

Frederic W. Cook & Co., Inc.

New York • Chicago • Los Angeles • San Francisco

June 8, 2006

**CONGRESS HOLDS HEARINGS ON EXECUTIVE COMPENSATION
-- COOK FIRM AND BUSINESS ROUNDTABLE TESTIFY --**

The House of Representatives Financial Services Committee, which has oversight of the SEC, held hearings on executive compensation on May 25. The special hearings were called by Congressman Barney Frank (D-Mass), ranking minority leader, to advance his bill, the Protection Against Executive Compensation Abuse Act, which he introduced last November.

Representative Frank's bill would require public companies to submit a comprehensive "Executive Compensation Plan" to their shareholders for approval. This "Plan" would have to include full disclosure of top executives' total compensation, identification of annual and longer-term performance measures and goals used to determine executives' incentive payments, and a provision for recapturing past incentive awards if earnings are restated. In addition, the bill would require shareholder approval of change-in-control "golden parachute" payments and disclosure of executive compensation SEC filings on company websites.

The following organizations testified at the hearings: Corporate Library (Nell Minow), Council of Institutional Investors (Ann Yerger), CalPERS (Christianna Wood), AFL-CIO (Brandon Rees), Business Roundtable (Tom Lehner), and Frederic W. Cook & Co. (Fred Cook). The first four organizations testified in favor of the Frank bill; the latter two against. Our firm's testimony is attached. We can provide electronic copies of the other testimonies upon request.

We and Business Roundtable tried to focus the Committee's attention on better measures of CEO pay ratios and pay-for-performance than typically are reported in the press and were the focus of Representative Frank's "The Problem of Executive Compensation" (http://www.house.gov/banking_democrats/ExecCompProblems.html). For example, using data from Mercer Human Resource Consulting's CEO Compensation Survey of 350 Companies, Business Roundtable reported a relatively close relationship between CEO pay and company performance over the past 10 years. Specifically, median CEO total compensation had increased over the past 10 years (1995-2005) at a compound rate of 9.6% a year vs. a median company equity market cap change and total shareholder return of 8.8% and 12.7%, respectively, a year. A breakout of CEO pay component by relevant financial metric is shown below:

Median 350 CEO Pay / Performance Comparison

1995-2005 Compound Annual Growth Rate

CEO Pay		Company Performance	
Base Salary	3.0%	Revenue Growth	4.2%
Annual Incentive	7.4%	Net Profit Growth	8.5%
Long-Term Incentive	<u>13.1%</u>	Market Cap	<u>8.8%</u>
Total Compensation	9.6%	TSR	12.7%

Source: Mercer 350

Our firm's testimony focused on the ratio of CEO pay to that of the median worker. Using the same data from the Mercer 350 survey, we showed that the median CEO total pay ratio had increased only two-fold over the past 10 years, from 90x in 1994 to 187x in 2004. This contrasts to the more inflammatory press-reported three-fold increase from 140x in 1994 to 430x in 2004.

We argued that CEO pay comparisons should use median data, not averages, and should include option grant date fair values, rather than realized stock option gains, which usually represent many years of compensation.

All six panelists participated in answering Committee members' questions following their testimony. The issues focused on by several members were not pay-for-performance or CEO pay ratios, but rather the need for majority voting for outside directors and excessive pensions (SERPs) for executives when companies are dropping, freezing or underfunding benefits for their other salaried employees.

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This letter is intended to alert compensation professionals about developments that may affect their companies. Specific questions regarding regulatory requirements and corporate governance issues related to executive compensation should be discussed with appropriate counsel. General questions about issues addressed in this letter may be directed to Frederic W. Cook in our New York office at 212-299-3703 or by email at fwcook@fwcook.com or to Alexa H. Kierzkowski in our Los Angeles office at 310-734-0110 or by email at ahkierzkowski@fwcook.com. This letter and other published materials are available on our website, www.fwcook.com.

