

Tips for a Plain English Securities Disclosure Document

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There are four reasons public companies should use plain English in the disclosure documents they file with the SEC and distribute to investors:

- ◆ The SEC requires plain English for some information.
- ◆ Investors want, need, and deserve plain English.
- ◆ Using plain English will improve your document and make your company look better.
- ◆ Using plain English will save you money.

If you want to communicate, and not just offer up facts for experts and the intrepid to decipher, you need to adopt a whole new approach to presenting information. Treat your next filing as an opportunity to elevate your company's disclosure style; resist the urge to simply update the numbers and the details from last year's report. I have seen far too many 10-Ks and proxy statements that need to be restructured and rewritten—ruthlessly. Even the best need a regular housecleaning so they don't get bloated and stale.

The trick to creating a plain English document is to be methodical. Do not expect that your first draft will be perfect, or that you will be able to fix all the problems in an existing document with one edit. I have broken the process into 22 steps, divided in five phases:

1. before you start—get the right mindset
2. first pass—fix the obvious problems
3. second pass—serious revisions
4. third pass—fine tuning
5. once you think you're finished.

This seems like a lot, but you will be more productive if you limit the number of things you look for in each reading.

You will find short focused examples throughout this discussion to illustrate my points, and some longer “don't let this happen to you” examples at the end of the package.

Before you start

Don't procrastinate.

It seems like plain English should be easier and faster to write than your average legalese, boilerplate, and gobbledygook, and that may be the case when you are updating a document that is already well-written and contains all the requisite data. However, if you are starting from scratch, it will take time and concentrated attention to identify, collect, and organize useful information and present it in a way that makes sense. And don't forget, whatever you produce will go through extensive review by colleagues and lawyers, and several negotiated drafts.

It is never too early to start working on your next filing. If the numbers aren't ready, tackle the paragraphs that describe your company's business, competition, properties, and other things that don't change dramatically each year. It will be easier to plug in the financial information if you already have a good starting point.

Pretend that providing disclosure in plain English is a good idea, even if you don't think it is.

People who write disclosure documents (or who pay others to write them) often assume that investors do not want to read them anyway. A writer with that attitude strives for nothing more than the floor of legal compliance. Start with the premise that investors would love to have the information you are required to give them, and are intelligent enough to understand at least some of it, if only you would make it convenient to read. Focus on the quality of your disclosure; don't settle for "legally adequate."

First pass

Speak the right language.

One of the best compliments a client has given me was not intended to be a compliment. A financial officer told me that the way I explained a particular accounting concept in a 10-K was substantively correct, but that an accountant reading my explanation might not recognize it as an accounting concept at all. Great! Unless all of your investors are accountants, why should your documents use accountants' unique vocabulary? You want to use common words—not businesspeak, industry jargon, and legalese.

Example

Original:

ABC's compensation program is intended to create competitive advantage through the stimulation of superior performance of the Company's human capital.

Better:

ABC's compensation program is designed to motivate employees and inspire great work.

Use plenty of descriptive headers.

Good headers will help you organize information and help readers find what they want. For that reason (among others), restrict text in each section to what the header says will be there. Make your headers as specific as you can: "How We Benchmark Pay for Named Executive Officers" is better than "Compensation."

Example

Original:

ABC Insurance's operations have liquidity requirements that vary among the principal product lines. Life insurance and pension plan reserves are primarily longer-term liabilities. Property and casualty, as well as accident and health reserves, including long-term disability, consist of both short-term and long-term liabilities. Life insurance and pension plan reserve requirements are usually stable and predictable, and are supported primarily by medium-term, fixed-income investments. Property and casualty claim demands are less predictable in nature, requiring greater liquidity in the investment portfolio. Accident and health claim demands are stable and predictable, but generally shorter term, requiring greater liquidity.

Better:

ABC Insurance's liquidity requirements vary among the principal product lines:

Life insurance and pension plan reserves are primarily longer-term liabilities. Reserve requirements are usually stable and predictable, and are supported primarily by medium-term, fixed-income investments.

Property and casualty and accident and health reserves, including long-term disability, consist of both short-term and long-term liabilities. These claim demands are less predictable in nature, so the investment portfolio must provide some liquidity.

Accident and health claim demands are stable and predictable, but generally shorter term. Satisfying these claims also requires liquidity.

