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

RE: Comments to Proposed Rule on Pay Ratio Disclosure (File No. S7-07-13)

Dear Ms. Murphy,

On behalf of Microsoft Corporation, I am writing in response to the U.S. Securities and Exchange Commission's request for comment to the proposed rule (the "Proposed Rule") to implement Section 953(b) of the Dodd-Frank Act. Founded in 1975, Microsoft is the worldwide leader in software, services and solutions that help people and businesses realize their full potential by creating technology that transforms the way people work, play and communicate. We employ nearly 100,000 employees on a full-time basis and have offices in more than 100 countries.

The flexibility the Commission built into the Proposed Rule mitigates some of the administrative burdens to comply with Section 953(b). We believe several additional modifications or clarifications to the Proposed Rule will significantly reduce the substantial technical, legal and administrative complexities for many companies while remaining faithful to the intent of Section 953(b). We respectfully offer the following comments and recommendations.

1. *In identifying the median employee, companies should be able to use measures of compensation that capture the substantial majority of compensation and do not lead to material distortion of the median.*

We believe identifying the median employee will be by far the most challenging aspect of implementing the Proposed Rule. The ability to use consistently applied compensation measures, along with statistical sampling and other appropriate techniques, to identify the median provides much-needed flexibility. The Proposed Rule further specifies that companies also may use "any consistently applied compensation measure to identify the median," which

may differ from the method of calculating total compensation in accordance with Regulation S-K Item 402(c)(2)(x).[1]

It is important to clarify and confirm that a "consistently applied compensation measure to identify the median" may include the use of a company's existing methods, assumptions, systems and processes used in the ordinary course of its business to identify the median, as long as they are consistently applied and do not result in material distortion of relative compensation levels.

For example, at Microsoft we would expect to measure total compensation to identify the median employee by using the sum of salary earned, incentive cash earned, and stock awards granted. We can assemble these amounts primarily by using our existing data and systems, with relatively minimal work to develop new tools devoted to this single compliance burden. Although this method would exclude certain minor elements of compensation such as benefits, perquisites and allowances, it would capture the substantial majority of compensation, and would avoid the significant extra burden of identifying and assigning a dollar value to compensatory items that vary widely across geographies and are difficult to value.

Although a precise figure is not possible now because of the need to work through all of the implications of the rule internally, if we were required to value these smaller elements of compensation for a worldwide workforce, we estimate it would increase the initial expense and ongoing workload by a factor of more than five times. The costs for these individual items are administered and tracked through scores of decentralized, local systems so they are not readily accessible centrally. In some jurisdictions, benefits the Company funds directly in the United States are funded through payroll taxes and government programs. Even if we were to use statistical sampling or estimates, to have a statistically valid sample we would need to calculate numerous compensation elements for many employees across many jurisdictions. Even if we were to do the work to generate this information relating to benefits and other secondary elements of pay, its usefulness would be questionable because factors such as local cost-of-living adjustments and fluctuations in foreign exchange rates would distort the relationship to CEO pay. We believe there is no incremental benefit that would be gained from this additional effort.

Microsoft's proposed approach is not necessarily optimal for other companies because of the wide variation in individual compensation structures and systems companies employ to award, track, and report for local tax purposes compensation. Each company is best suited to determine how to calculate total annual compensation in a way that will capture a

[1] SEC Release No. 33-9452, p. 39.

representative median, and they should be able to leverage the efficiency of existing systems and processes. Allowing a variety of methodologies among companies would also act as a natural laboratory from which best practices can emerge from experience, peer benchmarking, and investor and stakeholder dialog.

2. *Companies should not have to provide excessively detailed descriptions of their methodology for identifying the median employee.*

We agree with the Commission's recommendation that companies be required to provide a brief overview of their methodology for identifying the median employee, and not a detailed description that includes analyses and formulas. Detailed disclosures of methodology would provide little, if any, incremental benefit to investors, could in fact detract from investors' overall understanding of a Company's executive compensation, and would only increase concerns about disclosure overload that Chair White aptly raised in her October speech at the NACD 2013 Leadership Conference.[2] We believe the objective of the Proposed Rules should be to provide a clear but high-level understanding of the methodology, with enough information to form the foundation for an in-depth dialog with any shareholder who would like more detail. It would be appropriate for companies to assert the methodology provides a reasonable approach to identifying the representative median employee.

3. *Companies should have flexibility to use dates other than the last day of their fiscal year to determine the population from which to identify the median employee.*

The Proposed Rule mandates that companies use their employee population as of the last day of the fiscal year for determining the median employee. The Commission's justification is that a bright-line rule would "ease compliance burdens for registrants by eliminating the need to monitor changing workforce composition during the year."[3] While we agree with the objective, we think it is important that a company have the flexibility to choose another date within the fiscal year that is more representative of a company's headcount, when it results in a more representative median compensation. In many cases, an alternate date such as calendar-year-end ("CYE") also may facilitate the use of existing tax and payroll systems to perform the calculations. Foreclosing the use of CYE data and related systems and tools could unfairly disadvantage non-CYE companies relative to CYE companies. Non-CYE companies may be

[2] "When disclosure gets to be 'too much' or strays from its core purpose, it could lead to what some have called 'information overload' – a phenomenon in which ever-increasing amounts of disclosure make it difficult for an investor to wade through the volume of information she receives to ferret out the information that is most relevant." "The Path Forward on Disclosure," comments of Chair Mary Jo White to the National Association of Corporate Directors - Leadership Conference 2013 in National Harbor, Md.

[3] SEC Release No. 33-9452, p. 31.

required to incur the costs to design, build and implement special processes and systems devoted solely to this compliance obligation. We do not believe Congress intended to create disparate burdens on reporting companies based on the happenstance of different fiscal year ends.

Allowing organizations the flexibility to choose the calculation date will ease the compliance burden in other ways. For example, at some companies the end of the third fiscal quarter may be a better calculation date because it would provide more time for calculating the total annual compensation of their employees and identifying the median. The flexibility to determine the calculation date would also provide the necessary time for management to engage with their boards and committees throughout the calculation and disclosure process. The Commission could instruct companies, if they use a date other than the last day of the fiscal year, briefly to explain the reason for the alternative date and why it effectively identifies the median employee.

4. Companies should have additional time to incorporate employees of acquired entities into the pay ratio calculations.

Like many companies, Microsoft frequently acquires other businesses. These transactions include companies spanning multiple countries and business groups, thousands of employees, and diverse compensation and benefit programs. One of the most challenging parts of the acquisition integration process is migrating employee compensation to the acquirer's compensation programs, and migrating employee payroll to the acquirer's payroll systems. Acquiring employers often try to minimize disruptions to employee compensation for a period of time after closing an acquisition, and moving payroll systems often takes a great deal of time. In addition, selling companies often bargain for a transition period during which existing seller compensation levels and programs will continue in effect. For business combinations, organizations should have the flexibility to exclude the new employees from the calculation of median total annual compensation until the fiscal year beginning 18 months after closing of the acquisition. This approach would be consistent with the purpose of providing information about an issuer's internal compensation structure and decisions. An acquired entity does not reflect the acquirer's structure at the time of acquisition; rather it can take substantial time, sometimes more than a year after closing, before compensation systems and levels are fully harmonized with the acquirer's internal compensation structure. Other regulatory areas have recognized the need for an extended transition period for compliance obligations relating to compensation after mergers and acquisitions.[4]

[4] See, for example, the two-year post-acquisition transition period for minimum coverage requirements relating to qualified retirement plans. IRC § 401(b)(6)(C).

5. The compliance date should be the first fiscal year beginning six months after the effective date of the rule.

The Commission's proposed initial compliance period is the registrant's first fiscal year commencing on or after the effective date of the rule. Companies with a calendar-based fiscal year will not have to comply until they prepare their proxy statements for the 2015 fiscal year, that is, in early calendar year 2016. This transition period should give adequate time to develop systems and gather data to identify the median employee and calculate total compensation. Non-calendar year companies, however, may be unfairly denied this extended transition period. For example, if the rule becomes final before July 1, 2014, a company with a June 30 fiscal year end will be required to comply in mid-calendar year 2015 as it prepares its fiscal year 2015 proxy statement. This significantly shorter transition period may cause companies, particularly those with multinational operations and diverse or complex compensation structures, to incur substantial expense to design and implement systems that will yield useful information in just 12 months. To ensure non-calendar year companies have adequate time without incurring extraordinary burdens, we ask that compliance be required for the first fiscal year ending more than six months from the effective date of the final rule.

We appreciate the opportunity to comment. If you would like to discuss these matters further please contact me via email at [redacted] or phone at [redacted]

Sincerely,

John A. Seethoff
Vice President, Deputy General Counsel and Assistant Secretary
Microsoft Corporation