Capital Strategies Consulting, Inc.

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Electronic submission
c/o Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F St. NE
Washington, DC 20549-1090

Re: Pay Ratio Disclosure, File No. S7-07-13

Dear Officers,

Section 953b of the Dodd-Frank Wall Street Reform and Consumer Protection mandates the Commission to promulgate a rule to provide for the disclosure of the ratio of CEO pay to that of the median paid employee.

This letter reflects my personal views as a student of financial policy, fund trustee, and investment manager of small funds with aggregate value of less than $100 million.

Disclosing the CEO/median pay ratio will introduce "unit pricing" into senior management pay, which now absorbs 10% of corporate profits, a doubling since 1990. This counters the "Lake Woebegone/all CEOs are above average" effect that simply CEO disclosure delivered. (A board can't attract an inferior CEO, of which pay is an obvious if superficial marker.) Investors can now use the ratio among many other ratios in investment decisions. Whether this reverses the drain of corporate profits to senior management pay is unknowable. But the cost of compliance will be minimal, despite exaggerated and unsubstantiated claims to the contrary. If only a basis point of corporate profits are returned to shareholders instead senior management pay, the disclosure will more than pay for itself.

This comment letter is structured around the formal questions asked by the Commission. The proposed rule and request-for-comment contains 69 enumerated questions, and most enumerated questions themselves are composed of several questions. What follows is an attempt to answer each enumerated question. Of most concern, I believe that worker pay should not be annualized, nor should the company use full-time equivalents. Such efforts mask information important to investors, namely, the firm's reliance on part-time or seasonal workers.

1. Should we require the pay ratio disclosure only in filings in which Item 402 disclosure is required, as proposed? Should we require the pay ratio disclosure in Commission forms that do not currently require Item 402 disclosure? If so, which forms, and why? Would disclosure be meaningful to investors where no other executive compensation disclosures are required?

Disclosure of the pay ratio in Item 402 on an annual basis is sufficient.

2. Do registrants need any additional guidance about which filings would require the proposed pay ratio disclosure? Are there circumstances where the requirements of a particular form call for Item 402 information in certain circumstances, but the applicability of the proposed pay ratio disclosure requirements may not be clear? If so, please provide details about what should be clarified and what guidance is recommended.

Registrants should be instructed to include the pay ratio in a 10-k filing, and be permitted to disclose the pay ratio in other filings as the registrant wishes.

3. Should the pay ratio disclosure requirements, as proposed, apply only to those registrants that are required to provide summary compensation table disclosure pursuant to Item 402(c)? If not, to which registrants should pay ratio disclosure requirements apply?

Limiting the requirement to those registrants filing on Item 402 will be sufficient. Ideally, smaller firms attempting to attract capital may wish to volunteer the figure as a means of demonstrating that the enterprise isn't a CEO-enrichment vehicle, but one that aims to deploy capital to value-producing employees.

4. Should we revise the proposal so that smaller reporting companies would be subject to the proposed pay ratio disclosure requirements? If so, why? If so, also discuss how smaller reporting companies should calculate total compensation for employees and the PEO. For example, should they be required to calculate total compensation in accordance with Item 402(c)(2)(x) instead of the scaled disclosure requirements? In the alternative, should smaller reporting companies be required to provide a modified version of the pay ratio disclosure? If so, why, and what should that modified version entail? Should it be based on the compensation amounts required under the scaled disclosure requirements applicable to smaller reporting companies, such as a ratio where the PEO compensation and other employee compensation are calculated in accordance with Item 402(n)(2)(x)? Please provide information as to particular concerns that smaller reporting companies may have. Please discuss whether the disclosure would be useful to investors in smaller reporting companies.

The proposal needn't be revised to require smaller companies to disclose this ratio. It should be obvious to an investor in a small company when a CEO is over-compensated. Further, smaller firms that elect to volunteer this figure will be making a statement that they understand their own payrolls, and value disclosure to their shareholders (as well as the inverse and contrapositive).

5. Should we amend either Form 20-F or Form 40-F to include disclosure that is similar to the proposed pay ratio disclosure requirements? If so, why? Assuming we would not otherwise subject foreign private issuers to the executive compensation disclosure rules, what modifications would be needed to address the different reporting requirements that foreign private issuers and MJDS filers have for executive compensation disclosure in order to require pay ratio disclosure? In particular, how should these registrants calculate total compensation (for the PEO and for employees) for purposes of such a requirement? Please provide information as to particular

concerns that foreign private issuers or MJDS filers may have if they were required to comply with such a requirement. Please discuss whether the disclosure would be useful to investors, particularly in the absence of the executive compensation disclosure that would accompany disclosure of the ratio for registrants subject to Item 402 disclosure.

No additional forms need be amended. Firms that which to demonstrate shareholder friendliness will disclose.

6. Are there any other presentation issues that companies need guidance on or that should be clarified in the pay ratio disclosure requirements? If so, please provide details about such issues and any recommended guidance that should be provided.

We propose that the exact median need not be identified. Instead, once the median is approximated through estimation statistics, then a range of employee pay that asymptotes to 1 percent of the ultimate CEO/median pay ratio will be sufficient. No investor will be materially better informed to know that the ratio is 140.89567, as opposed to 141. Consequently, any median pay that results in a ratio, in this example, of 140.51-141.49 will suffice

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?

All employees should be considered, whether they domicile in the United States or not. As a practical matter, US firms with overseas employees may well pay these workers well, and will be motivated to include them to the extent managers feel motivated to reduce their ratio.

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?

Registrants may and should be encouraged to supply as many ratios as they feel informational. These should be presented with core figures, such as the underlying employee numbers. If 99 percent of a firm's employees work domestically, it will be misleading to list two separate ratios without stating these proportions.

9. Please identify the applicable data privacy laws or regulations that could impact the collection or transfer of the data needed to comply with the proposed pay ratio requirement. Please also identify whether there are exclusions, exemptions or safe harbors that could be used to collect or transfer such data. Please quantify, to the extent practicable, the impact of such laws on registrants subject to Section 953(b), such as an estimate of the number of registrants affected or

the average percentage of employees affected. How would the proposed flexibility afforded to all registrants (*i.e.*, selecting a method to identify the median, the use of statistical sampling or other reasonable estimation techniques and the use of consistently applied compensation measures to identify the median employee) impact any potential costs and burdens arising from local data privacy laws? In particular, would a registrant be able to make a reasonable estimation of the total compensation for affected employees? Would a registrant be able to select a consistent compensation measure that is not subject to local data privacy laws? If not, are there alternative ways to meet the statutory mandate of Section 953(b) that would reduce the costs and burdens arising from local data privacy laws? Are there applicable local data privacy laws that would prohibit the collection or transfer of data necessary to calculate the annual total compensation of an employee or group of employees or the identification of a median employee using a consistent compensation measure? In that situation, would a registrant be able to reasonably estimate compensation? If not, are there alternatives to the proposed rule that would address such a situation while still being consistent with Section 953(b)? Should any such alternatives be permitted? If an alternative should be permitted, what limitations or conditions should be imposed on using the alternative? For example, should registrants be required to disclose the approximate number of employees affected and identify the law that prohibits the collection or transfer of data? Please discuss whether any such alternatives would significantly impact the pay ratio disclosure.

Firms obliging various data privacy laws need violate none of them. US-based firms must know employee expenses, whether those employees are US domiciled, or foreign-domiciled, for purposes of reporting already required in the 10-k (under sales and administrative expenses, among other reporting items). As the pay ratio will inevitably be determined from sampling, there will be no confidentiality issues.

10. Should the rule cover employees of a registrant's subsidiaries as defined in Rule 405 and Rule 12b-2, as proposed? Are there any situations where an entity meets the subsidiary definition but its employees should not be included for purposes of the proposed requirement? For example, should the rule be limited to subsidiaries that consolidate their financial statements with those of the registrant? Should the rule not apply to subsidiaries of certain types of registrants, such as the portfolio companies of business development companies? Please provide details of any recommended limitations.

All employees of the parent corporation, whether they are employed directly by the parent or by subsidiaries, should be included. Regarding portfolio companies such as Berkshire Hathaway, the rule should also apply. While Berkshire Hathaway is certainly the exception, certain leveraged buyout firms intentionally terminate labor contracts and take other measures of dubious merit to the sustainability of the firm for the enrichment of senior managers. See, for example, the extensive hearings of the Senate Banking Committee, 1987, or Helyar/Burroughs "Barbarians at the Gate."

11. Alternatively, should the requirements be limited to employees that are employed directly by the registrant (*i.e.*, excluding employees of its subsidiaries)? Would such a limitation be consistent with Section 953(b)? How would such a limitation affect the potential benefits of the disclosure? Would such a limitation have other impacts, such as incentivizing registrants to alter their corporate structure, and, if so, are there alternative ways that the rule could address those impacts?

Certain commenters have alleged that managers would make material changes affecting wage expenses and therein profits so as to "improve" the number. On the surface, this claim implies low esteem for

CEOs. I do not find it credible that because a CEO would be embarrassed by disclosure of a reality, he would terminate employees, alter the corporate structure, or off-shore workers. I choose to believe that the agency problem of managers failing to act in the interest of shareholders has not deteriorated to this level yet. Still, various commenters have argued that the CEO would indeed make alterations, but some have said they'd attempt to make the ratio lower and off-shore workers to lower wage geographies and others said they'd reduce wages of existing employees to make the ratio higher apparently so as to appear "tough."[1]

12. Should Section 953(b) be read to apply to "leased" workers or other temporary workers employed by a third party? Does the proposed approach to such workers raise costs or other compliance issues for registrants, or impact potential benefits to investors, that we have not identified? Do registrants need guidance or instructions for determining how to treat employees of partially-owned subsidiaries or joint ventures? If so, what should such guidance or instructions entail?

Regarding partially owned subsidiaries, the Commission should apply its definitions for control. That is, if reporting company can control the level of wages at the subsidiary, then these employees should be counted. Some firms maintain codes of conduct governing working conditions for suppliers, but we are not aware of any of these mandating certain minimum compensation. Requiring a firm to consider the compensation of employees of all suppliers is both unworkable, and unnecessary. The ratio will be instructive when measured only with those employees that receive a paycheck from the same legal entity (or subsidiary) as the CEO.

13. Is it likely that registrants would alter their corporate structure or employment arrangements to reduce the number of employees covered by the proposed requirements? How should we tailor the proposed requirements to address such an impact?

We do not find it credible that registrants would alter their corporate structure, despite claims to the contrary. This rule requires publication of one number. The 2012 annual report of JP Morgan Chase & Co.spans 340 pages.[2] Nearly every page contains a quantitative figure of value to some shareholders. Most pages contain numerous numbers. While some of the numbers are repeated on various pages, this report contains at least 5,000 numbers, which is an under-estimation. Not all may be of equal material import, but undoubtedly dozens are more important in explaining operating results to shareholders than the CEO/median pay ratio. Any one of these is as or more likely to motivate a change to the corporate structure than the pay ratio.

At the same time, it is instructive that critics of the pay rule would proffer this potential, as it undercuts another criticism, namely, that the pay ratio is meaningless. It cannot be meaningless and at the same time so meaningful as to prompt a corporate overhaul.

14. Does the proposed inclusion of all employees raise competition concerns? If so, are there some industries or types of registrants that would be more affected than others? How should we tailor the proposed requirements to address such concerns?

[1] Steven Davidoff, *A Simple Solution that made a Hard Problem More Difficult*, New York Times (August 27, 2013) Available at: http://dealbook.nytimes.com/2013/08/27/a-simple-solution-that-made-a-hard-problem-more-difficult/?comments&_r=0

[2] See annual report, available at: http://www.sec.gov/Archives/edgar/data/19617/000001961713000221/0000019617-13-000221-index.htm

Critics alleged that some company ratios will "look better" than others. For example, of the 30,000 Goldman Sachs employees, more than a thousand earn greater than $1 million each a year. During the 2008 financial crisis, Goldman drew attention for paying a bonus of more than $1 million to 953 employees.[3]. At McDonalds, however, a large percentage, including, perhaps the median, make less than the annual minimum wage, as this employer often limits a work week to 28 hours so as to prevent employees from qualifying for certain benefits. This reality, however, ignores the utility for investors who are choosing which stocks to purchase, and how, once purchased, the companies are managed. An investor weighing McDonalds is more likely to contrast it with a peer such as Compass Group or Starbucks than with Goldman Sachs. To the extent the investor is weighing a McDonalds investment as opposed to Goldman, the pay ratio should be far less important than figures such as leverage ratios, earnings growth, market share, gross margin, and perhaps a hundred other indicators of future earnings.

15. Is the proposed calculation date workable for registrants? If not, what date should be used (*e.g.*, the last day of the registrant's second (or third) fiscal quarter) and why?

This date is acceptable. Choosing a date is arbitrary; it should simply be consistent over the years.

16. In the alternative, should registrants be permitted the flexibility to choose a calculation date for this purpose? Why or why not? If so, should we require the registrant to disclose why a particular date was chosen? Should such flexibility be limited to certain circumstances? If so, what principles should apply in identifying those circumstances?

Registrants may be allowed to choose the date on which they account for annual worker pay. However, employees who have worked even one day in the course of the selected fiscal year should be counted. For example, UPS hires thousands of workers for the Christmas holidays. The company should count these workers, including their total pay, even if the fiscal year chosen is August, which is the slowest month for UPS.

17. Is it appropriate to limit the scope of covered employees to those who were employed on the last day of the registrant's fiscal year, as proposed? Why or why not? Is consistency with other Item 402 disclosure important in this context? Would this approach ease compliance costs for registrants? 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? Please provide data, such as an estimate of the number of registrants that employ seasonal workers and the average percentage of seasonal employees that would likely be excluded. Is it likely that registrants might structure their employment arrangements to reduce the number of workers employed on the calculation date? Are there other costs that would be incurred using this approach that we should consider? Would the proposed calculation date have a meaningful impact on the potential usefulness of the disclosure for investors? Are there other ways to deal with defining the scope of covered employees that are more effective at reducing costs and providing meaningful disclosure?

See answer to Question 16.

18. Should registrants be required to include any individual who was employed at any time during the year, or for some minimum amount of time (and if so, what amount of time) during the year?

[3] "Bank Bonus Tab: $33 billion", *The Wall Street Journal*, July 30, 2009

Yes. See answer to question 167. There should be no minimum time. When a firm pays an employee, it must file tax forms and record expenses for its income statement, whether it is for one year, or any period less than that. It will be no additional burden for the company to count these figures as it determines the median.

19. Should the rule only apply to employees employed for the full fiscal year? Why or why not?

It should apply to all employees. Many retails firms hire significant numbers of temporary workers for the Christmas shopping season, which represents a corresponding large share of annual revenue and profit.

20. Is it appropriate to allow registrants to annualize the compensation for non-seasonal, non-temporary employees that have only worked part of the year, as proposed? Why or why not? Would allowing annualizing the compensation for these employees likely impact the median or the pay ratio?

It is not appropriate to annualize the wages.. Many firms intentionally employ workers at less than a full-time rate so as to avoid certain payment of benefits. This is central to their cost-reduction strategy. [4][5]

Similarly, at WalMart, use of workers on part-time basis who are otherwise available for full-time work serves as a core expense reduction strategy. WalMart explained this in an investor conference sponsored by Goldman Sachs. [6]

21. In the alternative, should registrants be required to annualize the compensation for these employees? Why or why not?

Registrants should be forbidden, not required to annualize the compensation of these employees. See response to Question 20.

22. Should we require all registrants that rely on the proposed instruction to annualize compensation for these employees to disclose that they have done so (or only when the adjustment is material, as would be required under the proposed instruction for disclosure of material assumptions, adjustments and estimates)? Why or why not? If so, what should the disclosure entail? For example, should the registrant only be required to state that it has relied on the instruction, or should it also be required to discuss the number or percentage of employees for which compensation was annualized?

