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SEC Adopts Interpretive Guidance on Pay Ratio Rule

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On September 21, 2017, the Securities and Exchange Commission announced that it approved interpretive guidance to assist registrants in their efforts to comply with the pay ratio disclosure requirement in Item 402(u) of Regulation S-K. The guidance is timely as the pay ratio disclosure rule becomes effective for most registrants in proxy statements or annual reports filed in 2018 for fiscal years beginning on or after January 1, 2017.

The Commission's guidance offers three points of clarity:

- The Commission emphasizes its approval of the use of reasonable estimates, assumptions, methodologies and statistical sampling as permitted by the rule. In response to concerns that the use of estimates and assumptions may leave registrants with compliance uncertainty and potential liability, the Commission notes that "...if a registrant uses reasonable estimates, assumptions or methodologies, the pay ratio and related disclosure that results from such use would not provide the basis for Commission enforcement action unless the disclosure was made or reaffirmed without a reasonable basis or was provided other than in good faith."
- The Commission acknowledges that a registrant may use appropriate existing internal records, such as tax or payroll records, in identifying its median employee and in calculating its population of non-U.S. employees for purposes of determining whether it can exclude non-U.S. employees from its total number of employees under the 5% *de minimis* exemption.
- The Commission notes that a registrant may apply a widely recognized test that the registrant otherwise uses (for example, using employment law or IRS guidance) to determine whether its workers are employees for purposes of the pay ratio disclosure rule.

Additionally, the Staff of the Commission's Division of Corporation Finance separately released guidance and hypothetical examples related to sampling and methodologies to assist registrants in determining how to use statistical sampling and other reasonable methods in preparing pay ratio disclosure.

The full text of the Commission's guidance published on September 21, 2017 is available [here](#), and the full text of the Staff's guidance published on September 21, 2017 is available [here](#).