

Keith Higgins Speaks

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Keith Higgins, the director of the Division of Corporation Finance, spoke at the always informative Tackling Your 2014 Compensation Disclosure: The Proxy Disclosure Conference, which was hosted by CompensationStandards.com and TheCorporateCounsel.net.

On the recently proposed pay ratio rules, he indicated that the SEC expects companies to use methods to find their median employee that fit the size and structure of their workplace and the way they pay them. Bigger companies may use statistical sampling and then any consistently applied measure to arrive at the median, before calculating that employee's total compensation. Recognizing that even statistical sampling may be very challenging for multinational companies with multiple lines of global businesses, the SEC would be very interested in getting hard data on the associated costs during the comment process. He suggested that the proposal does not permit annualization of non-full-time employees because the SEC was concerned that this would create a lot of additional work for companies, hence, this may be another area that companies will consider commenting on if they perceive benefits that outweigh the costs.

The remaining three rulemaking items in the Dodd-Frank "gang of four" are on the "middle burner" and have dedicated teams assigned to them, although they may not be immediately forthcoming. The Staff has examined companies' existing pay for performance disclosure to understand the current "market" for different types of disclosure such as realized and realizable pay.

It does not appear that any imminent guidance will be issued on the compensation advisor rules or as a result of the Staff reviews of implementation of the 2009 proxy enhancement disclosure. The Staff continues to make specific comments to issuers about proxy disclosure such as benchmarking or performance metrics.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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