Exxon Mobil Corporation
5959 Las Colinas Boulevard
Irving, TX 75039-2298
972 444 1803 Telephone
972 444 4766 Facsimile

Malcolm A. Farrant
Vice President
Human Resources

ExxonMobil

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Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Subject: Pay Ratio Disclosure
Release Nos. 33-9452; 34-70443; File No. S7-07-13

Dear Ms. Murphy:

As Vice President-Human Resources of Exxon Mobil Corporation, I am writing to provide ExxonMobil's comments on the proposed rules to implement Section 953(b) of the Dodd-Frank Act relating to pay ratio disclosure.

ExxonMobil currently employs over 75,000 regular employees (and more than 10,000 additional employees at company-operated retail sites) in 89 countries around the world. We believe our experience managing this highly diverse global workforce can be helpful to the Commission in implementing the pay ratio rules.

Background

To place our comments in context, it is important to explain ExxonMobil's approach to employee compensation. Our approach reflects two key truths: First, employees are not fungible. Each person brings his or her own unique set of skills, attributes, and experiences to the workplace. Second, employment markets are local, defined by cities, regions, and national borders. These markets differ based on differences in applicable laws and regulations; in economic and workforce conditions; and in culture and habits.

Taking these factors into account, we determine an employee's compensation based on the individual's own performance and qualifications, with reference to competitive conditions in the relevant market (i.e., the demand from other employers for similarly-situated individuals and the availability of such individuals in the location). We do not determine compensation by comparing one job to a different job in a different market. Accordingly, we believe the pay ratio disclosure is *inherently* misleading because it implies there is – or should be – a meaningful relationship between the numerator and the denominator, when such is not the case.

As the Commission notes in the proposing release,[1] pay ratio disclosure also does not permit meaningful comparison between companies. Even among integrated oil and gas companies, for example, pay ratios of two companies could differ significantly solely because one company chooses to operate its own retail sites (and therefore employs the site personnel) while another company uses a franchise model for its retail sites (and therefore does not employ site personnel). Neither is pay ratio disclosure necessarily comparable from year to year for the same company. For example, even in circumstances where pay levels and practices have not changed, the pay ratio could change significantly from year to year due to the company's decision to enter or exit lines of business or particular countries.

Supporters of pay ratio disclosure argue that large pay differentiation may have adverse effects on employee morale. This has not been our experience. To the contrary, we believe differentiation in pay based on individual performance and specific job requirements helps incentivize employees to do their best and to strive for personal growth and development, such as by acquiring new skills and more varied experience.

The point of the foregoing discussion is to explain why we do not believe the pay ratio disclosure holds value for investors. We realize this disclosure is mandated by the Dodd-Frank Act, but we urge the Commission to take every step within its discretion to reduce the burden incurred by SEC registrants in preparing the mandated disclosure. In this regard, we commend the Commission for its efforts as reflected in the proposing release to make calculation of the ratio less onerous. However, as outlined below, we believe there are additional steps the Commission can and should take to reduce further the compliance burden, as well as the potential for misleading disclosure.

Limit "employees" to U.S. employees

As previously noted, employment markets are local and comparing compensation across different markets therefore provides little meaningful insight into a company's personnel practices. The following examples help illustrate:

> Example 1: Differences in employee benefits. Two employees hold similar jobs in two different countries, A and B. Both employees receive similar direct cash compensation from the company. In Country A, the company also provides medical and retirement benefits to employees, which are reflected in total compensation. In Country B, medical

[1] Release Nos. 33-9452; 34-70442 (Sept. 18, 2013) (the "proposing release"), at 35 and Section IV.

and retirement benefits are provided exclusively by the national government.[2] Under the rules as proposed, the real economic circumstances of the two employees are equivalent but the pay ratio calculation would vary significantly depending on which employee is the median.

