerated Vesting
38	Exelon Corporation	3/30/2007	3	Dow Jones Utility Index / S&P 500	500	20	200%	100%	Payout of dividends at Target	Full or Partial Accelerated Vesting	Not disclosed
39	Federal Realty Investment	7/17/2007	3	Bloomberg REIT Shopping Center Index	36	30	150%	100%	out accumulated dividends at the future performance multi	Not disclosed	Full or Partial Accelerated Vesting
40	Forest Oil Corp.	5/15/2007	3	Custom	10	Not Disclosed	200%	50%	Payout of dividends at Target	Full or Partial Accelerated Vesting	Not disclosed
41	Gilead Sciences	2/9/2007	3	AMEX Biotech Pharmaceutical Index	9	20	200%	100%	Not Entitled to Dividends or Dividend Equivalents	Full or Partial Accelerated Vesting	Continued vesting for Death, Disability, and Retirement; Prorated with Service
42	Glimcher Realty Trust	3/14/2007	3	Other REITS	16	15	200%	Not Disclosed	Not disclosed	Full or Partial Accelerated Vesting	Continued vesting for Death, Disability, and Retirement; Prorated with Service
43	Goodrich	12/13/2007	3	Aerospace Peer Group	20	Not Disclosed	200%	100%	Not disclosed	Not disclosed	Not disclosed
44	H J Heinz	7/3/2006	2	Custom	10	60	100%	50%	Not disclosed	Full or Partial Accelerated Vesting	Continued vesting for Death, Disability, and Retirement; Prorated with Service
45	Hardie James Industries	8/16/2007	3	Custom	20	Not Disclosed	Not Disclosed	Not Disclosed	Not disclosed	Determined By Board	Continued vesting for Death, Disability, and Retirement; Prorated with Service
46	Hershey Foods	2/13/2007	3	Custom	Not Disclosed	Not Disclosed	250%	Not Disclosed	Not disclosed	Not disclosed	Not disclosed
47	Hewlett-Packard	1/24/2008	3	S&P 500	500	Not Disclosed	133%	Not Disclosed	Not disclosed	Not disclosed	Continued vesting for Death, Disability, and Retirement; Prorated with Service
48	Home Depot	1/24/2007	3	S&P 500	500	Not Disclosed	300%	100%	Not disclosed	Full or Partial Accelerated Vesting	Continued vesting for Death, Disability, and Retirement; Prorated with Service
49	Host Hotels & Resorts	12/26/2007	3	NAREIT Equity Index	Not Disclosed	Not Disclosed	200%	Not Disclosed	Not disclosed	Not disclosed	Not disclosed
50	Hubbell Corporation	2/15/2007	3	S&P Midcap 400	400	1	200%	100%	Not disclosed	Payout at Final Measurement	Payout at Target; Prorated with Service
51	IDEARC Inc.	2/22/2007	3	Not Disclosed	Not Disclosed	Not Disclosed	150%	Not Disclosed	Not disclosed	Not disclosed	Not disclosed
52	International Flavors & Fragrances	3/12/2007	3	S&P 500	500	20	Not disclosed	Not disclosed	Not disclosed	Not disclosed	Not disclosed
53	International Paper Company	8/14/2007	?	Custom	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not disclosed	Not disclosed	Not Disclosed
54	ITT Technologies	7/2/2007	3	S&P Industrials	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not disclosed	Not disclosed	Not Disclosed
55	KB Home	7/18/2007	3	Custom	11	20	150%	100%	out accumulated dividends at the future performance multi	Not disclosed	Not Disclosed
56	L3 Communications	8/7/2007	3	S&P Aerospace & Defense Index	56	Not Disclosed	200%	Not Disclosed	Not disclosed	Not disclosed	Not disclosed
57	Leggett & Platt Inc.	12/18/2007	3	nsumer Discretionary, Materials of S&P 500 and S&P400		Not Disclosed	175%	75%	out accumulated dividends at the future performance multi	Not disclosed	Continued vesting for Death, Disability, and Retirement; Prorated with Service
