



## SEC VOTES IN FAVOR OF PROPOSING PAY RATIO DISCLOSURE RULES

On September 18, 2013, the Securities and Exchange Commission (SEC) voted 3-2 to propose new pay ratio disclosure rules to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The new rules would require public companies to disclose the median of the annual total compensation of all employees of the company, except its principal executive officer (PEO), the annual total compensation of the PEO and the ratio of the median of the annual total compensation of all employees to the annual total compensation of the PEO. The pay ratio disclosure would be required to be included in any annual report, proxy or information statement or registration statement that is required to include executive compensation disclosure pursuant to Item 402 of Regulation S-K. The disclosure requirement would not apply to emerging growth companies, smaller reporting companies, foreign private issuers or U.S.-Canadian MJDS filers.

To address concerns from some commentators about the significant potential costs that could be involved in complying with the disclosure requirement, especially for companies that maintain complex payroll, benefits and pension systems for their employees (including multinationals with global workforces), the SEC proposed rules that would not specify any required calculation methodologies for identifying the median employee, but would allow companies flexibility to select a methodology that is appropriate to the size and structure of their own businesses and the way in which they compensate employees. For example, a company would be permitted to identify the median employee by using its full employee population or statistical sampling or other reasonable methods. The annual total compensation of the median employee would be calculated using the definition of "total compensation" as set forth in existing executive compensation disclosure rules (i.e., Item 402 of Regulation S-K) rather than a more simplified definition of "total compensation." Annual total compensation would be total compensation for the last completed fiscal year. Companies would be permitted to use reasonable estimates when (i) calculating the annual total compensation, (ii) calculating any element of total compensation and (iii) determining the annual total compensation of the median employee. "All employees" would include any full-time, part-time, seasonal or temporary worker employed by the public company or any of its subsidiaries (including officers other than the PEO) as of the last date of the company's fiscal year. Independent contractors, "leased" workers or other workers not employed by the company or its subsidiaries would not be covered. Companies would be permitted to annualize the total compensation for all permanent employees who were employed for less than the entire year, but would not be permitted to annualize the total compensation for part-time workers, temporary and seasonal workers. Companies would also not be permitted to use cost-of-living adjustments for non-U.S. employees. Companies would be permitted to supplement their pay ratio disclosure with a narrative discussion or additional ratios to provide additional context for the disclosed pay ratio.

The proposed rules will be subject to a 60-day public comment period once they are published in the Federal Register.

We will publish a more detailed client alert addressing the proposed rules in the near future.



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