# Market Trends 2018/19: Pay Ratio Disclosure

**A Lexis Practice Advisor® Practice Note by**
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This market trends article discusses 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 two years of pay ratio disclosure.

## 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.

In year two of the pay ratio disclosure, we have seen more companies identify a new median employee than not, despite the fact that companies need only identify the median employee once every three years, as long as there has been no change in employee population or employee compensation arrangements that would significantly change the pay ratio disclosure.

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 one-time 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, 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, the number of companies that included supplemental disclosures did not change significantly in year two.

# 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 2018 many companies used the same median employee that they had identified in 2017. Below are several examples of how companies disclosed their reuse of the median employee.

### Example 1

"SEC rules permit us to identify our median employee once every three years so long as there has not been a change in our employee population or employee compensation arrangements during the 2018 fiscal year that we reasonably believe would significantly impact our pay ratio disclosure. There has not been a significant change in our employee population or compensation arrangements during 2018, and the 2017 median employee's job description remained unchanged. Therefore, the CEO pay ratio for the 2018 fiscal year is calculated using the same median employee identified with respect to the 2017 fiscal year." *Aflac Incorporated, Definitive Proxy Statement filed March 22, 2019 (6321 – Accident & Health Insurance).*

### Example 2

"As permitted by the pay ratio rule, we used the same median employee to calculate our fiscal 2019 pay ratio as we used to calculate our fiscal 2018 pay ratio because we believe there has been no change in our employee population or employee compensation arrangements, including as a result of the acquisition described below, that would result in a significant change to our pay ratio disclosure." *FedEx Corp., Definitive Proxy Statement filed August 12, 2019 (4513 – Air Courier Services).*

### Example 3

"As also allowed under Item 402(u) of Regulation S-K, we used the same median employee as in fiscal year 2018, as there were no significant changes to our median employee's status, our employee population or our compensation programs in fiscal year 2019 that would reasonably be expected to result in a significant change in the pay ratio." *La-Z-Boy Inc., Definitive Proxy Statement filed July 16, 2019 (2510 – Household Furniture).*

### Example 4

"We last identified our median employee in the proxy statement for our 2018 Annual Meeting of Stockholders (the '2018 Proxy Statement'). Item 402(u) permits us to identify our median employee once every three years (and calculate total compensation for that employee each year), so long as there has been no change in our employee population or employee compensation arrangements during 2018 that we reasonably believe would result in a significant change to our Pay Ratio disclosure. Since there have been no significant changes in our employee population or employee compensation arrangements (including those of the median employee), we are using the same median employee identified in our 2018 Proxy Statement to determine our 2019 Pay Ratio disclosure." *IAC/Interactivecorp, Definitive Proxy Statement filed April 30, 2019 (5990 – Retail-Retail Stores, NEC).*

### Example 5

"Pursuant to SEC rules, we used the same median employee we used to calculate the pay ratio under SEC rules in fiscal 2018, who we previously identified as of January 31, 2018. In fiscal 2019, there was no significant change to the Company's employee population or compensation arrangements, and the median employee's circumstances did not change so as to impact significantly the pay ratio (with changes to the ratio instead stemming from changes to Mr. Minogue's compensation, based primarily on an increase in the grant date fair value of his equity awards)." *Abiomed, Inc., Definitive Proxy Statement filed June 25, 2019 (3841 – Surgical & Medical Instruments & Apparatus).*

## Substitution of the Median Employee

Some companies would have used the same median employee in 2018 and 2017, but for the fact that the person was no longer employed for all or part of 2018. As permitted by the pay ratio disclosure rule, in 2018 these companies used an employee in 2018 who was paid approximately as the median employee for 2017. Below are several examples of how companies disclosed their substitution of a new median employee.