Companies should be forbidden from annualizing compensation.

23. 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

[4] See, for example, this Bill Moyers report on McDonalds employee resource line advising its workers to avail themselves of welfare. Available at: http://billmoyers.com/2013/10/24/audio-mcdonalds-tells-full-time-employee-to-apply-for-welfare-benefits/

[5] Here is another example of McDonald's policy of limiting the hours of its workers so as to avoid paying benefits. Availabale at: http://finance.yahoo.com/news/why-most-workers-mcdonald-part-190003945.html

[6] See presentation by Bill Simon, CEO, WalMart, Sept. 11, 2013, available at: http://az204679.vo.msecnd.net/media/documents/bill-simon-goldman-sachs-2013-presentation_130233858314846907.pdf

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?

Companies should be forbidden from annualizing compensation, or using full-time equivalencies. The existence at a firm of a significant base composed of part-time workers is materially relevant to investors.

24. Should registrants be permitted, as proposed, to choose a method to identify the median that is workable for the company based on its particular facts and circumstances? Will registrants be able to use the proposed approach to identify the median? Do registrants need additional guidance or instructions to be able to use the proposed approach to identify the median? If so, what additional guidance is needed?

Registrants should be permitted to choose an appropriate method workable for the company. This ratio will be used by investors among many other figures. It is unlikely to be tracked with great precision by investors. For example, two peer retailers may have ratios of 256 and 245. This will be viewed as similar. It would be dissimilar if one retailer featured a ratio of 256, and the other 834. In other words, the specific numbers will be less important than the context.

25. Do registrants need further guidance on the permitted use of reasonable estimates in identifying the median? If so, what should that guidance be? In the alternative, should the proposed requirement expressly disallow the use of reasonable estimates? Please explain how the usefulness of the pay ratio disclosure would be affected by the use of reasonable estimates. Should the rule specify requirements for statistical sampling or any other estimation methods, such as appropriate sample sizes for reasonable estimates or requiring the results to meet specified confidence levels? Why or why not? If so, what should the requirements be? For example, should the estimate have at least a 90% (or 85%, or some other percentage) confidence level?

Registrants of any size employ accountants whose credentials will have required that they have mastered elementary statistics, of which identifying the median is part.

26. Are registrants likely to use statistical sampling to identify the median? How would registrants conduct the sampling? Would it be outsourced or conducted by internal personnel? How much would statistical sampling cost? Would the use of statistical sampling address costs relating to the inclusion of non-U.S. employees in the calculation?

We believe registrants conscious of costs will not amass each individual employee's compensation, unless readily available, but use estimation statistics, of which sampling is a part. It seems a waste of funds to outsource a function that should be readily available within the registrant.

27. 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? Should there be any limitations on the types of compensation measures that can be used? 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)? How would the use of that measure affect the median (*e.g.* would it likely generate a median that is a reasonable approximation of the median of Item 402(c)(2)(x) total

compensation)? What impact, if any, would the use of a consistently applied compensation measure have on the usefulness of the pay ratio disclosure? How could the proposed rules be changed to address any such impact? Are there any circumstances where it would be inappropriate to permit a registrant to use a consistently applied compensation measure to identify the median employee?

Registrants should be permitted to use any reasonable means of measure, provided that measure remains constituent over time.

28. Should we, as proposed, permit registrants to use the time period that is used for payroll or tax recordkeeping when identifying the median employee based on consistently applied compensation measures, whether or not the time periods correspond with the last completed fiscal year or the tax year? Why or why not? Are there any parameters that should be set, such as requiring the period to end within a designated amount of time before the filing of the proxy or information statement relating to the annual meeting of shareholders or written consents in lieu of such meeting or annual report, as applicable, in which updated pay ratio information is required (such as 3 months, 6 months, 9 months or 12 months) or, alternatively, a period ending no more than 9 months (or 12 months or another amount of time) following the last annual meeting of shareholders? Should such flexibility only be permitted where the registrant's fiscal year-end is different from calendar year-end? Are we correct that this accommodation would decrease costs for registrants? Would the use of different time periods for different employees have an adverse impact on the disclosure? Would such flexibility meaningfully reduce the comparability of the median of the annual total compensation of all employees to the annual total compensation of the PEO, or otherwise impair the potential usefulness to investors of the pay ratio disclosure?

Registrants should be permitted to use any time period they wish, provided that it is consistent over the years.

29. Could the flexibility of the proposed requirements allow a registrant to distort its pay ratio in material respects? If so, explain how.

Registrants using different calculation methods may frustrate exacting comparisons. We believe, however, that the ratio will be used for impressionistic purposes, as discussed above. A firm with a pay ratio of 1,736 will be unable to distort this into a ratio of 235.

30. Is our belief correct that allowing flexibility in identifying the median could minimize the potential anti-competitive impact of the costs of compliance? Would the proposed flexibility address other impacts on competition that could arise from the proposed requirements? Could a registrant's competitors infer proprietary or sensitive information about a company's business operations, strategy or labor cost-structure from the disclosure of the median of the annual total compensation of all employees? If so, how can this impact be addressed?

Disclosures of the pay ratio will have no anti-competitive impacts. CEO pay is already disclosed. Human resource departments already know what pay rates prevail at peer companies, as employees transfer routinely between such peers.

