

## [Securities Regulation Daily Wrap Up, TOP STORY—SEC issues guidance on compliance with pay ratio rule, \(Sept. 22, 2017\)](#)

Securities Regulation Daily Wrap Up

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Both the Commission and the staff of the Division of Corporation Finance have issued guidance to assist registrants with their disclosure about the pay ratio between CEOs and all other employees on which they will begin reporting early next year. Earlier this year, as acting chairman, Michael Piwowar sought additional comments on the rule after hearing that issuers had encountered compliance difficulties while preparing to comply with the rule. The rule will take effect on schedule and the nature of the disclosure remains unchanged, but the guidance is intended to assist registrants and potentially reduce the costs of compliance.

The SEC adopted the pay ratio rule in August 2015 as mandated by the Dodd-Frank Act. The rule requires the disclosure of the median of the annual total compensation of all of a registrant's employees excluding the CEO, the annual total compensation of the CEO, and the ratio of the median of the two (Release 33-9877). The disclosure is required in any annual report, proxy or information statement, or any registration statement that requires executive compensation disclosure under Item 402 of Regulation S-K. The rule does not apply to emerging growth companies, smaller reporting companies, or foreign private issuers.

**Commission guidance.** The Commission guidance notes that the pay ratio rule affords registrants significant flexibility in determining the appropriate methodology to use in identifying the median employee and in calculating the median employee's total annual compensation. The disclosure may be based on reasonable belief; the use of estimates, assumptions, and methodologies; and reasonable efforts. Registrants may rely on statistical sampling and a consistently applied compensation method such as payroll or tax records ([Release No. 33-10415](#)).

A number of commenters were concerned about potential liability since the flexibility permitted by the rule may involve a degree of imprecision. The Commission's guidance assures registrants that as long as they use reasonable estimates, assumptions, or methodologies, and good faith efforts, there would be no basis for an enforcement action. The guidance also provides additional clarity related to non-U.S. employees, the identification of a median employee, and the use of independent contractors.

**Staff guidance.** The staff level [guidance](#) was developed with input from the Division of Economic and Risk Analysis. It includes information on how to use statistical sampling methodologies and other reasonable methods, and includes hypothetical examples. The staff advises that registrants may combine the use of reasonable estimates with the use of statistical sampling or other reasonable methodologies. They also may use a combination of sampling methods.

The examples provided in the staff guidance include situations where registrants may use reasonable estimates, examples of reasonable methodologies they may use, and examples of the use of reasonable estimates, statistical sampling, and other reasonable methods.

**C&DIs.** The staff also updated its compliance and disclosure interpretations. The [update](#) to Question 128C.01 addresses how a registrant should select a consistently applied compensation measure to identify the median employee if it does not use annual total compensation using Item 402(c)(2)(x). The staff advises that a registrant may use any measure that reasonably reflects the annual compensation of all employees. The appropriateness of the measure will depend on the facts and circumstances.

The staff withdrew Question 128C.05 and added Question 128C.06. Under Question 128C.06, the staff advises that it will not object if a registrant describes the pay ratio as an estimate calculated in a manner consistent with Item 402(u) given that the disclosure may involve a degree of imprecision.

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