SOCIETY
of Corporate Secretaries
& Governance Professionals

December 16, 2013

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

Re: Pay Ratio Disclosure (Release Nos. 33-9452; 34-70443; File No. S7-07-13)

Dear Ms. Murphy:

The Society of Corporate Secretaries and Governance Professionals appreciates the opportunity to provide comments on the proposed amendment of Item 402 of Regulation S-K to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Proposed Rule").

Founded in 1946, the Society is a professional membership association of more than 3,100 corporate secretaries, in-house counsel and other governance professionals who serve approximately 1,600 entities, including 1,200 public companies of almost every size and industry. Society members are responsible for supporting the work of corporate boards of directors and their committees and the executive managements of their companies regarding corporate governance and disclosure. Our members generally are responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

EXECUTIVE SUMMARY OF COMMENTS

As discussed in the Overview below, we believe that the Proposed Rule contains a number of provisions that will add significant costs and impose burdens on public companies. These costs and burdens are particularly troubling because the disclosure called for by Section 953(b) will neither be material to the investment decisions of reasonable investors nor provide any other benefits to investors. Notwithstanding these facts, we recognize that the SEC is required to adopt rules under Section 953(b) of the Dodd-Frank Act, and consequently are submitting this comment letter to offer suggestions to make the rule less costly and burdensome than is currently proposed. These suggestions include the following, all of which are explained in greater detail later in this letter:

- The information called for by amended Item 402 should be furnished to, rather than filed with, the Commission.
- The employees covered by the rule should be limited in several respects, including the following: First, part-time and seasonal employees should be excluded from the calculation of median total compensation of all employees. Second, only employees of consolidated subsidiaries, rather than subsidiaries generally, should be included in determining such compensation.
- A company should have discretion to choose a date, other than the end of its most recent fiscal year, for determining the median employee for the purpose of these rules. At a minimum, a company should not be required to use the end of the most recent fiscal year.
- A company should be able to choose more than one compensation measure for the purposes of determining the median employee where it has non-US employees for whom US W-2 data does not exist.
- Companies should be permitted to use compensation data from the year prior to the most recently completed fiscal year, both for determination of the median employee and in the calculation of the pay ratio.
- The transition provisions should provide for compliance to begin for the first fiscal year commencing on or after **the January 1 following** the effective date of the rule.
- Data privacy laws will impact the gathering of data on non-US employees, and the final rule should take this into account.

Last, we respectfully request that the Commission exercise its discretion to exclude non-US employees from the determination of the median worker, which we believe will cut the costs of the average company by half.

OVERVIEW

The Pay Ratio Provides Little Benefit and is Not Material

The Society believes that Section 953(b) of the Dodd-Frank Act would exacerbate a significant problem with the current disclosure rules - overloading disclosure documents with information that is not material to investors which has the effect of obfuscating information that investors deem to be material to their investing decision. This very problem was identified by SEC Chair Mary Jo White, who recently asked "whether investors need and are optimally served by the detailed and lengthy disclosures about all of the topics that companies currently provide. . . ."[1] She reminds us that material information is not something that *might be* of interest to some investor, but rather that information is material only when "there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote." She also notes that

[1] See Chair White's October 15, 2013 speech "The Path Forward on Disclosure" at the National Association of Corporate Directors – Leadership Conference 2013 in National Harbor, Md.

prior to the Supreme Court's ruling in *TSC v. Northway*, in 1975, the Commission held public hearings on what information should be considered material, and at that time, it received over 100 suggested items, but decided against all of them, "noting that 'as a practical matter, it is impossible to provide every item of information that might be of interest to some investor in making investment and voting decisions.'"[2] We believe that the pay ratio disclosure, while possibly of interest to some, has little if anything to do with disclosure of information that is material to making investment or voting decisions, but rather is designed to harm the reputation of companies and further special interest agendas.[3]

Society members take a company's responsibilities to its shareowners very seriously. For this reason, Society members and the boards and management teams they advise regularly engage with a wide variety of shareowners, and are the principal drafters of the documents through which disclosure is made. As such, we believe that the disclosure mandated by Section 953(b) is not material to a reasonable investor in making an investment or voting decision.[4] Nor does it meaningfully improve the substantial executive compensation disclosure that is already required to be disclosed by the proxy rules, or the publicly available data on average worker pay in the US. Numerous groups (including the Commission itself) have stated that the pay ratio disclosures will likely be of little value to investors. And, the proposed rule does not further the Commission's core mission of protecting investors.

The High Cost of the Disclosure

While the Proposed Rule does not provide material information, it will nonetheless result in significant direct and indirect costs to companies in the forms of data gathering and systems costs, legal expense, auditing expense, public relations expense, and litigation risk expense, among others. The Society (with the Center On Executive

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[2] Id.

[3] See, e.g., letter of Thomas DiNapoli, Comptroller, State of New York at http://www.sec.gov/comments/s7-07-13/s70713-445.pdf explaining that the CEO pay-ratio rule will identify companies that don't pay their workers "a living wage" which could be a burden to taxpayers:

> I have an interest in identifying companies that do not make human capital management a priority and pay less than a living wage to employees. A September 24, 2013 *New York Times* editorial observed, "[The Rule] would help ... alert taxpayers to companies where work forces are underpaid, even as executive pay soars, a circumstance that often requires taxpayer dollars to be spent on assistance to low-wage earners ..... Company specific data on pay gaps will force chief executives and their boards to justify just how out of kilter pay scales have become." If companies are shifting the cost of doing business to taxpayers by underpaying their workers, there is a significant risk of reputational harm to those companies and their brands. Further, allowing a widening compensation gap may well impair those companies from conducting business in certain markets.

[4] See, e.g. Survey Question 9, attached as Appendix: no respondents have ever been asked by their top 10 shareholders to provide the pay ratio disclosure.

