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Moscow, Idaho 83843
[redacted]

November 28, 2013

Securities and Exchange Commission
Attn.: Ms. Elizabeth M. Murphy, Secretary
100 F Street, N.E.
Washington, DC 20549-1000

Via e-mail (rule-comments@sec.gov)

Re: File Number S7-07-13 Amendments to Item 402 of Regulation S-K to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Dear Commissioners:

I appreciate this opportunity to provide the Securities and Exchange Commission (the "Commission") with comments on the Commission's proposed amendments (the "Proposal") to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).

I am a third year law student at the University of Idaho College of Law. I have a Master's in Business Administration from California State University, Hayward and a Bachelor's in Economics from the University of California at Berkeley.

I support the proposed amendment, because the implementation of the pay ratio disclosure rule is a step in the right direction in the effort to control executive compensation. This information will also be useful to investors, workers, unions and management. Although I support the proposed amendment I believe that a simple change to the calculation date, which would result in the inclusion of most seasonal employees, would result in the information provided being more valuable to the public. I am especially interested in this because the impact on my state, Idaho, is potentially great as over 13% of Idaho's civilian workforce is employed in industries susceptible to high seasonality.[1]

[1]See Idaho Economy at a Glance/Bureau of Labor Statistics, http://www.bls.gov/eag/eag.id.htm (last visited Nov. 8, 2013).

A. **Proposed Amendments to the Dodd-Frank Wall Street Reform and Consumer Protection Act.**

I. The proposed amendment defines "employee" as an individual employed as of the last day of the registrant's last completed fiscal year.

Question 18 asks "Is it appropriate to limit the scope of covered employees to those who were employed on the last day of the registrants' fiscal year?" This section of my comment addresses this question.

The Dodd-Frank Act section 953(b) was passed at a time when the American economy was floundering and Congress wanted to promote the financial stability of the United States by improving accountability and transparency. Congress passed Dodd-Frank to accomplish these goals and as Senator Whitehouse from Rhode Island said, "these are common sense provisions to prevent unfairness and to give the American people a chance." [2] Unfortunately the rule, as currently proposed, has a flaw which will distort the usefulness of the information provided.

The requirement that companies must report the pay ratio as calculated on the last day of the company's fiscal year creates a distortion in the true ratio of CEO pay to median worker pay. Most companies elect a year-end to coincide with a period soon after the end of the busy season. This means that the year-end is generally during the company's slow season, which is reasonable because doing so provides a better measure of how a business performed over its natural business cycle.[3] However, this also means that fewer of the lower wage or seasonal employees will be counted in determining the median employee's earnings.

The regulation should re-define employee to refer to an individual employed during the month in the current year that corresponds with the month in which the registrant had its highest gross operating revenues from the previous year.

Not including lower wage seasonal employees skews the ratio as most temporary workers are paid less than other workers. Including seasonal or temporary workers would increase the gap between the CEO's annual compensation and the median worker's earnings.[4] Companies could be permitted to annualize the compensation for their seasonal or temporary employees just as the proposed rules allow companies to do for permanent employees who do not work a full year. Annualizing would prevent an unrealistic widening of the gap between the CEO's pay and the median worker's pay; if actual wages were used (instead of

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[2] 111 Cong. Rec. S2611 (daily ed. April 26, 2010) (statement of Senator Whitehouse), available at http://thomas.loc.gov/cgi-bin/query/D?r111:7:./temp/~r111GwEhsh::.

[3] Inc., Fiscal Year – Encyclopedia – Business Terms/Inc. com, http://www.inc.com/encyclopedia/fiscal-year.html. (last visited November 28, 2013).

[4] Laura Newberry, The Indianapolis Star, Temp Jobs Become Way to go for Many Employers (September 16, 2013), http:www.usatoday.com/story/money/business/2013/09/16/economy-temporary-workers/2665645.

annualized) the actual wages would be lower and would make the gap between the CEO's wages and the median worker's wages larger. Although this may be valid information it does not compare apples to apples – whereas comparing the full-time wages of the median worker to the full-time wages of the CEO does.

The above is best illustrated by examining several companies that employ large numbers of seasonal employees. The Walt Disney Company is a good place to start. Disney's fiscal year-end is on the Saturday closest to September 30.[5] Disney acknowledges, in its annual report, that "each of our businesses is normally subject to seasonal variations" and further states with respect to its amusement parks "peak attendance and resort occupancy generally occur during the summer months when school vacations occur."[6] Most schools in the United States are back in session by the beginning of September; therefore it is relatively safe to conclude that most seasonal employees will not be working for Disney by the end of its fiscal year.