Example 2: Differences in cost of living. Two employees hold similar jobs in two different countries, C and D. The employee in Country C receives total annual compensation of $100,000 and the employee in Country D receives total annual compensation of $75,000. The cost of living in Country D is approximately 50% of the cost of living in Country C. In real economic terms, the employee in Country D enjoys significantly higher pay than the employee in Country C. However, under the rules as proposed the appearance is reversed.

Example 3: Differences in currency exchange rates. A company headquartered in the U.S. maintains a large number of employees in Country E. These employees are paid in Country E's local currency, which decreases in value against the U.S. dollar year-over-year. Under the rules as proposed, the company's pay ratio appears to widen over the same period, even if there has been no change in pay levels or practices.[3]

As these examples show, significant differences in labor market conditions can easily make formulaic comparisons of pay practices across national borders misleading.

Limiting the ratio disclosure to a single country (the U.S.) would also dramatically reduce the necessary compliance effort, especially for multinational employers. Payroll reporting systems are typically designed to meet local statutory requirements, including local tax reporting; local labor standards and practices; local pay frequency; and other local factors. These system designs do not readily lend themselves to global or cross-regional integration and comparison. Additionally, ExxonMobil contracts with approximately 60 third-party payroll providers globally. These providers typically have discretion in system design, and as a result the specific nature of these third-party systems varies from provider to provider and country to country.

As a result of this complexity, we expect most companies with international scope will incur a substantial work effort to calculate the pay ratio based on a global employee base. In ExxonMobil's case, we estimate the compliance effort required to comply with pay ratio disclosure as proposed would require up to approximately 3,000 work hours by ExxonMobil

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[2] Note, the company's indirect contribution through taxes to the employee's medical and retirement coverage in Country B may in fact equal or exceed the company's direct contribution in Country A.

[3] Nor does a decrease in the exchange rate with the U.S. dollar necessarily result in any decline in pay for Country E employees in real economic terms. This would depend on changes in the local cost of living in Country E, which in turn would depend on a host of macroeconomic factors such as Country E's dollar-denominated trade balances.

personnel in the initial year of compliance, and approximately 850 work hours per year thereafter.[4] We estimate the ExxonMobil work effort would be reduced by over 90% if the pay ratio calculation were limited to U.S. employees.

We recognize the Commission did not believe it had flexibility, in the absence of specific language in the statute, to interpret "all employees" to mean only employees in the U.S. We would respectfully argue that recent legal precedents in fact require the opposite presumption: that the phrase "all employees" should be read to mean only U.S. employees in the absence of a "clear indication of extraterritoriality,"[5] i.e., clear language indicating the ratio is meant to include employees outside the U.S.

Allow use of confidence levels

The Commission could significantly reduce the compliance burden associated with the pay ratio disclosure by expressly endorsing the use of a confidence level in compiling an issuer's total employee base. In other words, for purposes of identifying the median employee, an issuer would only need to include countries and/or business units that, in the aggregate, represent a specified percentage of its total employees.

In the case of ExxonMobil, employees in 39 out of 89 countries represent less than 1% of total employees. Therefore, we believe a confidence level could be set at a level below 100% of the employee population and provide a reasonable estimate of our pay ratio, thus meeting the objectives of the legislation. For example, this confidence-level approach would allow us to limit the database to the 50 countries with the largest employee populations (out of 89 total countries), and the median could be calculated with significantly fewer external payroll systems. For ExxonMobil and many other companies, country affiliates with a low number of employees are typically paid through local, third-party payrolls. The process of retrieving and consolidating data from third-party vendors will be complex, time consuming, and costly. A confidence-level approach would reduce the need to rely on third-party payrolls and significantly reduce the reporting burden.

Due to the local nature of employment markets – which are heavily influenced by differences in local employment laws –each additional country included in the total employee dataset requires significant marginal effort, even if the country only accounts for a relatively small number of employees. In ExxonMobil's case, we estimate collecting and integrating payroll data from the additional 39 countries to achieve 100% workforce coverage would require approximately 350 additional work-hours per year, compared to the effort needed to cover the 50 countries with the largest employee populations.

