

CLIENT MEMORANDUM

SEC Proposes Pay Ratio Disclosure Rules

September 20, 2013

AUTHORS

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On September 18, 2013, the Securities and Exchange Commission, by a 3 to 2 vote, proposed new pay ratio disclosure rules as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed rules will require most public companies (with exceptions for emerging growth companies, smaller reporting companies, and foreign private issuers) to annually disclose in filings that require executive compensation disclosure (e.g., annual reports on Form 10-K and proxy statements) (i) the median annual total compensation of all employees (other than the principal executive officer (the “PEO”) of the company), (ii) the annual total compensation of its PEO, and (iii) the ratio between these two numbers. The new rules will not apply to any compensation paid to employees until the calendar year following the calendar year in which final rules are adopted. From a practical perspective, this means that these rules will not impact disclosure of 2013 or 2014 compensation and will likely not be effective until the 2015 compensation disclosure is required during the 2016 proxy season.

In calculating the median annual total compensation of all employees (other than the PEO), the proposed rules will require the inclusion of all employees as of the end of the most recent fiscal year without carve-outs for specific categories of employees (e.g., non-U.S., part-time or temporary employees). However, the proposed rules provide companies with flexibility in determining the median, including by using statistical sampling, and no specific methodology is required.

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Given the various methods that will likely be employed to determine the median, the proposed rules will require disclosure of the methodology and any material assumptions, adjustments or estimates used.

The public now has 60 days to provide comments to the proposed rules. We will continue to monitor these proposed rules and comments and will provide updates to the extent that the proposed rules are changed or finalized.

If you have any questions concerning the foregoing or would like additional information, please contact Michael A. Katz (212-728-8204, mkatz@willkie.com), Jordan A. Messinger (212-728-8799, jmessinger@willkie.com), Ian L. Levin (212-728-8212, ilevin@willkie.com), or the Willkie attorney with whom you regularly work.

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