32. Are there alternative ways to satisfy the statutory mandate? Please be specific.

The Commission may wish to allow firms to come within a certain percent of the median. This should make the calculation accessible within a few minutes. Since the overall goal is to distinguish firms with

significantly different ratios in the same peer group, what is important to note is the difference between ratios 235 and 635, not really between 235 and 245, which is about a 5 percent difference.

For example, CEO Duke of Walmart was compensated $20,693,000. If the Walmart median was $15,950, the pay ratio would be: 1,297.36677 If the median was $15,000, the ratio would be: 1,399.5333. If the median was $14,000, the ratio would be 1,478,071. Presumably, it would require no more than a few minutes for the largest employer in the nation to determine that the median was somewhere between $14-$16000. In each case, the resulting ratio is a very large figure. Fourteen thousand dollars and and $15,000 is 5 percent difference in ratio; 5% of $14000—700. $20.693,000/14,700=1407.68. Percentage difference between 1408 and 1478= 4.6%

IBM is one of the largest employers s in the United States with 434,000 employees.[7] CEO V.M. Rometty was paid $16,184,000 in 2012. [8] Its engineers are better compensated than clerks at WalMart or McDonalds, and there is relatively little dependence on seasonal or part-time work. Consider that the median pay may be $75,000, generating a CEO/median pay ratio of: 215.78667. (According to Bureau of Labor Statistics, the median pay in the "computer and mathematical occupations" is $75,080." [9]) If a margin of 5 percent is permitted in identifying the exact median, this would allow the use of compensation between $71,250 and 78,750. The resulting pay ratios could be 205-227. With a 2 percent margin, the compensation would be $73,500-76,500, yielding a ratio range of 211-220. At Hewlett – Packard, Co, CEO Margaret Whitman was paid $15,362,000 in 2012[10] nearly identical to that of Rometty. At Oracle, a competitor with IBM and Hewlett Packard, CEO Larry Ellison was compensated $96,160,696 in 2012.[11]If median pay was the same $75,000 as at IBM (and in the industry), the ratio would be 1,282. With a 2 percent margin, the ratio range would be 1,257-1,308. For investors, the relevant comparison of 215 at IBM to 1,282 at Oracle remains equally robust if the figures 211 for IBM and 1308 for Oracle. And investor can see with a single number without the more cumbersome compensation table in the Def 14a/proxy report that something is unusual about the Oracle pay.

Firms may not use median weighting, a methodological error.[12]

Compensation data is likely to be most robust for the better paid workers, such as management and veteran workers. At the same time, such workers are likely to account for no more than 20 percent of the

[7] "The 10 Largest Employers in America," USA Today, August 22, 2013, available at: http://www.usatoday.com/story/money/business/2013/08/22/ten-largest-employers/2680249/

[8] From AFL-CIO Paywatch, available at: http://www.aflcio.org/Corporate-Watch/CEO-Pay-and-You

[9] From AFL-CIO Paywatch available at: http://www.aflcio.org/Corporate-Watch/CEO-Pay-and-You/CEO-Pay-by-Occupation-Classification?fund=ORCL

[10] From AFL-CIO Paywatch, available at: http://www.aflcio.org/Corporate-Watch/CEO-Pay-and-You

[11] From AFL-CIO Paywatch, available at: http://www.aflcio.org/Corporate-Watch/CEO-Pay-and-You

[12] Firms with multiple divisions, units and different geographic locations may not use median weighting. Consider a multi-national company with 100,000 employees, with annual compensation ranging from $5,000 (for part-time, or seasonal workers) to $10 million. The French unit, with 4,000 workers, posts a median of $75,000. The Indian unit, which is a call center, has 20,000 workers with a median of $15,000. The U.S. affiliates have one unit of 6,000 with a median of $30,000, and another with 70,000 workers with a median of $40,000.
US: 70,000 --$40k (69,900 --$40k, 100 -->$1million)
US: 6,000--$30k (1,000--$5k, 1,000--$10k; 3,000--$30k)
India: 20,000--$15k (19,500--$15k, 500--$50k)
France: 4,000-$75k
70x$40 +6x$30+20x$15+4x$75 =$35,580
The median pay in this case should be $40k, not $35k.

work force. Lower paid workers are likely to be more easily aggregated. In other words, starting from the "bottom" instead of the "top" will likely lead more quickly to the middle 50%.

> 33. Are there other alternatives to calculating total compensation in accordance with Item 402(c)(2)(x) that would be consistent with Section 953(b)?

For American employers, the figure on a W-2 tax form would suffice.

Under Regulation S-K, Item 412 requires "clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this Item, and directors covered by paragraph (k) of this Item, by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the registrant and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item."

As average employees do not benefit from many of the non-cash payments as does the CEO, the W-2 form should be sufficient.

> 34. Should the requirements provide instructions or should we provide additional guidance about how to apply the definition of total compensation under Item 402(c)(2)(x) (or any particular elements of total compensation under Item 402(c)(2)) to employees that are not executive officers? If so, what specific instructions or guidance would be useful to registrants? Please also address whether specific instructions or guidance would limit flexibility and thereby raise costs for registrants.

No additional guidance will be necessary. Provided that the methodology remains consistent over time, any reasonable audit-tested method is acceptable.