**Frederic W. Cook & Co. Testimony
Before the House Financial Services Committee on
Executive Compensation**

May 25, 2006

The Honorable Michael G. Oxley, Chairman
The Honorable Barney Frank, Ranking Member
House Financial Services Committee
Room 2129, Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Oxley and Congressman Frank:

Thank you for the invitation to participate in the Committee's Panel on Executive Compensation.

Our Credentials

Frederic W. Cook & Co. provides management consulting assistance to corporations and their compensation committees in developing compensation plans for their executives and key employees. Our focus is on performance-based compensation programs (salaries, annual incentives, long-term incentives and stock ownership programs) that help companies attract and retain key employees, motivate and reward them for improved performance, and align their interests with those of shareholders.

Formed in 1973, our firm has served over 1,800 clients from offices in New York, Chicago, Los Angeles, and San Francisco. Many of our clients are among the largest companies in the world, including over half of Business Week's 250 largest market capitalization companies. Other clients have been small to mid-size firms, private companies and start-up ventures.

We hold ourselves responsible to be a thought leader in compensation design and practice innovations, and an advocate of leading "best practices" in the governance of executive compensation. As such, we regularly contribute to the knowledge base of compensation practice and philosophy through research, speeches, articles and essays.

Introduction

The media has been flooded with multitude of distorted, misleading and oftentimes erroneous statistics chosen to portray U.S. CEOs and Board governance in a negative light. In assessing what's right and wrong with executive compensation, it is critical to establish a sound base of facts. In our presentation we identify and clarify two important issues in executive compensation that have caught the public's attention: **CEO Pay Ratios** and **CEO Pay Increases**.

CEO Pay Ratios and Long-Term Trends

It is often cited in the press that the ratio of average large-company CEO's pay to the average American worker has grown three-fold over the past decade, from about 140x in 1994 to about 430x in 2004¹.

The calculations behind these statistics have been chosen to produce high CEO pay ratios for maximum propaganda value. **First**, they include realized option gains, which are the payoff from many years of grants and rising stock prices. They are not representative of a single year's compensation. **Second**, they focus on *average* CEO pay, not the *median*. Average pay is inflated above true compensation norms by a few outliers. **Third**, they compare CEO pay to the average pay of production and non-supervisory workers who, unfortunately, have not benefited from trends in the U.S. and global economy as much as other American workers.

What might be a better way of calculating the ratio of CEO pay to average workers? We propose using the **Mercer Human Resource Consulting's CEO Compensation Survey**. It is a large, stable group of 350 companies in diverse industries and sizes, and the data have been collected consistently since 1992. With funding support from Business Roundtable, we accessed this database on CEO pay and asked Mercer to calculate **median** CEO pay (not average), and break it down by component, namely, median base salary, median annual cash pay (salary plus earned bonus), and median total pay (annual cash pay plus stock options and other long-term incentives). For stock options, we had them substitute Black-Scholes option grant values for realized gains. These better reflect the intention of board compensation committees in setting CEO pay levels, and new SEC definitions of total pay.

For the average production worker's pay, we substituted the median annual earnings for individuals ages 25-64 who worked full-time for the full year.² This is more representative of the average American worker (blue collar and salaried) and comparable to CEOs, who also work full time and year round.

What was the result? The CEO pay ratio was **90x in 1994**, not 142x as reported by pay critics. And it rose to **187x in 2004**, not 430x. This is a **two-fold increase** over the period, not three-fold as usually reported. The estimated ratio actually went down to **179X in 2005**, as median total pay for CEOs declined slightly to \$6.8 million from \$7.0 million.³ The CEO pay ratio actually peaked in 2001, following the peak of the tech bubble. The fact that the CEO pay ratio has been trending below its peak level for four years running has not been reported in the press to our knowledge. It is possible that the critics of executive pay levels and practices use pay statistics selectively and only when it portrays CEOs in a bad light.

