MERIDIAN
COMPENSATION PARTNERS, LLC

December 2, 2013

Via E-Mail (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-07-13— Proposed Rule to Implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

Dear Ms. Murphy:

Meridian Compensation Partners, LLC ("Meridian") is pleased to provide comments to the Securities and Exchange Commission ("Commission") on the Commission's proposed rule to implement the provisions of Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act").

Meridian is one of the largest independent executive compensation consulting firms in North America. We provide trusted counsel to Boards and Management at hundreds of large public and private companies, consulting on executive compensation design issues, corporate governance matters and related disclosures. Our consultants have decades of experience in developing pay solutions that are responsive to shareholders, reflect good governance practices and align with company performance.

Section 953(b) of the Dodd-Frank Act directs the Commission to amend Item 402 of Regulation S-K ("Item 402") to require issuers (subject to certain exceptions) to disclose the median of the annual total compensation of all employees of an issuer (excluding the chief executive officer (CEO)), the annual total compensation of that issuer's CEO and the ratio of the median of the annual total compensation of all employees to the annual total compensation of the CEO (referred to collectively as the "Pay Ratio Disclosure").

On September 18, 2013, the Commission issued proposed amendments to Item 402 to add the Pay Ratio Disclosure requirement (Pay Ratio Disclosure, Release Nos. 33-9452; 34-70443 (September 18, 2013) [78 FR 60560] (referred to herein as the "Release"). Our comments on the proposed amendments are set forth below.

Employees Covered under Pay Ratio Rule ("Covered Employees")

In the Release, the Commission noted that the Dodd-Frank Act expressly requires disclosure of the median of the annual total compensation of "all employees" (except for the CEO). The proposed rule reflects this mandate by defining "all employees" to mean any individual employed by the registrant or any of its subsidiaries who falls into one of the following classifications on the last day of the registrant's fiscal year (referred to as "Covered Employees"):

- Full-time employees;
- Part-time employees;

- Seasonal employees; and
- Temporary workers.

Under the foregoing definition of Covered Employees, the proposed rule would cover the worldwide workforce of a registrant and its subsidiaries.

Meridian Comment

In the Release, the Commission has asked for comments on alternative definitions for Covered Employees. These alternative definitions include (i) limiting Covered Employees to full-time permanent employees, (ii) adding to the proposed definition of Covered Employee a minimum period of employment for part-time, seasonal and temporary workers and (iii) limiting Covered Employees to U.S. employees. We have the following comments on each of these alternative definitions.

- Covered Employees Limited to Full-Time Permanent Employees. We recommend that the Commission define Covered Employees to solely mean those individuals who are ***full-time*** permanent employees of the registrant or any of its subsidiaries on the last day of the registrant's fiscal year (other than the CEO). The compensation structure of full-time permanent employees is a more accurate reflection of a registrant's overall compensation philosophy and practices than the compensation structure of part-time, seasonal or temporary workers. Due to the inherent nature of seasonal and temporary positions (and the limited working hours of part-time workers), these employees typically are not covered under the full scope of a registrant's compensation and benefit programs. Moreover, given their limited term of employment, these employees' total annual compensation generally would be substantially less than full-time employees of the same registrant. Hence, for some registrants the inclusion of non-full time employees could result in the determination of a median employee that does not accurately reflect a registrant's actual pay philosophy and practices. However, this would not be the case if the median employee is determined from an employee population that is comprised solely of full-time permanent employees.

- Minimum Number of Days of Service. If the Commission should adopt a final rule that defines Covered Employees to include part-time, seasonal and temporary employees, we recommend that the definition provide that such employees must have been employed, at a minimum, during the 90 day period ending on the last day of the registrant's fiscal year to be considered a Covered Employee. Employees who are employed for a *de minimis* period (i.e., less than 90 days) generally are not representative of the actual workforce employed by a registrant during its entire fiscal year. Additionally, excluding short-service employees would likely ease the administrative burden and compliance costs associated with determining the median employee.

- Covered Employees Limited to U.S. Employees. In the Release, the Commission asks whether the exclusion of non-U.S. employees from the definition of Covered Employees would be consistent with the requirements of Section 953(b) of the Dodd-Frank Act. We do not believe such exclusion would be consistent with or permitted under the requirements of Section 953(b) of the Dodd-Frank Act. However, we believe it would be highly desirable to limit the Pay Ratio Disclosure solely to U.S. employees. The inclusion of non-U.S. employees would raise significant issues, a number of which were discussed in the Release (e.g., substantially increase compliance costs for multinational companies, introduce very challenging cross-border compliance issues, and raise concerns about the impact of non-U.S. pay structures on the comparability of data to companies without significant off-shore operations). We believe it would be necessary for Congress to amend Section 953(b) of the Dodd-Frank Act to specifically exclude non-U.S. employees.