> 35. Do registrants need further guidance on the permitted use of reasonable estimates in determining total compensation (or specific elements of total compensation) for employees other than the PEO in accordance with Item 402(c)(2)(x)? If so, what should that guidance entail? Would the use of reasonable estimates ever be inappropriate? Please also address whether specific instructions or guidance would limit flexibility and thereby raise costs for registrants.

Registrants need no further guidance. As labor is always an important expense, firms are currently well equipped to account for it.

> 36. Instead of allowing the use of reasonable estimates in determining total compensation (or any elements of total compensation) as described in this proposal, should the rules prohibit the use of reasonable estimates for that purpose? If so, why? Please include an explanation of how the potential usefulness of the pay ratio disclosure would be affected by a registrant's use of reasonable estimates in this context. Are there alternative ways to address this impact, such as requiring an explanation describing the use of estimates, rather than prohibiting the use of estimates?

Reasonable estimates should be permitted, and not prohibited. This rule should not be costly to implement.

> 37. Is it likely that the proposed requirements would affect the types of compensation that registrants provide to employees, and if so, what would that impact be? For example, one commenter suggested that registrants could decide to discontinue pension and incentive plans for employees or eliminate 401(k) plan matching contributions in order to facilitate their calculation of the pay ratio. If so, how should the proposed requirements address that impact?

Claims that registrants would discontinue compensation plans they believe are necessary to promote maximum productivity are disingenuous. Registrants would violate their fiduciary duty to shareholder were they to abrogate those plans because a wish to manipulate the pay ratio.

> 38. Should we require registrants to disclose information about the methodology and material assumptions, adjustments or estimates used in identifying the median or calculating annual total compensation for employees, as proposed? Why or why not? Would this information assist investors in understanding the pay ratio? Are there changes we could make to the requirement to avoid boilerplate disclosure? Should we require a more technical discussion, such as requiring the disclosure of statistical formulas, confidence levels or the steps used in the data analysis?

Registrants need not be required to disclose information about the methodology. Those attuned to shareholders will do so naturally; those that do not will be effectively providing shareholders evidence of a lack of consideration.

> 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?

Any change in methodology must be noticed.

> 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? If so, what additional information should be required? Please be specific as to how this information would assist investors in understanding the pay ratio or in using the pay ratio disclosure. Please also be specific about the costs of providing such disclosure. How could such a requirement be designed to avoid boilerplate disclosure? Would such a requirement raise competition concerns?

Firms need not provide narrative information other than to explain that the ratio is that of the CEO to the median paid employee, along with the statistic method used.

> 41. Should we require registrants to disclose additional metrics about the total compensation of all employees (or of the statistical sample if one is used), such as the mean and the standard deviation, as a supplement to the required disclosure? Would additional metrics be useful to investors? We assume that these metrics could be provided without additional cost or at a low cost once the median has been identified. Is this assumption correct? If not, please identify the

costs and benefits of such additional disclosure. Would such a requirement raise competition concerns?

The Commission should require no additional metrics. While these do not pose competitive risks, nor are they burdensome, they can be discredited as an additional, unnecessary burden.

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)?

Total compensation should be calculated for the most recent reporting period that prevails in the 10-k.

43. Should we, as proposed, require the pay ratio disclosure to be updated no earlier than the filing of a registrant's annual report on Form 10-K or, if later, the filing of a proxy or information statement for the registrant's annual meeting of shareholders (or written consents in lieu of such a meeting), and in any event not later than 120 days after the end of its fiscal year? Are we correct that the proposed timing rule would not affect the potential usefulness of the pay ratio disclosure for investors? If not, how should the requirements be changed to address that impact? Are we correct that the proposed timing rule would help to keep costs down for registrants by providing certainty as to the timing for annual updates and by allowing registrants to compile the disclosure at the same time as other executive compensation disclosure under Item 402? Are we correct that the proposed timing rule would help keep down costs for registrants that request effectiveness of registration statements after the end of the last fiscal year but before the filing of their annual proxy statement?

The pay ratio should be disclosed in the 10-k. If the registrant wishes to include this information in other filings, it should be permitted. Timing is unimportant.

44. Is the proposed timing workable for registrants? Does it provide enough time after the end of the fiscal year for companies to identify the median of the total compensation of all employees for that year? We note that one commenter asserted that it could take registrants three months or more each year to calculate pay ratio disclosure, and, accordingly, that the disclosure would not be available in time to be included in the annual proxy statement or annual report.. Would the ability to use reasonable estimates, consistently applied compensation measures, or statistical sampling be sufficient to alleviate this issue? For example, if a registrant is unable to calculate its employees' incentive compensation before such time, would it be able to reasonably estimate such compensation? Instead, should the proposed rules provide an accommodation for a company that cannot compile compensation information in time to be included in its proxy statement for the annual meeting of shareholders or Form 10-K, as applicable? For example, should registrants be permitted to delay the pay ratio disclosure until it is calculable and then file the disclosure under Item 5.02(f) of Form 8-K? If so, under what circumstances should registrants be permitted to do so? Or, if we were to allow for such a delay, should we specify when the disclosure should be required to be made? If so, what deadline should we impose? Would such a delay impact the usefulness to investors of the disclosure, particularly if the disclosure would not be available in time for inclusion in proxy or information statements for the annual meeting of shareholders?

The firm’s 10-k is subject to audit, and therefore labor expense will be fully accounted.

45. Is the proposed instruction appropriate in instances where registrants are relying on Instruction 1 to Items 402(c)(2)(iii) and (iv) with respect to the salary or bonus of the PEO?