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[4] We are not able to provide a specific estimate, but expect that a significant work effort would also be required on the part of each of our 60 third-party vendors.

[5] *Morrison v. National Australia Bank,* 561 U.S., 130 S. Ct. 2869 (2010), at 2883.

We believe use of a confidence level would be at least as accurate as other measures the Commission has already endorsed in the proposing release to reduce compliance burdens, including the use of statistical sampling and compensation estimates, and therefore should qualify as "another reasonable method" for identifying the median employee as referenced in the proposing release.[6] However, we believe issuers would be far more comfortable relying on the confidence level approach if it were expressly endorsed in the final rules.

A potential method for framing the confidence level would be to allow companies to exclude country affiliates in which the number of employees is less than 1% of their total workforce. In the case of ExxonMobil, this would focus the analysis on the 23 countries where we have a critical mass of employees. This would seem to be consistent with the intent of the legislation and substantially reduce cost and complexity.

Exclude part-time employees

We urge the Commission to reconsider its conclusion that "employees" must include part-time employees; or that, in the alternative, employers be allowed to annualize part-time compensation. The following example illustrates the issues:

> Example 4: Part-time employees. Joe and Jane are hourly workers performing similar jobs at different work sites for the company. Joe receives total annual compensation of $60,000 for working 40 hours per week. Jane receives total annual compensation of $45,000 for working 20 hours per week. In compensation per hour worked, Jane is more highly paid than Joe. Under the pay ratio rules as proposed however, Joe appears to be the higher paid employee.

As this example shows, comparing full time pay with part time pay without annualization can distort the pay ratio calculation and produce misleading results.

Use financial statement consolidation standards for determining "employees"

As proposed, Rule 12b-2 under the Exchange Act would be used to determine an issuer's "employees." This standard would result in costly additional compliance burdens and could make full compliance with the pay ratio calculation impossible. Instead, the pay ratio rules should rely on the same standard of control used for purposes of financial statement consolidation under FASB Accounting Standards Codification paragraph 810-10-15-8.

ExxonMobil's financial data systems are designed to support the preparation of consolidated financial statements. Because the 12b-2 standard is broader than the financial

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[6] Proposing release at 12

reporting standard, use of 12b-2 for pay ratio purposes would require additional systems or a manual process in order to integrate data from the additional covered entities. In many cases, this additional data is likely to be maintained on third-party systems, further increasing the cost of compliance.

In addition to the incremental work resulting from use of the 12b-2 standard, such a standard may result in situations where compliance with the pay ratio rules is impossible. The following example represents a common business structure in our industry:

> Example 5: Unconsolidated joint ventures. Company A and Company B are 50-50 owners of a joint venture ("JV") organized as a separate entity. Each Company contributes assets, funding, and employees to the JV. JV employees remain on the contributing company's payroll but are seconded (loaned) to the JV for assignments typically lasting 2-3 years. Company A is designated operator of the JV, and therefore is deemed to control the entity under Rule 12b-2. However, under the rules as proposed all employees of the JV – including employees on secondment from Company B – may be deemed employees of Company A.

The above example results in several impractical consequences. If all JV employees are deemed to be "employees" of Company A for pay ratio purposes, the only way Company A can make an accurate determination of its median employee is to obtain compensation data from Company B for the Company B employees on loan to the JV. However, Company B is likely to view that information as proprietary and be unwilling to share it. Nor would the typical JV agreement obligate the parties to share such information. Even more problematic, the Sherman Anti-Trust Act of 1890 generally prohibits two competitors from sharing information about the compensation of current employees.[7] Thus, full compliance with the pay ratio rules under a 12b-2 standard could well be impossible due to conflict with other U.S. laws.[8]

Lastly, as discussed in more detail below, inclusion of the incremental additional entities under a 12b-2 standard is likely to increase the work needed to address data privacy concerns.