### Example 1

"Our median employee from 2017 terminated their employment during 2018. However, there have been no significant changes in our overall employee population or in our employee compensation arrangements that we believe would significantly impact our pay ratio disclosure. Therefore, as permitted by SEC rules, we calculated the 2018 pay ratio set forth above using a substitute median employee that had similar compensation to the 2017 median employee." *First Industrial Realty Trust, Inc., Definitive Proxy Statement filed April 9, 2019 (6798 – Real Estate Investment Trusts).*

### Example 2

"Applicable SEC rules permit us to use the same median employee in calculating the pay ratio above as the median employee we identified last year in presenting the pay ratio in our proxy statement for our annual meeting of shareholders held in 2018 (the '2018 median employee') if there have been no changes that we reasonably believe would significantly affect this pay ratio disclosure and to substitute another employee for the median employee in certain circumstances. We believe that there have been no changes to our employee population or compensation arrangements that would result in a significant change to the pay ratio disclosure. However, in fiscal 2019, the 2018 median employee ceased to be employed with the Company. Therefore, as permitted by SEC rules, we are substituting another employee for purposes of this pay ratio disclosure for fiscal 2019. This substitute employee worked in the same position, had substantially similar compensation arrangements as the 2018 median employee, and would have been the 2018 median employee had the actual 2018 median employee been excluded from the determination. The fiscal 2019 median employee was a part-time, hourly retail store associate in one of our U.S. store locations." *Guess?, Inc., Definitive Proxy Statement filed May 13, 2019 (2340 – Women's, Misses', Children's & Infants' Undergarments).*

### Example 3

"The median employee identified using annual total cash compensation resulted in an associate with anomalous characteristics; specifically, such associate was a seasonal employee part of the year making the associate ineligible to participate in certain medical, retirement and incentive compensation programs in 2017. Consistent with the guidance provided in the SEC's Pay Ratio Disclosure adopting release, an associate within a 1% variance of the median, specifically the associate with the next lower annual total cash compensation was selected as the substitute for the original identified median employee." *Alliance Data Systems Corporation, Definitive Proxy Statement filed April 18, 2019 (7389 – Services-Business Services, NEC).*

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

In 2018, some companies used a different disclosure form than they did in 2017 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

"Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC adopted a rule requiring annual disclosure of the ratio of the median employee's annual total compensation to the annual total compensation of the principal executive officer. Set forth below is the annual total compensation of our median employee, the annual total compensation of Mr. Baccile, our CEO, and the ratio of those two values:

- The 2018 annual total compensation of our median employee (other than our CEO) was $96,789;
- The 2018 annual total compensation of Mr. Baccile, our CEO, was $4,044,762; and
- For 2018, the ratio of the annual total compensation of Mr. Baccile to the median of the annual total compensation of all of our employees was 42 to 1."

*First Industrial Realty Trust, Inc., Definitive Proxy Statement filed April 9, 2019 (6798 – Real Estate Investment Trusts).*

"The total compensation for the Chief Executive Officer was $2,859,010 (as disclosed in the Summary Compensation table) and the total compensation for the median employee was $89,956. The compensation for the median employee was calculated by totaling all applicable elements of the median employee's compensation for 2017, consisting of salary, bonus, the Company's 401(k) matching contribution and insurance premiums.

For 2017, the ratio of the annual total compensation of Mr. Baccile, our Chief Executive Officer, to the median of the annual total compensation of all of our employees (other than Mr. Baccile) was approximately 32 to 1."

*First Industrial Realty Trust, Inc., Definitive Proxy Statement filed April 10, 2019 (6798 – Real Estate Investment Trusts).*

### Example 2

"In preparing the pay ratio disclosure applicable to 2018, Belden determined that the 2017 pay ratio disclosure was incorrectly calculated due to a currency translation error. The actual median total annual compensation of Belden associates, excluding Mr. Stroup, in 2017 was $40,335.18. As disclosed in the 2018 Proxy Statement and Notice of Annual Meeting of Shareholders, Mr. Stroup's total reported 2017 compensation was $7,012,404. Accordingly, Mr. Stroup's reported 2017 compensation was approximately 174 times that of the median of the total annual compensation of all employees other than Mr. Stroup." *Belden Inc., Definitive Proxy Statement filed April 9, 2019 (3357 – Drawing and Insulating Nonferrous Wire).*

### Example 3

"Comparison to 2017 Median-Paid Annual Total Compensation

The annual total compensation of our median-paid employee for 2017 was $66,000. The median for 2018 is $75,000. In addition to salary increases and other increases in compensation, the following factors contributed to the increase in the median:

- The percentage of employees included in the calculation described above increased from 80% to 88%.
- We included estimates of company contributions to defined contribution retirement plans and the value of company provided medical and dental insurance coverage to the 2018 analysis. These were not included in the 2017 analysis.
- Currency exchange rates changed during 2018. If the exchange rates had not changed, the $75,000 median for 2018 amount shown above would have been $74,000."