Yes, the instruction is appropriate, allowing registrants flexibility in which CEO payment metric to utilize.

46. Instead of the proposed approach, should these registrants be required to calculate pay ratio disclosure using only the amounts of total compensation of the PEO that are available at the time of the filing, or in the alternative, make a reasonable estimate of the omitted total compensation amounts? Would such disclosure be useful or meaningful? In that case, should the registrant be required to update (by Form 8-K or otherwise) its pay ratio disclosure to reflect the PEO's recalculated total compensation?

Registrants should be allowed, but not required, to use a calculation format that is convenient, provided that it is consistent over time.

47. Is the proposed instruction clear? If not, what changes should be made to clarify it?

The instructions are clear.

48. Should we require any additional or supplemental disclosure when a registrant relies on the proposed instruction? If so, what would that disclosure entail? For example, should the proposed instruction require registrants to report the median annual total compensation of employees, even if the PEO total compensation and pay ratio are not available? Should registrants relying on the proposed instruction be required to disclose the pay ratio for the prior year in the Form 10-K or proxy or information statement?

In the rare case with PEO total compensation is unavailable, the median pay should be disclosed. Investors can then use data provided from previous years to calculate the ratio. The median will change little; if the subsequent PEO pay changes, this will serve as an alert to the investor of a significant change in PEO pay.

49. Would the proposed instruction cause registrants to change their compensation practices? Alternatively, would the proposed instruction have an adverse impact on the usefulness to investors of the proposed pay ratio disclosure? How should we change the proposed requirements to address such impacts?

Disclosure should have a remedial impact on executive pay to the extent that investors exert suffrage to express their newly informed concerns.

50. Should the Section 953(b) information be filed rather than furnished? What weight should we give to the use of the word “filing” in the statute?

The pay ratio must be published and we recommend that this be in the 10-k. Requiring an investor to email or telephone the investor relations department is inefficient for both investor and registrant.

51. Are there other ways to address commenters' concerns about the ability to compile and verify the pay ratio information that still fulfills the statutory mandate?

Disclosure of the pay ratio need absorb no more than a line in a 10-k report. The 2012 JP Morgan 10-k is 340 pages long, with 120 lines for each page, for a total of 40,800 lines. The pay ratio line, therefore, would have absorbed 1/40,800th of JP Morgan's 2012 annual report.

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?).

53. In the alternative, should the transition periods be different for different types of registrants? If so, what transition periods should apply to which registrants? For example, should registrants with a workforce below a certain size (*e.g.*, fewer than 1,000 employees) have a shorter phase-in period than others? Should there be a longer phase-in for multinational registrants? Please provide specific information about how to define the categories of registrants that should be subject to any recommended phase-in.

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)?

- Should we provide a transition period for business combinations? If so, what should the transition be? For example, should a registrant be permitted to omit the employees of a newly acquired entity until a period of time (*e.g.*, six months, 12 months) has passed following the closing of the business combination transaction? Instead of a specific transition period, would guidance about when the employees of a newly acquired entity need to be covered in the pay ratio provide sufficient direction for registrants? What should that guidance entail?
- Should we permit a registrant that is not subject to the proxy rules to amend its Form 10-K no later than 120 days after the end of the fiscal year covered by the report to provide the pay ratio disclosure? Should we permit such a registrant to provide the disclosure by filing a Form 8-K instead of an amendment to Form 10-K?
- Should we provide a transition period for registrants that cease to be smaller reporting companies? If so, what should the transition be?
- Does the fact that Title I of the JOBS Act provides transition periods for provisions other than Section 953(b) for registrants that cease to be emerging growth companies suggest that we should not provide a transition period for such registrants? Should we provide a transition for registrants that cease to be emerging growth companies? If so, what should the transition be? If not, would these registrants have the information available to compile the disclosure in time for their first proxy statement or annual report, as applicable, following the date they exit emerging growth company status? Should a transition period depend on the disqualifying event that occurs, on the basis that the registrant may have more advance notice of the occurrence for some types of events? For example, should a company that exits emerging growth company status because it reaches the fifth anniversary of its first sale of common equity be required to first disclose pay ratio information relating to the fiscal year in which its fifth anniversary occurred? Alternatively, should the amount of transition time provided depend on how long a company has enjoyed emerging growth company status, such as a longer transition for registrants that lose that status after one year or less?

The Commission should feel free to accommodate new issuers as they wish. Any issuer who chooses to fall short of full disclosure will be recognized by the market, and the price of the security appropriately discounted.

> 55. Instead of the proposed transition period, should we require new registrants that are not emerging growth companies to comply with pay ratio disclosure requirements in registration statements on Form S-1, Form S-11 or Form 10? Are we correct that the incremental time needed to compile pay ratio disclosure could cause companies that are not emerging growth companies to delay an initial public offering? What costs would be imposed on these companies if we did not provide the transition? Does the potential importance of the information to investors justify the burden on these companies of complying with the requirements in their Form S-1, Form S-11 or Form 10?

An emerging growth company by nature is likely to be small, lean, and especially mindful of costs. A firm with 10-100 employees should be able to determine the median within a few minutes. A firm with thousands of employees, by nature, is no longer an "emerging growth" company. A firm this size should have robust controls that could generate a median expeditiously. If a firm proposing to compete in a global economy might delay a public offering because it finds identification of the median burdensome probably should not propose that investors trust it with their savings.