Give some context.

Your filings cover a lot of information, so tell your readers what to expect. Every section should have a header and an introductory paragraph that explains what the section will discuss. Every paragraph should have either an introductory sentence or a sentence that eases the transition from the preceding paragraph.

Here are some good openers:

ABC's activities are conducted at the six facilities described below. Management believes that the quality and productive capacity of our facilities will be sufficient for the foreseeable future.

There are several instances in this report where we use language that is unique to XYZ or to our industry. For your convenience, we'd like to explain a few key phrases here.

Use defined terms correctly.

I have seen proxy statements that refer to three different Board committees as "the Committee." It is better to use more words and refer to the Governance Committee, the Compensation Committee, and the Audit Committee.

Similarly, many writers assign a defined term (such as the "Preferred Stock") to every special word or long phrase they introduce, thinking they will use the term several times. Unfortunately, it is not unusual for a defined term to appear once in a long document, never to be seen again. This frustrates readers who try to learn vocabulary that supposedly will be useful. (It also suggests that no one proofread the document before it was distributed.) If you don't need a defined term at least three times, strike it.

Conversely, if you intend to use an unfamiliar term several times, explain it clearly the

first time it comes up. Make your explanation obvious (indented, set off in a box, or in a distinctive font or color) so readers can find it again easily.

Personalize it.

Use your company's name rather than "the Company" or "the Corporation," especially if the company name is short. Some companies use personal pronouns ("We have designed our marketing program..."), but others are squeamish about that style.

If you must refer to your company in the third person, pick a term and stick with it. Don't be "the Company" on page 2, and "ABC Inc." or "the Corporation" on page 8.

Omit unnecessary detail and superfluous material.

Chances are, your starting document contains at least one sentence or paragraph that has been there "forever," even though nobody knows why. It was probably copied years ago from some industry leader's filing because "it looked good," but does not respond to any of your company's current disclosure obligations. If you and your lawyers cannot think of a good reason to keep an apparent filler sentence or paragraph, delete it.

On a smaller scale, distinguish critical data from the unimportant details that can be omitted.

Example

The IRS has completed audits of ABC's income tax returns for the 1995 through 2003 tax years, and has disallowed all net deductions that relate to lease in, lease out transactions. ABC appealed the examination results for the tax years 1995 through 1997 to the Appeals Division of the IRS. ~~During the fourth quarter of 2005, discussions with the Appeals Division were discontinued without a resolution, but did not prevail.~~ In March 2007, ABC filed a lawsuit in the United States District Court for the Northern District of Ohio, claiming that the disallowance of the deductions and assessment of penalties were erroneous. ~~The case proceeded to a bench trial, which commenced on January 21, 2008.~~ On May 28, 2008, the Court rendered a decision that was adverse to ABC. Management disagreed with the decision and, ~~on July 23, 2008,~~ ABC filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit.

Prefer the active voice.

Using the active voice rather than passive voice is helpful for two reasons: it will be obvious who did what; and your sentences likely will be shorter.

Example

Original:

Dividends paid to shareholders from interest earned by the Fund from tax-exempt municipal obligations and from exempt interest dividends received by the Fund from other tax-exempt securities are not includible in a shareholder's gross income for federal income tax purposes. Distributions of net interest income derived from other sources, if any, and of net short-term capital gains realized by the Fund will be taxable to shareholders as ordinary income.

Better:

Generally, your dividends will not be subject to federal income tax if they come from interest the Fund earns from tax-exempt securities like municipal bonds. If the Fund distributes net interest income derived from sources other than tax-exempt securities, or distributes short-term capital gains, those amounts will be taxable to you as ordinary income.

Include charts and tables, but use them instead of—not in addition to—information that would otherwise be in the text.

When you need to provide a lot of data, it is often easier to plug it into a chart or table. Graphics are convenient for readers because they offer a snapshot view of several facts at once. If you have created a good graphic, trust it. Use your text to explain the information, not to repeat it.