Disney's 2012 Annual Report states it employs approximately 166,000 people but it does not disclose positions or salaries.[7] The president of one of the unions representing Disney workers provided the following information: Disney World in Florida has over 60,000 workers at its peak season. Of these approximately 5,000 are in management, 35,000 are full-time permanent and 10,000 are part-time permanent.[8] This leaves between 10,000 and 15,000 seasonal workers at this one park alone, or almost 25% of the Park's work force. Further he stated that the starting wage for a ride-operator is $8.15 per hour. This is substantially less than the $19, 340.31[9] per hour earned by Mr. Robert Iger, the CEO of Disney (per the 2013 proxy statement Mr. Iger's annual compensation for 2012 was $40,227,848.00).[10]

According to the Florida Department of Economic Opportunity the entry wage for a recreation worker is $8.62 per hour and the median wage is $15.90 per hour.[11] Florida's minimum wage is $7.79 per hour.[12] These numbers corroborate the numbers provided by the Union as most seasonal workers will be paid an amount closer to the entry level wage rather than the median wage which includes full-time, long-term employees.

The 2012 Annual Report also states that Disney's total 2012 revenues equaled $42,278,000,000, and revenue from theme parks comprised approximately 25% of the total revenues.[13] If 25% of the theme park employees are seasonal and theme park employees

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[5] *Walt Disney Company 2012 Annual Report*, page 75, available at http://cdn.media.ir.thewaltdisneycompany.com/2012/annual/10kwrap-2012.pdf
[6] *Id* at 22.
[7] *Id* at 1.
[8] Telephone Interview with Eric B. Clinton, President UNITE Here! Local 362, (October 23, 2013).
[9] *Id*.
[10] *Id*.
[11] Florida Wages, http://www.floridawages.com/eds.php?compare=6&page=0 (last visited November 28, 2013)
[12] Department of Labor Minimum Wages, http://www.dol.gov/whd/minwage/america.htm#Florida (last visited November 28, 2013)
[13] *Walt Disney Company 2012 Annual Report* at 28.

make up 25% of the workforce (assuming revenues and number of employees are correlated) then not including seasonal employees in the pay ratio would exclude over 6% of the work force from the calculation of the median worker's wage. Because these 6% of excluded employees are the lowest paid (remember ride operators make $8.15 per hour) omitting them from the calculation clearly skews the median wage upward and narrows the gap between the CEO's compensation and the median worker's wage.

When Walt Disney ran the highly successful Disney Company he earned approximately 50 times what a housekeeper he employed earned[14]; now the CEO of the highly successful Disney Company earns approximately 1,161 times what the median American worker earns and 2,373 times what an entry level ride operator earns. The low income seasonal workers must be included in the ratio to provide an accurate picture of the discrepancy between the CEO's and the median worker's compensation.

The regulation should require the calculation to be the month end in the current year that corresponds with the month with the highest gross operating revenues from the previous year. It should also require the inclusion of all temporary and/or part-time workers employed at any time during that month. Changing the reporting date to be at the peak of the business cycle, in Disney's case possibly either July 31 or August 31 would include most seasonal employees and the ratio would be a better representation of the truth.

Registrants should be required to disclose the reporting month. This would add minimal costs to the reporting company while providing information supportive of the cogency of the median pay ratio. In addition reporting the calculation month improves compliance of registrants using the proper reporting month.

II. The regulation should require the inclusion of all employees who worked during the calculation month.

Question 18 asks "What impact would this calculation date have on registrants that employ seasonal workers and would the exclusion of seasonal workers not employed on the calculation date likely have an impact on the median or the ratio?" Questions 19 and 20 ask "Should registrants be required to include any individual who was employed at any time during the year?" and "Should the rule only apply to employees employed for the full fiscal year?" The following addresses these issues.

It is important that all employees who worked during the calculation month be included even if they have been let go by the end of the month. If a company is not required to include all seasonal employees, especially those discharged before the end of the calculation month, the median pay ratio could be skewed.