> 56. Does the proposed transition period for compliance by new registrants provide sufficient time (or, alternatively, too much time) for these companies to be able to comply? Why or why not?

The Commission is indeed overly generous with the transition period, but it need not be accelerated. Firms wishing to impress investors can beat the deadline.

> 57. Are there any alternatives to the proposed transition period that we should consider? For example, should we permit new registrants to omit pay ratio disclosure from Form S-1 and Form 10 (as proposed), but require them to comply with the proposed pay ratio disclosure requirements in their first proxy statement or annual report, as applicable?

I have no guidance for this question.

> 58. Are there other accommodations we should consider for new registrants?

New registrants need no additional help.

> 61. We request comment on all aspects of the costs and benefits of the proposed rules, including identification and assessment of any costs and benefits not already discussed. We seek comment and data on the magnitude and the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates and request that commenters provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular covered registrants, including small registrants, and, where relevant, for particular categories of covered registrants, as well as any other costs or benefits that may result from the adoption of these proposed amendments.

We question the assertion by a firm deduced to be Exxon that compliance would cost $100 million. IBM, the nation's second largest employer, says compliance would cost $100,000 (and we consider this an exaggeration).

> 62. What are the characteristics of employee compensation data that current payroll systems (or other management information systems) maintain? Would it be necessary for registrants to change such systems or other employee compensation records in order to track the information needed to comply with the proposed pay ratio rules? What would the transition costs be to make any such changes? How generally are payroll systems maintained across business or geographic segments and how would the separate payroll information across segments be aggregated to comply with the proposed rules? What are the initial and ongoing costs to comply and what activities incur those costs, such as burden hours/wages of company personnel, development and maintenance of computer systems, use of third-party service providers and other professionals? How would the use of reasonable estimates or statistical sampling affect these costs generally, including the need to change current payroll systems? Please also describe benefits, if any, to the registrant, beyond compliance with the proposed rules, from implementing changes to current payroll systems or management information systems.
>
> 63. How would allowing registrants to choose an approach for determining the median influence potential costs? How would allowing registrants to choose an approach that permits registrants to use any consistently applied measure of compensation and/or statistical sampling to identify the median employee and then calculate that employee's total compensation in accordance with Item 402(c)(2)(x) affect compliance costs, particularly as compared to requiring registrants to calculate total compensation in accordance with Item 402(c)(2)(x) for all employees to identify the median? Comparisons of the costs of each approach would be particularly helpful. Would allowing for alternative approaches retain the benefits of Section 953(b)? If not, please provide specific information or data on what benefits would not be achieved under the proposed rules.

Flexibility in choosing a sound methodology should reduce the cost substantially.

64. What are the transition costs that will be imposed on registrants as a result of the proposals, if adopted? Please be detailed and provide quantitative data or support, as practicable. Where applicable, please also distinguish between costs that are initial, non-recurring implementation costs and the costs of ongoing compliance.

> 65. What impact would the proposed rules have on the incentives of boards, senior executives and shareholders? Would the proposed rules be likely to change the behavior of registrants, investors or other market participants? Should we alter the proposed requirements to address that impact? If so, describe any changes that would address that impact and discuss any related costs and benefits that would arise from such a change.

The pay disclosure introduces “unit pricing” for CEOs. Investors can now decide which CEO delivers the best value, as it can easily be sorted as any other stock screen. Firms with low ratios tell an investor that, all other factors equal, that CEO is a bargain. What’s more, a low ratio means that there is room for motivation through extra compensation. A high ratio with low performance highlights a problem CEO and probably a problem board.

> 66. What impact would the proposed rules have on competition? Would the expected compliance costs put registrants subject to the rule at a competitive disadvantage? Are there particular industries or types of registrants that would be more likely to be impacted? If so, what changes to the proposed requirements could mitigate the impact?

The proposed rules, as with any disclosure, will promote competition. Compliance costs will be negligible.

> 67. What impact would the proposed rules have on market efficiency? Are there any positive or negative effects of the proposed rules on efficiency that we may have overlooked? How could the rules be changed to promote any positive effect or to mitigate any negative effect on efficiency, while still satisfying the mandate of Section 953(b)?

The proposed rules would promote market efficiency as they would steer investors to the best value CEO, that is, the one producing the most returns for the least pay, when compared to peers.

> 68. Could a registrant's competitors infer proprietary or sensitive information about the registrant's business operations, strategy or labor cost-structure from the proposed pay ratio disclosure? If so, please tell us what type of information could be inferred and how that could be determined. Please also tell us what changes to the proposed requirements could mitigate that concern?

Competitors would be unable to decipher proprietary or sensitive information. We further note that any concern about this contradicts claims by the same commenters that the information is void of value.

> 69. What impact would the proposed rules have on capital formation? How could the rules be changed to promote capital formation or to mitigate any negative effect on capital formation resulting from the rules, while still satisfying the mandate of Section 953(b)?

The proposed rule will promote capital formation as investors can more clearly see details of asset being purchased, and more efficiently allocate capital to firms best using it.

For questions, please contact me at [redacted] or [redacted]. Your consideration of these responses is appreciated, and I remain, [13]

Sincerely,

Bartlett Naylor

[13] This letter may be viewed as a supplement a letter submitted by Public Citizen, which, as a Public Citizen employee, I helped author. This present letter should not be represented as a Public Citizen document.