Example

Original:

Educational institutions are penalized to varying degrees under the Federal Family Education Loan Program or the William D. Ford Federal Direct Student Loan Program, depending on the default rate for the “cohort” defined in the statute. An institution with a cohort default rate that exceeds 20% for the year is required to develop a plan to reduce

defaults, but the institution's operations and its students' ability to utilize student loans are not restricted. An institution with a cohort default rate of 25% or more for three consecutive years is ineligible to participate in these loan programs and cannot offer student loans administered by the U.S. Department of Education for the fiscal year in which the ineligibility determination is made and for the next two fiscal years. Students attending an institution whose cohort default rate has exceeded 25% for three consecutive years also are ineligible for Pell grants. Any institution with a cohort default rate of 40% or more in any year is subject to immediate limitation, suspension, or termination proceedings from all federal aid programs.

Better:

As shown in the following chart, educational institutions are penalized to varying degrees for student loan defaults under the Federal Family Education Loan Program or the William D. Ford Federal Direct Student Loan Program, depending on the default rate for the "cohort" defined in the statute.

Cohort default rate	Penalty
More than 20% in one year.	The institution must develop a plan to reduce defaults, but the institution's operations and its students' ability to utilize student loans are not restricted.
25% or more for three consecutive years.	The institution is ineligible to participate in these loan programs and cannot offer student loans administered by the U.S. Department of Education for the fiscal year in which it is deemed ineligible and for the next two fiscal years. * * * * * Students attending the institution are ineligible for Pell grants.
40% or more in any year.	The institution is subject to immediate limitation, suspension, or termination proceedings from all federal aid programs.

Say everything just once, in an unambiguous way, under a logical header.

Companies often repeat "stock" paragraphs, like the description of the business or competitive strengths, in two or three places. Many justify this repetition by arguing that investors don't read a report from cover to cover; they start with their "favorite" section

and may not go any farther. The problem is, you should want investors to read your whole report. You can encourage them to do so by shortening the document (easy if you take out multiple duplicative paragraphs), writing clearly, and making sure that each section contains useful and unique information. If something is so important that you don't want the "skimmers" to miss it, give a thorough explanation in one logical place, and provide a summary and cross-reference in other appropriate sections.

Second pass

Replace text with bullet lists.

There are three good reasons to look for opportunities to use bullet lists:

- ◆ Bullets usually only require a few words, and there will be space between each item, so your document will be easier on the eye;
- ◆ Each point will stand out; and
- ◆ You can usually eliminate words.

There are several uses for bullet lists, but they are particularly good substitutes for word strings and sentence strings. I use the term "word string" to refer to a sentence that lists several items separated by commas or semicolons.

Example

Original with word string:

University believes that its competitive strengths in undergraduate program offerings include: career-oriented curricula developed with regular employer input that helps ensure graduates learn skills that will be marketable to employers; faculty with related industry experience; the demonstrated effectiveness of its undergraduate career services in obtaining education-related employment; national brand name recognition and market presence; regional accreditation; authorization by various states to grant degrees; modern facilities; well-equipped laboratories; evening, weekend and online class schedules; and a year-round academic calendar schedule that permits more flexible attendance and earlier graduation. Only a limited number of traditional colleges offer a bachelor's degree program that can be completed in three years. This results in a significant financial

advantage to University students who want to enter the work force one year earlier than would be possible if they had attended a traditional four-year undergraduate institution.

Better:

University's competitive strengths in the market for undergraduate programs include:

- Career-oriented curricula developed with employer input to ensure that graduates learn marketable skills;
- Faculty with industry experience;
- An effective undergraduate career service program;
- National brand-name recognition and market presence;
- Regional accreditation;
- Authorization by various states to grant degrees;
- Modern facilities and well-equipped laboratories;
- Evening, weekend, and online class schedules;
- A year-round academic calendar schedule that permits more flexible attendance and earlier graduation; and
- Bachelor's degree programs that can be completed in three years, giving University students the financial advantage of entering the work force one year earlier than their counterparts at traditional four-year undergraduate institutions.

You usually create "sentence strings" when you are describing a multi-step process. You probably won't realize until you finish writing that you have started every sentence with the same three words.

Example

Original with sentence string:

The Committee xxxxx. The Committee also xxxxxxxx. Then, in consultation with the CEO, the Committee xxxxxxxx. After reviewing the Company's year-end results, the Committee xxxxxxx.

Better:

The Committee has adopted the following multi-step process for determining incentive compensation awards:

- xxx
- xxx
- xxx
- xxx

Once you have your bullet lists, make sure the language is consistent. Don't start one bullet with a verb and the next with a noun.