Compensation) has conducted a survey to determine how costly the implementation of the Proposed Rule will be. The results of the survey are attached in the Appendix.[5] Certain statements from the survey are excerpted below. In addition to the costs mentioned above, one survey responder also noted competitive risks and expenses as follows: "Most of our competitors are private companies, and this would provide them with insight into our pay practices for lower level employees. This could also cause significant issues with our employees and [with] union relations due to the significant difference in pay levels. In addition, many foreign governments in countries in which we do business . . . may put significant pressure on us to increase local pay."

Yet another member described the costs of the disclosure in terms of lost opportunities:

> There will also undoubtedly be additional costs incurred in explaining the rationale for setting CEO pay at the levels we do, the composition of our overall workforce and why our ratio is, or is not, comparable to the ratio determined by other companies with completely different profiles (markets, geographies, size, workforce, performance, etc.) and what relevance that has. A high ratio may be the result of smart decisions to establish facilities in low cost regions, which will be completely lost in defending the ratio itself and if disclosed may reveal sensitive competitive information. While shareholders generally see little value in this ratio, this type of measure ends up being a tool for those with an agenda to cause disruption and controversy; the response to which diverts attention and drains resources from more productive activities (like creating more jobs). It is the unintended consequences that will be the real cost, which is why this continues to be a bad idea.

The Society has testified in favor of bills that would eliminate this provision of the Dodd-Frank Act, but at the same time has stood ready to create a workable solution, for example, by implementing a rule that would allow a company to use *average* worker pay and W-2 income, and limiting the ratio to *US employees only*.[6] Members of Congress on both sides of the aisle have agreed with us.

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[5] The survey data in the Appendix provides results of the Society-Center On Executive Compensation survey conducted in October and November of 2013, with responses through the end of November included. The results in the Appendix represent the responses of all Society members that responded, but not those that were solely Center Subscribers or members of HR Policy Association, the Center's parent organization, which also participated.

[6] See Written Testimony of Ken Bertsch, March 16, 2011, before the Subcommittee on Capital Markets and Government Sponsored Enterprises Committee on Financial Services United States House of Representatives Concerning Proposals to Alter or Repeal Section 953(b) of the Dodd-Frank Act, on Disclosure of the Ratio of CEO Compensation to the Median Worker Compensation.

That said, we understand the constraints on the Commission given the prescriptive wording of the statute, and we appreciate and endorse its efforts to afford companies a significant degree of flexibility, particularly the use of IRS Form W-2 income for US employees or other "consistently applied compensation measure" in an effort to reduce the costs of compliance.

PAY RATIO DISCLOSURE SHOULD BE FURNISHED, NOT FILED

The Society urges the Commission to allow the pay ratio disclosure under proposed Item 402(u) of Regulation S-K to be "furnished" rather than "filed." The Proposed Rule acknowledges comments making such a suggestion, but no comments asserting that pay ratio disclosure should be "filed."[7] However, the Commission has rejected these suggestions based on what we believe is an unnecessarily literal reading of Section 953(b) of the Dodd-Frank Act, which directs the Commission to amend Item 402 of Regulation S-K to require disclosure of the pay ratio in any *filing* of the issuer described in Item 10(a) of Regulation S-K.[8] The Commission concludes that "the use of the word 'filing' in Section 953(b) is consistent with the disclosure being filed and not furnished" and thus proposes that "the pay ratio disclosure would be considered 'filed' for purposes of the Securities Act and Exchange Act and, accordingly, would be subject to potential liabilities under such acts."[9]

Information Disclosed in a Filing Does not Have to be "Filed" with the SEC

The Society believes that the SEC should not give such disproportionate weight to the use of the word "filing" in Section 953(b). "Filings" described in Item 10(a) of Regulation S-K include, without limitation, registration statements under the Securities Act and Exchange Act, annual and other reports under Sections 13 and 15(d) of the Exchange Act, and proxy and information statements under Section 14 of the Exchange Act. Some of these "filings" include disclosures that are considered "furnished" and "not filed".[10] Therefore, the legislative mandate to disclose the pay ratio in any filing described in Item 10(a) of Regulation S-K does not mean that such disclosure must necessarily be "filed." Section 953(b) of the Dodd-Frank Act only prescribes the type of documents in which pay ratio disclosure should appear and does not dictate whether such disclosure should be furnished or filed.

[7] *See* SEC Release No. 33-9452, p. 75 and Note 138.
[8] *See* Section 953(b) of the Dodd-Frank Act.
[9] *See* SEC Release No. 33-9452, pp 75-76.
[10] For example, a current report on Form 8-K is considered a "filing" described in Item 10(a) of Regulation S-K. However, information included in a Form 8-K pursuant to Item 2.02 (Results of Operations and Financial Condition) or Item 7.01 (Regulation FD Disclosure) is not "deemed to be 'filed' for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the registrant specifically states that the information is to be considered 'filed' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act." See Form 8-K, General Instruction B.2.

"Filed" Status Is Inconsistent with Prior Commission Positions; The Proper Response is the Ballot, not Litigation Challenging the Disclosure

The proposed pay ratio rules appropriately allow a registrant to use (1) a methodology that uses reasonable estimates to identify the median and (2) reasonable estimates to calculate the annual total compensation or any elements of total compensation for employees other than the chief executive officer. Moreover, in determining the employee group from which the median is identified, the registrant may use not only its total employee population, but also statistical sampling or other reasonable methods. The Society agrees that the ability to use various estimates and statistical sampling is necessary to make compliance achievable. Nevertheless, the use of these methods disclosure is of necessity based on subjective decisions that make it difficult to verify the underlying data, particularly given that existing processes were established in connection with financial data, compensation information and other objective, quantitative (or quantifiable) disclosures.

The Commission appears to believe that the flexibility afforded by the proposed rules supports treating pay ratio disclosure as "filed" because the flexibility and use of estimates could "reduce some of the difficulties of compiling the required information."[11] However, the Society respectfully disagrees. In fact, we believe the opposite is true—the flexibility and use of estimates makes "filed" status inappropriate due to the imprecision of the amounts involved.

