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Submitted to the SEC via https://www.sec.gov/cgi-bin/ruling-comments

March 23, 2017

Michael S. Piwowar, Acting Chairman
US Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Acting Chairman Piwowar:

On behalf of Quest Diagnostics Incorporated, I am writing in response to your request for comment regarding the Securities and Exchange Commission's Pay Ratio Disclosure rule published in the Federal Register on August 18, 2015 (the "Rule"). Our discussion responds to your request in the SEC's Public Statement dated February 6, 2017 for public input concerning –

- "unanticipated compliance difficulties that may hinder [issuers] in meeting the reporting deadline" for the Rule; and
- "whether additional guidance or relief may be appropriate."

Quest Diagnostics is the world's leading provider of diagnostic information services. We empower people to take action to improve health outcomes. Derived from the world's largest database of clinical lab results, our diagnostic insights reveal new avenues to identify and treat disease, inspire healthy behaviors and improve health care management. Quest Diagnostics annually serves one in three adult Americans and half the physicians and hospitals in the United States, and our 43,000 employees understand that, in the right hands and with the right context, our diagnostic insights can inspire actions that transform lives.

As a service company, we care deeply about our employees' experience and engagement and believe we offer a competitive total rewards package, inclusive of wages, broad-based cash incentives and a comprehensive benefits package. We believe that the Rule will not serve employee interests, will drive costs up in several ways and could also be counter to investor interests. In particular, even though the SEC states in the release adopting the Rule that the disclosure should not be used to make comparisons across companies or industries, such comparisons are likely to be made and labor-intensive companies like ours will end up disclosing higher pay ratios, resulting in significant expenditures of time and resources to explain differences to investors, employees and the public.

We discuss below the unexpected challenges that we have encountered in preparing for the implementation of the Rule. We also describe some additional guidance that we believe would reduce the unanticipated and substantial compliance costs associated with the Rule. We respectfully suggest that the Rule's effective date be postponed and that the regulations be reviewed further to simplify implementation and compliance. Please note that our suggestions should not be taken as support for the Rule.

1. **Unanticipated Compliance Difficulties**

In preparing for compliance with the Rule, we have found that the costs associated with compliance are potentially significant, uncertain and difficult to quantify. Like many companies, we are focused on containing costs, including in our human resources, legal and finance functions. We are likely to need to add staff as a result of the Rule. We would like to draw your attention to the following initial difficulties we are encountering, some of which are specific to our business model and may not have been anticipated by the Commission when it adopted the Rule.

(a) *Expansive Scope of "Employee" Definition*. The Rule requires that issuers include part-time, temporary, and seasonal employees when identifying their median employee. We are finding that this expansive definition dramatically complicates our compliance and will increase our compliance costs due to the following:

(i) Systems/Data Issues. Although we have a centralized HR system in the United States, our business experiences significant volume fluctuations and, in addition to full-time, part-time and temporary employees, we make extensive use of a non-employee contingent workforce. These contingent workers can be employed as contractors directly, or, more typically, through temporary staffing agencies we contract with. We pay the staffing agencies based on i) hours worked by their employees, ii) an hourly rate (which we help determine) and, iii) a "mark-up" charged by agencies. The staffing agencies are responsible for paying the employees and issuing associated tax documentation. We therefore do not have access to full data necessary to take account of the compensation of such workers in the determination of the median employee, nor can we fully audit how these contingent workers are actually paid. Moreover, collating and analyzing such information from several systems (our HR system/payroll, our accounts payable system and the staffing agencies) is proving complicated and expensive. Setting up supporting auditing structures for the calculation is also challenging.

(ii) Impact of Shifts in Our Workforce Profile on Median Calculation. We appreciate the effort to simplify compliance with the Rule by offering registrants the opportunity to determine the median employee every three years. Our business model, however, may require us to make the determination annually: We employ a significant number of part-time and on-demand employees, including the contingent workforce described above. Significant shifts in employee mix occur as a matter of course and may make it impossible for us to conclude that from one year to the next that there has been no change in the employee population that would significantly impact the pay ratio disclosure. We do not believe that the SEC intended the Rule to impose the compliance costs and challenges of an annual determination of the median employee on a company like ours whose mix of full-time, part-time and contingent employees varies as a function of its normal business practice.