Example

Original:

The Company uses the following general principles to guide its decisions regarding the design of its compensation program and to ensure that it is consistent with the overall objectives described above:

1. Provide a competitive compensation package.
2. The Company's compensation program should align the interests of Named Executive Officers with the interests of the Company and its shareholders.
3. A significant portion of the compensation package should be tied to performance of the Company.

Better:

The Company uses the following general principles to guide its decisions regarding the design of the compensation program and to ensure that the program is consistent with the overall objectives described above. The compensation program should:

1. Be competitive.
2. Align the interests of Named Executive Officers with the interests of the Company and its shareholders.
3. Be tied, to a significant extent, to the Company's performance.

Make sure your explanation follows a logical sequence.

Think carefully about what readers need to know, and in what order. Your discussion will be much more useful, and you likely can eliminate cross-references and repetition to make it shorter.

The paragraph in this example was completely out of order. Once I rearranged the sentences, it was easy to see that the company was repeating itself. I was able to eliminate over half of the words.

Example

Original:

The Plan places a portion of incentive compensation at risk, since participants must achieve certain performance thresholds to earn bonus incentive compensation under the Plan. In addition, the Plan increases bonus incentive awards when performance exceeds Plan objectives. Under the Plan, participants are eligible to earn cash bonus incentive compensation based upon the achievement of certain performance goals and objectives relating to the Company and each individual participant. The Committee establishes quarterly and annual performance goals and objectives for the Plan. Following the end of each performance period, the Committee determines the extent to which the performance goals and objectives were obtained. Based on this assessment, eligible participants in the Plan may earn a bonus incentive award in an amount equal to a percentage of such participant's target bonus incentive compensation. [131 words]

[Doesn't the first underlined sentence look like it should come after the sentence that follows it? Point A: participants can earn a bonus if we achieve our goals. Point B: participants can earn a better bonus if we exceed our goals. As for the second underlined sentence, how helpful is it to give the reader an unknown percentage of an unknown target amount?]

Better:

Since Plan participants must achieve certain performance thresholds to earn bonus incentive compensation, a portion of their compensation is at risk. The Committee establishes and monitors quarterly and annual performance goals and objectives for the

Plan. Participants are eligible to earn cash bonus incentive compensation based on whether, and by how much, individual and company-wide performance goals and objectives are achieved or surpassed. [63 words]

Make sure each piece of information is easy to find.

Your headers are snappy and descriptive. Your opening sentences tell the reader where you are going. Don't let it all fall apart in the meat of your discussion by trying to pack too much information into a single sentence.

Example

Original:

ABC Corporation, founded in 1968 with executive offices in Eatontown, New Jersey, with reported revenues of approximately \$83 million for its fiscal year ended June 30, 2008, and manufacturing facilities in Pennsylvania, New York, South Carolina and Illinois, is a major producer of plastic containers for the packaging industry. *[How many words lie between the company's name and the explanation of what the company does? And why is that revenue number buried?]*

Better:

ABC Corporation, which was founded in 1968, is a major producer of plastic containers for the packaging industry. ABC's revenues were approximately \$83 million for the fiscal year ended June 30, 2008. ABC has executive offices in Eatontown, New Jersey, and manufacturing facilities in Pennsylvania, New York, South Carolina, and Illinois.

Eliminate ambiguity.

Read your document critically. If it contains a lot of hedge words and vague language, readers may think the drafter either did not understand what the company wanted to say, did not know how to say it clearly, or intentionally avoided making an unequivocal statement.

If the problem is lack of knowledge, find someone who thoroughly understands the issue, and ask plenty of questions. Then translate what you learned into a logical, orderly

explanation that gives readers specific, useful information—including any background or definitions they may need.

If you are working with language that is intentionally ambiguous, find out why and see if there is a legal and responsible way to be more forthright. People are not fooled when they read that a company “rationalized” its work force, and it demeans the folks who weren’t “rational.” Similarly, the pharmaceutical company that cancels a drug trial because of “expirations” really should explain that it was people—not medicines—that “expired.” Face it: If your words are susceptible to more than one meaning, readers will select the one that is the least favorable to your company (unless they sue, and then they will argue that they believed the “best case” interpretation). If your words are too vague to be interpreted at all, readers will be justifiably annoyed.

Finally, if the problem is that you are writing “the way it’s always been done,” it’s time to rethink. Consider the following example, which uses fairly common language to claim the safe harbor for forward-looking statements. My suggested rewrite clearly explains how certain events could affect the registrant, which should reduce the risk of investors claiming to have been misled.

Example

Original:

This report contains forward-looking statements which are subject to numerous assumptions, risks and uncertainties. Statements pertaining to future periods are subject to uncertainty because of the possibility of changes in underlying factors and assumptions. Actual results could differ materially from those contained in or implied by such forward-looking statements for a variety of factors including: sharp and/or rapid changes in interest rates; significant changes in the economy which could materially change anticipated credit quality trends and the ability to generate loans; failure of the capital markets to function consistent with customary levels; significant delay in or inability to execute strategic initiatives designed to grow revenues and/or manage expenses; consummation of significant business combinations or divestitures; and significant changes in accounting, tax, or regulatory practices or requirements.

Better:

This Annual Report contains forward-looking statements, which by their nature are subject to assumptions, risks, and uncertainties. For a variety of reasons, actual results could differ materially from those contained in or implied by our projections:

- ◆ Interest rates could change more quickly or more significantly than we expect.
- ◆ If the economy changes significantly in an unexpected way, the demand for new loans and the ability of borrowers to repay outstanding loans likely will change in ways that our models do not anticipate.
- ◆ The stock and bond markets could suffer a significant downturn, which would likely have a negative effect on our financial condition and that of our borrowers.
- ◆ It could take us longer than we anticipate to implement strategic initiatives designed to increase revenues or manage expenses, or we may be unable to implement those initiatives at all.
- ◆ Acquisitions and dispositions of assets, business units, or affiliates could affect us in ways that management has not anticipated.
- ◆ We may become subject to new and unanticipated accounting, tax, or regulatory practices or requirements.

Anticipate—and answer—questions.

Several years ago I worked on the 10-K of a pharmaceutical company that filed a petition with the Food and Drug Administration in the early 1980's to challenge the FDA's approval of a competitor's product. The 10-K described the ensuing administrative and appellate proceedings in detail. If I were an investor, I would have wanted to know three things: How significant is the product to the reporting company and to the competitor? What does the reporting company stand to gain if the FDA now retracts its approval? And does the potential gain justify fifteen years of legal bills? The 10-K did not answer any of these questions. Just as bad, when the litigation ended after sixteen years, the matter was completely dropped from the company's periodic reports. Again, if I were an investor, I would have been curious about the outcome.

Edit out the word “respectively.”

You can ease your reader’s memory load dramatically by avoiding the word “respectively.” Which of the following sentences is easier to track?

Example

Net income for 2008, 2007, and 2006 was \$2.6 million, \$3.1 million, and \$1.4 million, respectively.

OR

Net income was \$2.6 million in 2008, \$3.1 million in 2007, and \$1.4 million in 2006.

Adjust your layout.

A plain English document uses white space, decent margins, and short focused paragraphs. Our eyes and our brains need visual interest and regular breaks.

Print out your draft and just flip through the pages. Does it look like something you would want to read, or is it intimidating? Here are some things to consider:

- ◆ If you have blocks of right-justified text, convert your document to “align left,” which will give you a solid left margin but a jagged right margin (like this paper).
- ◆ If you have a paragraph that runs more than half a page, try to break it into two smaller paragraphs, or see if there is text that can be converted into a bullet list.
- ◆ If the descriptive headers you wrote are not jumping off the page, play with the font (make it larger or darker) and the placement (increase the white space above and below).
- ◆ If you consistently have more than 15 or 20 words across a single line of text, consider enlarging your font or your side margins.

You may end up with a longer document than you started with, but your readers will appreciate it.

Third pass**Eliminate extraneous words.**

Your document should be in pretty good shape by now. As you read it cover to cover (yes, again!), continue looking for ways to clean it up. Chances are you will find

thoughts or whole sentences that appear more than once—especially if different people wrote different sections. You certainly will find words or phrases that were written in the haste to create a working draft that really don't need to be there.

Examples

Managed accounts are monitored on a systematic basis, and each account is reviewed at least annually by a designated principal of the firm. ~~Notwithstanding the above, m~~More active accounts and larger accounts may be reviewed more often.

