Market Trends 2019/20: Pay Ratio Disclosures

A Practical Guidance® Practice Note by
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This practice note focuses on recent market trends covering the Securities and Exchange Commission's (SEC's) pay ratio rulemaking, which was mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (111 P.L. 203, 124 Stat. 1376), and provides recent pay ratio disclosure examples. The SEC originally proposed pay ratio disclosure in 2013, and the proposal generated a great deal of interest and debate. The final rule was adopted in 2015 and required pay ratio disclosure by companies with respect to their first full fiscal year that began on or after January 1, 2017. For calendar year companies, we've now seen three years of pay ratio disclosure.

For additional information on pay ratio disclosure, see Pay Ratio Disclosure and Pay Ratio Rule Presentation. For other market trends articles covering various capital markets and corporate governance topics, see Market Trends.

Disclosure Requirement

The pay ratio disclosure rule is contained in paragraph (u) of Item 402 of Regulation S-K (17 C.F.R. § 229.402(u)). It requires public companies to disclose:

- The median of the annual total compensation of all employees other than the chief executive officer
- The annual total compensation of the chief executive officer
- The ratio of these amounts

Filings Requiring Pay Ratio Disclosure

Generally, the pay ratio disclosure appears in filings that require executive compensation disclosure pursuant to Item 402 of Regulation S-K, such as proxy and information statements, annual reports on Form 10-K, and registration statements under the Securities Act of 1933 and the Securities Exchange Act of 1934.

Location of the Disclosure

The pay ratio disclosure is called for by Item 402(u) of Regulation S-K, which means it is a part of the executive compensation disclosure, but it is not part of the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K (17 C.F.R. § 229.402(b)). Generally, companies present the pay ratio chronologically in the order that it appears in Item 402, which is following the executive compensation and potential payments upon termination or change in control tables.

Employees Covered

For the purposes of the pay ratio rule, the term "employee" means an individual employed by the company or its consolidated subsidiaries as of any date (determined by the company) within the last three months of the company's last completed fiscal year. In addition to full-time employees and employees based in the United States, the term includes:

- Employees based outside of the United States
- Part-time employees
- Temporary employees
- Seasonal employees

Independent contractors, leased workers, and any employee employed by, and whose compensation is determined by, an unaffiliated third party are not considered employees for purposes of the pay ratio disclosure rule.

Individuals who become employees as a result of a business combination or the acquisition of a business can be omitted from the calculation of the median of the annual total compensation of all employees other than the chief executive officer for the fiscal year in which the transaction became effective.

Limited Exemption for Foreign Employees

There are two limited exemptions from the definition of employee. These exemptions permit companies to exclude certain employees located in non-U.S. jurisdictions (non-U.S. employees) from the pay ratio calculation.

The first is an exemption for employees in a foreign jurisdiction in which data privacy laws or regulations are such that, despite the company's reasonable efforts to obtain and process the information necessary to comply with the pay ratio disclosure rule, the company is unable to do so without violating those data privacy laws or regulations.

The second is a de minimis exemption for excluding non-U.S. employees who make up 5% or less of the total employee population.

Companies Exempt from Pay Ratio Disclosure Requirement

Smaller reporting companies, emerging growth companies, foreign private issuers, MJDS filers (i.e., registrants filing under the U.S. Canadian Multijurisdictional Disclosure System), and registered investment companies are not subject to the pay ratio disclosure requirement.

Identifying the Median Employee

The pay ratio disclosure rule gives companies flexibility to select a method for identifying a median that is appropriate to the size and structure of their businesses and compensation programs.

Companies may identify the median based on total compensation regarding their full employee population or by using a statistical sample or another reasonable method. Reasonable estimates of the median for companies with multiple business lines or geographical units may be determined using more than one statistical sampling approach.

The median employee must be an actual, individual employee. However, companies are not required to, and should not, identify the median employee by name or other identifiable information. Companies may choose to generally identify the median employee's position to place the compensation in context, but the instructions to the rule specify that they should not do so if providing the information could identify any specific individual.