58	Lexington Realty Trust	1/3/2007	5	Morgan Stanley REIT Index	Not Disclosed	5	Not Disclosed	Not Disclosed	out accumulated dividends at the future performance multi	Full or Partial Accelerated Vesting	Full or Partial Accelerated Vesting
59	MDU Resources	2/21/2007	3	Custom	28	Not Disclosed	200%	100%	out accumulated dividends at the future performance multi	Not disclosed	After first year, Payout at Target, Prorated with Service
60	Metlife	12/13/2007	3	S&P Insurance Index	Not Disclosed	20	200%	100%	Not disclosed	at Final Measurement, multiplied by Change of	Continued vesting for Disability and Retirement; Payout at closing price on date of D
61	Minerals Technologies Inc.	10/26/2007	3	Custom	Not Disclosed	Not Disclosed	N/A	N/A	Not disclosed	Not disclosed	
62	National City Bank	3/2/2007	4	Custom	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed	Not disclosed	Not disclosed	Not Disclosed
63	Nationwide Health Properties	2/5/2007	3	FTSE NAREIT Index	Not Disclosed	Not Disclosed	200%	50%	Not Entitled to Dividends or Dividend Equivalents	Full or Partial Accelerated Vesting	Full or Partial Accelerated Vesting
64	New Jersey Resources Corporation	1/4/2008	3	Custom	Not Disclosed	Not Disclosed	150%	Not disclosed	out accumulated dividends at the future performance multi	Greater of Target or Final Measurement	Greater of Target or Final Measurement; With a Proration
65	NewField Exploration	2/21/2007	3	Custom	27	20	200%	100%	Not disclosed	Payout at Final Measurement	Continued vesting for Death, Disability, and Retirement
66	Nicor Incorporated	3/26/2007	3	S&P Utility Index	Index	20	200%	75%	Not disclosed	Determined By Board	Continued vesting for Death, Disability, and Retirement
67	Nordstroms	2/26/2007	3	Not Disclosed	Not Disclosed	30	125%	0%	Not disclosed	Not disclosed	Continued vesting for Death, Disability, and Retirement; Prorated with Service
68	Northwest Natural Gas	2/27/2007	3	Custom	10	90	200%	60%	out accumulated dividends at the future performance multi	Payout at Final Measurement; Prorated with Service	Continued vesting for Death, Disability, and Retirement; Prorated with Service
69	Occidental Petroleum Corporation	7/18/2007	3	Custom	8	10	150%	100%	Payout of dividends at Target	Payout at Target	Payout at Target; Prorated with Service
70	Orbital Group Ltd	9/21/2007	3	Small Cap Peers in S&P / ASX indices	50	Not Disclosed	125%	50%	Not disclosed	Not disclosed	Not disclosed
71	OshKosh Truck Corp.	9/21/2007	3	S&P Midcap 400	400	10	200%	75%	out accumulated dividends at the future performance multi	Payout at Final Measurement	Payout at Final Measurement on Termination; Prorated with Service
72	Overseas Shipholding group	1/17/2007	3	Custom	19	1	100%	0%	Not disclosed	Determined By Board	Forfeiture
73	Pennsylvania Real Estate Trust	4/5/2005	4	Morgan Stanley REIT Index	Index	20	Not disclosed	Not disclosed	Not disclosed	Not disclosed	Not disclosed
74	PG&E	2/22/2007	3	Custom	12	30	200%	65%	out accumulated dividends at the future performance multi	Payout at Final measurement or Continue plan	Continued vesting for Death, Disability, and Retirement
75	Pioneer Natural Resources Compan	3/2/2007	3	Custom	11	60	250%	110%	out accumulated dividends at the future performance multi	Payout at Final Measurement	Continued vesting for Death, Disability, and Retirement; Prorated with Service

