



UNIVERSITY OF
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December 14, 2011

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

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

Dear Ms. Murphy:

I am writing with regard to the implementation of the disclosure requirements contained in Section 953(b) of Dodd-Frank. That section requires the calculation of a ratio using total compensation for the CEO and total compensation for the company's median employee.

Concerns have been raised about the logistical difficulties in implementing the requirement. Some have asserted that the formula used to determine median employee compensation is excessively complex and that the provision requires frequent, at least quarterly, disclosure of the ratio. In fact, however, the Securities and Exchange Commission ("Commission") has sufficient discretion to address both concerns during the regulatory process.

The language of Section 953(b) provides the Commission with broad regulatory discretion. For example, the Section does not define the frequency of disclosure of the ratio but merely references Item 10(a) of Regulation S-K. 17 CFR 229.10(a). The provision does not restrict the Commission's authority to amend the language of Item 10(a) and in so doing determine the frequency of ratio disclosure.

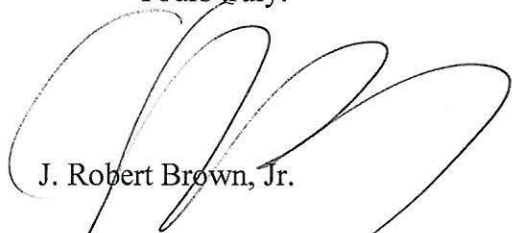
With respect to the formula for determining total compensation of the median employee, Section 953(b) references Item 402(c)(2)(x). 17 CFR 229.402(c)(2)(x). The Commission has less room to alter this provision. Section 953(b) specifically states that the Commission must use the version "in effect on the day before the date of enactment" of Dodd Frank. Subsection (x), however, merely defines the categories of compensation that must be included in computing the median. It does not prevent the Commission from defining how each category should be calculated.

Section 953(b) does not, for example, prohibit the Commission from amending Item 402(c)(2)(ix) and identifying types of compensation that can be excluded from “other compensation.” *See* Letter from Frederic W. Cook, Frederic W. Cook & Co., August 13, 2010 (recommending that the Commission “[a]llow the exclusion of benefit costs, training, relocation, expat allowances, etc.).¹ *See also* Letter from the ABA Business Law Section, Sept. 29, 2010 (containing suggestions on revision of total compensation formula when applied to employees).²

The Commission does, therefore, have the legal flexibility to address logistical concerns that arise in connection with the determination of median employee compensation. I have written a law review article on this topic that was published by the Harvard Business Law Review and provides further detail on the views set out in this letter.³

With regards,

Yours truly,



J. Robert Brown, Jr.

Professor
Director, Corporate Commercial Law Program
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¹ <http://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-6.pdf>

² <http://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-19.pdf>

³ The article can be found on the Harvard site (<http://www.hblr.org/2011/10/compensation/>) or on my SSRN page (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1942867)