Companies need only identify a median employee once every three years, unless there has been a change in the employee population or employee compensation arrangements that would significantly change the pay ratio disclosure. In addition, if the median employee is no longer with the company, promoted to a different position, or the makeup of the employee population has significantly changed as a result of a change of control or merger, companies are permitted to substitute a new median employee who has substantially similar compensation as the previous median employee, using the same consistently applied compensation measure as was previously used.

In year three of the pay ratio disclosure, most companies retain the same median employee for their pay ratio disclosure. By comparison, in year two, more companies identified a new median employee than not. As a reminder, calendar year companies that have not reidentified their median employee will need to do so for the upcoming 2021 proxy season.

In 2021, many, if not most, companies may need to reidentify the median employee, even if they're not required to by the every-three-year rule. The COVID-19 pandemic has caused companies to implement workforce reductions, furloughs, and changes in pay across many industries. All companies should consider whether these events constituted significant changes in the employee population or in employee and executive compensation arrangements. Additionally, some chief executive officers have agreed to reduce, defer, or otherwise accept changes to elements of their compensation in response to the pandemic, so companies are expected to discuss the impact of the pandemic on compensation and, ultimately, the pay ratio.

Once the median employee has been identified pursuant to one of the methods described above, the total compensation for the median employee must be calculated for the last completed fiscal year, consistent with the requirements for calculating the chief executive officer's total compensation for the same fiscal year for purposes of the summary compensation table.

For further discussion of the pay ratio disclosure rule, including the required disclosures that must be made, see Pay Ratio Disclosure.

Supplemental Disclosure and Ratios

In general, the pay ratio disclosure for most companies was limited to that required to be disclosed. However, companies are permitted to include supplemental ratios and additional disclosure to provide context for or present an alternative to the required pay ratio. Although most companies chose not to include supplemental ratios, when used, supplemental ratios often recalculate the pay ratio to adjust certain pay components, typically of the chief executive officer, or exclude certain employee populations. Common adjustments made to calculate supplemental ratios include excluding onetime or sign-on bonuses, annualizing multi-year performance awards, excluding pension payments, excluding all non-U.S. employees, and excluding all part-time and temporary employees. The prevalence of supplemental ratios did not change significantly year-over-year.

This year, there was not a meaningful increase in supplemental ratios. Similar to year two, the number of companies that included supplemental disclosures did not change significantly despite pressure from institutional investors to include supplemental disclosure about the median employee and employee population, including job functions; education levels; geographic location; full-time and part-time status; and use of temporary, seasonal, and subcontracted workers.

Pay Ratio Disclosure Examples

Below are recent examples of pay ratio disclosure reflecting:

- The reuse of the median employee
- Comparison with prior year pay ratio disclosure
- The use of supplemental ratios to reduce the pay ratio
- Explanations for an unusually high ratio
- Supplemental disclosures about the median employee and employee population

Pay Ratio Disclosure Explaining the Reuse of the Median Employee

As permitted by the pay ratio disclosure rule, in 2019 many companies used the same median employee that they had identified in 2018. Below are several examples of how companies disclosed their reuse of the median employee.

Example 1

"We did not have a significant change in employee population and the same median employee was used for the fiscal 2020 pay ratio calculation as was used for the 2018 and 2019 calculations, as permitted by the Pay Ratio Rule." *FactSet Research Systems Inc, Definitive Proxy Statement filed October 29, 2020 (7370 – Services-Computer Programming, Data Processing, Etc.).*

Example 2

"Our 2019 median employee, in accordance with SEC rules, was our median employee selected for 2018. In 2018, in accordance with SEC rules, we selected a median employee who had compensation that was similar to our 2017 median employee because our 2017 median employee was subsequently promoted, and as a result, that employee's compensation changed. We believe there has been no change in our employee compensation arrangements or employee population that would result in a significant change to our pay ratio disclosure for 2019, thus we did not re-identify a median employee for 2019." *PRA Group Inc. Definitive Proxy Statement filed March 29, 2020 (7320 – Services-Consumer Credit Reporting, Collection Agencies).*