Unearned income on direct financing leases is amortized over the lease terms using a method that approximates the interest method. ~~This method amortizes unearned income to~~ and produces a constant rate of return ~~on the lease~~.

SFAS No. 157 became effective ~~for fiscal years beginning after November 15, 2007~~ (effective January 1, 2008 for ABC).

~~The Fund invests in a broad range of investment-grade, income-producing corporate bonds and, to a lesser extent, below investment-grade bonds.~~ Under normal market conditions, the Fund invests at least 65% of its total assets in U.S. dollar-denominated investment-grade debt securities issued by companies that are established in their industries, have stable cash flows and strong balance sheets. The Fund also may invest up to 35% of its total assets in high yield, high-risk corporate debt securities that are rated below investment-grade.

Make sure your language is consistent throughout.

Do not switch back and forth between first person (“We offer our customers....”) and third person (“The Company’s customers”). You also should not switch between a conversational tone and a formal or legal tone. If you need to quote directly from a legal document, make it clear that you are quoting. If you don’t need a direct quote, then paraphrase—but in plain English.

Example

The Compensation and Stock Option Committee meets each June to determine which employees, if any, should receive grants of stock options. In addition to the employee-specific issues described in the previous paragraph, the Committee reviews the following items when considering the granting of employee stock options: [text omitted]. It is the policy of this Committee that neither the Committee nor any member of management shall backdate any equity grant, or manipulate the timing of the public release of material information or of any equity award with the intent of benefiting the grantee. Accordingly, management shall advise the Committee whenever it is aware that material non-public information is planned to be released in close proximity to the normal date for the grant of an equity-based compensation award. *[The first two sentences are conversational. The two underlined sentences were clearly written by a lawyer and do not match the tone of the rest of the paragraph.]*

Edit to conform to grammar rules, even the ones you don't like.

Once you put all that work into drafting your report, it would be a shame if you failed to notice and correct a grammatical error. Here are some common problems.

Examples

The Company owns a \$35.0 million portfolio of Agency issued mortgage-backed securities. These are comprised of \$5 million in Collateralized Mortgage Obligations, with the remainder of the portfolio in mortgage-backed pass-through securities. *[The word “comprise” means “include” or “embrace.” It is never correct to say “comprised of.” The underlined words should be replaced with “comprise” or “consist of.”]*

Clients receive statements from the custodian who holds the account. *[The custodian is not a person, so “who” should be “that.”]*

The advisor manages assets for their own account. *[The advisor is a single entity, so “their” should be “its.”]*

Once you finish

Get an outside opinion—perhaps two or three.

Ask someone from outside the company (preferably not one of your attorneys) to critique your document (but be careful about disclosing material non-public information). You may think that everything is clear and unambiguous because you know the company's history, the industry vocabulary, and the nuances of your corporate philosophy. An outsider can read a passage and give you a logical interpretation that may be absolutely wrong, ask questions that show you where the holes are in your story, and point out sentences that the average person would need to read three or four times to comprehend. It is always an unexpected revelation for my clients when I highlight things that company officers think are perfectly plain but that actually are unintelligible to an outsider.

After you revise the report based on the outsider's comments about content and clarity, give the document to a second person (and even a third) for basic proofreading. Ask the proofreader to look for:

- ◆ Extraneous words (these may occur when you write, or you may have forgotten to delete something when you edited);
- ◆ Real words (so they won't jump out at you as errors) that aren't the right word (say, "valve" rather than "value");
- ◆ Repetition ("Also, the Committee also....");
- ◆ Sentences that are too long and should be broken into two or three;
- ◆ Inconsistent usage (you refer to "the Company" in one paragraph and "the Corporation" in the next);
- ◆ Awkward transitions between paragraphs that could be fixed by adding subheaders or better opening sentences;
- ◆ Incorrect cross references (for example, you changed the name of a header, but didn't change an internal cross-reference to that section); and
- ◆ Unnecessary defined terms.

These longer examples will tie together many of tips you just read.

Original

Potential problem bonds are fully current but judged by management to have certain characteristics that increase the likelihood of problem classification. ABC Insurance had \$69 million of potential problem bonds, including amounts attributable to policyholder contracts as of December 31, 1998, compared with \$63 million as of December 31, 1997. These amounts are net of \$14 million and \$10 million of cumulative write-downs, respectively. Potential problem bonds attributable to policyholder contracts represented 35% and 45% of total potential problem bonds at December 31, 1998 and 1997, respectively.

