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Via email

December 2, 2013

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

RE: File Number S7-07-13: Proposed rule to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy:

I am writing on behalf Vivient Consulting LLC, an independent compensation consulting firm that advises public companies and their Board of Directors. Below, we submit for your consideration several comments in response to the proposed rule to implement Section 953(b). We focused our letter on the topics that the Commission specifically requested comment and where we can offer the benefit of our experience.

Request for Comment #4: Should we revise the proposal so that smaller reporting companies would be subject to the proposed pay ratio disclosure requirements?

We believe that the current treatment (i.e., "the pay ratio disclosure rules would not apply to smaller reporting companies") is appropriate. From a cost standpoint, requiring smaller reporting companies to disclose the pay ratio would create a significant cost and administrative burden. Given the size of their employee population and administrative budget, very few smaller reporting companies employ full-time senior level human resource professionals who could be assigned the responsibility of complying with the proposed ruling. Initial and ongoing compliance would likely necessitate hiring additional staff and/or outside advisors. Smaller reporting companies would incur a disproportionate compliance cost relative to market capitalization compared to that of larger public companies.

Request for Comment #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?

The proposed rule requires the inclusion of all employees in the identification of the median, "without any carve-outs for specific categories of employees." In order to provide more transparency and meaningful comparison of pay ratios, we believe that registrants should 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. Substantial pay level differentials exist between U.S. employees and other non-U.S. employees. The pay ratio of a theoretical company with half of its employees in the U.S. and half of its employees in India could swing dramatically from one year to the next based on a very small change in the number of India vs. U.S. employees. Providing two ratios, one for U.S. employees and one for India employees, would mitigate such a year-over-year distortion, as well as account for any distortions caused by foreign currency fluctuations.

We believe that pay ratio disclosures WILL be used as a benchmark for compensation comparisons across companies. While the Commission's proposed flexible approach reduces the ability to directly compare ratios, this will not prevent consultants, proxy advisory firms, and institutional investors from spending many hours trying to reverse-engineer pay ratios to understand and/or rationalize why companies' pay ratios differ from one another. Further, once disclosed, pay ratios will be aggregated and then segmented further (e.g., by industry, company size, work force demographics, geographic span, etc.). By allowing, but not requiring, registrants to provide two separate ratios, as well as provide supplemental disclosure with a narrative discussion, more meaningful comparisons can be drawn.

Request for Comment #28: Should registrants be permitted, as proposed, to identify the median employee using a consistently applied compensation measure? Why or why not? How would this impact compliance costs? Would this address costs arising from having employees in multiple jurisdictions and payroll systems?. . .What compensation measure would registrants likely use for this purpose? How would that measure compare to total compensation calculated under Item 402(c)(2)(x)?

Allowing registrants to determine and select the compensation measure for the purpose of identifying the median employee mitigates some of the costs of compliance with the proposed rule. In addition to payroll data, companies typically compile compensation data as part of their annual process for making employee salary increase and bonus payout recommendations. As a result, the proposed rule provides registrants the flexibility to identify the median employee by using compensation data that is already compiled for other business purposes.

For U.S.-centric companies, total cash compensation (salary plus variable pay) or reported W-2 earnings are the likely compensation measures. Due to differences in payroll data components by region and/or country, global companies will likely use base salary (and its equivalent for non-U.S. employees) as the likely measure, especially if variable pay (bonus) programs and payout decisions are decentralized (for example, by business unit, country, region, professional vs. production employee segments). In either case, these measures for the median employee may not include equity awards granted, pension and/or retirement benefits and other compensation defined under Item 402(c)(2)(x). However, by permitting "the use of reasonable estimates in determining any elements of total compensation," the proposed rule enables registrants to approximate total compensation under Item 402(c)(2)(x).

Request for Comment #40: Should we require registrants to disclose additional narrative information about the pay ratio or its components, or factors that give context for the median, such as employment policies, use of part-time workers, use of seasonal workers, outsourcing and off-shoring strategies? … Would such a requirement raise competition concerns?

Registrants should not be required to disclose additional narrative information about the pay ratio or its components. Such a requirement would increase the costs of compliance and encourage outside interests to further probe into the registrants' organizational and compensation structures, potentially leading to competition concerns. We agree with the Commission's view that registrants should be "permitted to supplement the required disclosure with a narrative discussion if they choose to do so." Practically speaking, any material year-over-year change in a registrant's pay ratio will likely be accompanied by a short explanation as to the reasons for the variance.

We appreciate your consideration of our comments. If you have any questions regarding this letter, please feel free to contact me at (310) 426-2340.

Sincerely,

Bertha Masuda

Bertha Masuda
Partner