Adjustments to Compensation of Covered Employees

The proposed rule would permit, but not require, a registrant to annualize total compensation for all permanent full-time employees who were employed for less than the full fiscal year for purposes of determining total compensation and identifying the median employee. In addition, depending on the facts and circumstances, the proposed rule would allow a registrant to annualize the compensation for a permanent part-time worker who has only worked a portion of the year based on the worker's part-time compensation rate. If a company chooses to annualize total compensation, then it would be required to do so for all similarly situated employees. However, the proposed rule would not allow companies to annualize pay for other classifications of employees, such as seasonal and temporary employees.

Meridian Comment

In the Release, the Commission seeks comment on permitting registrants to annualize the compensation of part-time, seasonal and temporary workers. We have the following comment on this adjustment to compensation.

If the Commission should adopt a final rule that defines Covered Employees to include part-time, seasonal and temporary employees, then we would recommend that the final rule provide that the compensation of these employees may be annualized, at the registrant's discretion. Annualization of compensation would make the comparison between the median employee's total annual compensation more representative of a registrant's pay practices for full-time employees.

Covered Entities

As previously noted, the proposed rule would cover individuals who are Covered Employees of the registrant or any of its subsidiaries on the last day of the registrant's fiscal year. Generally, a subsidiary of a registrant is an affiliate controlled by the registrant directly or indirectly through one or more intermediaries pursuant to Rule 405 of the Securities Act of 1933 and Rule 12b-2 of the Securities Exchange Act of 1934 (referred to as "Covered Entities").

Meridian Comment

We recommend that the Commission define Covered Entities to mean the registrant and its subsidiaries that consolidate their financial statements with those of the registrant. This definition of Covered Entities is consistent with the manner in which investors view and analyze the overwhelming majority of registrants. Further, this definition avoids the necessity of a registrant accumulating compensation data for entities outside of its consolidated financial group which, in certain instances, may prove problematic and costly.

Determining Median Employee

The proposed rule would provide registrants significant latitude in the identification of the median employee. In particular, the proposed rule would permit registrants to identify the median employee from a sample population of the entire workforce. In addition, the proposed rule would permit registrants to identify the median employee using a consistently applied compensation measure (e.g., salary, W-2 wages), whether this identification is made from a sample employee population or the entire employee population. The proposed rule does not prescribe specific estimation or sampling techniques or confidence levels that must be used to develop sample employee population or median employee. In support of this flexible approach, the SEC noted in the Release that companies are in the best position to determine what is reasonable in light of their own employee population and access to compensation data.

Meridian Comment

We have the following comments regarding the methodologies permitted for determining the median employee under the proposed rule.

- Use of Statistical Sampling and Reasonable Estimates. We support the use of self-determined statistical sampling and reasonable estimates to identify the median employee. Registrants have expressed widespread concern regarding the cost and ability to accumulate compensation data necessary to comply with the Pay Ratio Disclosure. The proposed rule responds, in part, to these concerns by permitting companies to use self-determined sampling techniques and reasonable estimates to identify the median employee, provided that such sampling or estimation techniques are applied on a consistent basis. Furthermore, this flexibility would likely facilitate registrants employing methodologies that are (i) valid (i.e., seen to be reasonable), (ii) stable (i.e., low variance over time) and (iii) defensible (i.e., can be explained in a public filing).

- Use of Consistently Applied Compensation Measures. Similarly, we support the use of a consistently applied compensation measure to identify the median employee. Permitting registrants to identify the median employee based on a self-selected compensation measure (e.g., salary, W-2 wages) would likely reduce the cost of compliance by making the data collection process less burdensome for registrants. Furthermore, under the proposed rule, a compensation measure may be based on payroll or tax records even if the period covered by such records differs from a registrant's fiscal year, which would likely reduce the cost of compliance for registrants that have fiscal years that are not based on the calendar year.

- Inclusion of Safe Harbor. In the Release, the Commission rejected commenters' suggestions that the proposed rule include safe harbor methodologies. We agree with the Commission's decision to favor flexibility over "prescriptive requirements to avoid the additional costs that a less flexible approach could impose." We further agree with the Commission's observations that a prescriptive approach "may not be workable for all types of registrants." Therefore, we urge the Commission to adopt a final rule that maintains the flexibility permitted registrants under the proposed rule.