Example 3

"As permitted by the SEC's pay ratio rules, we used the same median employee to calculate our fiscal 2020 pay ratio that we used to calculate our fiscal 2019 pay ratio, as we believe that there have been no changes in our employee population or employee compensation arrangements that would result in a significant change to our pay ratio disclosure." *Sysco Corporation, Definitive Proxy Statement filed October 7, 2020 (5140 – Wholesale-Groceries & Related Products).*

Example 4

"We used the same median employee as was identified for fiscal 2019, as we do not believe there have been changes to our employee population or compensation arrangements that would significantly impact the pay ratio." T*apestry Inc., Definitive Proxy Statement filed September 25, 2020 (3100 – Leather & Leather Products).*

Example 5

"Under SEC rules, the median employee is only required to be identified once every three years if there has been no change in our employee population or compensation arrangements or in the median employee's circumstances that we reasonably believe would significantly affect our pay ratio disclosure. Because there were no such changes, we did not re-identify a new median employee for 2019, but rather used the same median employee from last year." *Wright Medical Group N.V., Definitive Proxy Statement filed September 18, 2020 (3842 – Orthopedic, Prosthetic & Surgical Appliances & Supplies).*

Substitution of the Median Employee

Some companies would have used the same median employee in 2019 and 2018, but for the fact that the person was no longer employed for all or part of 2019. As permitted by the pay ratio disclosure rule, in 2019 these companies used an employee in 2019 who was paid approximately the same as the median employee for 2018. Below are several examples of how companies disclosed their substitution of a new median employee.

Example 1

"Although there was no change to XPO's employee population or compensation arrangements that the company believes would significantly impact the pay ratio disclosure, we reidentified our median employee due to a change in our 2018 median employee's circumstances in 2019. Our 2018 median employee received a salary increase as a result of his promotion to manager which the company believes would result in a significant change to the pay ratio disclosure. As permitted under the SEC executive compensation disclosure rules, we elected to run a full analysis to identify a new median employee. We selected December 31, 2019 as the date on which to determine our 2019 median employee." *XPO Logistics Inc., Definitive Proxy Statement filed April 21, 2020 (6798 – Real Estate Investment Trusts).*

Example 2

"Our median employee in fiscal year 2019 was a part-time remote Senior Stylist. We believe there has been no change to our employee population and compensation arrangements that we believe would result in a significant change to our pay ratio disclosure. However, our original median employee is no longer employed by the Company. Accordingly, as permitted under SEC rules, we have substituted a new median employee with substantially similar fiscal 2019 compensation as the original median employee for purposes of our pay ratio disclosure for fiscal year 2020." *Stitch Fix, Inc., Definitive Proxy Statement filed November 4, 2020 (5961 – Retail-Catalog & Mail-Order Houses).*

Example 3

"We continued to rely on our fiscal 2018 methodology and its determination of the Median Employee-Partner because there were no changes to the composition of our employee-partner population in fiscal 2020 that we reasonably believe would result in a significant change to our pay ratio disclosure. Additionally, although Mr. Farmer did not receive an annual cash incentive in fiscal 2020, as previously discussed in the section entitled 'Executive Compensation,' which impacted his total compensation for fiscal 2020, there were no other changes to our compensation arrangements in fiscal 2020 that we reasonably believe would result in a significant change to our pay ratio disclosure. Due to the fact that the employee-partner originally identified as the Median Employee-Partner was no longer employed by the Company, we picked a new Median Employee-Partner whose compensation was substantially similar to that of the original Median Employee-Partner in fiscal 2018." *Cintas Corporation, Definitive Proxy Statement filed September 15, 2020 (2320 – Men's & Boys' Furnishings, Work Clothing, & Allied Garments).*

Comparison with Prior Year Pay Ratio Disclosure – Changes from Year 1 to Year 2 or Explanation of Differences

In 2019, some companies used a different disclosure form than they did in 2018 when providing the disclosures provided by the pay ratio disclosure rule. Other companies added a discussion of the differences from the prior year's disclosure. Below are several examples of these types of comparisons.

Example 1

"Our median employee's compensation was $177,403. Our CEO's disclosed compensation amount was $15,590,338. Accordingly, our CEO Pay Ratio is 88:1.

