

SEC Releases Guidance on Pay Ratio Rules

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Last month, the **Securities and Exchange Commission** released new **Compliance and Disclosure Interpretations (“C&DIs”)** which provide guidance on the **CEO pay-ratio rules**. As a reminder, the CEO pay-ratio rules were enacted in August of 2015 and generally require public companies to disclose the ratio of their CEO’s annual total compensation to that of the median annual total compensation of all other company employees.

The new C&DIs provide guidance on several aspects of these pay-ratio rules, including the determination of individuals to be included in the employee population and identification of the median employee.

The following provides an overview of the C&DIs:

- **Use of a Consistently Applied Compensation Measure.** The pay-ratio rules provide that the median employee is determined using the annual total compensation (“ATC”) of each employee unless the company selects another “consistently applied compensation measure” (a “CACM”). The C&DIs clarify that any measure that “reasonably reflects” annual compensation of employees could serve as a CACM. The appropriateness of such measure depends on facts and circumstances. The CD&Is further clarify that companies cannot use hourly or annual rates of pay as the sole CACM.
- **Time Period for a CACM.** The pay-ratio rules provide that in order to calculate the pay-ratio, the company must first select a date (within 3 months of the end of its fiscal year) to determine the employee population. After determining the employee population the company identifies the median employee using either the ATC or a CACM. The CD&Is clarify that, in applying the CACM, a company is not required to use a period that includes the date on which the employee population is determined nor is it required to use a full annual period.
- **Furloughed Employees.** The pay-ratio rules provide that the employee population used to identify the median employee requires inclusion of full-time, part-time, temporary, and seasonal workers. The pay-ratio rules are silent on the treatment of furloughed employees, but the C&DIs clarify that companies will need to determine whether furloughed employees should be included in the employee population based on facts and circumstances. If the furloughed employee is determined to be an employee, his or her compensation should be determined using the same method as non-furloughed employees.

- Third Party Workers. The CD&Is further clarify that a company should include workers whose compensation it or one of its consolidated subsidiaries determines regardless of whether such workers are considered “employees” under tax or employment law.

For calendar year companies, the pay-ratio rules will apply for 2017 compensation with disclosures made in their 2018 proxy statements.

The full text of the CD&Is can be found [here](#).

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