



December 30, 2013

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

RE: Comments in Response to the U.S. Securities and Exchange Commission Notice of Proposed Rulemaking Regarding Pay Ratio Disclosure, RIN 3235-AL47, 78 Fed. Reg. 60560, File Number S7-07-13

Dear Ms. Murphy:

The Society for Human Resource Management (the "Society" or "SHRM") submits these comments to the U.S. Securities and Exchange Commission (the "Commission") in response to the Notice of Proposed Rulemaking ("Proposed Rule"), which implements Section 953(b) of the Dodd-Frank Act, published in the Federal Register on October 1, 2013. *See* 78 Fed. Reg. 60560 (Oct. 1, 2013). This letter represents SHRM's official position regarding the Proposed Rule, and we have not endorsed comments by any other entity or individual which purports to reflect SHRM's views.

The Society is the world's largest association devoted to human resource management. Representing more than 250,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

SHRM's membership consists of dedicated and knowledgeable HR professionals who are responsible for developing and administering human resource and benefit policies, including determining compensation and benefits strategies for employers. HR professionals traditionally serve employers by establishing the best compensation structures for attracting and retaining employees. Further, HR professionals will be instrumental in the administration of any system that analyzes and summarizes an employer's compensation data, such as the pay ratio disclosures required by the Proposed Rule.

SHRM appreciates the efforts by the Commission to reduce the burdens of complying with the Proposed Rule. However, while we are supportive of this approach, SHRM has identified several issues in the Proposed Rule which, if revised, would result in the further reduction of compliance challenges for employers without diminishing the value of the

disclosure provided to the Commission. Accordingly, we respectfully offer the following comments and recommendations for changes and clarifications to the Proposed Rule.

Employees located outside of the United States

The Commission should limit the employees included in the identification of the median employee to those employed within the United States or who are paid through a U.S. payroll system.

As a threshold matter, challenges exist in aggregating compensation data over a variety of incompatible payroll systems. These challenges may be exacerbated by currency fluctuations. Further, compensation practices vary widely in jurisdictions outside of the U.S., and a number of employers across a wide range of industries incorporate unique methods of compensation that are not comparable with U.S. compensation concepts.

For example, in some locations certain allowances, such as for housing, transportation and family care, may be key components in determining an employee's total compensation. Other employers might provide profit-sharing arrangements to employees that might not be comparable with traditional concepts of U.S. base compensation. Similarly, it may be standard practice in certain non-U.S. jurisdictions to include government provided benefits in calculating an employee's total compensation. Regardless of the particular variations, it is likely that measures of compensation in non-U.S. jurisdictions will not allow for straightforward comparison with U.S. compensation structures. Further, including employees who are employed outside the U.S. will likely create significant administrative and cost burdens with regard to gathering information. In many cases, these costs are likely to exceed similar costs for gathering the information of domestic employees.

In particular, data protection laws in a number of non-U.S. jurisdictions establish a variety of obstacles for collecting such compensation information, such as requiring the approval of disclosures by local management, employees, as well as government regulators. Further, noncompliance can result in fines, and in some cases, personal criminal liability.

The Commission has acknowledged these issues, stating that "the inclusion of non-U.S. employees raises compliance costs for multinational companies...and could raise concerns about the impact of non-U.S. pay structures on the comparability of the data to companies without off-shore operations."

Further, registrants are required to include employees at any of its subsidiaries "as set forth in Securities Act Rule 405 and Exchange Act Rule 12b-2." This will include certain non-U.S. subsidiaries, over which an employer may have little to no control with respect to compensation practices and reporting practices within the subsidiary's home jurisdiction, and for which an employer may have limited access to the data necessary for compliance with the Proposed Rule. By eliminating the requirement that employees outside of the U.S. be counted in determining the median employee, a number of the most significant compliance burdens would be substantially reduced.

Measuring Compensation of Certain Non-full-time Employees.