The increase in the median employee's stated compensation from 2018 to 2019 was primarily due to an increase in the Change in Pension Value and Nonqualified Deferred Compensation Earnings item included in the Summary Compensation Table. The change in the actuarial present value of the median employee's pension benefit increased $46,894 primarily due to lower discount rates used at the end of 2019 to measure the present value of this benefit. This amount was $0 in 2018.

It is important to note that 87 percent of our CEO's compensation is at risk. Additionally, 66 percent of the amount disclosed as the CEO's total compensation in the Summary Compensation Table is the grant date value of equity awards made during 2019. He has not earned any value from these awards to date." *Williams Companies, Inc., Definitive Proxy Statement filed March 19, 2020 (4922 – Natural Gas Transmission).*

Example 2

"As of July 31, 2020, the end of our fiscal year, we had approximately 14,900 U.S. employees and approximately 7,350 non-U.S. employees. Our non-U.S. employees were acquired partially through Fiscal Year 2019 and therefore excluded from our determination of the median employee previously. This year we were required (under SEC rules) to recalculate our median employee with the inclusion of our non-U.S. employees. Therefore, our median employee has been updated for Fiscal Year 2020. Our non-U.S. employee's compensation was converted into U.S. dollars." *Thor Industries Inc., Definitive Proxy Statement filed November 5, 2020 (3716 – Motor Homes).*

Example 3

"Comparison to 2018 Median-Paid Annual Total Compensation

The annual total compensation of our median-paid employee for 2018 was $75,000. The median for 2019 is $76,000. Salary increases and other increases in compensation contributed to the increase in the median while changes in currency exchange rates reduced the year-on-year increase in the median. If the exchange rates had not changed during 2019, the $76,000 median shown above would have been $78,000." *Johnson & Johnson, Definitive Proxy Statement filed March 11, 2020 (2834 – Pharmaceutical Preparations).*

Supplemental Pay Ratios

Some companies included supplemental pay ratios showing alternative ratios based on assumptions different than those required by the pay ratio disclosure rule. Below are several examples of how companies disclosed supplemental pay ratios.

Example 1

"During 2019, our principal executive officer was our Chief Executive Officer, Dr. Martine Rothblatt. For purposes of this pay ratio disclosure, Dr. Rothblatt's 2019 annual total compensation was $45,651,970, and the 2019 total annual compensation for our median employee, identified as discussed below, was $196,979, resulting in a pay ratio of approximately 232:1. Dr. Rothblatt's total compensation for purposes of this disclosure differs from the total annual compensation reflected in the Summary Compensation Table because we included the value of employer paid non-discriminatory health and welfare benefits and basic life insurance premiums, which are not required to be disclosed in the Summary Compensation Table, but which we include here to give a more complete picture of our median employee's total rewards compensation.

As noted above under Supplementary Summary Compensation Table, Dr. Rothblatt's 2019 total compensation as reported in the Summary Compensation Table and as used in determining the pay ratio disclosed above includes the full value of equity awards granted to Dr. Rothblatt in 2019, although these equity awards were intended to cover four years of equity compensation for the period 2019–2022. In order to provide a more complete depiction of our pay ratio for 2019, a supplemental pay ratio was calculated using Dr. Rothblatt's annualized pro forma 2019 compensation, as disclosed in the Supplementary Summary Compensation Table, which includes one-fourth of the value of her four-year equity award, plus the value of employer paid non-discriminatory health and welfare benefits, totaling $15,644,470. The ratio of this measure to the compensation of the median employee, including the value of employer paid non-discriminatory health and welfare benefits as described above, was approximately 79:1." *United Therapeutics Corp., Definitive Proxy Statement filed April 29, 2020 (2834 – Pharmaceutical Preparations).*