Moreover, the Commission's proposal contradicts the long-standing treatment of other compensation-related information as "not filed." Such treatment dates back to 1992, when the Commission issued Release No. 33-6962, *Executive Compensation Disclosure*, which adopted amendments to the executive officer and director compensation disclosure requirements. That Release recognized that the newly adopted Compensation Committee Report on Executive Compensation and Performance Graph raised significant concerns about the potential for litigation and increased an issuer's exposure to liability with respect to these disclosures. To accommodate these concerns, the Release stated that the information required by the Compensation Committee Report on Executive Compensation and Performance Graph "shall not be deemed to be 'soliciting material' or to be 'filed' with the Commission or subject to Regulations 14A or 14C…, or to the liabilities of Section 18 of the Exchange Act…, except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act."[12]

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[11] *See* SEC Release No. 33-9452, pp 75-76.

[12] *See* 1992 Release, Item 402(a)(9). Both the Compensation Committee Report and Performance Graph have retained this "not filed" status in SEC Regulation S-K. *See* Item 402(e)(5), Instructions to Item 407(e)(5) and Item 201(e), Instruction 8 of Regulation S-K.

The Commission's reasoning in the 1992 Release was that "[i]f shareholders are not satisfied with the decisions reflected in the report, the proper response is the ballot, not resort to the courts to challenge the disclosure."[13] The same reasoning applies to the pay ratio disclosure.

Exchange Act Certification Requirements Will Increase the Costs of Compliance for "Filed" Pay Ratio Disclosure

If pay ratio disclosure is deemed "filed" and included or incorporated by reference in the Form 10-K, it will be covered by the CEO and CFO certifications required under Rules 13a-14 and 15d-14 under the Exchange Act. The assumptions, estimates and sampling contemplated by Item 402(u) of Regulation S-K render the pay ratio disclosures difficult to verify with the degree of precision that is customary and, we believe, necessary for the purposes of those certifications. Among other things, the treatment of pay ratio disclosure as "filed" will require the development and implementation of internal controls (including disclosure controls) and audits that will increase the costs of compliance, possibly substantially, particularly given the use of assumptions, estimates and sampling contemplated by the rule. As one company explained:

> After consulting with our in-house SOX administrators, we believe that we would be required to apply the same standards as currently used for other SOX-compliant financial disclosures. [Based on] materiality, the compensation, payroll and employee management processes are not currently documented or certified for SOX in 10 of 11 countries in which we operate. The requirement to document and test these processes would result in significant costs to the company. Compliance could involve efforts of many in the organization and costs are associated with each.

Moreover, as a practical matter, it will be difficult and impracticable to obtain the customary sub-certifications in respect of pay ratio disclosure, particularly for larger companies with operations across the globe.

PART-TIME AND SEASONAL EMPLOYEES SHOULD BE EXCLUDED (AND LEASED EMPLOYEES SHOULD REMAIN EXCLUDED)

Another area where we believe the Commission has adopted an unnecessarily literal approach is its view that "all employees" includes part-time and seasonal employees. We do not agree that the statutory provision should be read so literally that it includes any employee, regardless of the nature of his or her employment.

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[13] *See* id.

Section 953(b) is silent on the definition of "employees," and there is no legislative history to support that it was intended to have such an expansive application. However, other Commission rules distinguish among various categories of "employees;" for example, certain Item 402 disclosures reflect a distinction between salaried and other employees.[14] Including part-time and seasonal employees for purposes of calculating the pay ratio, when they may not be included for other purposes, would create internal inconsistency within Item 402. Thus, we urge the Commission to limit the pay ratio disclosure to full-time and non-seasonal employees.

In addition, we believe interpreting "all employees" to include part-time and seasonal employees would have numerous other negative implications, including:

- Including part-time and seasonal employees will generate higher costs and other compliance burdens and will lead to longer and more complex proxy statements –

- Including part-time and seasonal employees in the ratio would distort the ratio for companies in industries that rely heavily on seasonal employees during high periods of demand, particularly if the companies are not permitted to annualize the salary data. The same is true for other industries that rely heavily on part-time employees.

Leased Employees

With respect to leased employees, the Society supports the Commission's view that leased employees should not be included in determining the median employee. As proposed, leased employees provided pursuant to a contract with a professional employer organization are to be excluded in determining median compensation. A professional employer organization supplies the workforce that is under the management control of its clients. The workforce, however, remains employed by the professional employer organization, which sets the compensation for the leased employees and determines other terms of their employment. An employer typically pays the professional employer organization a fee that is based on an hourly rate per leased employee. This fee includes a mark-up over the amount that a leased employee receives as compensation. As a result, a registrant that utilizes a professional employer organization would not have control over the compensation or the recordkeeping of leased employees. For these reasons we support the Commission's view that leased employees should not be included in determining the median employee. We also note that if leased employees were included, they would be double-counted in cases where the professional employer organization is also a public company.

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[14] See, i.e., Instructions to Item 402(j): "The registrant need not provide information with respect to contracts, agreements, plans or arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers of the registrant and that are available generally to all **salaried** employees." (Emphasis added.)

ONLY EMPLOYEES OF MAJORITY-OWNED OR CONSOLIDATED SUBSIDIARIES SHOULD BE INCLUDED

For purposes of proposed Item 402(u) of Regulation S-K, “employee” would be defined as an individual employed by the registrant or any of its subsidiaries as of the last day of the registrant’s fiscal year. “Subsidiary” is defined in Rule 405 under the Securities Act and Rule 12b-2 under the Exchange Act as an affiliate that is controlled directly, or indirectly through one or more intermediaries. This definition would broadly encompass employees not only of consolidated subsidiaries but also of entities over which a company may have only limited control, such as joint ventures and other minority investments.

We believe that, in determining their pay ratios, companies should be required to include only employees of majority-owned, or consolidated, subsidiaries. Item 3A-02 of Regulation S-X states that “[g]enerally, registrants shall consolidate entities that are majority owned,” and Rules 405 and 12b-2 define a majority-owned subsidiary as “a subsidiary more than 50 percent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.” In addition to the relationship between compensation and performance (as demonstrated by the results reflected in consolidated financial information), the board and management of the parent company would likely have little or no influence over the compensation decisions of employees of minority-owned subsidiaries and affiliates, which suggests that those employees should not be included in determining the ratio.

