# American Federation of Labor and Congress of Industrial Organizations

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*Sent via electronic mail*
*rule-comments@sec.gov*

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

***Re: Comments on Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act***

Dear Ms. Murphy:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing to provide comment to the Securities and Exchange Commission on Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 953(b) seeks to provide investors with improved disclosure of public company compensation practices, including the median annual total compensation of all employees (except the Chief Executive Officer), the annual total compensation of the CEO, and the ratio of the CEO's total compensation with median employee wages.

The AFL-CIO is the country's largest labor federation and represents 12.2 million union members. Union-sponsored pension and employee benefit plans hold more than $480 billion in assets. Union members also participate directly in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public-sector employers. The retirement savings of America's working families depend in part on public companies having responsible compensation practices for both their CEOs and all other employees.

**Median Employee Compensation Data Is Material to Investors**

The median total annual compensation of all company employees is material to investors for numerous reasons. For many companies, particularly in the service sector, employee compensation is frequently the single largest expense. Not only is employee compensation material from an accounting perspective, but it is a critical human resources management function. Yet few companies provide meaningful disclosure of how employee compensation is allocated over their workforce. Disclosure of median annual total compensation for all employees will help investors compare employee compensation structures between companies and their peers.

Investors will benefit from greater transparency regarding whether a company pays its median employee a relatively high or low level of compensation. For example, higher median employee compensation levels may indicate that a company pays "efficiency wages," i.e., more than the minimum level needed so that the company can attract the best qualified employees and improve employee productivity. Relatively higher levels of median employee compensation may also make it easier to retain workers and reduce employee turnover. Higher median compensation levels may also indicate that a company employs a workforce that is relatively highly skilled.

The ratio of CEO to median employee compensation is also material to investors as an indicator of wage dispersion within a company. For decades, economists have studied the relative merits of flat versus pyramid compensation structures. For example, one economic theory (known at "tournament theory") suggests that having a highly paid CEO might motivate other executives to work harder and rise to the top. Others, such as management guru Peter F. Drucker, argue that CEO should not be paid more than a certain ratio of the lowest paid employee to maintain group cohesion and teamwork. Disclosure of CEO to median employee compensation ratios will give investors more information on how companies approach these human resources questions.

**U.S. and Global Compensation Figures Should Be Disclosed**

The Commission's regulations implementing Section 953(b) should require comprehensive disclosure of median compensation for all employees of public companies and their consolidated subsidiaries, both foreign and domestic. The text of Section 953(b)(1)(A) states that public companies must disclose "the median of the annual total compensation of all employees of the issuer," not just all U.S. employees. The best way to implement the statute's language is for the Commission to require that public companies disclose the median compensation level of their U.S. and global workforces as two separate statistics.

The relative compensation levels of a company's U.S. workforce and its global workforce is material to investors for a variety of financial reasons. For example, the disparity between U.S. and global employee compensation is relevant for investors to understand decisions to move operations offshore. Many U.S. domiciled companies employ a significant percentage of their workforces abroad, and these numbers are increasing with globalization. According to a 2007/2008 survey by the Conference Board and Duke University, 53 percent of companies have adopted a corporate-wide strategy for guiding off-shoring and outsourcing decisions, up from 22 percent in 2005.[1]

Mandated disclosure of U.S. and global median compensation figures will also provide investors with a greater understanding of global compensation trends. The increasingly global structure of company workforces has been accompanied by the increased use of global policies on employee compensation. A 2008 survey by the human resources consulting firm Towers Watson found that 57 percent of multinational companies have adopted a formal philosophy or statement of guiding principles on global employee compensation, and another 17 percent plan to develop such policies by 2010.[2] Disclosure of median employee compensation data for both U.S. and global employees will encourage companies to provide a narrative description their global compensation policies.

**Issuer Concerns Regarding Section 953(b) Are Overstated**

Disclosure of median compensation levels for the employees of public companies and their consolidated subsidiaries is entirely feasible and will not impose an undue burden on public companies. In the U.S., all employers are required to report each employee's annual compensation to the Internal Revenue Service on Form W-2, as reported under "wages, tips and other compensation." The national tax authorities of most other countries have similar reporting requirements for withholding tax purposes. Moreover, because payroll processing is integral to the accounting process, collecting the required information to comply with Section 953(b) should be attainable for any company that has sufficient internal controls over its financial reporting.

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[1] Ton Heijmen, et. al., The Conference Board and Duke University Offshoring Research Network, *2007–2008 ORN Survey Report: Offshoring Reaches the C-Suite*, available at https://offshoring.fuqua.duke.edu/pdfs/Duke_ORN_4th_Annual_Report_Executive_Summary.pdf.

[2] Towers Perrin, *Effective Global Governance and Oversight of Total Remuneration Programs: An Elusive Business Imperative*, February 2009, available at http://www.towersperrin.com/tp/getwebcachedoc?webc=GBR/2009/200903/Global_Total_Remun_Svy_22709.pdf.

At least one publicly traded company already discloses its average employee's compensation in its annual proxy statement. At Whole Foods Market Inc., the CEO's annual cash compensation is capped at a maximum ratio of the company's average annual employee wage.[3] Whole Foods calculates its employees' average annual wage as the product of its full-time employees' average hourly wage and 2,080 hours (the product of 40 hours/week and a 52-week year). Although we believe that the compensation of part-time employees should also be disclosed under Section 953(b) to provide a more complete picture of workforce compensation, Whole Foods shows that disclosure of this information is easily accomplished.

The disclosure of compensation data under Section 953(b) will not have unintended consequences on public company employment decisions. Because Section 953(b) requires disclosure of median compensation levels, a public company would not have to restructure a substantial portion of its workforce to meaningfully alter the required disclosures. It is simply not credible to suggest that companies will dramatically restructure their operations to manipulate this data. Moreover, such a business decision would be improper under state corporate laws that require boards of directors to put the interests of shareholders before the interests of company CEOs who may be potentially embarrassed by their companies' Section 953(b) disclosures.

Investors will not be misled by comparing Section 953(b) disclosures between companies. Greater transparency about median employee compensation levels and workforce wage disparities will help investors better understand how individual companies compare to their industry peers as well as the compensation strategies of entire industries. We note that any concerns about Section 953(b) potentially misleading investors can be remedied by providing investors with more disclosure. To help investors better compare companies, we urge the Commission to require that public companies provide a narrative discussion and analysis of their Section 953(b) disclosures including their use of outsourcing and off-shoring strategies, use of part-time and temporary employees, and use of efficiency wages to boost productivity.

**Conclusion: Section 953(b) Disclosures Should Be Enhanced**

Since passage of the Securities and Exchange Act of 1934, the Commission has required companies to disclose material information to investors. Greater transparency both improves the efficiency of the capital markets and promotes greater management accountability to investors. Over the years, public companies have been required to provide enhanced disclosure of their business operations regarding a large variety of

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[3] Whole Foods Market Inc., 2010 Proxy Statement filed Jan. 12, 2010, page 15, available at http://www.sec.gov/Archives/edgar/data/865436/000120677410000109/wholefoods_def14a.htm

subject matters. Yet disclosure of employee compensation practices has not kept pace with this overall trend. We therefore urge the Commission to use the requirements of Section 953(b) as a starting point for updating the disclosure requirements for public companies on their employee compensation practices.

Sincerely,

Richard L. Trumka
President

RLT/DFP/sdw
opeiu #2, afl-cio

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner