

SEC Pay Ratio Rule: Davis Polk Comment Letter

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As discussed previously [here](#), the SEC solicited comments on its proposed “pay ratio” rule, as mandated by Section 953(b) of the Dodd-Frank Act, that requires companies to disclose the median annual total compensation of all employees, as well as the ratio of that median to the annual total compensation of the company’s chief executive officer. Davis Polk has submitted a [comment letter](#) with the following recommendations, which are focused on easing companies’ compliance burdens:

- **More flexible timing for determining the “median employee”:** providing companies with the option to select a date prior to the company’s fiscal year end as the calculation date for purposes of determining the median employee, so as to allow companies to perform the median employee analysis outside of the crush of the busy fiscal year end.
- **Exclusion of part-time, seasonal and temporary employees:** including only full-time employees in the median employee determination, on the basis that the inclusion of part-time, seasonal and temporary employees would distort the calculation of the ratio.
- **Clarification of relevant “chief executive officer”:** requiring the disclosure of the pay ratio for only the individual serving as CEO on the last day of the company’s most recently completed fiscal year, which we believe is the most relevant ratio.
- **More flexible use of “consistently applied compensation measure”:** seeking clarification that companies may use one or more comparable compensation measures to identify the median employee, in light of the differences in compensation practices within a company across different jurisdictions, geographic locations and lines of business.
- **Exclusion of unconsolidated subsidiaries:** limiting the requirement to only employees of consolidated subsidiaries in the pay ratio calculation, on the basis that unconsolidated subsidiaries are not included in the financial statements of the company and that, as a practical matter, companies may have little impact or influence on the compensation of employees at affiliates that are not consolidated subsidiaries.
- **Clarification of effective date:** seeking clarification that the first required pay ratio disclosure is in the 2016 proxy statement for all companies, regardless of when a company’s fiscal year ends, if final rules are indeed implemented in 2014.
- **Transition period for M&A transactions:** permitting companies that undergo a significant corporate transaction to elect to disregard changes in its employee population resulting from the transaction during a transition period, similar to the transition period afforded to newly IPOed companies.

For further details regarding the SEC’s proposed pay ratio disclosure rule, please see our [memo](#).

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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