December 2, 2013

PNC

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

RE: File Number S7-07-13 Pay Ratio Disclosure

Dear Ms. Murphy:

The PNC Financial Services Group, Inc. appreciates the opportunity to provide the Securities and Exchange Commission with comments on the Commission's proposed rules to implement the requirements of Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, under which an issuer would be obligated to disclose the ratio of the compensation of its chief executive officer to that of its median compensated employee.

PNC is a diversified financial services company, with approximately $309 billion in assets as of September 30, 2013. PNC's principal lines of business are retail banking, corporate and institutional banking, asset management, and residential mortgage banking. PNC provides many of its products and services nationally and others in PNC's primary geographic markets in the Northeast, Midwest and Southeast United States. PNC also provides certain products and services internationally.

We share, with many others, concerns over the potential costs and burdens to comply with the Section 953(b) disclosure requirement. In that regard, we appreciate the Commission's efforts reflected in the proposed rules to help mitigate the expense and other operational issues presented by Section 953(b) through the flexible approach offered for determining the identity of the median compensated employee. Although we understand the Commission's perspective regarding the limitations on its discretion resulting from the language of Section 953(b), we believe there are additional opportunities to enhance the final rules. This is particularly the case if one focuses on achieving the apparent goals of this provision rather than on an overly literal reading of its language. We recognize that Section 953(b) refers to the ratio of the "median of the annual compensation of all employees" to that of the CEO. Nonetheless, we believe that some deviation from that precise language should be acceptable if it furthered what we believe to be the intent of this provision—to show the ratio of the compensation of the typical or representative employee to that of the CEO. In some cases, applying the text literally could lead to results that will distract from the achievement of that purpose.

The PNC Financial Services Group
One PNC Plaza 249 Fifth Avenue Pittsburgh Pennsylvania 15222
www.pnc.com

We are not convinced that the utility of this new disclosure to investors and other constituents will be anything other than limited. But if issuers are going to be required to provide it, we think it is important that the disclosed ratio itself as well as any accompanying text not impede whatever utility there may be. The following are our thoughts as to possible improvements to the proposed rule that would facilitate clarity and improve meaningfulness and in some cases mitigate unnecessary burdens as well.

1. *Anomalies in compensation of median compensated employee*. As noted above, in general, we are very appreciative of the flexible approach taken by the Commission towards identifying the median compensated employee. Most importantly, we appreciate not being required to compute Regulation S-K Item 402(c) compensation for large numbers of employees within range of the median. One result, however, is the possibility that the median compensated employee chosen by reference to a metric other than total Item 402(c) compensation may have pay elements, or may be missing pay elements, that make his or her total Item 402(b) compensation to be anomalous when compared to others at about the same overall compensation level.

To the extent that this ratio has any value at all, presumably that value will come from the opportunity it provides to evaluate the relationship between the pay practices with respect to the CEO and those with respect to the rank and file employees, on a snapshot basis as well as comparatively over time. This value—and as noted above, we suspect it may be limited in the best of circumstances—is all that justifies the effort that issuers will need to put into compliance, and will be significantly undercut to the extent that the ratio reflects anomalies due to the specific attributes of the one employee, out of perhaps tens or even hundreds of thousands of employees, who happens to be identified as the median compensated one.

Assume that an issuer determines the median compensated employee by reference to total taxable W-2 compensation. The following are some examples of ways in which an individual could have the median compensation on that basis but not be representative of the employees with approximately his or her compensation when converted into item 402(c) compensation.

- Non-participation in benefit programs, where the value of the benefit is reflected in Item 402(c) compensation but not in W-2 compensation. There are two categories of such programs. First, there are programs such as 401(k) programs and health savings accounts (HSA) associated with the issuer's high deductible health plan where the amount taken out of compensation and put in the employee's account is already reflected in executives' Item 402(c) compensation. Second, we expect that many issuers will elect to include, for both the CEO and the median compensated employee, widely available health and welfare benefits that are permitted but not required to be included in Item 402(c) compensation.

