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December 2, 2013

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

Re: File Number S7-07-13 – Comment Letter on Pay Ratio Disclosure

Dear Ms. Murphy:

In accordance with the instructions to the proposed rulemaking to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act"), Hay Group offers comments to the Securities and Exchange Commission ("Commission") on certain aspects of these proposed rules.

Hay Group is a global, full-service human resource consulting firm with 87 offices in 49 countries. The comments included in this letter are based on our review and analysis of the proposed rules as well as feedback received from some of our clients.

1. Registrants Subject to the Proposed Disclosure Requirements

In its discussion of the proposed rules, the Commission notes that companies that qualify as emerging growth companies are not subject to Section 953(b) and thus are not required to comply with the proposed pay ratio disclosure requirements. In addition, the Commission proposed that the pay ratio disclosure requirements will not apply to "smaller reporting companies and foreign private issuers" pursuant to a decision to apply the requirements only to registrants that are required to provide summary compensation table disclosure. While we applaud these exclusions in the Commission's proposals, in our view the Commission should go further in crafting exclusions from this burdensome disclosure.

In summary, we believe that the Commission should give further consideration to the substantial economic costs and burdens that compliance with the proposed rule will impose on small businesses (in relation to their size) and weigh these against the unknown and unsupported benefits that compliance might provide. The Commission itself recognizes that "neither the statue nor the related legislative history directly states the objectives or intended benefits of the provision" (see the "Introduction to Discussion of the Proposed Amendments", Section II.A.). Smaller public companies have been a primary source of job growth in the United States and generally have the least financial capability to absorb the substantial compliance costs of the proposed new disclosure requirement.

Accordingly, the Commission should undertake further economic analysis of the likely impact of the new rule on smaller public companies and extend its exclusions from this proposed reporting requirement. For example, the Commission might develop a further exemption that would apply to all businesses with revenues (in the most recently completed fiscal year preceding the year of disclosure) of less than $500 million (or some larger number determined by the Commission) or a market cap less than $1 billion (or some larger number determined by the Commission).

2. Employees Included in the Identification of the Median

In its discussion of which employees must be considered in identifying the median, the Commission explains that its "proposed requirements state that 'employee' or 'employee of the registrant' includes any full-time, part-time, seasonal or temporary worker employed by the registrant or any of its subsidiaries…." (Section II.C.2.a.) However, to the extent that the Commission seeks useful disclosure while limiting compliance costs and burdens, the Commission should reconsider any such broad interpretation of the reference to "all employees" in Section 953(b) of the Act.

We note that the Act itself is silent on whether Section 953(b) applies to non-U.S. employees and the issue is not addressed in the Act's legislative history. When balanced against the tremendous costs and other impediments (e.g., strict data privacy laws in many countries and the European Union) of obtaining full compensation data on non-U.S. employees, which statistical sampling and permissible estimates cannot satisfactorily address, the Commission should interpret the term "employees" as meaning U.S. employees only.

In addition, as part of our analysis of the potential impact of the proposed rules on certain clients, we determined that the usefulness of disclosure would be improved and the burden on employers would be lessened by the exclusion of part-time and seasonal workers from the pay ratio calculations. While the proposed rule only would apply to part-time or seasonal employees who are employed at the end of a fiscal year, the result may be unfairly affecting companies (such as retailers) that rely on seasonal or increased part-time help during the last few months of the year. Also, an employer could lower its pay ratio by terminating seasonal or part-time employees right before year-end so as not to include them in pay ratio calculations, thereby having the unintended consequence of early terminations of generally low paid employees. For a pay ratio comparison to provide meaningful disclosure, it should focus only on full-time employees; after all, the CEO in the ratio will be a full-time employee.

If the Commission nevertheless determines that part-time and seasonal workers should be included, the Commission should take the logical step of permitting companies to annualize the compensation of such workers. By requiring the inclusion of part-time and seasonal workers without allowing companies to annualize their compensation, the Commission's proposed rule distorts the impact of these workers in any pay ratio calculation.

3. Proposed Compliance Date

The Commission notes that Section 953(b) of the Act does not specify a date for compliance with its requirements. (See Section II.D.1.) The current proposal of the Commission is for a registrant to begin compliance for its first fiscal year commencing on or after the effective date of the rule, with the omission of this initial pay ratio disclosure permitted from filings until the registrant's annual report (Form 10-K) for that fiscal year or later proxy statement for its next annual meeting of shareholders.

While the Commission provides some guidance on the possible timing of compliance for companies with fiscal years ending on December 31 regarding the likely operation of the rules if finalized as proposed, some of our clients with other fiscal years have inquired whether their situations might result in earlier compliance under such proposals. Depending on the timing of the issuance of final rules and their subsequent effective date, it appears that disclosure could be required in 2015.

For example, assume that comments on the proposals are considered, the proposed rules are refined and finalized, and the effective date ultimately is June 1, 2014. For a company with a June 30 fiscal year-end, the first fiscal year after the effective date would begin on July 1, 2014. Under this scenario, the initial pay ratio disclosure would be required by the annual proxy statement for the fiscal year ending June 30, 2015, which would result in an initial required disclosure in the 2015 proxy statement.

In order to allow all companies adequate time to determine how best to comply with the pay ratio disclosure requirement, and then obtain the pay data necessary for compliance, we believe that the Commission needs to push back its compliance date for all companies until at least 2017. The Commission recognized in its discussion of its proposed requirements the substantial time and effort that can be involved for obtaining the compensation information necessary to properly determine the pay ratio. Further, in developing examples regarding compliance dates, the Commission should not focus solely on companies with fiscal years ending on December 31, but also include an example addressing the earliest that any company might need to comply with its final rule.

Hay Group appreciates this opportunity to provide comments regarding the pay ratio disclosure proposed rulemaking.

Very truly yours,

Hay Group

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