

# Changes in Final Pay Ratio Disclosure Rules

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The SEC held an open meeting today to adopt the [final rules](#) requiring pay ratio disclosure, which were just released. A company's first reporting period for the pay ratio disclosure is its first full fiscal year beginning on or after January 1, 2017. This appears to mean the 2018 proxy statement for companies with fiscal years ending December 31st.

In her opening comments, Chair White noted that the Commission received over 287,000 comment letters, including more than 1,500 unique letters, that both criticized and endorsed the pay ratio rule. In her view, the Commission's responsibility is to implement the mandates of Congress in a cost-effective way: "It is the law and we're required to carry it out."

We will issue a detailed memo. Below is a brief summary of the major changes from the proposed rule that include the ability for companies to:

- Calculate the median employee only once every three years. The same median employee can be used for the ratio for the next three years unless there have been significant changes in the employee population or employee compensation arrangements that would result in significant changes to the disclosure.
- Use any date within three months prior to the last day of the last completed fiscal year to identify the median employee (the proposed rule used the last day of the last completed fiscal year).
- Exclude employees in jurisdictions where the company would violate laws governing data privacy in gathering the information. Companies must first use reasonable efforts and provide a legal opinion.
- Exclude all non-U.S. employees if they account for 5% or less of the total number of employees, or up to 5% of the total employees who are non-U.S. employees. In calculating this number, any non-U.S. employee exempted under the data privacy exemption must be counted against this percentage (unless that number exceeds 5%).
- Make cost-of-living adjustments for the compensation of employees in jurisdictions other than the jurisdiction in which the CEO resides to identify the median employee and calculate that employee's annual total compensation.

Both Chair White and the Director of Corporation Finance, Keith Higgins, emphasized that the rule permits "substantial" and "significant" flexibility, including, as proposed, discretion to use estimates and sampling. Consistent with the proposed rules, companies can review the total employee population, use statistical sampling or any other reasonable methods, and the median employee can be identified based on consistently applied compensation measures.

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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