*Johnson & Johnson, Definitive Proxy Statement filed March 13, 2019 (2834 – Pharmaceutical Preparations).*

### Example 4

"The difference between the pay ratio for 2017 and 2018 is due largely to a change in the discount rate used to calculate the present value of the change in pension value for our CEO. A relatively small change in the discount rate may significantly affect pension plan obligations and costs, and although the methodology utilized to determine the discount rate was consistent with prior years, the change in the discount rate itself had a large negative impact on the CEO's total compensation as calculated for the 2018 Summary Compensation Table. Because we do not maintain a defined benefit or other actuarial plan for employees of the business that employs the median employee, our median employee's annual total compensation was not affected by the change in discount rate." *Southwest Gas Holdings, Inc., Definitive Proxy Statement filed March 18, 2019 (4923 – Natural Gas Transmission & Distribution).*

## 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

"For 2018, our last completed fiscal year:

- The median employee total annual compensation (excluding our Chief Executive Officer) was $41,017
- Our Chief Executive Officer's total annual compensation as reported in our 2018 Summary Compensation Table was $4,262,719
- The ratio of Chief Executive Officer to median employee total annual compensation was 104 to 1

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We have elected to disclose a supplemental ratio that includes the value of health care benefits paid by the Company. Because these benefits are provided on a broad, non-discretionary basis, the value is not required to be reported in the 2018 Summary Compensation Table. However, if we include the value of these benefits, the total annual compensation of our median employee would increase by $6,577 and the total annual compensation of our CEO would increase by $6,577, resulting in a ratio of our CEO's annual total compensation to the annual total compensation of our median employee of 90 to 1." *HCI Group, Inc., Definitive Proxy Statement filed April 29, 2019 (6331 – Fire, Marine & Casualty Insurance).*

### Example 2

"For 2018, our last completed fiscal year, Mr. Mittelstaedt had 2018 annual total compensation of $13,665,549 as reflected in the Summary Compensation Table included in this proxy statement. For our median employee, we elected to use the employee who was determined to be the median employee in 2017 in accordance with the methodology described below, a commercial truck driver whose annual total compensation for 2018 was $54,624. The resulting ratio of our CEO's pay to the pay of our median employee is approximately 250 to 1. Mr. Mittelstaedt's total annual compensation included a retention equity award of $9,110,935, as reflected under the share-based award column in the Summary Compensation Table. For 2018, the annual total adjusted compensation for Mr. Mittelstaedt, excluding the retention equity award, was $4,554,614. The resulting ratio of our CEO's adjusted pay to the pay of our median employee is approximately 83 to 1.

We have elected to disclose a supplemental ratio that includes the value of health and dental care benefits paid by the Company. Because these benefits are provided on a broad, non-discretionary basis, the value is not required to be reported in the Summary Compensation Table. However, if we were to add the value of these benefits, the total compensation of our CEO would increase by $18,975 and the total compensation of our median employee would increase by $18,231, and the resulting ratio of our CEO's annual total compensation to the annual total compensation of our median employee would be approximately 188 to 1. Excluding the retention equity award described above, the resulting ratio would be 63 to 1." *Waste Connections, Inc., Definitive Proxy Statement filed April 5, 2019 (4953 – Refuse Systems).*

### Example 3

"For fiscal 2018, our last completed fiscal year:

- The median of the annual total compensation of all associates of the Company (other than our CEO) was $12,939; and
- The annual total compensation of our CEO, as reported in the Summary Compensation Table included earlier in this Proxy Statement, was $16,749,378.

Based on this information, for fiscal 2018, the ratio of the annual total compensation of Ms. Soltau, our Chief Executive Officer, to the median of the annual total compensation of all associates was 1,294 to 1. In addition, we have calculated a supplemental pay ratio, which you will find below under 'Supplemental Pay Ratio Disclosure.' The supplemental pay ratio compares the median employee compensation to the target total compensation of our CEO.