Example 2

"For 2019, the median of the annual total compensation of all our employees (other than our CEO) was $113,869; and the annual total compensation of our CEO, for purposes of this pay ratio disclosure (as discussed below), was $18,729,996. As a result, the ratio of the annual total compensation of our CEO to the median of the annual total compensation of all our employees was approximately 164 to 1. As discussed further beginning on page 33, during 2019 Mr. Conroy was granted one-time performance-contingent Performance Stock Units intended to provide performance incentives over a three-year period. In order to provide a more accurate assessment of Mr. Conroy's compensation for 2019 relative to our median employee, and in order to account for the long-term intent of that award, as a supplemental ratio we deducted 2/3 of the value of that award, which would result in a supplemental pay ratio of 97:1." *Exact Sciences Corp., Definitive Proxy Statement filed April 29, 2020 (8731 – Services-Commercial Physical & Biological Research).*

Example 3

"The 2019 total annual compensation of our CEO was $11,204,097 and the median employee, excluding our CEO, was $52,908, resulting in a ratio of 212:1. This pay ratio is calculated in a manner consistent with SEC rules based on our payroll and employment records and the methodology described above. Because the SEC rules for identifying the median compensated employee and calculating the pay ratio based on that employee's annual total compensation allow companies to adopt a variety of methodologies, to apply certain exclusions, and to make reasonable estimates and assumptions that reflect their respective compensation practices, the pay ratio reported by other companies may not be comparable to the pay ratio reported by us, as other companies may have different employment and compensation practices and may utilize different methodologies, exclusions, estimates and assumptions in calculating their own pay ratios.

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Supplemental Pay Ratio

The required compensation measure used for our CEO and included in the pay ratio above does not represent his annual cash compensation. As described in the section titled 'Compensation & Long-Term Incentive for Our Chairman & CEO' beginning on page 23 of this Proxy Statement, total compensation includes the grant date fair value of $10,313,375 for a restricted stock award that does not vest until 2028. Excluding this restricted stock award, the annual cash compensation of our CEO was $890,722, and the pay ratio of our CEO to our median employee was 17:1." *Watsco, Inc., Definitive Proxy Statement filed April 24, 2020 (5070 – Wholesale-Hardware & Plumbing & Heating Equipment & Supplies).*

Example 4

"**Dodd-Frank Act Pay Ratio Information**

CEO to Median Employee Pay Ratio (Calculated in Accordance with Item 402(u) of SEC Regulation S-K)	272:1
Supplemental Pay Ratio Information[1]	
CEO to Median Employee Pay Ratio (Full-Time Employees Only)[2]	136:1
CEO to Median Employee Pay Ratio (Full-Time REIT Employees Only)[3]	65:1

(1) The supplemental ratios listed above were calculated based on the total compensation paid to our CEO and to the median employees identified above using the methodology set forth in our *2019 Summary Compensation Table* on page 47 below.

(2) For purposes of calculating this supplemental pay ratio, only full-time employees of the company as of December 31, 2019 (a total of 572 employees) were included in the determination of the median company employee.

(3) For purposes of calculating this **supplemental pay ratio**, only full-time employees employed by our REIT entity (comprising our Hospitality business segment) as of December 31, 2019 (a total of 90 employees) were included in the determination of the median company employee."

Ryman Hospitality Properties, Inc., Definitive Proxy Statement filed March 08, 2020 (6798 – Real Estate Investment Trusts).

Explaining Unusually High Pay Ratios

Some companies concerned that their pay ratio would be perceived as high, either in the abstract or in comparison to their peers, provided additional information explaining the reasons for their ratio. Below are several examples of additional information companies disclosed in this situation.

Example 1

"The individual identified as the median employee is a part-time hourly associate working in a Christmas Tree Shops store receiving a total annual compensation for fiscal 2019 of $14,521. The identification of the median employee was influenced by the Company having a workforce significantly composed of part-time, hourly store associates.

The compensation of the Company's CEO for fiscal 2019 as reported in the Summary Compensation Table was $13,764,398. Using the CEO's annualized salary of $1,200,000 and the CEO's actual compensation (other than salary), the annualized compensation amount used for the calculation of the CEO Pay Ratio was $14,618,244. This includes the grant date fair value of stock awards, including one-time awards made in connection with hiring of the CEO and the negotiation of his employment agreement, which may not necessarily reflect the actual value, if any, that may be realized by the CEO. The ratio of the annual total compensation of the Company's CEO to that of the median employee is estimated to be 1,007:1. This estimate was calculated in a manner consistent with the applicable SEC rules and guidance, based upon the payroll and employment records of the Company. The rules and guidance applicable to this disclosure permit a variety of methods and a range of reasonable estimates and assumptions to reflect compensation practices. Therefore, the pay ratio reported by other companies in similar industries may well not be comparable to the pay ratio reported above.

