December 3, 2013

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

Dear Ms. Murphy,

Subject: Comments on Proposed Rules Relating to Pay Ratio Disclosure
Release Nos. 33-9452; 34-70443; File No. S7-07-13 (the "Release")

We respectfully submit this letter in response to the solicitation by the U.S. Securities and Exchange Commission (the "Commission") for comments on the proposed amendments to Item 402 of Regulation S-K ("Proposed Rules") requiring disclosure of:

- The median of the annual total compensation of all employees of an issuer, excluding the chief executive officer ("median compensation");
- The annual total compensation of that issuer's chief executive officer; and
- The ratio of the median of the annual total compensation of all employees to the annual total compensation of the chief executive officer ("pay ratio").

The Proposed Rules are intended to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank").

Aon Hewitt is the world's preeminent human resources consulting and outsourcing firm with the resources, expertise, and global reach to solve the most pressing and complex people challenges that organizations face today.

We employ the strongest team of professionals in the industry, who have access to the widest breadth and depth of research, platforms, and services in more locations and for more industry segments than any other human capital firm. Our singular focus is on our clients: We deliver distinctive value, top-rated customer service, and measurable business impact.

We appreciate the opportunity to offer these comments and hope that the Commission finds our observations and recommendations useful in developing final rules. Our comments provided below are limited to the following four areas:

- Need for maximum flexibility in selecting a methodology of calculating median compensation;
- Need to limit the relevant employee population to employees working in the U.S.;

- Need to provide additional time between the reference date for the median compensation and the date the registrant's filing containing Item 402; and
- Need to consider pay ratio disclosure as furnished rather than filed; or, in the alternative, provide clear "safe harbor" rules for Issuer compliance.

Need for Maximum Flexibility

We support the Commission's position of providing maximum flexibility with respect to identifying the employee with the median compensation. The proposed rules provide in part the following:

"(i) Registrants may use (A) ***a methodology that uses reasonable estimates to identify the median*** and (B) ***reasonable estimates to calculate the annual total compensation*** or any elements of total compensation for employees other than the PEO.

(ii) In determining the employees from which the median is identified, a registrant may use (A) its employee population or (B) statistical sampling or ***other reasonable methods***" (emphasis in bold italics added).

Because the process of identifying the employee with the median compensation is completely different than the process of identifying "named executive officers" (whose compensation must be disclosed under the existing Item 402 rules), and because organizational structures of public companies tend to be complex (particularly in the context of a large global company with several hundred subsidiaries), it is critical that the final rules issued by the Commission retain the above-cited language. We also recommend that the Commission clarify that when determining if an estimate or method is reasonable, registrants may consider the complexity of its organizational structure, geographic dispersion of the employee population, and the cost of obtaining employee compensation information.

Notwithstanding the proposed flexibility under the proposed rules, a registrant will still need to institute many new processes which may, depending on the circumstances, include the following:

- Establishing guidelines for identifying individuals who provide services directly to or on behalf of the registrant (including subsidiaries of the registrant) who would be treated as "employees" for purposes of the pay ratio disclosure;
- Reviewing current data gathering systems to determine where new or enhanced systems will need to be implemented to gather compensation data for those individuals identified as employees;
- Analyzing employee subpopulations across regional and organizational divisions and current compensation retrieval systems to determine the most cost-efficient manner of estimating the median compensated employee;
- Developing communication and training for local human resource staff members to collect the required information;

- Working with "data privacy officers" in various countries to make sure that transmission of individual compensation data does not violate privacy laws in a given locale;
- Capturing and applying necessary foreign exchange information so that compensation data can be organized under a single currency; and
- Testing collected data for reasonableness.

It is essential the registrants be allowed to exercise judgment in these areas and to use reasonable methods and to make reasonable estimates to determine the median compensated employee. We believe the proposed rules provide for this and recommend that the Commission not scale back the proposed use of reasonable estimates.

Need to Use Only Employees Working in the U.S.

Based on research by Radford, a unit of Aon Hewitt, including employees outside the U.S. when determining median compensation can result in a significant, and in our view, *distorting* shift in the pay ratio. When non-U.S. employees are included in determining median compensation, the pay ratio can be from 1.75 to 2.20 times greater (or more) than the pay ratio determined without these employees. The impact varies with the size of the company, industry, and countries in which the company operates. As a result, CEOs with identical compensation, in similarly-sized companies could have dramatically different pay ratios, based on the fact that one company has all, or most of its employees in the U.S., and the other has all, or most of its employees located elsewhere in the world. Further, the compensation of U.S. employees in these companies could be identical.

Investors do not know the country-by-country makeup of a company's employees, neither the countries in which employees reside nor the pay practices that may be competitive in that country. Without this contextual information, the pay ratio disclosure cannot serve any meaningful purpose. However, if the compensation comparison is restricted to the U.S. alone, investors will have a data point that is clearly understandable—the CEO's total compensation is a specified multiple of all its U.S. employees. If, on the other hand, the pay ratio is determined on a global basis (putting aside issues of data privacy and the difficulty applying U.S. compensation measurement rules to significantly different pay packages such as a Singapore housing allowance or a "13th month bonus" in China), investors would have to have an enormous amount of additional information to understand what a disclosed global pay ratio really means. Such additional information is well beyond the scope of Section 953(b) of Dodd Frank and would place a significant burden on registrants with large non-U.S. employee populations.