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## Supplemental Pay Ratio

We understand that the CEO pay ratio is intended to provide greater transparency to annual CEO pay and how it compares to the pay of the median employee. As such, we are providing a supplemental ratio that compares the CEO's total target pay of $11,000,000, which includes Ms. Soltau's annualized base salary, annual target bonus and annual equity grant target, but excludes the special one-time cash signing bonus and equity signing bonus, which were inducements to join the Company, to the pay of the median associate. We believe this supplemental ratio reflects a more representative comparison. The resulting supplemental CEO pay ratio is 850 to 1." *J.C. Penney Company, Inc., Definitive Proxy Statement filed April 1, 2019 (5311 – Retail Department Stores).*

### Example 4

"Set forth below is the annual total compensation of our median employee, the annual total compensation of our President & Chief Executive Officer, Mr. Monaco, and the ratio of those two values:

- The 2018 annual total compensation of the median employee of Enbridge (other than our President & Chief Executive Officer, Mr. Monaco) was $111, 341;
- The 2018 annual total compensation of our President & Chief Executive Officer, Mr. Monaco, was $9,530,194; and
- For 2018, the ratio of the annual total compensation of Mr. Monaco to the median annual total compensation to all our other employees was 86 to 1.

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## Supplemental Ratio Excluding Impact of Change in Pension Values

As discussed in the context of our Summary Compensation Table on page 84, the change in pension value (which is a component of annual total compensation) is subject to many external variables, such as foreign exchange rates, discount rates and other actuarial assumptions. Accordingly, we are providing a supplemental calculation of the pay ratio, which excludes the impact of pension values. This supplemental ratio is not intended to replace the above ratio required by and calculated in accordance with the SEC rules, but is provided to normalize for year-over-year changes in pension values which we do not believe are helpful in evaluating compensation for comparative purposes.

Set forth below is the annual total compensation of our median employee, the annual total compensation of our President & Chief Executive Officer, Mr. Monaco, and the ratio of those two values excluding the impact of changes in pension values:

- The 2018 annual total compensation of the median employee of Enbridge (other than our President & Chief Executive Officer, Mr. Monaco), excluding the impact of pension values, was $94,865;

- The 2018 annual total compensation of our President & Chief Executive Officer, Mr. Monaco, excluding the impact of pension values, was $8,961,194; and
- For 2018, the ratio of the annual total compensation of Mr. Monaco to the median annual total compensation of all our other employees (excluding pension values) was 94 to 1."

*Enbridge Inc., Definitive Proxy Statement filed March 27, 2019 (4610 – Pipelines (No Natural Gas)).*

## Example 5

"For 2018,

- The median of the annual total compensation of all of our employees, other than Ms. Howard, was $44,198.
- Ms. Howard's annual total compensation, as reported in the Total column of the 2018 Summary Compensation Table, was $9,670,408.
- Based on this information, the ratio of the annual total compensation of Ms. Howard to the median of the annual total compensation of all employees is estimated to be 219 to 1.

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We expect that the ratio of the compensation of our CEO to our median employee will vary over time for a number of reasons, and in particular as result of the fact that a large portion of our CEO's compensation is performance-based. In 2018, Company performance against the pre-determined performance measures included in our CEO's compensation elements was significantly stronger than the Company performance against those same measures in 2017, resulting in higher compensation to Ms. Howard over the prior year. The 2018 pay ratio is also significantly larger over the prior year for several extraordinary reasons. First, although our compensation practices in 2018 did not significantly change from the prior year's practices (outside of the extraordinary compensation related to the Sale Transaction) in 2018, SaleCo's employee population consisted of a disproportionate number of highly compensated employees. The divestiture of that business accordingly resulted in a shift of the median employee to a considerably lower compensation level. Second, in 2018, our CEO received significant compensation related to the Sale Transaction that would not have been awarded under ordinary circumstances, including a Transaction Bonus Award and SaleCo Adjustment Payment. (See 'Compensation Discussion and Analysis — Compensation Related to the Sale Transaction' for additional information on those awards.) Third, under the applicable Summary Compensation Table Rules, the modification of certain performance targets included in Ms. Howard's 2017 PBRSU Award and 2018 PBRSU Award to align those targets with the Company's structure following the-Sale Transaction resulted in accounting charges that are required to be included in the 2018 Summary Compensation Table, although those modifications did not result in additional incremental grants to her. (See 'Compensation Discussion and Analysis — Compensation Related to the Sale Transaction — *Modification of Outstanding Adjusted EBITDA Performance-Based Restricted Stock Units'* for additional detail on these modifications.) Although not intended as a substitute for the above disclosed pay ratio, for informational purposes, the table below indicates the pay ratio for our CEO to our median employee without taking into account the extraordinary compensation items related to the Sale Transaction:

- The median of the annual total compensation of all of our employees, other than Ms. Howard, was $44,198.
- Ms. Howard's annual total compensation, as reported in the Total column of the 2018 Summary Compensation Table, excluding the Transaction Bonus Award, the SaleCo Adjustment Payment, and the 2018 PBRSU Award Modification and 2017 PBRSU Award Modification was $5,025,985.
- Based on this information, the adjusted ratio of the annual total compensation of Ms. Howard to the median of the annual total compensation of all employees is estimated to be 114 to 1."

