FREDERIC W. COOK & CO., INC.
90 PARK AVENUE, NEW YORK, N.Y. 10016 - TEL. (212) 986-6330
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November 29, 2013

Via Internet Comment Form

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

Re: File Number S7-07-13
CEO Pay Ratio Disclosure

Dear Ms. Murphy:

We are responding to the Commission's request for comments on the proposed CEO pay ratio disclosure rule.

Frederic W. Cook & Co., Inc. provides consulting services to compensation committees, boards of directors and corporations with respect to the compensation of executives and directors. The Firm's services are provided to companies in all industries and size categories. We have provided compensation consulting services to more than 2,700 companies since we were founded 40 years ago. We are the independent compensation consultants to approximately 25% of the S&P 500 companies.

We would like to note at the outset that we agree with comments made by Commissioners Gallagher and Piwowar about the pay ratio's questionable utility for public investors as well as the Commission's cautionary comments that "precise comparability across companies may not be relevant and could generate potentially misleading interpretations or conclusions." But, on the other hand, we also recognize that the Commission has been charged with implementing this disclosure requirement under the Dodd-Frank Act and we appreciate the flexible manner in which the Commission has proposed to implement the statutory mandate.

Our letter focuses on practical suggestions that we believe can significantly reduce the compliance burden on public companies. While our comments have been informed by discussions with numerous clients, the comments in this letter represent the views of our Firm and should not be ascribed to any particular client. The sequence of our comments follows the proposed rule and, for ease of reference, each comment is preceded by the specific Request for Comment ("RFC").

RFC 7. ***Are there alternative ways to fulfill the statutory mandate of covering "all employees" that could reduce the compliance costs and cross-border issues raised by commenters? For***

example, would it be consistent with the statute to permit registrants to exclude non-U.S. employees from the calculation of the median? Would it be consistent with the statute to permit registrants to exclude non-full-time employees from the calculation of the median? If not, could these alternatives be implemented in a way that would be consistent with the statute?

We recommend that non-U.S. employees be excluded from the calculation of the median. Among all the possible changes the Commission could make to the proposed rule, dropping non-U.S. employees would by far save the most time and expense for multi-national companies, while dramatically increasing the relevance and potential value to investors by eliminating the distortions listed in the proposed rule. To our knowledge, comparisons of pay of a CEO in one country with typical worker pay across multiple countries have not been completed. Research of CEO pay ratio literature over the past seven years did not yield one example of multiple country worker pay comparisons with CEO pay in one country. The AFL-CIO's website shows the CEO pay ratio in approximately 17 countries and all compare CEO compensation with only workers in that particular country, not other countries.

As an analogy to another context in which non-U.S. persons were specifically excluded, we note that when the Commission issued final rules implementing the blackout trading restriction on executive officers and directors as required by Section 306 of the Sarbanes-Oxley Act of 2002, the standard applied was whether more than a majority of participants *located in the United States* were affected by a blackout.

RFC 8. ***Should registrants be allowed to disclose two separate pay ratios covering U.S. employees and non-U.S. employees in lieu of the pay ratio covering all U.S. and non-U.S. employees? Why or why not? Should we require registrants to provide two separate pay ratios, as requested by some commenters? What should the separate ratios cover (e.g., should there be one for U.S. employees and one for non-U.S. employees, or should there be one for U.S. employees and one covering all employees)? If separate ratios are required, should this be in addition to, or in lieu of, the pay ratio covering all U.S. and non-U.S. employees? Would such a requirement increase costs for registrants? Would it increase the usefulness to investors of the disclosure?***

If non-U.S. employees are included in the pay ratio, requiring only one ratio as proposed is sufficient, particularly as the Commission specifically noted in the proposed rule that as a matter of standard practice registrants can provide supplemental disclosures (within certain parameters). Requiring two separate disclosures (with and without non-U.S.) would be even more complicated and costly without providing any additional value and possibly even making the ratio more confusing.

RFC 24. ***Should we allow full-time equivalent adjustments for part-time employees and temporary or seasonal employees, as recommended by some commenters? Should we allow cost-of-living adjustments for non-U.S. employees as recommended by some commenters? If so in either case, please explain why. In particular, please address the potential concern that***

these kinds of adjustments could cause the ratio to be a less accurate reflection of actual workforce compensation. Is there an alternative way to mitigate this concern?

We recommend that the proposed rule be revised to allow the issuer the option of making full-time equivalent adjustments for part-time employees and temporary or seasonal employee, to avoid an obvious apples-to-oranges comparison. In addition, permitting such adjustment will enable registrants to continue to structure their workforce in the manner that is right and optimal for their individual business needs, without the distraction of whether the arrangement is optically best from a pay ratio disclosure perspective.

