

December 17, 2013

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

Attention: Elizabeth Murphy, Secretary

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

Ladies and Gentlemen:

We, the undersigned representatives of our respective companies, appreciate 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 "Act"), as contained in the above-referenced release (the "Proposed Rules").

The primary purposes of this letter are (1) to express a number of overarching points about the Proposed Rules that our companies would like to emphasize as part of the rule-making process, and (2) to make a number of suggestions that we believe would help mitigate some of the practical difficulties for compliance that we see in the Proposed Rules. We defer to letters submitted by trade organizations that represent the interests of corporations, including many of ours, in particular the letter submitted by the Society of Corporate Secretaries & Governance Professionals dated December 16, 2013, for more detailed explanations on the rationale behind the high-level points and recommendations we outline in this letter.

First of all, we recognize and appreciate that the Commission has proposed a flexible approach to the pay ratio disclosure required under Section 953(b) of the Act that may enable companies to reduce the costs of compliance. **It is crucial that the final rules afford companies a significant degree of flexibility in identifying the median employee. Thus, we urge the Commission to adopt final rules that allow for at least the amount of flexibility as in the Proposed Rules for companies to identify the median employee, including using appropriate estimates, assumptions and sampling.**

The following are changes to the proposed rules that we urge the Commission to incorporate into the final rules that are eventually adopted:

- 1. The information called for by amended Item 402 should be *furnished to, rather than filed with, the Commission.*** Absent this, there should be some type of "safe harbor" to exclude this information from the information that is certified pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act. Given the allowance for flexible approaches to identify the median employee under

the rules as proposed, we believe this treatment would be appropriate and that there is precedent for this approach (*e.g.*, Form 8-K, Item 2.02 (*Results of Operations and Financial Condition*)).

2. **The pool of employees from which companies need to identify the median employee should not include part-time, seasonal and temporary employees**, and we agree that leased employees should not be included, as proposed.
3. **The pool of employees from which companies need to identify the median employee should include employees of a given company's consolidated subsidiaries, but not employees of unconsolidated subsidiaries.** Parent companies typically will not have the same level of access to the data of its unconsolidated subsidiaries as they do to the data of their consolidated subsidiaries. Thus, requiring companies to include the employees of unconsolidated subsidiaries when identifying the median employee will add costs without meaningful benefits.
4. **Companies should have discretion to choose the reference date they use for purposes of identifying the median employee for a given year.** In general, companies should be able to choose a reference date that allows them to identify the median employee in the most efficient manner. We suspect that for many companies, this will likely be the last day of the company's most recent fiscal year, as is consistent with the Proposed Rules.
5. **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....",** so as not to require companies whose fiscal years end earlier than December 31 to include the pay ratio disclosure in their 2015 proxy statements. The insertion of the reference to January 1 in the above language¹ would make the final rules effective for all companies for their annual meetings taking place in 2016, at the earliest, and give every company "one full reporting cycle to implement and test any necessary systems."²

We believe these suggested changes are ones that would meaningfully help minimize the cost and complexity of identifying the median employee, while still providing the information called for by Section 953(b) of the Act.

¹ Proposing Release, p. 76.

² Proposing Release, p. 77.

Finally, while we understand that the Commission has been compelled by Congress to promulgate rules to implement Section 953(b), **we want to emphasize our collective view that the cost of this disclosure far outweighs any benefit to the investment community.** This section of the Act is one example of what Chair White described as a troubling trend in her October 15, 2013 speech entitled, “The Path Forward on Disclosure.”³ Congress needs to be aware that should this trend continue, we are concerned that it would fundamentally alter the purpose of securities disclosure, which up until now has been to provide investors with “material” information (*i.e.*, information with a substantial likelihood that a reasonable investor would consider it important in making an investment decision⁴), and ultimately impair the Commission’s ability to fulfill its core mission of protecting the integrity of our capital markets and promoting capital formation.

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

Respectfully submitted,

[signatures on behalf of 33 companies appear on the following pages]

³ <http://www.sec.gov/News/Speech/Detail/Speech/1370539878806#.Up1vLcRDuBI>

⁴ *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 449 (1976). See also *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988).



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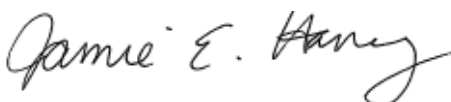
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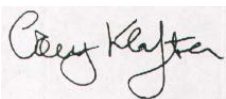
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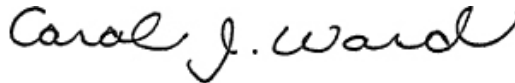
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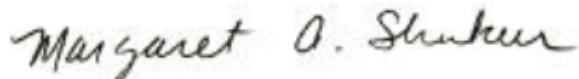
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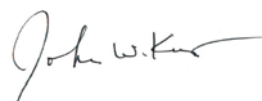
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