*Navigant Consulting, Inc., Definitive Proxy Statement filed April 9, 2019 (8742 – Services –Management Consulting Services).*

## Example 6

"Mr. Robert Taubman had 2018 annual total compensation of $1,842,633 as reflected in the Summary Compensation Table above. The annual total compensation for our median employee for 2018 was $94,239, calculated on the same basis as required by the Summary Compensation Table. As a result, Mr. R. Taubman's 2018 annual total compensation was approximately 19 times that of our median employee. To provide additional CEO pay ratio context, the table below also reflects Mr. R. Taubman's 2018 annual target pay compared to the median employee's annual total compensation for 2018.

| CEO Pay Ratio | 2018 CEO Pay | CEO Pay Description |
|---|---|---|
| 19:1 | $1,842,633 | Summary Compensation Table Pay (required SEC disclosure) |
| 59:1 | $4,990,015 | Annual Target Pay" |

*Taubman Centers, Inc., Definitive Proxy Statement filed April 30, 2019 (6798 – Real Estate Investment Trusts).*

### Example 7

"In addition to the Pay Ratio Disclosure required by the SEC's rules, we are also providing a supplemental pay ratio that excludes all 17,054 employees of CCBA as of October 1, 2018 in the calculation of the median annual total compensation of all employees. We believe this is helpful context, as the Company plans to hold its controlling interest in CCBA temporarily. The Company has presented the financial position and results of operations of CCBA as discontinued operations in its consolidated financial statements from the date of acquisition (as reported in Notes 1 and 2 to the Company's consolidated financial statements in the Form 10-K). Therefore, we believe a global employee population that excludes CCBA employees provides a more representative comparison to our Pay Ratio Disclosure for 2017.

Excluding all CCBA employees as of October 1, 2018, for 2018, the median annual total compensation of all employees of the Company and its consolidated subsidiaries (other than the Chief Executive Officer) was $35,878. For 2018, the resulting ratio of the compensation of the Chief Executive Officer to the median annual total compensation of all other employees, excluding employees of CCBA, was estimated to be 466 to 1." *The Coca-Cola Company, Definitive Proxy Statement filed March 7, 2019 (2080 - Beverages).*

## 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

"To provide context for this disclosure, it is important to understand the unique circumstances of our employee population. Our shipboard employees are an essential part of our operations and comprise over 90% of our workforce, while shoreside employees make up the remainder. Due to maritime requirements and the practical implications of employment on ships with worldwide operations, our shipboard employees receive certain accommodations that are not typically provided to shoreside employees including housing and meals while on the ship and medical care for any injuries or illnesses that occur while in the service of the ship. These accommodations are free of cost to each shipboard employee. Additionally, because our shipboard employees are away from home for extended periods of time while on the ship, they do not work for the entire year. For example, a shipboard employee will typically work between six to ten months out of the year. Pursuant to the rules governing our Pay Ratio Disclosure, we have not annualized payment for our shipboard employees. Our shipboard employees also generally reside outside of the U.S., where the cost of living may be significantly lower than in the U.S." *Norwegian Cruise Lines Holdings Ltd., Definitive Proxy Statement filed April 26, 2019 (4400 – Water Transportation).*

### Example 2

"To provide context for this disclosure, it is important to understand the scope of our operations. Approximately twenty percent of our employees are located in Mexico where the cost of living is significantly below the United States. The compensation elements and pay levels of our employees can vary dramatically from country to country based on market trends, cost of living, and cost of labor. These factors, along with fluctuations in currency exchange rates, impact the median employee compensation and the resulting ratio." *Keurig Dr. Pepper Inc., Definitive Proxy Statement filed April 25, 2019 (2080 – Beverages).*

### Example 3

"As a result of our sale in 2018 of arena management-related businesses that employed approximately 12,000 part-time, seasonal and temporary workers, we reasonably believed there would be a significant change in our pay ratio and have identified a new median employee for 2018. To identify the median employee, we engaged an unaffiliated third-party advisory services firm to conduct a statistical sampling of approximately 161,000 full-time, part-time, seasonal and temporary employees as of December 31, 2018 (which included approximately 19,800 non-U.S. employees) based on comparisons of base wages. As permitted under SEC rules, we excluded from our employee population approximately 30,000 employees of Sky, which we acquired in the fourth quarter of 2018.