¹ "Executive Excess 2005," Sarah Anderson and John Cavanagh, Institute for Policy Studies; Scott Klinger and Liz Stanton, United for a Fair Economy.

² Census/Bureau of Labor Statistics.

³ 2005 worker earnings statistics are not yet available from Census/BLS, but by aging 2004 earnings at just 1.3% (i.e., equal to rate of increase from 2003 – 2004) the ratio decreased from 187x in 2004 to 179x in 2005.

A chart of CEO pay ratios over an 11-year period using these more-defensible statistics from Mercer Human Resources Consulting is shown on **Exhibit 1**. You'll note in looking at this chart that: (1) the CEO **salary multiple** has hardly moved; it was 24.9x 11 years ago, and it was 25.5x in 2005; (2) the CEO **total cash ratio**, reflecting annual performance bonuses, moved up one-third from 46x to 63x; but (3) the big increase over the period came in the form of at-risk stock option and other equity grants, tied to market appreciation, which raised the **CEO total pay ratio** from 90x to 179x over 11 years, a growth rate of 6.5% per year.

This situation of increased performance-based incentives and at-risk equity grants is quite different than just saying that CEO pay went through the roof at the expense of the average worker.

Now I would like to address the second part of the problem with the CEO pay ratio debate. Regardless of the ratio used, whether 430X, 500X, or 179X, it only applies to the CEOs of very large companies. The public has been subject to such an incessant drumbeat of negative criticism about escalating CEO pay that it now accepts as given that all CEOs are paid "too much."

Even The Wall Street Journal reported as "fact" on January 31, 2005, that "*The average CEO's salary in the U.S. is 475 times greater than the average worker's salary.*" This is patently absurd. There are approximately 15,000 public company CEOs in the U.S. and many more heading private companies. The WSJ later corrected its error by stating, "A Towers Perrin study found that the total compensation of the **average chief executives in the U.S. in 2005 was 39 times the compensation of the average worker**, while the average CEO of Standard & Poor's 500 companies made 212 times the average worker. This article incorrectly said that the average CEO salary in the U.S. was 475 times the average worker's salary."

Note the errors committed by The Wall Street Journal. They used a statistic from a small sample of very highly paid CEOs in very large companies and made the reader believe that *all* CEOs are overpaid. And they took the CEO's *total pay* and called it *base salary*, having you believe that CEO pay is not at risk or variable with performance.

CEO Pay Increases

The Committee's statement regarding "The Problem of Executive Compensation" cited a 30% increase in median CEO compensation and 91% increase in average CEO compensation in 2004 (Corporate Library)⁴.

The distorting issues are similar in this case. **First**, realized option gains and payouts of other long-term incentives were included, so compensation may represent the payoff of many years of service and not a single year's compensation. **Second**, average increases are misleading because they are skewed by outliers. The sample was defined as "2000 of the largest US corporations", but the 91% increase in the average was driven by just 27 CEOs whose increases were over 1,000% because they were off a very low base.

⁴ "Corporate Library 2004 Pay Survey" Paul Hodgson

A more meaningful baseline statistic was constructed using the same Mercer Human Resource Consulting's CEO Compensation Survey referenced earlier. We found that CEO total compensation increased 13% in 2004 and decreased 3% in 2005⁵. For reference, Corporate Library found that median CEO compensation increased 11% in 2005 (down from 30% in 2004).

We found CEO total compensation to have a 5-year compound annual growth rate of 5.5% and a 10-year compound annual growth rate of 9.6%, reflecting changes in the size of companies and their financial and market performance.

Detailed data are provided in **Exhibits 2 and 3**.

Conclusions

Public debate on CEO pay would be enhanced if all parties agreed to: (1) use large data bases of companies, like Corporate Library, and use them consistently over time; (2) use the grant date present value of new stock option grants, not realized gains; (3) focus on market medians, not averages that are distorted by outliers; and (4) report the results consistently every year, whether or not they support a particular point of view.

