



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

March 29, 2018

William Hinman
Director
Division of Corporation Finance
100 F St NE
Washington, D.C. 20549

Dear Director Hinman

On behalf of more than 400,000 members and supporters of Public Citizen, we inquire about the efforts by the Division of Corporation Finance (Division) to ensure the integrity of reporting in the newly implemented disclosure of the CEO pay ratio. This rule, which is Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, requires publicly traded firms to determine the median paid employee at the firm. This figure is then compared with the CEO's pay, yielding a ratio. To implement the rule, the SEC has provided generous latitude when firms identify the median paid employee. Sampling and reasonable estimates are permitted. The SEC notes that these and other compliance accommodations mean that the disclosure "may involve a degree of imprecision."¹ Acknowledging latitude, we are concerned that the SEC may regard this disclosure without adequate care, and therein, deprive investors of reliable information mandated by law. We note here a few examples of curious disclosures and urge the Division to investigate whether these require amendment by the issuers and may justify general emphasis of the importance of compliance with this rule.

- Citigroup reports that its median paid employee received \$48,249. The company reports that the CEO received \$17.8 million in its discussion of this ratio. It reports the ratio as 369-1. But Citi also reports elsewhere in its proxy statement that the CEO received \$23 million, when combining all compensation. That would make the ratio 476-1. In its discussion of the smaller CEO pay figure, Citi notes in a footnote that "this number is the sum of the 2017 total compensation reported in the 2017 Summary Compensation Table." The larger number comes from a table labelled "2017 Named Executive Officer

¹ *Commission Guidance on Pay Ratio Disclosure*, SECURITIES AND EXCHANGE COMMISSION (Sept. 21, 2017) <https://www.sec.gov/rules/interp/2017/33-10415.pdf>

Compensation.” Citi explains: “In accordance with SEC rules, these awards are not reportable in the 2017 Summary Compensation Table because they were not awarded during 2017. They will be reportable next year in the 2018 Summary Compensation Table.” While either ratio is easily divined, we are concerned that Citi would represent a lower CEO pay level, and concomitantly, a lower ratio. For those attempting to compare ratios, the different results may confuse an analysis.²

- Median pay at many banks varies considerably. At Bank of America, it is \$87,115, while at Citigroup it is \$48,249. These banks have similar employment numbers, including tens of thousands of tellers where pay is reportedly \$25,000 to \$35,000. One possible explanation may involve health insurance. Firms with higher median pay may be using high health compensation figures. We urge the Division to encourage discussion of such assumptions.
- At Verizon and AT&T, the median pay figures vary considerable. Verizon reports median pay of \$126,623.³ AT&T reports median pay of \$78,437.⁴ AT&T explains that it sampled employees among a set numbering 244,248, excluding 12,835 located in 53 other countries. Verizon does not describe its total employee figures. Where AT&T is silent on the issue, Verizon explains that it added a number of benefits.⁵ There may be some factors that account for this difference, such as lower wages in Texas, and use of contractors for lower wage jobs.⁶ But the SEC may wish to examine the data behind Verizon’s figures.
- GEO Corp reports median pay of 35,630.⁷ The firm explains that it employs 19,000, largely in the United States, with other employees in Australia, South Africa and the United Kingdom. It paid its CEO \$9.6 million, generating a ratio of 271-1. This firm owns and manages private prisons, with more than 100,000 detainees.⁸ Class action

² Citigroup proxy statement, Securities and Exchange Commission (March 14, 2018)

<https://www.sec.gov/Archives/edgar/data/831001/000120677418000792/citi3349731-def14a.htm#toc>

³ Verizon Proxy, SECURITIES AND EXCHANGE COMMISSION (March 2018)

<https://www.sec.gov/Archives/edgar/data/732712/000119312518087697/d444132ddef14a.htm>

⁴ AT&T Proxy, Securities and Exchange Commission (March 2018)

<https://www.sec.gov/Archives/edgar/data/732717/000119312518079415/d471421ddef14a.htm>

⁵ “To identify the “median employee” for purposes of this disclosure (i.e., the individual employee whose compensation was at the median level among our entire employee group), we used a determination date of October 1, 2017 and analyzed, for all of the individuals employed by us or any of our consolidated subsidiaries on that date, the compensation that we paid to each of those individuals for the 12-month period ending on that date. We considered each employee’s “compensation” to consist of (i) the employee’s total gross earnings for the 12-month period ending October 1, 2017, plus (ii) the estimated amount of Verizon’s contributions for that period to the retirement plans in which the employee participates, plus (iii) the estimated present value of the employee’s accrual under a Verizon pension plan (if any) for those who are still accruing service and whose benefits have not otherwise been frozen.”

⁶ Theo Francis, *Does Verizon Really Pay the Typical Worker 60% More Than AT&T?* (March 28, 2018)

<https://www.wsj.com/articles/does-verizon-really-pay-the-typical-worker-60-more-than-at-t-1522238400>

⁷ *The GEO Group proxy statement*, SECURITIES AND EXCHANGE COMMISSION (March 13, 2018)

<https://www.sec.gov/Archives/edgar/data/923796/000119312518080762/d500556ddef14a.htm>

⁸ “As of December 31, 2017, our worldwide operations included the management and/or ownership of approximately 96,000 beds at 141 correctional, detention and community based facilities, including idle facilities and projects under development, and also include the provision of community supervision services for more than

litigation brought by detainees has highlighted that GEO employs these detainees to perform work, and the pay is \$1 a day.⁹ While this litigation does not detail the number of detainees employed and paid this amount, it is reasonable to assume that it may be more than 10,000, and therefore, one of these detainees is the median paid. This would imply median pay of \$200 or \$300, and a ratio of 32,000-1. While the litigation is pending, the facts about pay are not in dispute. We believe the Division should require GEO and firms in like circumstances to enumerate these unconventional employment circumstances.

Generally, we recognize a tension when companies report the median pay. A firm may wish to post an inaccurately low median pay figure so as to reduce antagonism among those paid below this median.¹⁰ At the other end, a firm with an inaccurately high median reduces the pay ratio, suggesting more reasonable CEO pay.

With these forces at play, we encourage the Division to exercise appropriate diligence in oversight of this important new disclosure.

For questions, please contact Bartlett Naylor at bnaylor@citizen.org

Sincerely,

Public Citizen

192,000 offenders and pretrial defendants, including approximately 100,000 individuals through an array of technology products including radio frequency, GPS, and alcohol monitoring devices.” GEO Corp 10-k, SECURITIES AND EXCHANGE COMMISSION (2018)

<https://www.sec.gov/Archives/edgar/data/923796/000119312518058566/d494769d10k.htm>

⁹ *Menocal et al v. GEO Group*, Petition For Permission to Appeal Class Certification, US COURT OF APPEALS FOR THE TENTH CIRCUIT (March 13, 2017) <http://deportationresearchclinic.org/App-1-GEOPetition-2017-3-13.pdf>

¹⁰ Jena McGregor, *As companies reveal gigantic CEO-to-worker pay ratios, some worry how low-paid workers might take the news*, WASHINGTON POST, (Feb. 21, 2018) https://www.washingtonpost.com/news/on-leadership/wp/2018/02/21/as-companies-reveal-gigantic-ceo-to-worker-pay-ratios-some-worry-how-low-paid-workers-might-take-the-news/?utm_term=.15ea2a556a77