If companies are required to include employees of all subsidiaries (rather than only majority-owned or consolidated subsidiaries), compliance with the rule would be far more burdensome and costly and might be impossible in some cases. Over 70% of Society/CEC survey respondents indicated that including minority owned subsidiaries and joint ventures would increase costs; the average increase reported was 98%.[15] In effect, a company would have to review each unconsolidated subsidiary and equity affiliate to determine whether there is sufficient “control” to bring that entity within the scope of the rules. Moreover, companies would likely be unable to rely on their existing internal controls in connection with this information because many of those controls apply only to consolidated entities.

Aside from the significant time and costs that this would entail, for each instance in which an entity were deemed to be controlled, the parent company would be faced with the prospect of having to obtain compensation data for personnel employed by

[15] Survey Question 7(a), attached in Appendix.

that entity, even if they are not technically an employee of the parent or any of its direct or indirect subsidiaries. Getting this data would be extremely difficult or impossible in some instances. Moreover, in general, the board and management of the parent company would likely have little or no influence over the compensation decisions of employees of minority-owned subsidiaries and affiliates, which suggests that those employees should not be included in determining the ratio.

For substantially the same reasons, we believe that employees of portfolio companies of business development companies should be excluded in determining pay ratios.

COMPANIES SHOULD BE ABLE TO SELECT A DATE TO DETERMINE THE MEDIAN EMPLOYEE

We believe that companies should be able to set the date as of which they determine the median employee, and at a minimum should not be required to use the most recent fiscal year-end. Specifically, while the proposed rule would require a company to calculate its annual pay ratio as of its most recent fiscal year-end, we believe that this will not provide a sufficient amount of time for a company to collect and analyze the data necessary to determine the median employee and calculate the pay ratio for inclusion in its Form 10-K or proxy statement.[16]

The process of collecting the data on all employees to find a median and then calculating the pay for the median employee, for many if not most issuers, will be a time-consuming process that will require at least some manual data collection. The Society/CEC survey shows that about 33% of respondents said it would take 60-90 days to calculate the ratio and draft the disclosure; another 23% said it would take more than 90 days. About 28% of respondents said it would take 30-60 days, and 14% (or 17 companies) said fewer than 30 days.[17] The timing concerns are compounded by the fact that the data collection, analysis and calculation will occur during a period in which schedule and time restraints are already significant for most companies due to, among other things, pressing demands to close books, prepare audited consolidated financial statements for the year, and set compensation for the next year. Further, as proposed, this entire process will run concurrently with the height of proxy season.

To address these issues, we propose that a company be permitted to use its fiscal year-end, or any other date it chooses, to find the median employee. Once the median employee is identified, a company could determine that person's compensation at fiscal year-end, whether that be calendar year-end or not, as it does for the PEO.

[16] Moreover, we note that the due dates are effectively shorter than the statute and Proposed Rule provides due to advance sign-off companies must obtain before printing and mailing.
[17] Survey Question 10, attached in Appendix. For comparison, 7 companies had less than 1 billion in revenue.

In this regard, we appreciate the flexibility afforded by the proposed rule to use calendar year (e.g., W-2) information as opposed to fiscal year information to determine the median employee. For a company whose fiscal year-end is different from the calendar year-end, say June 30, 2016, and is preparing its pay ratio disclosure for a proxy statement to be filed in September 2016, it should have the flexibility to use W-2 information (and equivalent information for non-US employees) for the year ended December 31, 2015.

We believe that flexibility regarding the timing of the median employee pay calculation is critical to ensure the verifiability of the reported ratios. Registrants must have a sufficient amount of time to collect and prepare the data and verify that the data are representative. This is particularly true if the Commission disagrees with our position that pay ratio disclosure be "furnished" rather than "filed."

THE RULE SHOULD PERMIT COMPANIES TO USE COMPENSATION DATA FOR THE YEAR PRIOR TO THE MOST RECENT FISCAL YEAR TO DETERMINE THE MEDIAN EMPLOYEE AND HIS/HER COMPENSATION

Companies should be permitted to use compensation data from the year prior to the most recently completed fiscal year, both for determination of the median employee and for calculating his or her total annual compensation. This approach would have the following benefits:

- Using prior year data will enable companies to have enough time to verify their processes for identifying the median employee.
- Much of the data needed to identify the median employee and calculate his or her compensation will not be available for the first three to six months of the year following the end of the applicable fiscal year.
- Using prior year data for the CEO's compensation will make sure this approach does not distort the ratio and does not contradict current disclosures, since the proxy already provides the last three years of compensation data for the CEO.

THE TRANSITION PROVISIONS SHOULD BE REVISED TO APPLY TO 2016 ANNUAL MEETINGS FOR ALL COMPANIES

The Proposed Rule provides that a company must disclose the pay ratio in its first fiscal year commencing on or after the effective date of the rule. A company would be permitted to omit the initial pay ratio disclosure until the filing of its annual report on Form 10–K for that fiscal year or, if later, the filing of a proxy or information statement for its next annual meeting of shareholders following the end of such year.

We believe the above provision should be revised to provide that compliance would commence "for the first fiscal year commencing on or after the **January 1 following** the effective date of the rule...." Without the addition of the reference to January 1, companies with fiscal year-ends earlier than December 31 would be disadvantaged, because they could have to comply with the new rules a year earlier, depending on when in 2014 the final rules become effective.

By way of illustration, the Proposed Rule states that "if the final requirements were to become effective in 2014, a company with a fiscal year ending on December 31 would be first required to include pay ratio information relating to compensation for fiscal year 2015 in its proxy or information statement for its **2016** annual meeting of shareholders." However, if the requirements were to become effective prior to July 1, 2014, then some companies would be required to include pay ratio information in their proxy statements or information statements for their **2015** annual meetings. For example, if a company has a fiscal year that begins on July 1, 2014 and ends on June 30, 2015, it would be required to include the pay ratio information its proxy statement or information statement filed in September **2015.** This timing would conflict with the Commission's stated belief that "it will take registrants one full reporting cycle to implement and test any necessary systems."[18]

In short, the insertion of the reference to January 1 in the above language would make the final rules effective for all companies for their 2016 annual meetings, assuming the final rules are effective in calendar year 2014.