To address this, we believe the pay ratio should look only at U.S.-based employees. Furthermore, we do not support the notion of multiple pay ratio disclosures: one reflecting only U.S. employees and one reflecting non-U.S. employees. This approach would simply double the effort required to comply with the regulation without providing meaningful information to an investor. It would, in effect, require the issuer to go through the effort of identifying two sets of median employees—one in the U.S. and one outside the U.S., and would not mitigate the issues surrounding the determination of what constitutes "compensation" in various non-U.S. locations.

As an additional issue, many companies with international operations do not have a global human resources function with centralized global recordkeeping. If the pay ratio is limited to the U.S., most employers will be able to look at a common database of employees with a consistent definition of compensation. If a global pay ratio is required, a company would be required (in some cases, for the first time) to define, collect, aggregate, and analyze compensation from a number of countries, incurring a substantial cost solely to calculate one additional disclosure under an already complex and extensive set of Item 402 disclosures. Relative to the time and effort needed to collect data for a U.S.-only approach, we believe the global data collection would be, for most companies, unduly burdensome.

Need to Allow Additional Time to Identify the Median Employee

Under the proposed rules, a registrant will need to determine the median compensated employee among its employees who are actively employed as of the end of the registrant's current reporting period. Given our considerable experience in the area of compensation and benefit administration, we believe it will be difficult for most companies to gather this information in a timely fashion and have sufficient time for review by all of parties responsible for the Item 402 disclosures. At a minimum, we recommend the Commission permit registrants to consistently use its employee population as of the fiscal year-end next preceding the reporting period to identify the median compensated employee. The registrant can then use a reasonable estimate of what that median compensated employee's total compensation for the current reporting period is when calculating the pay ratio regardless of whether that individual was, in fact, employed at the end of the reporting period.

Based on work we have done to date, we believe that using the employee population that existed one year prior to the end of the current reporting period will not have a material impact on the pay ratio. It is highly unlikely that the compensation and benefit profile of the median compensated employee is likely to change radically from year to year, and any perceived added value of using more contemporaneous information for purposes of the pay ratio is likely to be negligible.

Need to Consider the Pay Ratio as Furnished Not Filed, or in the Alternative, Provide Specific Safe Harbor Rules

In terms of potential legal costs to issuers relative to an immaterial benefit to investors, we strongly believe that the Commission needs to either:

a. Consider the filing of the pay ratio to be "furnished" rather than "filed"; or, in the alternative,

b. Provide clear "Safe Harbor" rules for issuers to meet the methodological requirements of computing the ratio.

There has been an explosion of litigation over "say on pay votes," almost all of which have been dismissed with prejudice. We believe that this practice will be repeated with regard to the pay ratio disclosures if companies are required to provide this information as "filed," rather than "furnished". As the Commission acknowledges, there are myriad decisions a company must make in computing the ratio—what methodology is applicable, when is the appropriate measurement date, who is to be considered an "employee" for purposes of the calculation, what constitutes "compensation", etc. If the ratio is to be considered "filed," companies will be open to the plaintiff's bar challenging every assumption a company makes, with the allegation that the company has willfully misled investors by its choice of assumptions. There is no Generally Accepted Accounting Principal or any other body of rules that would guide a registrant in making these assumptions. The Commission, by encouraging companies to select their own "best fit" solutions is opening the door to companies being challenged—"*Why* did the company choose methodology 'A' when a majority of its peers chose methodology 'B', which coincidentally leads to a higher ratio?"

If the Commission permits the pay ratio to be considered "furnished," even though it is contained in documents that are "filed," it would remove liability under Section 18 and limit the ability of the plaintiff's bar to launch strike suits with the view of extorting settlements from issuers. (This is an all too common practice today with regard to "say on pay" votes and votes on stock plans, where suits are being filed shortly before a shareholder meeting, claiming that insufficient information has been provided to shareholders, and demanding companies either settle quickly…with little, if any money actually reaching shareholders… or incur the cost of rescheduling annual meetings.)
If the Commission decides that registrants should be subject to the "filed" rather than "furnished" rules, then we would suggest the following:

a. The Commission should provide significantly greater guidance as to approved methods (whether sampling, survey data, or other "reasonable estimates" (as noted in the Commission's release on page 40). Because of the higher scrutiny applied to "filed" material, and the likelihood of strike suits from the plaintiff's bar, the Commission should provide sufficient guidance to give issuers a series of "safe harbors" for determining the median employee.

b. In order to provide these safe harbors, the Commission should provide further guidance in terms of:

    i. Allowable methodologies; and

    ii. Range of acceptable variation within each methodologies (e.g., for a statistical sampling approach, how big does the sample need to be as a percentage of the workforce, how to allocate among different countries, does the size of the sample needed vary with the number of countries included, what is an acceptable confidence level and margin of error, etc.).

c. The Commission should explicitly include in the safe harbors the use of an alternative year-end reference point for determining the median employee (for whom total compensation for the current reporting period will be disclosed). As we have noted earlier, the key is to consistently apply a particular time period—it need not be the same as the current reporting period of the registrant.

We appreciate the opportunity to provide the Commission with comments relating to its proposed rules under Section 953(b) of Dodd Frank, and we would be happy to discuss with the Commission and/or its staff any of our comments provided herein.

Sincerely,
Aon Hewitt

Theodore R. Buyniski
Partner
Radford, an Aon Hewitt Company

David M. Sugar
Partner
Aon Hewitt

Todd McGovern
Partner
Aon Hewitt

Brian Dunn
CEO, Global Compensation, Aon Hewitt and
President, McLagan, an Aon Hewitt Company

DS:mm
INT/AA/SEC/MUR120301e