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March 23, 2017

Michael S. Piwowar
Acting Chairman
U.S. Securities and Exchange Commission
100 F St. NE
Washington, DC 20549-1090

Re: Reconsideration of the Pay Ratio Rule

Dear Chairman Piwowar:

We are submitting this letter in response to your request for “public input on any unexpected challenges that issuers have experienced as they prepare for compliance with the [pay ratio] rule and whether relief is needed.” We thank you for the opportunity to participate in a much needed reexamination of the pay ratio rule. We believe the primary issue to be the extent to which the costs of the rule far outweigh its benefits.

Many of our clients believe that the large majority of their shareholders will see little benefit to the pay ratio disclosure and do not believe that it indicates anything about their short-term profitability or long-term value, either absolutely or relative to their peers or other public companies.

The costs of compliance, however, are easier to enumerate. We have summarized below certain material concerns that our clients have communicated to us.

- Possible effect on employee morale. Our clients are concerned regarding the possible effect of the disclosure of the median pay level on their employees. An employee who believes that he or she is at least as valuable as the average employee may not appreciate the many factors that go into compensation decisions and may make unwarranted inferences from a comparison of their pay to that of the median employee. Such an effect could give rise to material disruptions and other issues for their businesses.
- Cost of data collection. Our clients are incurring costs in money and manpower in the collection of the necessary data. Many global clients have different payroll software in

different jurisdictions in which they operate. Such circumstances have required them to manually input certain data and contract to purchase specialized new software for purposes of aggregating certain other data stored in different software systems. We have been advised that statistical sampling (as permitted by the final rule) is not a cost-saving alternative.

- Legal uncertainties. Our clients have been facing numerous decisions in interpreting and implementing the dictates of the rule, costing time and effort of in-house legal departments and cost of outside counsel consultation.
 - Basic questions relating to the determination of the compensation to be included and the value of such compensation must be dealt with. Although the rule provides flexibility, decisions, based on informed judgments, must be made. Compiling the data necessary to make those judgments is expensive. When non-US employees are included, the challenges multiply exponentially.
 - Identification of the members of the workforce whose compensation must be considered for purposes of the ratio has also proven challenging. SEC guidance indicates that non-employee workers may need to be included based upon whether the company “determines” such workers’ compensation. Such determinations are not straightforward and require due diligence and legal assessments. For example, for workers not on payroll, but compensated instead pursuant to service contracts, all such contracts must be gathered (in certain cases translated) and examined in order to ascertain whether the company could be viewed as “determining” compensation.

In light of the focus of the administration on the deletion of unnecessary regulations and the stated intention of Congress to carry out that agenda, we believe that the implementation of the pay ratio rule should be delayed until Section 953(b) of the Dodd-Frank Act can be revoked.

* * * * *

We thank you for the opportunity to submit this letter. We would be happy to discuss with you any of the matters described above or anything else you feel would be helpful in your review. Please do not hesitate to contact me if you would like to discuss these matters further.

Very truly yours,


Arthur H. Kohn

cc: Commissioner Kara M. Stein