DATA PRIVACY LAWS WILL IMPACT NON-US EMPLOYEES

We are concerned that data privacy laws in various non-US jurisdictions could adversely impact the cost and practicability of gathering and verifying the data needed to identify the median of the annual total compensation for all employees. While some of our members believe the privacy issues can be resolved, others do not. But whether they can or cannot, the burden was best described by one member in terms of not only compliance with the data privacy laws, but also the cost of determining *whether* certain privacy laws apply: "We would be compelled to review data privacy laws in all of our 27 countries."

Others described the concern of having to get releases from each employee in certain countries outside the US:

> We expect difficulties in collecting data from the employees in 10 countries outside the US. Based on our years of experience with equity awards to individual top managers in these countries, we believe that privacy laws may require a signed consent from each employee in order to create a company database of all employees or a sample of employees, or to collect and transmit

[18] *See* SEC Release No. 33-9452, p 77.

personal data across national borders. This could result in delays in the collection of data or the potential that some relevant data may not even be available for the calculation, both of which could raise compliance concerns. We are currently unaware of safe harbors or other exclusions in the legal and governance systems in other countries in which we operate that would allow broad collection, aggregation and transmission of private employee data across national borders absent an individual release by each affected employee.

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We appreciate that the proposed rule would permit registrants to use measures including statistical sampling and estimates to calculate the compensation of affected employees. These measures, as noted in the Proposed Rule, may also alleviate complexity related to the non-comparability of definitions of compensation and payroll systems across foreign jurisdictions as well as currency fluctuations. However, we respectfully request that the Staff consider the following clarifications when issuing final rules.

- <u>When the Median Employee Is a Non-US Employee</u>: We believe that the proposed rule does not adequately address what a company may be required to disclose if the median employee, once identified, is located in a non-US jurisdiction and calculation or public disclosure of his or her compensation under Item 402(u) is impracticable or impossible due to privacy issues. We propose that the Staff provide in the final rules that, in such a situation, a company may substitute the next closest lower-paid US employee for purposes of identifying the median and performing the calculation to be disclosed to the public.

- <u>Disclosure of Laws Prohibiting Data Collection</u>: We believe that there may be instances in which local data privacy laws will prevent a company from making a reasonable estimation of the total compensation for affected employees. We support the Staff's suggestion that in these instances, companies could disclose the approximate number of employees affected; however, for reasons of brevity, as discussed above, we suggest that companies not be required to identify the law that prohibits the collection or transfer of data.

- <u>Additional Privacy Law Considerations</u>:

    - Data privacy laws in various jurisdictions will require companies to undertake detailed analysis as to the ways in which they can provide the information that is necessary for the rule.
    - In the EU, EU Directive 95/46/EC of the European Parliament and the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (the "EU Privacy Law"), with which all EU member states must comply, regulates the "processing" of "personal data."

- "Personal data" is defined broadly. The degree to which compensation data is "personal data" will require careful analysis, although it is clear that compensation data of an identifiable individual is personal data.
- "Processing of personal data" is defined very broadly and the collection of compensation data for the purpose of computing the ratio is highly likely to be considered "processing."
- When processing personal data, companies must comply with a number of restrictions imposed by the EU Privacy Law. Although the EU Privacy Law has designated that transfers of personal data can be made to certain countries outside of the EU, the US is not one of those countries.
- Therefore, these restrictions will require many companies to retain outside counsel (in each country that has implemented regulations under the EU Privacy Law) to analyze their approaches.
- There are 27 countries in the EU that have implemented the EU Privacy Law, including the United Kingdom, Germany, France and the Netherlands.
- Other countries such as Japan and Singapore have developed or are in the process of developing domestic data privacy regulations.

COMPANIES SHOULD NOT BE LIMITED TO ONE COMPENSATION MEASURE FOR NON-US EMPLOYEES

We believe the pay ratio rule should not limit companies to a single "consistently applied compensation measure" to identify the median employee, as this could be problematic for companies with employees located in non-US jurisdictions. For example, a company may be able to use W-2 or payroll information to relatively efficiently and accurately quantify annual cash compensation for US employees, but this data could be impracticable to replicate for certain non-US employees due to privacy concerns, comparability of compensation schemes, tax systems, or otherwise. Under the proposed rule, if it is not possible to treat foreign employees consistently, a registrant could be forced to use a different compensation measure for US employees. We believe this unnecessarily undercuts the flexibility that the Commission has otherwise achieved in the proposed rule and could have a negative impact on the ability of companies to gather meaningful and accurate compensation data to determine the median.

In light of this, we propose that the Commission consider including in the final rules that for employees based in non-US jurisdictions, registrants be permitted to use (i) the same compensation measure used in the US or (ii) another reasonably comparable compensation measure for any non-US jurisdiction where the same compensation measure is not used, unless a different application is required or compensation cannot be estimated in a particular jurisdiction for a particular reason (i.e., data privacy laws). We believe this would reduce costs while enhancing the ability of registrants with foreign operations to respond to the disclosure requirements without "distorting" or compromising the reliability of the data.

COMPENSATION FOR PERMANENT EMPLOYEES CAN, BUT NEED NOT BE, ANNUALIZED

The Society supports the approach described in the Proposed Rule allowing, but not requiring, companies to make annualizing adjustments to the compensation of full-time employees. We believe that allowing annualizing adjustments effectuates the Dodd-Frank Act requirement that each registrant disclose the median of the annual total compensation of its employees. Such adjustments would result in a calculation that is closer to a fair and reasonable representation of the registrant's actual compensation practices and labor costs. The adjustment also would help eliminate the potential distorting effects of mid-year hires, including those that result from a merger or acquisition.