Amazon.com is an example of a company that uses many seasonal employees whom they probably lay off just before the fiscal year ends. Amazon in its 2012 annual report stated

[14] Telephone Interview with Eric B. Clinton, President UNITE Here! Local 362, (October 23, 2013).

it had 88,400 full-time and part-time employees as of their December 31 fiscal year-end.[15] The Annual Report went on to state "employment levels fluctuate due to seasonal factors affecting our business…we utilize independent contractors and temporary personnel to supplement our workforce, particularly on a seasonal basis."[16] On October 1, 2013 Amazon issued a press release stating that in 2012 they had hired 50,000 seasonal employees. [17] Amazon did not respond to a request as to whether these 50,000 employees were included in the 88,000 at fiscal year-end. However, it is reasonable to conclude that Amazon's busy season is over by December 26, and that a large percentage of Amazon's seasonal employees would be discharged by the December 31 reporting date. If Amazon was required to include all employees who worked during the calculation month, and if December was their highest gross revenue month, then all of the employees laid off after the holiday rush would be required to be included in the pay ratio which would result in a more accurate pay ratio.

Amazon states that it pays its seasonal employees 94% of what its permanent employees make.[18] According to the Bureau of Labor Statistics the average annual wage of a retail trade employee is $26,763[19]. If Amazon pays its employees 94% of this, then the average seasonal employee's wage is $25,158[20]. Adding 50,000 employees at this wage to a calculation of median wage will apply tremendous downward pressure on the median wage. Because Amazon did not respond to a request for what the actual number of permanent versus seasonal employees and median wage of each group exact calculations cannot be made.

However, Jeffrey Bezos, the CEO of Amazon, received total compensation in 2012 of $1,681,840[21]. If the median wage was $25,158 (assumed by including 50,000 seasonal workers in the median worker's wage) then he earned almost 67 times what the median worker earned. If we do not include the seasonal workers and assume a median wage of $34,645 (which the United States Bureau of Labor Statistics states is the median American worker's wage)[22] then Mr. Bezos earned only 49 times the earning of the median wage worker. Not including the seasonal employees could hypothetically result in a skewing of the ratio by approximately 40% - an unacceptable number.

On January 19, 2011 Senator Menendez who sponsored Section 953(b) of the Dodd-Frank Act penned a letter to the United States Securities and Exchange Commission

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[15] *Amazon.com 2012 Annual Report*, page 3, available at http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-reportsannual; (follow "2012 Annual Report" hyperlink).
[16] *Id.*
[17] *Amazon.com Press Release*, Seattle (Business Wire), October 1, 2013, *available at* Inc. http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=1860082&highlight=.
[18] *Id*.
[19] *Databases, Tables & Caclulators by Subject*, extracted on October 19, 2013, Average Hourly Earnings of all employees – Retail Trade, http://www.bls.gov/.
[20] *Amazon.com Press Release*, Seattle (Business Wire), October 1, 2013, *available at* Inc. http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle&ID=1860082&highlight=.
[21] *Amazon.com 2013 Proxy Statement, page 18, available at* http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-reportsannual; (follow "2013 Proxy Statement" hyperlink).
[22] *Trends in CEO Pay*, AFLCIO, http://www.aflcio.org/Corporate-Watch/CEO-Pay-and-You/Trends-in-CEO-Pay (last visited November 29, 2013).

reiterating that Section 953(b) required a company to use the median of the "annual total compensation of all employees of the issuer (except the CEO)."[23] Senator Menendez's continued in this letter that "I really did mean all employees of the issuer. I intended that to mean both full-time and part-time employees, not just full-time employees."[24] The Senator explained that the purpose of the law was to allow the general public to "know whether public companies' pay practices are fair to their average employees, especially compared to their highly compensated CEOs."[25] Senator Menendez's emphatic letter gives credence to the belief that all employees should also include temporary employees who are laid off just before the calculation date.

B. Conclusion

Correcting the calculation of the median worker's pay by including all seasonal employees who work during the calculation month and changing the calculation date to a period that reflects the highest employment period will create a more accurate ratio of the PEO's compensation to the median worker's compensation. This in turn will provide better information to investors, employees, unions and management and more accurately reflect Congress's goal of accuracy and transparency. Requiring companies to disclose the calculation month will increase the legitimacy of the calculation and encourage compliance.

Thank you for providing me the opportunity to address these issues and thank you for the time and consideration the Commission and its staff are giving to the development of the Regulations. If you have any questions please do not hesitate to contact me via e-mail at mcco8167@vandals.uidaho.edu.

Sincerely,

Brianne H. McCoy
JD Candidate Class of 2014

[23] Letter from Senator Robert Menendez, New Jersey United States Senate, to the Honorable Mary L. Schapiro, Chairwoman United States Securities and Exchange Commission (January 19, 2011), (on file with author).
[24] Id.
[25] Id.