Cost of Compliance versus Claimed Benefits

The Commission has made a general request for quantitative information as to the costs and benefits of the proposed rule and any suggested alternatives to the proposed rule.

Meridian Comment

We acknowledge that certain aspects of the proposed rule, such as permitting the use of sampling, reasonable estimation techniques and consistently applied compensation measures, are likely to reduce the cost of compliance for many registrants. However, the Commission noted that under certain circumstances, the cost of compliance might continue to be significant even when registrants choose to use the foregoing techniques to identify the median employee. To better understand these compliance costs, registrants have been asked to provide the Commission detailed compliance cost estimates. While we are not in a position to provide such detailed cost estimates, we are able to advise the Commission that many of our clients with significant non-U.S. workforces believe that they would incur substantial costs to comply with the proposed rule.

Required Disclosures

In addition to the Pay Ratio Disclosure, the proposed rule would require the following disclosures:

- Any methodology used to identify the median;
- Any material assumptions, adjustments or estimates used to identify the median or to determine total compensation or any elements of total compensation; and
- Any estimated amounts.

The proposed rule further provides that a registrant's disclosure of the methodology and material assumptions, adjustments and estimates used should provide sufficient information for a reader to be able to evaluate the appropriateness of the estimates. However, the proposed rule would not require the disclosures to include technical analysis or formulas (such as statistical formulas, confidence levels or the steps used in data analysis). In addition, the proposed rule would not require registrants to include a narrative discussion of the Pay Ratio or its components.

Meridian Comment

We support the high-level disclosure of techniques, sampling methods and estimates used to determine median employee as would be required under the proposed rule. This level of disclosure should provide investors with sufficient information to understand the manner in which a registrant determined its Pay Ratio and the appropriateness of such determination. For this reason, we do not support any required disclosure of additional metrics about the total compensation of all employees as suggested in question 41 of the Release. Further, such additional quantitative disclosures would appear to exceed (rather than implement) the requirements of Section 953(b) of the Dodd-Frank Act.

Similarly, we do not support any required narrative disclosure to explain the Pay Ratio Disclosure as suggested in question 40 of the Release. In question 40, the Commission asks whether registrants should be required to disclose narrative information about the Pay Ratio or its components, or factors that give context for the median, such as employment policies, use of part-time workers, use of seasonal workers, outsourcing and off-shoring strategies. We believe such required disclosures would likely involve proprietary business information and prove anti-competitive. Further, like the additional quantitative disclosures discussed above, such additional narrative disclosures would appear to exceed (rather than implement) the requirements of Section 953(b) of the Dodd-Frank Act.

Location of Filing

The proposed rule does not specify the placement of the Pay Ratio Disclosures within a registrant's proxy statement or annual report.

Meridian Comment

We recommend that a registrant have the discretion to locate the Pay Ratio Disclosure in its Compensation Discussion and Analysis or as a free-standing section in its executive compensation disclosure.

Transition Period (Effective Date)

Under the proposed rule, a registrant must begin to comply with the Pay Ratio Disclosure for the registrant's first fiscal year commencing on or after the effective date of the final rule.

Meridian Comment

The proposed transition period could result in a significantly earlier initial compliance date for registrants with fiscal year ends other than December 31 in comparison to registrants with fiscal year ends of December 31. For example, if the effective date for the final rule was April 1, 2014, a registrant with a fiscal year-end of March 31 would immediately be subject to the Pay Ratio Disclosure and would be required to first disclose the Pay Ratio in its proxy filed in 2015. In contrast, a registrant with a fiscal year-end of December 31 would not be subject to the Pay Ratio Disclosure until the beginning of its 2015 fiscal year starting January 1, 2015 and would be required to first disclose the Pay Ratio in its proxy filed in 2016.

The proposed transition period clearly is more favorable for registrants with December 31 fiscal year ends than for registrants with fiscal year ends other than December 31. To create a more equitable transition period, we recommend that, in the event that the Commission adopts a final rule with an effective date in 2014, the Commission adopt a transition period that requires a registrant to comply with the Pay Ratio Disclosure for the registrant's first fiscal year commencing on or after January 1, 2015.

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We appreciate the opportunity the Commission has afforded the public to comment on its proposed rule implementing Section 953(b) of the Dodd-Frank Act. We welcome the opportunity to discuss with the Commission and its staff our comments provided herein.

Sincerely,

Meridian Compensation Partners, LLC

Donald G. Kalfen
Partner