However, the Society believes that companies should not be required to annualize compensation for employees that have not been employed for the entire year. Instead, companies should have the flexibility to determine if annualization would impose a substantial additional cost and burden without benefit to investors to justify it.

Disclosure of Annualizing Adjustments Should Be Minimal

Proposed Item 402(u) provides that, to the extent annualizing adjustments have a material effect on the calculation, companies that choose to make annualizing adjustments would be required to disclose them. For the reasons stated above with regard to "disclosure overload," we recommend that such disclosure should be limited to no more than a brief statement that the registrant has made annualizing adjustments to the total compensation of its employees in compliance with the Instruction. Requiring detailed disclosure about annualizing adjustments would unnecessarily add to the costs and burdens of registrants' compliance, and would not provide any meaningful benefit to investors.

Disclosure Should be Made for the Chief Executive Officer at Company's Fiscal Year-End

*W*e recommend that the final rule expressly clarify that if a company's summary compensation table includes more than one CEO (because more than one individual served in that position during the most recent fiscal year), then the CEO whose compensation should be used for purposes of the pay ratio disclosure is the CEO as of fiscal year-end.

THE COMMISSION SHOULD EXERCISE DISCRETION TO EXCLUDE NON-US EMPLOYEES

Last, the Society requests that the Commission exercise discretion to exclude non-US employees, or at a minimum, adopt the rule on a pilot basis for the first year without those employees. The Society has consistently expressed the view that non-US employees should not be included in the pay ratio rule for purposes of determining the median employee. For example, in testimony before the US House of Representatives Committee on Financial Services on September 10, 2010, a Society representative stated as follows:

> "There are cross-border issues, like exchange rates. There are privacy laws in France, for example, that might not even allow you to do this, all kinds of things. So if you are willing to work to make this only U.S. employees, a lot of corporate secretaries and human resource professionals will breathe easier. So this is a situation where we don't think the cost would outweigh the benefit of what the number is."

(We note that at this hearing, Chairman Frank stated that he agreed with the Society's view: "I guess it would seem clearly there would be a consensus that it shouldn't be every single employee.")[19]

Comparability

Our concerns with regard to the inclusion of non-US employees are based on both comparability and cost. Companies will be comparing apples to oranges because of differences in compensation packages (e.g., company- provided versus government-provided pension and health benefits) and cost of living standards among different countries, as well as in the outsourcing context. In the latter case, a company that keeps relatively greater production in-house would tend to have a significantly lower median "annual total compensation" than one that outsources extensively.

Cost

With respect to costs to comply with the Proposed Rule, our members have told us that the majority of the costs stem from the inclusion of non-US employees. In fact, Society/CEC survey respondents overwhelmingly said that their costs would be cut substantially if the pay ratio were limited to US employees only: 80% said costs would decrease, with the average company having a 41% decrease.[20] This is so because under the proposed rule companies with a US employee base can use W-2 payroll data to find the median but those with non-US employees cannot. Instead they will be required to:

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[19] Testimony of Darla Stuckey, "Executive Compensation Oversight After the Dodd-Frank Wall Street Reform and Consumer Protection Act" Hearing Before the Committee on Financial Services U.S. House of Representatives, September 24, 2010 (http://financialservices.house.gov/media/pdf/111-160.pdf) at 25-29.

[20] Survey Question 7(c), attached in Appendix.

- Aggregate data from multiple (possibly dozens of) payroll systems, many of which track different types of compensation and some of which contain very little or no individual data;
- Engage in ongoing verification of their compliance with foreign data privacy laws, possibly including the need to secure releases from individual employees in certain countries (see "Privacy Law Concerns for Non-US Employees" below);
- Gain access to compensation data that is managed by third-party vendors;
- Address currency translation and fluctuations; and
- Educate non-US personnel on Item 402 (potentially in every country in which they operate).

Several survey respondents report that statistical sampling, while it may be helpful, does not decrease the costs of finding the median employee because the "most time consuming effort lies with collecting the data and not in the calculation method." One survey respondent with over 50,000 employees described the costs of data gathering whether using all employees or sampling:

> We do not maintain a single, centralized payroll, HRIS or planning system. To build such a system, the company would need to commit to over $10 million for a system that is not currently needed for any other reason. As such, we would need to gather the information across all of our 69 countries worldwide to identify the median employee. Even if statistical sampling was an option, this worldwide information gathering would still need to occur.

Section 36(a)

While we are aware of statements by Commission staff that the language of Section 953(b) – i.e., the reference to "all employees" – mandates the inclusion of non-US employees, we continue to believe that excluding such employees would substantially reduce the costs of compliance without impacting the benefits, if any, of the pay ratio disclosure. Thus, we respectfully request the Commission to consider using discretion to eliminate non-US employees, either permanently, or on a pilot basis.[21] "As the Supreme Court has recognized, 'no legislation pursues its purposes at all costs.'. . . Allowing the aims of specific statutes to yield to practicality, Congress authorized exemptions from certain provisions' requirements. . ."[22]

We ask that the Commission consider whether such authority emanates from the fact that the substance of Section 953(b) is incorporated into the Exchange Act, as stated in

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[21] That is, require only US employees for the first year the rule is effective (or such other period of time), and then reconsider whether to add non-US employees.

[22] American Petroleum Institute, et al. v. Securities and Exchange Commission and Oxfam America, Inc., No. 12-1668 (D.D.C. Jul. 2, 2013), citing Rodriguez, 480 U.S. at 525-26.

the comments on the Proposed Rule submitted by the US Chamber of Commerce:

> Congress' decision to incorporate the substance of DFA §953(b) into the '34 Act, rather than enact it as a stand-alone provision, means that the substance of any Commission DFA §953(b) rulemaking must be necessary or appropriate in furtherance of the Commission's core mandates under the '34 Act—protection of investors, facilitation of capital raising and promoting the fairness and efficiency of the Nation's securities markets.[23]

Thus, at least in the view of some commenters, Section 36 of the Exchange Act gives the Commission the authority in this case to exempt any person, security or transaction from provisions of the Act. Specifically, Section 36(a)(1) provides that "the Commission, by rule . . . may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." Because Section 953(b) directs the Commission to amend Regulation S-K, promulgated pursuant to the 34 Act, we believe Section 36 can be viewed as applicable. The Commission has, of course, used its statutory authority under Section 36 in various contexts, and we believe that its use in the current context is appropriate and consistent with investor protection.[24]

Efficiency, Competition and Capital Formation

In the alternative, we request that the Commission consider the Proposed Rule in light of the burdens it will place on efficiency, competition and capital formation, and exclude non US employees on that basis. The Commission states in the Release that:

> Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and Section 3(f) of the Exchange Act [15 U.S.C. 78c(f)] require us, when engaging in rule-making under those Acts where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.
>
> Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or

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[23] Comment letter of David Hirschman, U.S. Chamber of Commerce, December 2, 2013 at 11.