This more even-handed approach, however, may not serve the purposes of those who attack CEO compensation as a means of undercutting the trust of the American people in our system of board governance. It is likely the critics will continue on their path of selective and distorted reporting of CEO pay abuses. If so, we should expect and welcome the business community to defend itself by:

1. Countering misleading facts with better facts,
2. Advocating pay for performance and executive ownership,
3. Extending performance-based compensation broadly in the organization, and
4. Promulgating and defending best practices, while marginalizing and excoriating bad practices.

Are there CEO pay abuses? Of course there are, just as there are abuses of power in all large institutions. If there was not the potential for abuse in our free enterprise system, we would not have a free enterprise system. The job of those who defend our systems is not to defend the abusers but to encourage the adoption of evolving best practices in corporate governance and executive compensation so that additional and burdensome regulation is not required

Comments on "The Protection Against Executive Compensation Abuse Act"

We do not believe the proposed Act is necessary or desirable. We favor full disclosure of top executives' compensation along the lines of the SEC proposal. This is well underway and will happen.

⁵All incumbents; continued incumbents increased 17% in 2004 and 1% in 2005.

We do not support requiring shareholder approval of an "Executive Compensation Plan." This usurps the traditional role and responsibility of the independent board of directors acting as the shareholders' representatives. Shareholders already are required to approve the use of equity in compensation plans. Combining this with enhanced SEC disclosure of all executive compensation (cash, stock, benefits, SERPs, perks and other special benefits, and termination/change-in-control payments) is all that is needed to give directors the added discipline and incentive they need to reform bad practices and adopt good ones.

Disclosure of performance measures or targets used to determine top executive compensation is already part of the proposed SEC rules. And requiring companies to "claw-back" incentive payments based on fraudulent accounting is already part of the Sarbanes-Oxley Act.

What Would Be Helpful?