For all the above reasons, we urge the Commission to rely on financial statement consolidation standards for purposes of the pay ratio rules. The Commission could clarify the appropriate treatment of equity entities by providing guidance to the effect that a company's

[7] See, U.S. Department of Justice and U.S. Federal Trade Commission joint "Statement on Anti-Trust Enforcement Policy in Healthcare" (1996), which establishes safe harbor guidelines for conducting salary surveys and considered applicable to all companies engaged in U.S. interstate commerce. These guidelines do not permit direct sharing of pay data between competitors.

[8] Under 12b-2 standards, multiple companies may also be deemed to share control of a JV. In that case, the same individual could be deemed to be an "employee" of multiple companies simultaneously for pay ratio purposes.

"employees" include employees who remain on its payroll while being loaned or seconded to another entity.

In addition to the specific recommended rule changes outlined above, ExxonMobil also offers its observations on the following additional issues raised by the proposing release:

Data privacy

As the Commission acknowledges in the proposing release,[9] data privacy laws in the EU and elsewhere can make sharing of employee pay information across borders more difficult even within a consolidated corporate group. Generally speaking, countries with strong privacy laws prohibit transfer of personal data – defined as any data relating to identifiable individuals – across national borders unless certain conditions are met.[10] The conditions typically include a legal reason for performing the transfer, determined with reference to the transferring entity; documentation and disclosure of the purpose of the transfer to employees and regulators; and a transfer mechanism that meets regulatory requirements. This latter requirement can be met via informed employee consent, inter-affiliate data transfer agreements, or regulatory "safe harbors" such as the frameworks established by the U.S. Department of Commerce.[11]

To the extent collection of pay data for purposes of the pay ratio calculation must be shared by affiliates who would not otherwise be required to provide such individual detail to the U.S. parent, each affiliate will need to review and update its procedures including providing appropriate notice and disclosure to employees and reporting to regulators. We estimate that approximately 16 ExxonMobil affiliates around the world will be required to undertake additional compliance efforts under data privacy laws as a result of the pay ratio rules as currently proposed, requiring an estimated work effort of up to 40 man-hours per affiliate.

As can be seen from the foregoing explanation, compliance burdens can be significantly reduced to the extent the coverage of non-U.S. affiliates can be reduced. Ideally, this would be accomplished by limiting the ratio calculation to U.S. employees. If the Commission is unable to take that step, Commission endorsement of the confidence level approach described above, together with use of financial statement consolidation principles for determining "control," would significantly reduce the need for additional data privacy compliance work.

[9] Proposing release at 26
[10] Compliance with data privacy requirements is likely required when transferring specific pay information even if employee names are omitted from the file.
[11] See, http://export.gov/safeharbor/index.asp

Statistical sampling

We appreciate the Commission's efforts to reduce compliance burdens by endorsing the use of statistical sampling to identify the median employee. However, we do not believe statistical sampling would result in a significant reduction of actual costs, especially in the first year of compliance. This is because a company would need to make a complete assessment of its employee base in order to verify that its sample size and sampling methods are in fact appropriate for that company. In other words, the work we believe is required in order to construct a valid statistical sampling model effectively moots the cost savings which the model is intended to provide. For this reason, ExxonMobil would not expect to make use of statistical sampling. Instead, we urge the Commission to endorse the confidence level approach described previously in this letter. Such guidance would be consistent with statistical sampling but would, we believe, result in much more substantial savings for issuers.

Annualization

Similar to our comments on statistical sampling, we commend the Commission for its efforts to make the ratio calculation more logical by allowing compensation for partial-year employees to be annualized. However, in ExxonMobil's case, identifying these mid-year hires and annualizing their pay would be a manual process. We believe the costs in time and effort would not be justified in light of the expected small number of such persons. Annualization would be far more meaningful – and likely worth the effort to implement – if applied to part-time employees in addition to partial-year employees.

We appreciate the opportunity to offer these comments. ExxonMobil would also be pleased to address any questions the Commission may have about these comments or to provide additional information that may be helpful.

Sincerely,