Appendix A (continued)
Summary of Relative TSR Provisions

	Company Name	SEC Filing Date	Performance Period	Ranked to	Number of Peers	Stock Price Averaging Period	Payout Max Bendpoint	50% Bendpoint	Dividend Equivalents	Change In Control Provisions	Termination Provisions
76	Potlatch Corporation	1/19/2007	3	Custom	Not disclosed	60	200%	100%	out accumulated dividends at the future performance multi	Payout at Target; Prorated with Service	Continued vesting for Death, Disability, and Retirement; Prorated with Service
77	PPG Industries	2/21/2007	3	Not Disclosed	Not disclosed	Not disclosed	Not disclosed	Not disclosed	out accumulated dividends at the future performance multi	Payout at Target	Continued vesting for Death, Disability, and Retirement
78	Rayonier Inc.	10/9/2007	3	Custom	15	20	175%	100%	Not Disclosed	Not Disclosed	Payout at Target; Prorated with Service
79	Rowan Companies	5/14/2007	3	Custom	7	25	200%	100%	Not Disclosed	Determined By Board	Continued vesting for Death, Disability, and Retirement; Prorated with Service
80	Royal Bank of Canada	11/30/2007	3	Custom	20	Not disclosed	150%	100%	Not Disclosed	Not Disclosed	Not Disclosed
81	Spartech Corp.	11/21/2007	3	Custom	16	365	200%	100%	Payout of dividends at Target	Payout at Final Measurement; Prorated with Service	Continued vesting for Death, Disability, and Retirement; Prorated with Service
82	Spectra Energy Corp	8/3/2007	3	S&P500	Index	30	150%	58%	out accumulated dividends at the future performance multi	Payout at Target; Prorated with Service	Continued vesting for Death, Disability, and Retirement; Prorated with Service
83	Steelcase Inc.	5/4/2007	3	Custom	Not disclosed	20	200%	100%	out accumulated dividends at the future performance multi	Payout at Target; Prorated with Service	Continued vesting for Death, Disability, and Retirement
84	Strategic Hotels & Resort	2/20/2007	3	Bloomberg Hotel REIT	Index	30	200%	100%	out accumulated dividends at the future performance multi	Payout at Target	Payout at Target
85	Sun Life Financial	3/27/2007	3	Custom	12	5	150%	Not disclosed	out accumulated dividends at the future performance multi	Payout at Target	Continued vesting for Death, Disability, and Retirement; Prorated with Service
86	Suncor Energy Inc.	3/16/2007	3	Peer Group	Not disclosed	Not disclosed	150%	100%	Not disclosed	Not disclosed	Not disclosed
87	Superior Energy Services Inc	12/20/2006	3	Custom	12	Not disclosed	200%	75%	Not Disclosed	Payout at Maximum	Continued vesting for Death, Disability, and Retirement; Prorated with Service
88	Sybase Incorporated	4/28/2006	3	S&P 400	Index	Not disclosed	100%	90%	Not Disclosed	Not Disclosed	Not Disclosed
89	Time Warner	1/26/2007	3	S&P 500	Index	30	200%	100%	out accumulated dividends at the future performance multi	Payout at Final Measurement; Prorated with Service	Continued vesting for Death, Disability, and Retirement; Prorated with Service
90	Treehouse Foods	2/5/2007	3	Custom	22	20	100%	100%	Not Disclosed	Payout at Target	Continued vesting for Death, Disability, and Retirement
91	Tyco International	7/6/2007	3	S&P 500 Industrials	Index	Not disclosed	200%	100%	Not Disclosed	Payout at Target	Continued vesting for Death, Disability, and Retirement; Prorated with Service
92	United Technologies Corp	10/16/2006	3	S&P 500	Index	1	200%	100%	Not Disclosed	Determined By Board	Continued vesting for Death, Disability, and Retirement
93	US Airways Group, Incorporated	3/30/2007	3	Custom	13	90	140% - SVP 200% - CEO	70% - SVP 125% CEO	Not Disclosed	Not Disclosed	Continued vesting for Death, Disability, and Retirement
94	Vectren Corporation	12/28/2007	3	Not Disclosed	Not Disclosed	365	Not Disclosed	Not Disclosed	out accumulated dividends at the future performance multiplier		Continued vesting for Death, Disability, and Retirement; Prorated with Service
95	Verizon Communications	3/14/2006	3	S&P 500 and Peer Group	500+	1	200%	55%	Payout of dividends at Target	50% Payout at Target	Continued vesting for Death, Disability, and Retirement
96	Viacom Incorporated	9/25/2006	3	S&P 500	Index	20	300%	100%	Not Disclosed	Not Disclosed	Not Disclosed
97	Vodafone Group Public LTD	8/8/2007	3	FTSE Global Communications index	Index	Not disclosed	100%	25%	Not Disclosed	Not Disclosed	Not Disclosed
98	Vulcan Materials	7/12/2007	3	Index	Index	Not Disclosed	150%	100%	Not Disclosed	Payout at Final Measurement	Continued vesting for Death, Disability, and Retirement
99	Walt Disney Company	12/15/2006	3	S&P 500	500	30	Not Disclosed	Not Disclosed	out accumulated dividends at the future performance multi	Payout at Target	Payout at Target
100	Westpac Banking Corp	8/17/2007	10	Peer Group	10	Not Disclosed	100%	Not Disclosed	Not Disclosed	Not Disclosed	Not Disclosed
101	Xcel Energy Inc	7/29/2005	3	Edison Electric Index	Index	10	200%	100%	No Dividend Equivalents	Determined By Board	Continued vesting for Death, Disability, and Retirement; Prorated with Service