In connection with the preparation of the foregoing disclosure, management has provided the Compensation Committee with the analysis of the CEO to median employee pay ratio and accompanying contextual narrative, for its information when setting executive pay decisions." *Bed Bath & Beyond Inc. Definitive Proxy Statement filed June 18, 2020 (5700 – Retail Home Furniture, Furnishings and Equipment Stores).*

Example 2

"The resulting estimated ratio of the annual total compensation of Ms. Horowitz to the median of the annual total compensation of all associates (other than Ms. Horowitz) was 4,293 to 1, which was calculated in a manner consistent with Item 402(u). As additional context, the magnitude of our ratio is influenced by our store staffing model which relies on a significant number of part-time, temporary, and seasonal associates. This approach to store staffing provides flexible, entry-level employment opportunities to students—many of whom are among our core customer demographic—that can become the foundation for a career at A&F As a result, we maintain a 'promote from within' mentality, and we provide opportunities for students to shape themselves into top candidates and potential future leaders of the Company. Students and young professionals who are motivated, creative and strategic are natural leaders to drive results in our team-based culture. For reference, our median associate is a part-time associate and full-time student who worked for, on average, seven hours a week for a period of six months.

Further, other public companies will use methods and assumptions that differ from those we have chosen, but that are appropriate for their circumstances. Therefore, it may be difficult, for this and other reasons, to compare our reported pay ratio to pay ratios reported by other companies." *Abercrombie & Fitch Co., Definitive Proxy Statement filed April 7, 2020 (5651 – Retail-Family Clothing Stores).*

Supplemental Disclosures about the Median Employee or Employee Population

Some companies, particularly those with a global footprint, added disclosure about the global nature of their workforce and where the median employee fit in their global workplace. Below is an example of disclosure a company provided concerning its global workforce.

Example 1

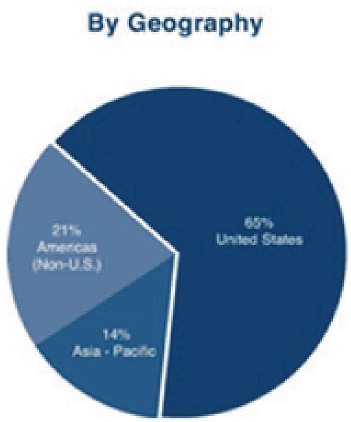
"For purposes of reporting annual total compensation and the ratio of annual total compensation of our CEO to our median employee, both the CEO and median employee's annual total compensation were calculated consistent with the Summary Compensation Table executive compensation disclosure requirements, plus the value of employer-paid health insurance contributions. Our median employee compensation was $54,322 and our CEO's compensation was $18,907,522. Accordingly, our CEO to median employee pay ratio is 348:1.

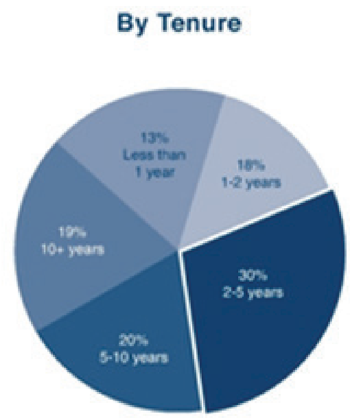
Our enterprise-wide Company compensation philosophy is designed to attract and retain high-quality talent and provide market-competitive total compensation opportunities that support our pay-for-performance culture. Actual pay practices vary for employees by level and geographic location based on competitive market factors. The most significant difference in the pay practices for our CEO versus our median employee is the use of variable/at-risk compensation.

We consistently applied total cash compensation as the measure to determine the median employee in our global employee population as of October 1, 2019. That workforce population consisted of 320,559 global full-time, part-time, temporary and seasonal employees employed on that date. 113,443 of those employees were located outside the United States and we then applied the de minimis exemption to exclude 14,521 employees in the Philippines (4.5% of our global employee population).