[24] For example, the Commission has in recent years used its exemptive authority under Section 36 in connection with the definition of the term "securities intermediary," the electronic filing requirements for Self Regulatory Organizations and the rules under Regulation SHO of the Act.

> appropriate in furtherance of the purposes of the Exchange Act. (emphasis added)[25]

For all the reasons stated herein, the Society believes that under Section 23(a)(2) of the Exchange Act, the pay ratio disclosure would impose a burden on competition that is not necessary or appropriate in furtherance of the purpose of investor protection because: (1) it will in fact confuse investors rather than provide meaningful information, (2) it will create excessive costs for companies and their investors far in excess of the benefits, if any, and (3) it will place companies at a competitive disadvantage to private companies and/or to those listed in other markets.

Impact of Proposed Rules on Market Efficiency and Competition

The proposed rule will have an impact on Society members in terms of indirect financial and competitive costs. For example, in response to the survey, 55% of respondents said they "anticipate the pay ratio disclosure will impose indirect financial and competitive costs beyond the compliance costs identified in the previous questions (e.g., adverse impact on sales, brand damage, increased public relations costs)?"[26] The textual comments provide color:

- "Our competitive advantage, recognized by analysts and our shareholders is our low cost country footprint which provides a distinct disadvantage when calculating a global pay ratio."
- "Certain marketing groups and NGO's will likely use the data to embarrass the company and will work to drive certain customers to other vendors or alternate sources."
- "Most or all of our direct competitors are foreign private issuers and will not be subject to the disclosure, putting us at a competitive disadvantage."
- "The sole purpose of the disclosure is to enable organized labor to further incite union activity within the work force. This will no doubt increase costs to address labor risks and cost jobs."

In addition, the requirements of pay ratio disclosure also could be a factor in determining where to list. While we believe that the Commission has done a good job in minimizing the potential costs of the rule, there is a compliance cost as well as other hidden costs (e.g., the effect on employee morale with disclosure of median pay at their own and at competitor companies). We therefore urge the Commission to consider additional ways to minimize the cost of compliance in the final rule so as not to provide greater incentive to list outside of the US.

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[25] *See* SEC Release No. 33-9452, p. 86, Note 150.
[26] Survey Question 8, attached in Appendix.

We also believe that the pay ratio disclosure may competitively disadvantage public companies. In addition to the comments above, the disadvantage may be particularly strong at a new and fast-growing technology company which may have a concentrated employee base and be in competition for key talent with private companies in the engineering or technology sector. Such a company may not wish to offer guidance as to a median salary even within the transition period for the first fiscal year after going public. Even though such a company may be covered for a period of time by the emerging growth company exception, the exception may not be available at the time of the initial public offering or could be lost soon thereafter. In addition, the pay ratio disclosure for newly public companies may be even less meaningful than at other companies until it has been public for several years, because a significant portion of compensation may be in the form of equity, which is likely to be more volatile especially in emerging industries.

Moreover, we believe that a transition time of at least three fiscal years after the effective date of the registration statement would provide a more reasonable amount of time for newly public companies to build their businesses and adjust to the reporting requirements before being subject to this disclosure item.

Finally, we agree with the Commission's determination not to include pay ratio disclosure in registration statements on Form S-1 or S-11 for an initial public offering, as doing so could cause a delay in filing for companies that are not emerging growth companies. However, we believe that additional transition time may be required for new registrants, as the pay ratio requirements not only add a compliance burden (implementing systems to compile and verify pay ratio disclosure), but also serve as a disincentive to going public at all.

Exclude Employees that Represent No More than a Specified Percentage

If non-US employees are not excluded from the rule, we urge the Commission to consider permitting companies to exclude such employees that represent no more than a specified percentage of all employees. In addition, any company that is required to include non-US employees in determining the median employee should be permitted to make the adjustments necessary to eliminate unique forms of compensation outside the United States (e.g., government-provided pension or healthcare plans).

* * * *

We appreciate the opportunity to provide comments on this important rulemaking and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

Darla C. Stuckey

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Robert Lamm, Chair, Securities Law Committee, Society of Corporate Secretaries

Virginia K. Fogg

Virginia Fogg, Chair, Policy Advisory Committee, Society of Corporate Secretaries

cc: Mary Jo White, Chair
Luis A. Aguilar, Commissioner
Daniel M. Gallagher, Commissioner
Michael S. Piwowar, Commissioner
Kara M. Stein, Commissioner
Keith F. Higgins, Director, Division of Corporation Finance

Appendix
Excerpt of Pay Ratio Proposed Rule Cost Survey

Companies that Responded to Survey

Of the approximately 1,270 companies surveyed, 134 public companies completed the survey. Eighty-eight belong to both the Society and the HR Policy. An additional seven are solely HR Policy members, while the remaining 39 are only Society members. This reflects the 127 Society member responses. Their revenues span from $15 million to greater than $450 billion, with the breakdown shown below (all percentages are approximate):

Greater than $30 billion: 24%
Between $5 and $30 billion: 51%
Less than $5 billion: 25%

Questions

1. What is your company's annual revenue? __________________

	Revenue
Average – All Companies	$29.2B
Median – All Companies	$14.5B
Total Number of Respondents	127
Number of Respondents with Revenue >$30B	30
Number of Respondents with Revenue of $5B-$30B	65
Number of Respondents with Revenue of $1B-$5B	25
Number of Respondents with Revenue <$1B	7

2. Approximately how many employees does your company employ (US and non-US) worldwide; including full-time, part-time, direct-hire temporary and seasonal?

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Average	67,655	149,398	57,656	11,331
Median	34,000	134,102	34,000	5,950
Number of Respondents	127	30	65	32

3. Approximately what percentage of your employees:

a. Are located in the US?____________%

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Average	62%	61%	57%	75%
Median	60%	50%	50%	86%
Number of Respondents	126	30	64	32

b. Are employed full-time?______________%

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Average	87%	88%	87%	83%
Median	95%	95%	95%	95%
Number of Respondents	120	28	61	31

c. Are employed full-time outside the U.S.?__________%

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Average	45%	50%	50%	31%
Median	45%	56%	52%	19%
Number of Respondents	120	27	61	32

d. Are employed by the company on a part-time, direct-hire temporary or seasonal basis? ___________%

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Average	11%	10%	11%	13%
Median	5%	6%	5%	5%
Number of Respondents	120	28	62	30

e. Are employed on a part-time, direct-hire temporary or seasonal basis outside of the U.S.? __________%

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Average	5%	4%	6%	6%
Median	2%	3%	2%	1%
Number of Respondents	115	26	59	30

4. In how many countries (including the US) do you maintain employees? _________

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Average	35	55	37	14
Median	27	63	31	9
Number of Respondents	127	30	65	32

5. Approximately how many separate employee data systems (Human Resource Information System, payroll, benefits and pension, tax reporting) do you have worldwide?

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Average	50	63	63	12
Median	15	40	30	5
Number of Respondents	122	26	65	31

6. Apart from collecting information for the purposes of calculating the pay ratio, does your company have a business purpose for identifying the median employee?

a. Yes (please explain)

____

b. No

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Yes	0	0	0	0
Number of Respondents	121	28	61	32

7. Please provide the percentage increase or decrease in the cost estimate in the first year you anticipate your company would incur if the SEC were to make any of the following changes to the proposed pay ratio disclosure:

a. The pay ratio calculation must include employees of all minority-owned subsidiaries and joint ventures. +/-______________________%

		Companies with Annual Revenue…		
	All Respondent Companies	>$30 Bil	Btw $5 Bil and $30 Bil	<$5 Bil
Average	+98%	+200%	+74%	+49%
Median	+20%	+35%	+20%	+10%
# of Respondents indicating an Increase	76	20	38	18
# of Respondents indicating an Decrease	0	0	0	0
# of Respondents indicating No Change	27	5	13	9
Number of Respondents	103	25	51	27

b. The pay ratio calculation is based on full-time, permanent employees only. +/-__________________%

		Companies with Annual Revenue…		
	All Respondent Companies	>$30 Bil	Btw $5 Bil and $30 Bil	<$5 Bil
Average	-12%	-12%	-13%	-9%
Median	-10%	-10%	-5%	-10%
# of Respondents indicating an Increase	10	1	5	4
# of Respondents indicating an Decrease	72	19	35	18
# of Respondents indicating No Change	24	5	14	5
Number of Respondents	106	25	54	27

c. The pay ratio calculation is based on U.S. employees only (non-U.S. employees excluded). +/-__________________%

		Companies with Annual Revenue…		
	All Respondent Companies	>$30 Bil	Btw $5 Bil and $30 Bil	<$5 Bil
Average	-41%	-48%	-48%	-21%
Median	-50%	-50%	-50%	-10%
# of Respondents indicating an Increase	2	0	1	1
# of Respondents indicating an Decrease	87	23	47	17
# of Respondents indicating No Change	20	3	7	10
Number of Respondents	109	26	55	28

d. Median employee pay must be calculated by calculating the total compensation as required in the Summary Compensation Table for all employees then identifying the median employee from this calculation. +/-__________________%

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Average	+4,689%	+1,895%	+8,101%	+461%
Median	+175%	+450%	+175%	+100%
# of Respondents indicating an Increase	109	26	56	27
# of Respondents indicating an Decrease	0	0	0	0
# of Respondents indicating No Change	1	0	0	1
Number of Respondents	110	26	56	28

8. Do you anticipate the pay ratio disclosure will impose indirect financial and competitive costs beyond the compliance costs identified in the previous questions (*e.g.*, adverse impact on sales, brand damage, increased public relations costs)?

a. Yes (please explain and provide an estimate of the increase due to indirect costs)

____

b. No

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Yes	55% (66)	72% (21)	56% (35)	34% (10)
Number of Respondents	120	29	62	29

9. Has one of your company's 10 largest investors ever inquired about your company's ratio of CEO pay to overall employee pay?

a. Yes (please explain in the space below)

____

b. No

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
Yes	0	0	0	0
Number of Respondents	118	26	60	32

10. The proposed rule states that the pay ratio must be calculated as of the last day of the company's fiscal year. If the SEC adopts the proposed rules as written, how much time do you anticipate the calculation of the pay ratio and the development of the proxy disclosure to require?

a. Fewer than 30 days
b. Between 30 and 60 days
c. Between 60 days and 90 days
d. Between 90 days and 120 days
e. Between 120 days and 150 days
f. Between 150 days and 180 days
g. Greater than 180 days

		Companies with Annual Revenue…		
	All Respondent Companies	**>$30 Bil**	**Btw $5 Bil and $30 Bil**	**<$5 Bil**
A	14% (17)	17% (5)	5% (3)	29% (9)
B	28% (35)	21% (6)	35% (22)	23% (7)
C	33% (41)	34% (10)	35% (22)	29% (9)
D	16% (20)	14% (4)	16% (10)	19% (6)
E	2% (3)	3% (1)	3% (2)	0% (0)
F	2% (3)	3% (1)	3% (2)	0% (0)
G	3% (4)	7% (2)	3% (2)	0% (0)
Number of Respondents	123	29	63	31