  There are a variety of reasons why an employee might not participate in one or more of these programs. For example, an employee may decline employer health coverage if he or she is covered by a spouse's employer's plan. Also, an employee who is covered under a health plan that is not a high deductible one is ineligible to participate in an HSA. An employee who works part-time with a relatively high base salary (such as an accountant working two days a week) might be ineligible for all of the benefits otherwise provided full-time employees but employees with approximately the same compensation generally are eligible to utilize the benefits and do so.

If a high percentage of the issuer's workforce, including most of those with W-2 compensation near the median amount, participate in such programs, an employee who declines would have Item 402(c) compensation lower than most of the employees with similar W-2 compensation. In that event, if such an employee happened to have the median W-2 compensation, the resulting ratio would be distorted when compared to the typical employee at his or her pay level.

- Impact of different treatment of equity compensation for taxable income and Item 402(c) purposes. Equity compensation is reflected in taxable income when vested or exercised, but under Item 402(c) is included as compensation in the year of grant. This could lead to anomalous results in circumstances such as the following:

  Assume an issuer that does not typically grant equity to employees around the median level but on an occasional basis grants special performance awards of restricted issuer stock to high achieving employees. The effect of this would be cause a one-time spike in the employee's Item 402(c) compensation in the year of grant followed by a one-time spike in his or her W-2 income in the year of vesting or exercise. If, in either year, this employee is the median compensated employee, the ratio would be distorted compared to a ratio using other employees with otherwise equivalent compensation packages.

  Assume the issuer instead grants equity broadly, including to those around the median level. The grants themselves may not be particularly distortive. But if the issuer includes options in this program, an individual employee could exercise a relatively large amount of such options in a single year. This would cause a spike in his or her W-2 income that year without impacting Item 402(c) income for that year. An employee could thus be elevated into median compensated employee status despite the fact that his or her Item 402(c) income is consistently below that of the other employees compensated near the median amount.

If one or more of these types of situations came to pass, it could easily lead to a pay ratio that does not accurately reflect the actual relationship between the compensation packages provided typical employees and that provided the CEO. It also could lead to dramatic swings in the ratio on a year-to-year basis—even without meaningful changes in the compensation program—if a non-representative employee happens to represent the median one year but not the next. It could even cause the ratio to increase despite a decrease in the CEO's pay and an across the board increase in the pay structure for rank and file employees.

Accordingly, we suggest that issuers be given the flexibility, after first identifying the median compensated employee using whatever methodology they select, to determine that the individual employee thus identified has anomalous compensation characteristics that would create the risk of a distorted pay ratio. If so, issuers should then have the flexibility to identify another employee, with approximately the same compensation calculated in accordance with the same methodology, to use for purposes of calculating the pay ratio. We suggest that the Commission establish a 1% variance from the actual median as representing approximately the same compensation. Any such issuer availing itself of this option would, of course, need to disclose that it had done so and provide a reasonable description of the anomalous attributes of the overall compensation package of the original median compensated employee and an explanation for the selection of the employee actually used for the ratio. We believe Congress's use of "median" is intended to act as a proxy for "representative" and does not necessarily accord special status to individuals who may technically be precisely the median. Our approach would facilitate finding a "representative" ratio and thus should better meet Congress's goal. While we understand that the Commission does not feel it has the flexibility to ignore totally the concept of "median," we believe that choosing a more representative employee who is compensated almost at the median sufficiently honors the approach suggested in the statute. This is particularly the case when one factors in the advantages of not using anomalous employees for this purpose. We note in this regard that the Commission's own flexible approach leads to the possibility that different allowed methodologies would lead to different levels of "median compensation," although technically there can only be one median. As the Commission suggests, the likely slight differences that would result do not meaningfully alter the final result. With our proposal, any differences would only have the effect of making the ratio more representative of the issuer's compensation program.

2. *Foreign employees*. As is the case with many other issuers, PNC is concerned about the requirement to include foreign employees in the calculation. Recognizing the Commission's view that it does not have the discretion to eliminate foreign employees totally from the process, we have several thoughts that may ameliorate some potential problems.

First, the proposed rule requires issuers to use the same methodology for all employees, without apparent qualification.[1] It may not be possible to find such a methodology that could be used for both United States and non-United States employees. For example, W-2 compensation, which in many cases would be a relatively easy metric to use in the United States, is not applicable to foreign employees. Second, for issuers with very few foreign employees, the effort to develop processes to identify the median compensated employee (particularly given the foreign privacy law considerations that the Commission recognizes) could be significant relative to the likelihood that a foreign employee would be the median or that the median employee would be meaningfully affected by the presence of foreign employees in the pool being reviewed. Third, if a foreign employee is the median compensated employee, it may not be easy to come up with a total compensation amount that is sufficiently

[1] Instruction 2(iii) to Item 402(u): "An issuer may identify the median employee using . . . (B) any other compensation measure that is consistently applied to all employees included in the calculation . . . ." Also, Instruction 2(iv) to Item 402(u): "Issuers must . . . consistently apply any methodology used to identify the median and any material assumptions, adjustments or estimates used to identify the median . . . ."

analogous to item 402(c) compensation to make the ratio meaningful for the current year and across time periods.

To help solve these issues, we believe that issuers with a de minimis foreign workforce should be allowed to exclude them altogether from the process of identifying the median compensated employee, despite the language in Section 953(b), on the grounds that excluding a small number of employees is unlikely to affect in any material way the ratio and that the nominal, at most, difference in result is outweighed by the cost savings that would accrue to these issuers. We suggest 5% as representing "de minimis" for this purpose. In addition, for those issuers whose foreign workforce does not qualify for this exclusion, we believe that issuers should be able to use different methodologies in different markets, as long as the methodologies are generally designed to achieve comparable results given the difference in pay practices in different markets and, in the case of markets with more significant numbers of employees (we suggest the same 5% threshold), disclosure regarding the alternative methodology. Finally, if an issuer is required to include foreign employees in its identification of the median compensated employee and a foreign employee happens to be the median compensated one, we believe that the issuer should be able to use instead another employee with approximately the same compensation under whatever methodologies are being used to identify the median, in the same manner as we have suggested for anomalous compensation situations. It would be appropriate to choose another employee either because of a foreign market anomaly or to avoid privacy issues.

3. *Filed vs. Furnished*. We respectfully disagree with the Commission's conclusion that the language of the statute precludes treating this information as "furnished" rather than "filed." The statutory language refers to information to be included in a "filing," rather than referring to information that is to be "filed." We believe that the common usage would be to refer to a form provided the Commission as a "filing," regardless of whether the information is deemed filed versus deemed furnished. We are unaware of any situation where a form entirely consisting of furnished information is officially, or even colloquially, referred to as a "furnishing." In addition, there are forms that can and do contain information in both categories. We suspect that no one would think that referring to such a form as a "filing" would preclude being able to treat as furnished information otherwise eligible for that status. (We are not addressing here the question as to whether a statutory reference to "filed" information would necessarily preclude treating it by rule as "furnished.")

If not required to be treated as filed, we encourage the Commission to revisit the comments by those who originally suggested that it be treated as furnished. The difficulties in obtaining the required information (in particular, in identifying the employee whose compensation will be used as the median) suggest that the lower risks associated with furnished information are appropriate in this case. The extent to which this disclosure is likely to rely on judgments and estimates that may vary widely from issuer to issuer, and that may be difficult to validate in accordance with the types of controls normally applicable to disclosure also argue against the higher liability regime for filed material. As the Commission's own efforts to ease the regulatory burden by providing much needed flexibility to the process demonstrate, absolute precision in determining who the median compensated employee is and how much he or she makes is not necessary to achieve the intended result. Issuers should not be subjected to the higher liability regime for such a process.

In addition, this disclosure is analogous to the conflict minerals disclosure, also mandated by Congress, where the Commission has elected to treat the required information as furnished. As is the case with the conflict minerals disclosure, this disclosure appears to be less useful for investors than as a means of providing information to the public intended to have some social utility.

* * *

Thank you for the opportunity to comment on these proposed rules. We would be pleased to discuss our comments with representatives of the Commission at their convenience. In addition, if you have any questions regarding this letter, please do not hesitate to contact George P. Long, Senior Vice President, Human Resources, at [redacted] or [redacted], or Edward S. Rosenthal, Deputy General Counsel, at [redacted] or [redacted].

Sincerely,

Joan L. Gulley /ER

Joan L. Gulley
Executive Vice President and Chief Human Resources Officer