

First Wave of Pay Ratio Disclosures Filed

March 7, 2018

U.S. public companies recently began disclosing their CEO-to-median employee pay ratios, as required by the Dodd-Frank Act and Item 402(u) of Regulation S-K. It is still too early to draw conclusions, but we outline some preliminary observations below based on our review of the pay ratio disclosure included in 35 SEC filings through February 2018. A list of these 35 companies with links to the applicable SEC filing is included at the end of this memorandum.¹

CEO-to-Median Employee Pay Ratios. The earliest pay ratios varied widely within and across sectors. Using the Global Industry Classification Standards (GICS) to classify companies by sector, we observed the following ranges of pay ratios:

- Financials: **1:1 – 429:1**
- Health Care: **6.4:1 – 388:1**
- Industrials: **50:1 – 428:1**
- Real Estate: **14.84:1 – 111:1**
- Utilities: **55:1 – 190:1**
- Energy: **0.9:1 – 25:1**
- Information Technology: **46:1***
- Materials: **59.6:1***
- Telecommunications Services: **85:1***

* A single ratio is provided instead of a range because only one company in the sector was identified.

Supplemental Pay Ratios. To supplement the prescribed pay ratio disclosure, nine companies provided additional pay ratios, reflecting adjustments to certain elements of compensation and/or the employee population used to calculate the required pay ratio, including, for example:

- Excluding special elements of CEO compensation (First Horizon, IQVIA, Teva)
- Excluding elements of compensation for both CEO and median employee (Cognex, Eli Lilly, Magicjack)
- Adjusting CEO compensation to annualize compensation after an internal mid-year promotion (Popular) and to value performance awards at target vs. maximum (IQVIA)
- Including U.S. employees only (AES, IQVIA)
- Including realized pay only (AES)
- Reflecting the effect of “add backs” for health and dental benefits (Fastenal)

The supplemental pay ratios disclosed by most companies had the effect of lowering the ratio. That said, some companies provided higher supplemental pay ratios (Eli Lilly, Popular).

¹ For additional background on the pay ratio disclosure rule, please see our previous client memoranda – [SEC Adopts Final Pay Ratio Disclosure Rule](#) and [Pay Ratio Disclosure Rule: The SEC’s Latest Guidance Should Ease Compliance Costs for Companies](#).

Add Backs. The pay ratio disclosure rule permits a company to “add back” certain compensation elements that may be omitted from the summary compensation table. One company (Fastenal) disclosed the use of such “add backs” – for health and dental benefits – and did so in connection with its supplemental pay ratio.

Consistently Applied Compensation Measure (CACM). Some companies used base salary (e.g., IQVIA, Magellan Midstream, Spirit Aerosystems) or W-2 wages (e.g., Pinnacle) as the CACM to identify their median employee. Most opted for a “base pay plus” approach and added additional compensation components to base salary, including, for example:

- Commissions, annual bonus, equity compensation and other incentive payments (Magicjack)
- Equity grants and non-equity incentive compensation (AES)
- Target cash bonus (Pentair, Teva)
- Annual cash bonus and equity compensation (Apollo)
- Annual cash bonus, equity compensation and other incentive payments (Apartment Investment & Management)
- Annual cash bonus, actual overtime, carried interest paid and equity granted (KKR)
- Bonuses earned (Carlyle)
- Bonuses and overtime paid (Honeywell)

Statistical Sampling. No companies disclosed the use of statistical sampling for purposes of identifying their median employee.

Optional Description of Median Employee. When describing the methodology used to select the median employee, some companies (e.g., Carlyle, Cincinnati Financial, Spirit Aerosystems) explained why one particular individual was selected from two or more potential median employees. Other companies provided a more detailed description of the identified median employee and his or her particular circumstances, including, for example:

- Whether the median employee is a full-time employee (Home Bancshares, Teva)
- Whether the median employee is salaried or paid hourly (A.O. Smith, Teva)
- Whether the median employee received some special pay component (Eli Lilly, First Horizon, Teva)
- The median employee’s role with the company (A.O. Smith, Home Bancshares)
- The median employee’s location (AES, A.O. Smith, Teva)

Location of Disclosure. Over half of the early filers included the pay ratio disclosure at the end of the executive compensation section following the “potential payments upon termination or change in control” disclosure (e.g., AES, A.O. Smith, AGNC, Apollo, Carlyle, Eli Lilly, Honeywell, IQVIA, Pentair, Pinnacle, Spirit Aerosystems, Umpqua). Alternative placements of the pay ratio disclosure included, for example:

- After the summary compensation table (Citizens Financial, Teva)
- As part of the CD&A (Cincinnati Financial, First Defiance Financial, First Real Estate Investment Trust of New Jersey)

De Minimis Exemption. Seven companies utilized the *de minimis* exemption to exclude portions of the companies' non-U.S. employees in anywhere from one to 27 countries (A.O. Smith, Eli Lilly, Fastenal, Honeywell, IQVIA, Pentair, Teva).

Data Privacy Exemption. No companies disclosed the use of the data privacy exemption.

COLA Adjustments. No companies disclosed the use of cost of living adjustments.

Pay Ratio Disclosure Reviewed			
AES CORP (PRE14A)	DORCHESTER MINERALS, LP (PRE14A)	HOME BANCSHARES INC (DEF14A)	PINNACLE FINANCIAL PARTNERS, INC (PRE14A)
A.O. SMITH CORP (DEF14A)	ELI LILLY & CO (PRE14A)	HONEYWELL INTERNATIONAL INC (PRE14A)	POPULAR, INC (PRE14A)
AGNC INVESTMENT CORP (PRE14A)	FARMERS NATIONAL BANC CORP (PRE 14A)	INVIVO THERAPEUTICS HOLDING COMPANY (FORM S-1)	PROTALIX BIOTHERAPEUTICS, INC (PRE14A)
APARTMENT INVESTMENT & MANAGEMENT CO (PRE14A)	FASTENAL CO (DEF14A)	IQVIA HOLDINGS INC (DEF14A)	RLI CORP (PRE14A)
APOLLO GLOBAL MANAGEMENT, LLC (FORM 10-K)	FIRST DEFIANCE FINANCIAL CORP (PRE 14A)	KKR & CO. LP (FORM 10-K)	SPIRIT AEROSYSTEMS HOLDINGS, INC (PRE14A)
CARLYLE GROUP LP (FORM 10-K)	FIRST HORIZON NATIONAL CORP (PRE14A)	MAGELLAN MIDSTREAM PARTNERS, LP (DEF14A)	TENNANT CO (PRE 14A)
CINCINNATI FINANCIAL CORP (PRE14A)	FIRST MID ILLINOIS BANCSHARES INC (PRE14A)	MAGICJACK VOCALTEC, LTD (DEFM14A)	TEVA PHARMACEUTICAL INDUSTRIES LTD (FORM 10-K)
CITIZENS FINANCIAL SERVICES INC (PRE14A)	FIRST REAL ESTATE INVESTMENT TRUST OF NEW JERSEY (DEF14A)	OTTER TAIL CORP (DEF14A)	UMPQUA HOLDINGS CORP (PRE14A)
COGNEX CORP (PRE14A)	GCP APPLIED TECHNOLOGIES INC (PRE14A)	PENTAIR PLC (PRE14A)	

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