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GMS Flash Alert

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United States – Preparing for the CEO Disclosure Rules

The U.S. CEO Pay Ratio disclosure rules mandated by the Dodd-Frank Act[1] will soon take effect and the requirements will impose new disclosure burdens on companies, which will have to properly disclose CEO compensation, median employee total annual compensation, and the ratio of CEO pay compared to median employee pay. Moreover, there will be heightened scrutiny of executive compensation policies by employees, shareholders, and the public.

The disclosure requirements are expected to have wide-reaching implications for a company's:

- Shareholder outreach;
- Proxy disclosure and external communications;
- Internal communications;
- Employee engagement and productivity; and
- Executive- and broad-based-Pay strategy.

WHY THIS MATTERS

U.S. companies will be affected by these requirements and will have to properly disclose CEO compensation, median employee total annual compensation, and the ratio of CEO pay compared to median employee pay. These requirements could result in heightened scrutiny of their executive compensation policies.

Companies will need to understand how to develop a process, a work-plan, and weigh median employee methodology options, amongst other things, as a means of properly fulfilling their responsibilities under the CEO pay ratio disclosure rules.

Background

In August 2015, the U.S. Securities and Exchange Commission (SEC) adopted final rules[2] implementing the CEO pay ratio disclosure requirements under the Dodd-Frank Act. Under the rules, companies will be required to disclose: (i) CEO compensation; (ii) median employee total annual compensation; and (iii) the ratio of CEO pay compared to median employee pay.

Requirements Apply for First Fiscal Year on or after January 1, 2017

Companies are required to provide the new pay ratio disclosures for the first fiscal year commencing on or after January 1, 2017. As a result, companies with a fiscal year ending December 31, 2017, will need to disclose the pay ratio information (reflecting 2017 compensation) in their 2018 proxy statements.

The rules provide companies with flexibility to determine the "median" employee to recognize the inherent differences in business and talent models while satisfying the filing requirements. Companies can choose the compensation variable to determine median employee (e.g., payroll records, cash compensation, total compensation), whether to use full employee population (which includes those employees seconded overseas by the U.S. company) or a statistical sample of the population, and the point in time to determine the "median" employee (between fiscal year-end and the following three months) among other decisions.

KPMG NOTE

Flexibility creates a demand for analysis and decision-making to report the pay ratio that is most reflective of each company's pay and staffing model. It is recommended that companies begin discussing their concerns in respect of their obligations under the CEO pay ratio disclosure rules with their qualified compensation, statistics, and payroll professionals – the new rules apply in just a few short months.

FOOTNOTES:

1 Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111–203, H.R. 4173).

2 See "SEC Adopts Rule for Pay Ratio Disclosure" on the SEC Web site at: https://www.sec.gov/news/pressrelease/2015-160.html.

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