ABC Insurance considers bonds that are delinquent or restructured as to terms, typically interest rate and, in certain cases, maturity date, problem bonds. As of December 31, 1998 and 1997, ABC Insurance had problem bonds, including amounts attributable to policyholder contracts of \$119 million and \$137 million, net of related cumulative write-downs of \$19 million and \$30 million, respectively. Problem bonds attributable to policyholder contracts represented 29% and 24% of total problem bonds at December 31, 1998 and 1997, respectively.

Major Problems

- ◆ The definition of “potential problem bonds” in the first paragraph is not helpful without the definition of “problem bonds,” which does not appear until the second paragraph.
- ◆ In order to understand the numbers, you need to track three sets of figures (a gross amount, a write-off, and an allocation of the gross amount between policyholders and the insurance company) for two years. It is much more effective to present that kind of information in a chart.

Better

A “problem bond” is either delinquent or restructured—typically to reduce the interest rate or extend the maturity date. “Potential problem bonds” are fully current, but management believes they have certain characteristics that make them likely to become “problem bonds.”

The table below provides information about the potential problem bonds and problem bonds in ABC Insurance’s investment portfolio as of December 31:

Type of bond	Year	Amount (in millions) net of cumulative write-downs of . . . (in millions)	Portion of total attributable to policyholder contracts
Potential problem	1998	\$69	\$14	35%
	1997	\$63	\$10	45%
Problem	1998	\$119	\$19	29%
	1997	\$137	\$30	24%

Original

Performance Metrics

Selecting the appropriate performance metrics is another important element of ABC's pay for performance philosophy. Annually, we analyze the relationship of the performance measures and the weighting used in the annual and long-term incentive plans to enhance shareholder value. Since 2004, the performance metrics in both plans have been earnings per share (EPS), return on equity (ROE) and economic profit added (EPA). Each of these metrics has different benefits. Earnings per share measures profitability per share and EPS Growth is easily comparable to peers and commonly used by investment analysts to communicate expectations of performance. Return on Equity measures profitability relative to capital used to generate earnings and is also easily compared to peers. Economic Profit Added measures profit generated in excess of the cost of capital and is designed to balance growth and returns and focus ABC's executive officers on the allocation of finite capital. ABC's external compensation consultants have performed regression analyses on each of the performance metrics with measures of value such as total return to shareholders and market-to-book multiples. Each metric is looked at in isolation and in combination. The consultants have confirmed that the metrics provide a strong line of sight to corporate financial performance, correlate well to value creation, and are important to the investment community. Their findings are reviewed with the compensation committee for concurrence and approval. We have selected these factors to drive improved shareholder return and enterprise value to total capital utilization and maintain consistency year over year in performance metrics for ABC employees.

Major problems

- ◆ Long, daunting block of text.
- ◆ The paragraph is about performance metrics, but information about those metrics is buried.

Better

Performance Metrics

Implementing ABC's pay for performance philosophy requires appropriate performance metrics. Since 2004, the performance metrics used for ABC's annual and long-term incentive plans have been earnings per share (EPS), return on equity (ROE), and economic profit added (EPA). Using the same metrics for several years in a row gives ABC employees consistent standards, but the Compensation Committee analyzes these measures and their weightings regularly to ensure they remain apt.

As described below, each of these metrics offers a different benefit, and as a group they drive improved shareholder return and foster maximum value for ABC's assets.

- EPS measures profitability per share. EPS growth is an easy measure to compare among peers, and the metric is commonly used by investment analysts to communicate expectations of performance.

- ROE measures profitability relative to capital used to generate earnings. This measure also is easy to compare among peers.
- EPA measures profit generated in excess of the cost of capital. Using this metric encourages executive officers to allocate assets to uses most likely to produce growth and returns.

ABC's external compensation consultants have studied these performance metrics to determine how important they are—both alone and in combination—to ABC's mission of creating value for its shareholders. The consultants have confirmed to the Compensation Committee that EPS, ROE, and EPA are strong indicators of corporate financial performance, demonstrate value creation, and are important to the investment community.