Appendix B
Summary of Terms Defining Total Shareholder Return

S_i	Represents the Stock price at Time *i*
D_i	Represents the Dividend payout at Time *i*
P_i	Represents the number of shares Purchased at Time *i* due to Dividend Reinvestment
AP_i	Represents the Accumulated number of shares Purchased at Time *i* through Purchases due to Dividend Reinvestment
AS_o^x	Represents the Average *x*-day Stock price on the Date of Grant
AS_i^x	Represents the Average *x*-day Stock price at Time *i*
TSR_i^x	Represents the Total Shareholder Return using an *x*-day averaging period at Time *i*

Appendix C
Referenced Examples from SEC Filings

Example 1:
A Share Award Agreement that uses a Closed Group can be found with Goodrich Corporation from their 8K filing with the SEC on December 10, 2007:

"(c) Aerospace Peer Group. The Aerospace Peer Group is a group of aerospace companies selected, from time to time, by the Company's Compensation Committee. The Aerospace Peer Group must be set by the Compensation Committee within 90 days of the beginning of a Term. If during the Term there is any change in the corporate capitalization of any aerospace company in the Aerospace Peer Group, such as a stock split, a corporate transaction or any partial or complete liquidation of any such aerospace company, the Compensation Committee, to the extent it deems it necessary and/or appropriate, in its sole discretion, shall take such change into account in determining the TSR of such aerospace company in the Aerospace Peer Group for purposes of subsection (b) of Section 4 (including, without limitation, by making such determination as if the change had not occurred or by eliminating such aerospace company from the Aerospace Peer Group for the Term)."

Example 2:
Adjusting for corporate events can be found with KB Home in their SEC filing of July 12, 2007:

"(c) The "Peer Companies" are Beazer Homes USA, Inc.; Centex Corporation; D.R. Horton, Inc.; Hovnanian Enterprises, Inc.; Lennar Corporation; M.D.C. Holdings, Inc.; NVR, Inc.; Pulte Homes, Inc.; The Ryland Group, Inc.; Standard Pacific Corp.; and Toll Brothers, Inc. The Peer Companies may be changed as follows:

(i) In the event that, at anytime during the Performance Period, a Peer Company is no longer included in the same Standard & Poor's Global Industry Classification Standard ("GICS") Sub-Industry as the Company, such company shall no longer be a Peer Company.