We have a broad and diverse workforce with approximately 57% of the people represented in three key talent pillars (27% clinicians, 18% customer-facing employees and 12% information and computer technologists). Our median employee (one of our customer-facing employees) is a non-exempt, full-time employee who works within our operations function as a customer service lead representative in the United States.

A summary of our workforce population is provided in the charts below:"





UnitedHealth Group Incorporated, Definitive Proxy Statement filed April 17, 2020 (6324 – Hospital & Medical Service Plans).

Example 2

Median Employee Total Annual Compensation	CEO Total Annual Compensation	CEO to Median Employee Pay Ratio	Market	Employee Status
$12,379	$8,401,209	679:1	All markets (U.S. and international)	full-time, part-time, seasonal, temporary
$37,021	$8,401,209	227:1	U.S. only	full-time, part-time, seasonal, temporary

"Facts to Consider Regarding Our Employees

- The Company's employees are located in 45 countries.
- Approximately 82% of the Company's employees are located outside of the U.S.
- Of this 82%, approximately 82% are located in lower wage geographies, where the average annual salary is less than 50% of the average salary for our U.S. employees.

Given that 82% of the Company's employees are located outside of the U.S., mostly in lower wage geographies, and that a vast majority of the positions are hourly direct labor, many of whom are temporary or seasonal employees, whose compensation is not annualized per the SEC rules, the compensation of our median global employee (who is employed outside of the U.S.) is significantly lower than our U.S. employee base, which leads to a higher global chief executive officer pay ratio.

In light of the significant percentage of employees located outside of the U.S., we also conducted a review of the 2019 taxable wages employees in the U.S. We included all employees, whether employed on a full-time, part-time, or seasonal basis. 2019 taxable wages were annualized for any employees who joined the Company after January 1, 2019. We then identified the median total compensation among the list of taxable wages for these 11,823 employees. The median U.S. employee's total annual compensation for 2019 was $37,021 and the ratio of the chief executive officer to the median U.S. employee's total annual compensation was 227:1." *Brinks Co., Definitive Proxy Statement filed March 27, 2020 (4731 – Arrangement of Transportation of Freight & Cargo).*

Reliance on Exemptions for Excluding Non-U.S. Employees

Finally, as permitted by the pay ratio disclosure rule, some companies excluded some or all of the non-U.S. employees when calculating their pay ratio. Below are several examples of how companies disclosed their exclusion of these non-U.S. employees.

Example 1

"In identifying the median employee using the method described above, we excluded approximately 34 employees in Brazil and approximately 290 employees in China because these employees represent less than 5% of our workforce, as permitted under the de minimis exemption to the SEC rules. The total numbers of U.S. employees and non-U.S. employees were 13,118 and 2,420, respectively, before taking into account such exclusions and for purposes of calculating such exclusions. After taking into account the de minimis exemption, 13,118 employees in the U.S. and 2,096 employees located outside of the U.S. were considered for identifying the median employee.

Mr. Rawlins had a 2019 annual total compensation of $7,288,480, as reflected in the Summary Compensation Table included in this Proxy Statement. Our median employee's annual total compensation for fiscal 2019 determined on the same basis was $7,550. As a result, Mr. Rawlins' 2019 annual total compensation was approximately 965 times that of our median employee." *Designer Brands, Inc., Definitive Proxy Statement filed May 29, 2020 (5661 – Retail Shoe Stores).*

Example 2

"Excluded population. We excluded from the analysis AutoZone employees in Brazil, Canada, China, Germany and the United Kingdom, pursuant to the de minimus exemption under the rules. The 571 employees in these locations represent less than 5% of the total employee population of 96,690 as of June 30, 2020." *Autozone Inc., Definitive Proxy Statement filed October 26, 2020 (5531 – Retail-Auto & Home Supply Stores).*