Original

Certain statements in this report that are not reported financial results or other historical information are “forward-looking statements” and within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements give current expectations or forecasts of future events and are not guarantees of future performance. They are based on management’s expectations that involve a number of business risks and uncertainties, any of which could cause actual results to differ materially from those expressed in or implied by the forward-looking statements. You can identify these statements by the fact that they do not relate strictly to historic or current facts. They use words such as “anticipate,” “estimate,” “expect,” “project,” “intend,” “plan,” “believe” and other words and terms of similar meaning in connection with any discussion of future operating or financial performance. In particular, these include statements relating to future actions; prospective changes in raw material costs, product pricing or product demand; future performance or results of current and anticipated market conditions and market strategies; sales efforts; expenses; and financial results. There are risks and uncertainties that may cause results to differ materially from those set forth in these forward-looking statements. In particular, unanticipated changes in the economic, competitive, governmental, technological, marketing or other factors identified in this report and in the Company’s other filings with the Securities and Exchange Commission could cause such results to differ materially and could include, but are not limited to, changes in U.S., regional or world polymer growth rates affecting the Company’s markets; changes in global industry capacity or in the rate at which anticipated changes in industry capacity come online in the polyvinyl chloride or other industries in which the Company participates; fluctuations in raw material prices, quality and supply and in energy prices and supply, in particular fluctuations outside the normal range of industry cycles; and an inability to raise prices or sustain price increases for products.

The Company cannot guarantee that any forward-looking statement will be realized, although it believes that management has been prudent in its plans and assumptions. Achievement of future results is subject to risks, uncertainties and inaccurate assumptions. Should known or unknown risks or uncertainties materialize, or should underlying assumptions prove inaccurate, actual results could vary materially from those anticipated, estimated or projected. Investors should bear in mind as they consider forward-looking statements.

The Company undertakes no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise. You are advised, however, to consult any further disclosures the Company makes on related subjects in its filings with the Securities and Exchange Commissions. You should understand that it is not possible to predict or identify all risk factors. Consequently, you should not consider any such list to be a complete set of all potential risks or uncertainties.

Major Problems

- ◆ The first paragraph is a long, daunting block of text. The meat of the Company's legal protection—the specific list of likely risks and uncertainties that could affect forecasted results—is buried at the end.
- ◆ I have highlighted four places (in 470 words!) that the Company makes the generic statement that forward-looking statements are not a sure thing.
- ◆ The first sentence helpfully explains that “forward-looking statements” do not relate to reported financial results or historical information. The fourth sentence unnecessarily repeats some of that explanation.

Better

Certain statements in this report are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements give management's current expectations or forecasts of future events; they are not guarantees of future performance. Any one of a number of business risks and uncertainties could cause actual results to differ materially from those expressed in or implied by the forward-looking statements.

Forward-looking statements do not relate strictly to historic or current facts. They use words such as “anticipate,” “estimate,” “expect,” “project,” “intend,” “plan,” “believe,” and other words and terms of similar meaning in connection with a discussion of future operating or financial performance. In this report, these include statements relating to future actions; prospective changes in raw material costs, product pricing, or product demand; future performance or results of current and anticipated market conditions and market strategies; sales efforts; expenses; and financial results.

There are risks and uncertainties that may cause results to differ materially from those set forth in XYZ's forward-looking statements. It is not possible to predict or identify all risk factors, but unanticipated changes that could cause such results to differ materially could include:

- Changes in U.S., regional, or world polymer growth rates could adversely affect XYZ's markets;
- We may experience unexpected changes in global industry capacity;
- Changes in capacity in the polyvinyl chloride or other industries in which XYZ participates may be realized at rates that vary from what management anticipates;
- Fluctuations in raw material prices, quality, and supply and in energy prices and supply—particularly fluctuations outside the normal range of industry cycles—could cause volatility in our markets; and
- We may be unable to raise prices or sustain price increases for our products.

XYZ cannot guarantee that any forward-looking statement will be realized, although management believes its plans and assumptions are prudent. Should risks or

uncertainties materialize, or should underlying assumptions prove inaccurate, actual results could vary materially from those anticipated, estimated, or projected.

XYZ undertakes no obligation to publicly update forward-looking statements, whether as a result of new information, future events, or otherwise. Investors should consult any further disclosures XYZ makes on related subjects in its filings with the Securities and Exchange Commission.