RFC 39. ***Should we require disclosure when a registrant changes its methodology (or material assumptions, adjustments or estimates) from previous periods, where such change has a material effect, as proposed? Should registrants be required to describe the reasons for the change, as proposed? Should registrants be required to provide an estimate of the impact of the change on the median and the ratio, as proposed? Is the proposed information useful? Is there other information that should be required?***

To enable registrants to determine a calculation methodology that is reasonable and administrable over the long-term, we suggest permitting a good-faith compliance period of two years following the effective date of the rule during which registrants may freely change the initial methodology without having to specifically explain and quantify the change. Every registrant's first reported calculation of the ratio will have been performed in a vacuum without the benefit of compliance and administration best practices over the long-term (for example, registrants who initially choose to use whole employee population data may wish to change to statistical sampling). While some registrants will undoubtedly be able to determine the "right" methodology in the first year of compliance, many others (in particular, large companies with global operations) may find that calculating the pay ratio in a cost-efficient and effective manner is an iterative process that is refined over the course of the initial compliance years. Accordingly, we propose that as registrants initially grapple with efficient and effective ways of calculating the pay ratio they be provided with a two year good-faith compliance period during which they are exempted from the explain-and-quantify requirement (analogous to similar good-faith compliance relief offered by the Internal Revenue Service in the aftermath of I.R.C. Section 409A, another groundbreaking statute).

RFC 42. ***For purposes of the disclosure of the median of the annual total compensation of employees and the pay ratio, should we, as proposed, require total compensation to be calculated for the last completed fiscal year, rather than some other annual period? Why or why not? How does this impact the ability of a registrant to compile the disclosure in time to include it in a proxy or information statement relating to an annual meeting of shareholders (or written consents in lieu of such meeting)?***

As proposed, the pay ratio is required to be disclosed in the normal course either in the Form 10-K or, if later, the registrant's annual proxy statement. This "10-K/proxy season" deadline is a significant burden due to the fact that human capital resources are already fully stretched during the first quarter of each fiscal year to comply with the Form 10-K filing, complete the proxy statement and prepare for the annual shareholders meeting. Some of our clients expect to hire a new full-time resource simply to be able to timely comply within the proposed deadline; others worry about the additional workload which will be imposed on staff that is already stretched thin during the 10-K/proxy season. If additional time is not provided, we expect that registrants who regularly file their proxy statements well before the SEC's 120-day fiscal year-end filing deadline will delay their customary proxy filing dates, which will have the impact of also delaying shareholder annual meeting dates.

We believe the pay-ratio reporting burden can be significantly reduced if additional time is provided for compliance and we propose that registrants be permitted to disclose the pay ratio in a Form 8-K filing on or before the end of the second quarter of the fiscal year. (Registrants who wish to voluntarily disclose the pay ratio in their Form 10-K or proxy statement before then should have the option of doing so.)

While we believe the Form 8-K is adequate disclosure, to the extent the Commission views the natural location of the pay ratio disclosure as being in a Form 10-K or proxy statement, if the foregoing suggestion is adopted the Commission can also provide that the ratio be reported in the following year's Form 10-K or proxy statement (analogous to the manner in which Say-on-Pay voting results are initially reported in a Form 8-K filing and also discussed in the following year's proxy statement). As an illustration of the foregoing comment as it relates to a calendar year registrant, the CEO-to-median employee pay ratio calculation for the completed 2015 year would be reported by the registrant in a Form 8-K on or before June 30, 2016 (thus ensuring that current disclosure is publicly available to investors within a reasonable period following fiscal year end), with the same information being reported in the registrant's 2017 proxy statement.

RFC 52. ***Should the proposed requirements have a transition period, as proposed? Is the period too long? Too short? If so, how long should the transition period be and why? Please be specific (for example, instead of the proposed period, should compliance be delayed until the first fiscal year beginning on or after six months following the effective date of the final rules?).***

Under the proposed rule, registrants must begin to comply with respect to compensation for the registrant's first fiscal year commencing on or after the effective date of the rule. Accordingly, if the rule becomes effective in 2014, a calendar year registrant would first be required to include pay ratio disclosure in its 2016 proxy statement. However, a fiscal year company may have to include pay ratio disclosure in its 2015 proxy statement (depending on what point during the year the Commission finalizes the rule and the registrant's fiscal year end). To avoid disadvantaging fiscal year registrants, we would suggest that compliance be delayed until the first fiscal year beginning on or after six months following the effective date of the final rules.

RFC 54. ***Are there any other accommodations that we should consider for particular types of companies or circumstances (other than the proposed transition period for new registrants described below in this release)?***

Recognizing the payroll and compensation integration complexities associated with M&A transactions, we would suggest permitting, at the registrant's election, one full fiscal year transition period before the successor registrant has to consider the target company's employee information for purposes of determining the median employee.

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We very much appreciate the Commission's consideration of our comments. We are available to answer or clarify our comments and would welcome the opportunity to discuss our letter in greater detail.

Very truly yours,

Frederic W. Cook & Co., Inc.
Bindu M. Culas
David E. Gordon
Edward D. Graskamp