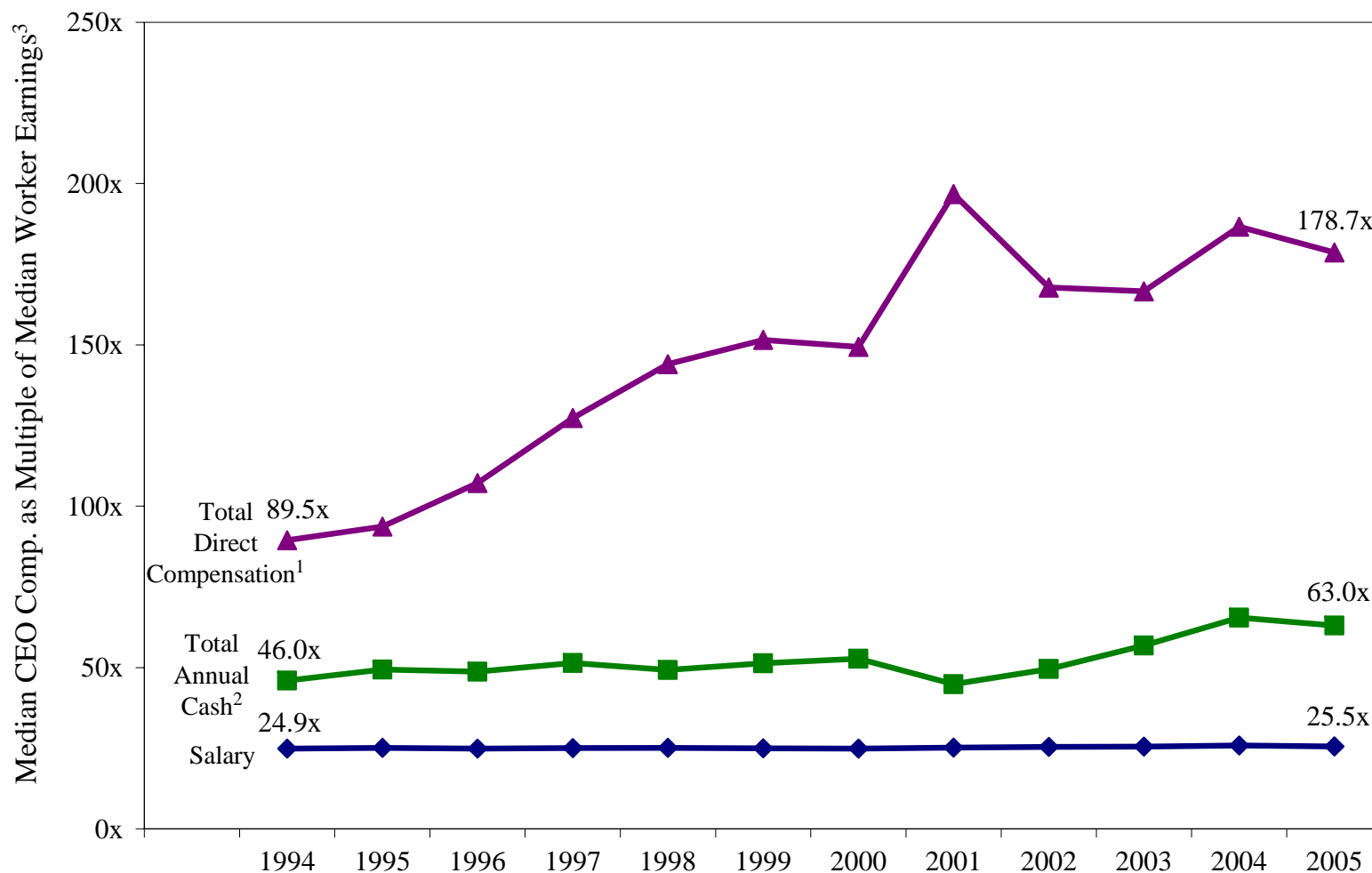
There are areas where your Committee could be helpful to boards and managements. This includes governmental action to encourage the adoption of good practices by reducing the tax incentives for perks. You also could encourage the spread of concepts of performance-based compensation and equity incentives to lower levels of the company, thereby narrowing the CEO pay gap in companies, not by lowering the top, but by raising the bottom.

I would be pleased to advance these ideas with you in a follow-up memo or discussion if desired.

Thank you,

Frederic W. Cook

CEO Pay Ratio (vs. Worker Earnings)



¹ Salary, earned annual bonus, grant value of restricted shares and stock options, and target value of earnout of any other new performance-based cash or equity awards

² Salary and earned annual bonus

³ Wage and salary for full-time workers ages 25-64 who were employed for the whole year.