The Proposed Rule prohibits employers from annualizing or adjusting the compensation of non-full-time employees, such as part-time, seasonal, or temporary employees. In many industries, a particular business strategy requires the use of non-full-time employees. In other cases, an employer may determine that, in order to attract and retain employees, it is beneficial to offer compensation structures that differ from a traditional full-time employment position.

The final rule should allow employers to annualize the compensation of non-full-time employees. If an accommodation for annualizing non-full-time employee compensation is not included in the final rule, the result will be skewed pay ratio data for employers who require an increased number of employees at certain points during the year, or those employers who have emphasized certain benefits through part-time employment positions. For example, requiring an employer with a large retail operation to compare the compensation of its chief executive officer with a median employee which is determined by the inclusion of a large number of employees hired for the holiday season will grossly distort the pay ratio.

Calculation Methods for Estimating Median Employee Compensation.

As noted in the Proposed Rule, the Commission intends to provide employers with flexibility in determining the median employee. Although sampling and an allowance for reasonable estimates should reduce compliance burdens to some extent, the calculation of the pay ratio will create significant administrative burdens for employers. Accordingly, SHRM recommends that further steps be taken to reduce the compliance burden in ways that will not substantially reduce the value of the information provided.

The Commission should establish a safe harbor method which provides for estimating median employee compensation, such as through the use of a formula or algorithm. Creation of such a safe harbor would provide employers with a streamlined process for making these determinations that are not excessively burdensome to administer. At the same time, such a safe harbor methodology would not result in significant distortions of the pay ratio as currently calculated. A safe harbor would also minimize the liability concerns for chief executive officers and chief financial officers in certifying information in public filings, as described below.

Date of Compliance Following the Effective Date of Final Regulations.

The Proposed Rule provides that the initial compliance period is the employer's first fiscal year commencing on or after the effective date of the final rule. Depending on when the final rule becomes effective, the initial compliance period will likely be sufficiently abbreviated such that it may cause employers to incur significant compliance expenses. The effect of a short initial compliance period would be magnified for employers with fiscal years that begin shortly after the effective date of the final rule.

SHRM recommends that the initial compliance date be at least two years from the effective date of the final rule. Such a delay would allow employers to gather necessary information, and to review various approaches for compliance. Further, complying with the final rule will require the development of sophisticated systems, and extensive training of employees in the functions and processes of these systems. Allowing a two year delay would significantly decrease the ultimate cost of compliance for employers, reduce the potential for miscalculation, and avoid placing any excessive burden on the employers in order to comply with the final rule.

Furnishing of Pay Ratio Disclosures.

Finally, the pay ratio disclosure provided by registrants to the Commission should be considered to be “furnished” rather than “filed.” By requiring that these disclosures be “filed” in an annual or quarterly report, a registrant’s chief executive officer and chief financial officer will be required to certify the accuracy of the disclosure pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. Making the determinations necessary to determine the pay ratio for a large employer will be exceedingly complex, especially with regard to compensation information required from subsidiaries in non-U.S. jurisdictions. Verifying such information to the degree necessary to certify its accuracy will be challenging. Further, to the extent a registrant takes advantage of the flexibility provided in the Proposed Rules to make estimates and assumptions in the course of determining the pay ratio, such verification will be even more difficult.

By allowing these disclosures to be “furnished,” rather than “filed,” the Commission would avoid imposing any undue burdens to certify the information, or any undue liability for chief executive officer and chief financial officer certifications of information that is inadvertently incomplete or erroneous. SHRM also notes that the Commission has allowed that other disclosures may be “furnished” rather than filed in the past in situations where the filing of such disclosures would impose undue liability.

Conclusion

SHRM appreciates the opportunity to comment on the Proposed Rule. Should the Commission decide to conduct any stakeholder meetings upon review of this comment and those of others, SHRM would welcome the opportunity to participate.

Sincerely,



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