All of our part-time, seasonal and temporary employees as of December 31, 2018, including in our theme park and entertainment production businesses, were required to be taken into account for purposes of identifying our median employee under SEC rules. SEC rules do not permit us to annualize the compensation paid to these workers as if they were full-time employees, which has the effect of reducing the level of our median employee's total compensation relative to what it would have been had the rules permitted us to annualize compensation across our entire workforce or to use only full-time U.S. employees. The impact of this rule may be different for us than some companies in our peer groups given the composition of our workforce across our uniquely diversified company, and changes in the number of part-time, seasonal or temporary workers from year to year may make year-over-year comparisons not meaningful. We believe putting into context how our median employee was identified highlights why that employee's compensation and the resulting pay ratio, and year-over-year changes thereto, should not be compared on an 'apples-to-apples' basis.

We have estimated that our pay ratio for 2018 is 426 to 1, calculated by dividing Mr. Roberts' 2018 total compensation set forth in the Summary Compensation Table, adjusted as described below ($35,041,029), by $82,205, which represents the annual total compensation of our median employee." *Comcast Corporation, Definitive Proxy Statement filed April 6, 2019 (4841 – Cable & Other Pay Television Services).*

## Supplemental Disclosures about the Median Employee or Employee Population

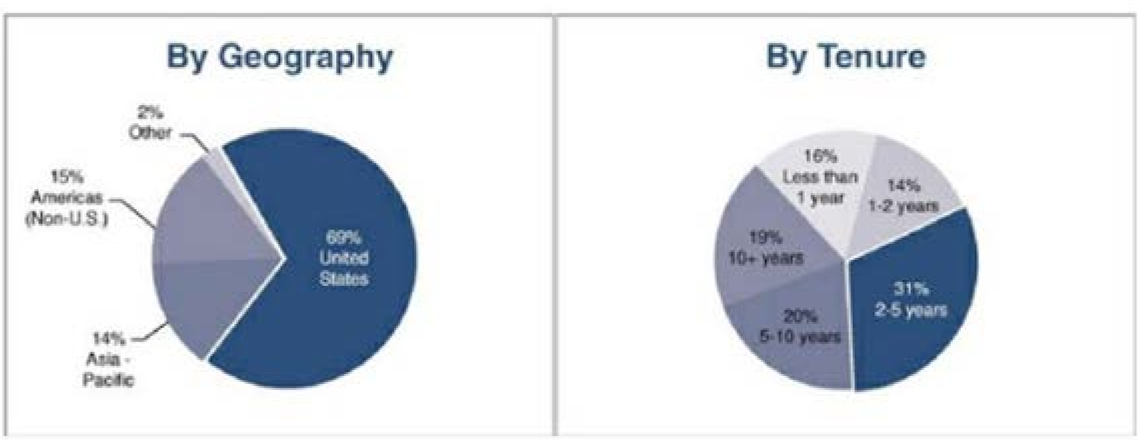
Some companies, particularly those with a global footprint, added disclosure about the global nature of their workforce and where the median employee fit in their global workplace. Below is an example of disclosure a company provided concerning its global workforce.

## Example 1

"We consistently applied total direct compensation as the measure to determine the median employee in our global employee population as of October 1, 2018. That workforce population consisted of 272,625 global full-time, part-time, temporary and seasonal employees employed on that date. 85,332 of those employees were located outside the United States and we then applied the de minimis exemption to exclude 11,530 employees in the Philippines (4.2% of our global employee population).