(b) *Calculation of Total Compensation.* Our benefits package (healthcare, pensions and so on) is a very significant percentage of the median employee's compensation, but is a very small percentage of the CEO's compensation. For this reason, we believe that calculating the CEO Pay Ratio inclusive of broad-based benefits would improve the comparability of our ratio compared to other companies, and we appreciate the flexibility included in the rule to allow the calculation to be performed on this basis. We note, however, that the nature of our workforce would considerably complicate the calculation, as benefit values may be difficult to obtain and may require additional assumptions.

(c) *Overseas De Minimis Exception.* The inclusion of non-U.S. employees in the pay ratio determination creates immense compliance complications, especially because we could not rely on straight salary data for identifying our median employee. Currently, fewer than 5% of our employees are non-U.S. employees, and we accordingly would be eligible to take advantage of the Overseas De Minimis Exception. Nevertheless, rule requirements to separately disclose the underlying jurisdictions that are excluded and the approximate number of employees in each jurisdiction create additional disclosure burdens on matters we believe could be competitively sensitive. Moreover, initially excluding non-US employees creates the potential for discontinuities in our disclosures if, in the future, we expand internationally and exceed the 5% level, as a ratio calculated with foreign employees included might be meaningfully different than a ratio calculated without including them. Such discontinuities could enable a reader to calculate with some degree of precision pay information for parts of our business (e.g., a country).

2. <u>Requests for Additional Guidance and Relief</u>

Our comments below describe additional guidance that we believe will reduce the unanticipated and substantial compliance costs associated with the Rule.

(a) Delay the Effective Date in order to Re-examine Cost-Saving Alternatives. The SEC has received numerous comment letters suggesting changes that would make compliance with the Rule simpler and less costly. We will not reiterate all the suggestions here, but instead recommend that the effective date of the Rule be delayed by at least one year in order to permit the SEC to re-examine and reconsider cost-reduction and other reasonable compliance alternatives. Since there is no statutory deadline associated with Section 953(b) of the Dodd-Frank Act, a delay would not be inconsistent with the SEC's authority under the statute.

(b) *Exclude Contingent Workers*. We recommend that the SEC issue additional guidance or relief in order to permit issuers to exclude contingent workers not paid directly by the company. Their inclusion adds an extra layer of cost and uncertainty to identifying the median employee and potentially in calculating the median employee compensation. We see no compelling policy reason for this, and believe that the SEC could reasonably provide flexibility that allows issuers to make their own determinations regarding excluded employees, provided they disclose any classes of excluded employees. If inclusion of seasonally-hired or temporary employee groups is intended to improve comparability across companies, it is contrary to the assumption that the ratio is not comparable across companies and industries and significantly adds to the cost of the pay ratio disclosure.

(c) *Further Simplification of the Median Employee Determination*. We recommend that the Commission provide additional relief to permit issuers to identify the median employee every three years without the need to positively assert or verify that there has been no change in the employee population that would significantly impact the pay ratio disclosure.

(d) *Further Simplification of the Overseas De Minimis Exception*. We recommend that the Commission provide additional relief to permit issuers that fall within the Overseas De Minimis Exception to focus only on their U.S. workforces without providing additional disclosures with respect to the distribution of their employees, other than the auditable statement that fewer than 5% of employees are employed by the Company outside the US.

Conclusion

We appreciate that the SEC has a statutory mandate to promulgate pay ratio rules, and we are grateful for the efforts that the SEC has made to balance administrative costs and burdens of compliance with the statutory requirement. We believe, however, that the Rule as adopted will disadvantage many labor intensive companies, especially those that use contingent workers, by forcing us to incur costs and administrative burdens that we believe were likely not anticipated. Thank you in advance for your consideration of our recommendations.

Sincerely,

Jeffrey S. Shuman
Senior Vice President, Chief Human Resources Officer