

Adoption of SEC Pay Ratio Rule Expected in Near Term

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The *WSJ* [reports](#) that the SEC will likely adopt a pay ratio rule next week. Amidst intense speculation over whether the final rule will provide any flexibility to companies regarding counting non-U.S. and part time or temporary workers when determining the median employee, the article states that the SEC intends to allow companies to exclude 5% of its overseas workforce.

A June 4 memorandum by the SEC Division of Economic and Risk Analysis, which we previously discussed [here](#), found that the exclusion of 5% of employees may cause the pay ratio estimate to decrease by up to 3.4% or increase by up to 3.5%. The Division later updated the memo on June 30 for more detailed scenarios but with largely the same general results. The memorandums noted that the analysis is limited by a lack of comprehensive data on the intra-company distribution of compensation of these categories of employees.

The Center for [Executive Compensation recommended](#) that the Commission allow companies to exclude employees on a principles-based manner, based on the unique circumstances of each company, such as whether the cost of compliance is high relative to the impact of the exclusion. The Center points out that the SEC's own data shows that excluding 40% of an employee population only reduces the pay ratio by 10.77% or increases it by 12.08%. The average respondent to the Center's pay ratio survey has 40% of their employees located overseas, and the Center estimates that excluding those employees would result in a 47% pay ratio compliance cost savings.

Similarly, the [Business Roundtable](#) argues that unlike the academic and government research that the SEC relied on to produce the memorandums, companies do not have easy access to compensation data from around the world, since they use a wide range of different and often incompatible payroll systems. Compensation is not even uniformly defined across international boundaries due to the allocation of different types of benefits and taxes. The main reason that companies have not attempted to gather the information is because there is no business benefit, and a great deal of cost, in collecting and harmonizing the pay data. Doing so merely to comply with the pay ratio rule does not change that calculus. The Business Roundtable urges the SEC to seek to have Congress change the rule, or otherwise use its exemptive authority to ease the burden on companies.

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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