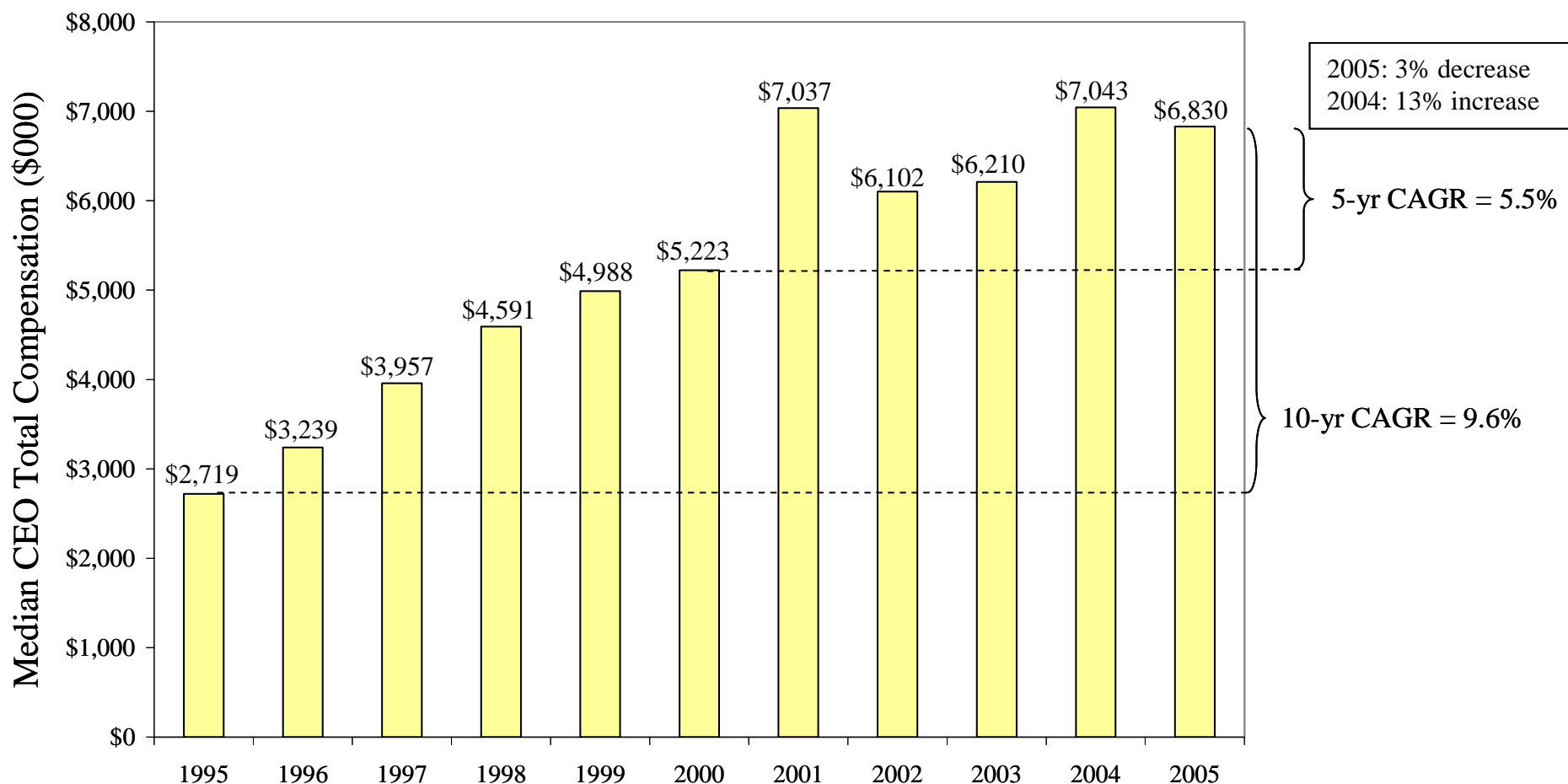
MERCER MEDIAN CEO PAY TREND DATA
(\$000)

	<u>1995</u>	<u>2005</u>	<u>CAGR</u>
<i>Mercer 350 Median CEO Pay (\$000)</i>			
1. Salary	\$729.0	\$975.0	3.0%
2. Bonus ⁶	703.0	1,433.7	7.4%
3. Long-Term ¹	<u>1,287.5</u>	<u>4,421.5</u>	<u>13.1%</u>
4. Total	\$2,719.5	\$6,830.2	9.6%
<i>Mercer 350 Median Financial Metrics (\$mil)</i>			
1. Revenue	\$5,055.7	\$7,627.5	4.2%
2. Net Income	261.5	590.5	8.5%
3. Market Cap	4,324.6	10,078.4	8.8%
4. TSR Index	1.00	3.32	12.7%

⁶ Derived median

Growth in Median CEO Total Direct Compensation

- Total compensation includes salary, earned annual bonus, grant value of restricted shares and stock options, and target value of earnout of any other new performance-based cash or equity awards.



Source: Mercer 350 database (350 large-cap general industrial and service companies with median revenue of \$10 billion); all incumbents.