(ii) In the event of a merger, acquisition or business combination transaction of a Peer Company with or by another Peer Company, the surviving entity shall remain a Peer Company, without adjustment to its financial or market structure, provided that the surviving entity is still in the same GICS Sub-Industry as the Company.

(iii) In the event of a merger of a Peer Company with or by an entity that is not a Peer Company, or the acquisition or business combination transaction by a member of the Peer Group of or with an entity that is not a Peer Company, in each case, where the Peer Company is the surviving entity, the surviving entity shall remain a Peer Company, without adjustment to its financial or market structure, provided that the surviving entity is still in the same GICS Sub-Industry as the Company.

(iv) In the event of a merger or acquisition or business combination transaction of a Peer Company with or by an entity that is not a Peer Company, other form of "going private" transaction relating to any Peer Company or the liquidation of any Peer Company, where such Peer Company is not the surviving entity or is otherwise no longer publicly traded, the company shall no longer be a Peer Company.

(v) In the event of a bankruptcy of a Peer Company, such company shall remain a Peer Company, without adjustment to its financial or market condition."

Example 3:
The disclosure by Overseas Shipholding Group on 1/17/2007 specifically identifies the payout function as companies change in the peer group. Note that Overseas Shipholding Group initially starts with 19 peer companies, and they specifically identify payout based on the remaining number of companies in the peer group.

"In order to satisfy component (1) of the Performance Goal, the Company's ranking (from the top) among the Peer Group at the end of the Performance Period must be as follows:

- *If there are 18 or 19 Peer Group companies on the last day of the Performance Period, the Company must be ranked 5th or higher based on TSR.*
- *If there are between 14 and 17 Peer Group companies on the last day of the Performance Period, the Company must be ranked 4th or higher based on TSR.*
- *If there are between 10 and 13 Peer Group companies on the last day of the Performance Period, the Company must be ranked 3rd or higher based on TSR.*
- *If there are between 6 and 9 Peer Group companies on the last day of the Performance Period, the Company must be ranked 2nd or higher based on TSR.*
- *If there are 5 or fewer Peer Group companies on the last day of the Performance Period, the Company must be ranked 1st based on TSR."*

Example 4:
An example of the payout accumulated dividends at future Performance Multiplier
approach for the treatment of dividend equivalents can be found in the SEC filing from Edison International on February 22, 2007:

"Dividend Equivalent Reinvestment. For each dividend declared on EIX Common Stock with an ex-dividend date on or after the date an award of Restricted Stock Units is granted and before all of such Restricted Stock Units either have become payable pursuant to Section 5.1 or have terminated pursuant to Section 8, the holder of such award will be credited with an additional number of Restricted Stock Units…"

Example 5:
An example of the payout of dividends at target approach for the treatment of dividend equivalents from Anheuser Busch's November 21, 2006 filing with the SEC:

"Section 4. RIGHTS AS A STOCKHOLDER. Until such time, if ever, as the Recipient may forfeit any Restricted Stock in accordance with Section 6 hereof, the Recipient shall be a stockholder of record of the Company for all purposes with respect to the Restricted Stock and shall have all rights of a common stockholder of the Company, including the right to vote such Restricted Stock at any meeting of the common stockholders of the Company and the right to receive all dividends declared and paid with respect to such Restricted Stock, subject only to the restrictions imposed by this Restricted Stock Agreement."

Example 6:
Anheuser Busch does an effective job of disclosing their provisions in their Share Award Agreement, although their calculation is simplified absent an averaging period:

"(v) "TSR" shall mean an S&P 500 Company's total shareholder return, which will be calculated by dividing (i) the sum of (A) the cumulative amount of the S&P 500 Company's dividends for the Performance Period, assuming same day reinvestment into the common stock of the S&P 500 Company on the ex-dividend date, and (B) the share price of the S&P 500 Company's common stock at the end of the Performance Period minus the share price at the beginning of the Performance Period, by (ii) the price of a share of the S&P 500 Company's common stock at the beginning of the Performance Period."