Example 3

"For the fiscal year ended June 30, 2020, the annual total compensation of the Chief Executive Officer was $29,154,460 and the annual total compensation of the median employee of the Company was $81,307, which resulted in a ratio of 359 to 1. The pay ratio is based on the Company's payroll and employment records and the following methodology. The Company used June 12, 2020 as the date to determine the median employee. At that date, the Company had approximately 12,800 employees globally consisting of full-time, part-time and temporary employees. In determining the median employee, the Company excluded from its employee population all of its employees located in China (45), which in aggregate represent less than 5% of our workforce under SEC rules. To identify the median employee, the Company reviewed data on base salary plus overtime, incentives and other allowances paid to employees during the fiscal year ended June 30, 2020. Base salaries were adjusted for full-time and part-time employees hired during the measurement period to reflect a full year of service. No cost-of-living adjustments were made in identifying the median employee. We believe that annual base salary plus overtime, incentives and other allowances is a consistently applied compensation measure at the Company and most appropriate for determining the median employee. After the median employee was identified, we calculated such employee's annual total compensation using the same methodology used for the Company's named executive officers as set forth in the Summary Compensation Table." *Fox Corporation, Definitive Proxy Statement filed September 23, 2020 (4833 – Television Broadcasting Stations).*

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Mike Hermsen is a partner in Mayer Brown's Corporate & Securities Group. Mike has an extensive practice that focuses on securities matters, including the representation of issuers in securities offerings and liability management transactions, corporate clients in connection with compliance, reporting and stock exchange matters and companies, boards of directors and management on, among other things, corporate governance matters and executive compensation disclosures and reporting. Mike has been included in *The Best Lawyers in America* in the practice areas of Securities/Capital Markets Law and Securities Regulation for over a decade and *Legal 500* recommends Mike in "Capital Markets – Equity Offerings" noting Mike has "unsurpassed knowledge of SEC rules." In addition, Mike is frequently cited in the media regarding new regulatory initiatives.

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Candace Jackson is an associate in the Chicago office of Mayer Brown and a member of the Corporate & Securities practice. Candace's practices focuses on advising public companies in connection with:

SEC Reporting and Disclosure Guidance: annual and periodic reporting, earnings releases, investor presentations, non-GAAP financial measures, internal control over financial reporting and disclosure control and procedures issues, Section 16 compliance, insider trading, Regulation FD compliance, and reporting on Schedules 13D and 13G and Forms 13F and 13H.

Annual Meetings and Proxy Statements: annual meeting and proxy timeline management, meeting logistics and conduct of the annual meeting, proxy statement compliance and design, CD&A, executive compensation tables, and CEO pay ratio disclosures.

Stockholder Activism and Proxy Advisory Firms: proxy contests, responding to stockholder proposals, engagement with proxy advisory firms, and managing negative vote recommendations.

Stock Exchange Corporate Governance Requirements: NYSE and Nasdaq listing applications, corporate governance requirements, director independence, policies and charters, exchange notification requirements, and affirmations.

Public Company M&A: registration of securities and proxy disclosure in connection with public company M&A transactions.

Candace also represents issuers and underwriters in connection with public and private capital markets transactions, including:

- offerings of debt, equity, convertible and hybrid securities;
- continuously offered debt and equity programs;
- debt and equity tender offers;
- exchange offers; and
- consent solicitations.

Candace is an experienced securities attorney and public company advisor with in-house experience, serving previously as an assistant general counsel at US Foods Holding Corp., where she advised the company through its initial public offering and private equity sponsor exit, and as a senior attorney at Primerica, Inc., where she began her career in the changing governance environment following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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Kwaku Osebreh is an associate in Mayer Brown's Chicago office and a member of the Capital Markets practice. His practice involves the representation of issuers, underwriters, agents and selling stockholders in a broad range of SEC-registered and exempt transactions. He also advises clients on corporate governance matters and public company reporting obligations.

Prior to joining Mayer Brown, Kwaku practiced at another law firm where he advised clients on a wide range of corporate and securities law matters, including initial public offerings.

Kwaku earned his JD from Northwestern Pritzker Law School. He earned an MBA from the University of Kentucky and a BS in Economics and Computer Information Systems from Campbellsville University. Before starting law school, Kwaku worked in progressive analyst roles in a healthcare system.