We have a broad and diverse workforce with approximately 60% of the people represented in three key talent pillars (85,000 clinicians, 45,000 customer-facing employees and 30,000 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 senior claims 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 19, 2019 (6324 – Hospital & Medical Service Plans).*

### 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, we excluded all employees located outside the United States (a 'non-U.S. employee') under the de minimis exemption of the pay ratio rule which permits exclusion if a company's non-U.S. employees account for 5% or less of total employees. The jurisdictions and approximate number of employees excluded were Hong Kong (94), India (43), Italy (6), Korea (38), Singapore (31), and Taiwan (57). As of February 2, 2019, we had 142,950 employees, comprised of 142,681 U.S. employees and 269 non-U.S. employees." *Macy's, Inc., Definitive Proxy Statement filed April 3 2019 (5311 – Retail Department Stores).*

### Example 2

"As permitted by the pay ratio rule, in determining our median employee, we excluded approximately 3.7% of our total employee population as of March 1, 2018, or approximately 15,471 employees outside of the U.S., from the following countries and territories: Argentina (310); Aruba (13); Austria (314); Bahamas (25); Bahrain (123); Barbados (37); Bermuda (25); Botswana (21); British Virgin Islands (6); Bulgaria (171); Cayman Islands (16); Colombia (241); Costa Rica (49); Curacao (14); Cyprus (78); Czech Republic (574); Denmark (487); Dominican Republic (84); Egypt (114); Estonia (63); Fiji (38); Finland (218); French West Indies (7); Greece (248); Grenada (6); Guadeloupe (8); Guam (14); Guatemala (42); Hungary (330); Indonesia (648); Ireland (288); Israel (185); Jamaica (50); Jordan (16); Kenya (38); Kuwait (145); Latvia (76); Lithuania (115); Luxembourg (53); Macau (10); Malawi (31); Namibia (44); New Zealand (253); Norway (171); Panama (90); Peru (25); Philippines (746); Portugal (369); Puerto Rico (462); Romania (422); Russia (663); Saint Kitts and Nevis (9); Saint Lucia (8); Saint Martin (10); Saint Vincent and the Grenadines (6); Slovakia (183); Slovenia (104); South Africa (1,100); South Korea (1,144); Swaziland (10); Sweden (707); Switzerland (1,035); Trinidad and Tobago (46); Turks and Caicos Islands (7); Turkey (805); Ukraine (148); United Arab Emirates (870); United States Virgin Islands (17); Uruguay (34); Venezuela (61); Vietnam (461); and Zambia (130). As a result, an aggregate employee population of approximately 407,417 was considered (the 'considered population') in determining our median employee in fiscal 2018." *FedEx Corp., Definitive Proxy Statement filed August 12, 2019 (4513 – Air Courier Services).*

### Example 3

"In making our determination of the median employee in our 2018 Proxy Statement, we first identified our total number of employees as of October 1, 2017 (6,795 in total, 5,362 of which were located in the United States and 1,433 of which were collectively located in various jurisdictions outside of the United States). We then excluded employees located in the following jurisdictions outside of the United States, which together represented less than 5% of our total number of employees: Belarus (171 employees), Belgium (38 employees), China (2 employees), Iceland (1 employee), Italy (3 employees), Japan (113 employees), Spain (1 employee) and Sweden (3 employees). After excluding employees in these jurisdictions, our pay ratio calculation included 6,463 of our total 6,795 employees." *IAC/Interactivecorp, Definitive Proxy Statement filed April 30, 2019 (5990 – Retail-Retail Stores, NEC).*

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Mike Hermsen has an extensive practice that focuses on securities matters. He represents issuers, investment banking firms and security holders in connection with issuances of equity and debt securities. Mike also represents corporate clients in connection with compliance and reporting matters and counsels companies, boards of directors and management on stock purchases, liability management, executive compensation reporting and corporate governance matters.

Before Mike joined Mayer Brown in 1994, he had extensive senior administrative experience with the US Securities and Exchange Commission in Washington, DC. In the SEC's Division of Corporation Finance he served as Assistant Director (1992-1994), Special Counsel (1990-1992) and Attorney/Advisor (1986-1990). He also has accounting and audit experience with a then-Fortune 500 manufacturing corporation.

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 advises public companies in connection with corporate governance and reporting obligations under the Exchange Act, NYSE and NASDAQ rules. She also represents public issuers of securities in M&A transactions as well as issuers and underwriters in connection with public offerings and private placements of debt, equity, convertible and hybrid securities, continuously offered debt and equity programs, debt and equity self-tenders, exchange offers, and consent solicitations.

Candace is an experienced securities attorney and public company advisor, having served as both in-house and outside counsel in her previous roles 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; associate at Husch Blackwell LLP, where she assisted clients in the preparation and review of Exchange Act filings, advised clients on corporate governance matters and represented clients in public securities offerings and M&A transactions; and 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.