

**GET READY FOR THE SEC'S NEW PAY RATIO DISCLOSURES**  
**Public Company Disclosures Required Commencing in 2018**

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In 2015, the Securities and Exchange Commission (SEC) adopted a new pay ratio disclosure rule that requires public companies to disclose the ratio of the compensation of their “principal executive officer” (typically the chief executive officer) to the median compensation of their other employees. The SEC’s pay ratio rulemaking was mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act and applies to certain issuers for their first fiscal year beginning on or after January 1, 2017. Therefore, calendar year issuers will need to begin including pay ratio disclosure early in 2018. The pay ratio disclosures will have to be included in the proxy and information statements, annual reports on Form 10-K, and registration statements filed under the Securities Act of 1933 and the Securities Exchange Act of 1934.

The pay ratio disclosure rule, Item 402(u) of Regulation S-K, requires certain public companies to disclose:

- (i) The median of the annual total compensation of all employees of the company other than the principal executive officer, which under the rule means the total annual compensation of the “median employee”;
- (ii) The annual total compensation of the principal executive officer; and
- (iii) The ratio of these amounts.

In addition, the rule also requires companies to describe, in non-technical terms, the methodology used to identify the median employee and to calculate the annual total compensation.

The rule applies to the compensation of all employees of the public company, including employees of consolidated subsidiaries, employees based outside of the U.S., and part time or temporary employees. Independent contractors and leased workers are excluded from the term “employees.” The rule does, however, provide limited exemptions for non-U.S. employees if complying with the pay ratio disclosure rule would violate applicable foreign data privacy laws, or if the non-U.S. employees represent less than 5% of the company’s total employee population. The median employee must be an actual, individual employee, although the identity of the employee does not have to be disclosed. The pay ratio rule allows companies to use reasonable estimates to both identify the median employee, such as statistical sampling, and to calculate annual total compensation.

The pay ratio disclosures only apply to companies that provide a summary compensation table under Item 402(c) of Regulation S-K. Therefore, emerging growth companies, smaller reporting companies, foreign private issuers (including MJDS filers), and registered investment companies are not subject to this requirement.

Public companies subject to the new pay ratio disclosure rule should begin preparations for determining the methodology that will be used to identify their median employees and to comply with the pay ratio disclosure requirements. The pay ratio disclosures will be subject to securities law liabilities, and principal executive and financial officers will have to certify these disclosures. Therefore, affected companies should prepare to disclose accurate information in compliance with this new rule in their annual reports on Form 10-K for 2017, proxy statements for their 2018 annual stockholders meetings and in any registration statements.

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