Institute for Policy Studies

March 22, 2017

Michael S. Piwowar
Acting Chair
Securities and Exchange Commission
100 F Street, NE
Washington, CC 20549-1090

Dear Acting Chair Piwowar,

This is in response to your puzzling request for yet another round of public comments on Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires public companies to disclose the ratio between their CEO and median employee pay.

We had assumed that the U.S. Securities and Exchange Commission had more pressing business than to relitigate a transparency reform that was signed into law in 2010 and adopted by the SEC in 2015. Perhaps your agency could learn a thing or two about efficiency from your Indian counterparts, who managed to implement that country's pay ratio disclosure law just seven months after it became law. In the meantime, we hope you'll comply with the request issued recently by a group of nine senators for an estimate of the taxpayer costs of your decision to "reconsider implementation" of this regulation.

To save some of our own staff resources, we merely include here the key points in our two previous Institute for Policy Studies comment letters on this issue, along with updates on the increase in support for pay ratio disclosure over the seven years since it became U.S. law.

CEO-worker pay ratio data is of material interest to shareholders

Our 2011 letter to the SEC focused on the argument that shareholders have a material interest in the ratio data because extreme pay differentials between CEOs and their workers undermine enterprise effectiveness. We summed up the extensive academic research indicating that such gaps:

1. Reinforce rigid corporate hierarchies and bloated bureaucracies that discourage workers from being creative contributors to enterprise success.
2. Lead to lower morale and higher turnover rates that undermine productivity.
3. Reinforce a "celebrity CEO" culture that is not conducive to high executive performance.

Recently, we had the opportunity to interview Connecticut State Treasurer Denise Nappier, whose experience as the manager of that state's $30 billion pension fund reinforces this academic research.

"Pay disparity can have an impact on financial performance," Nappier told us. "And data on disparities can inform investment and engagement decisions." Information on median worker pay "would help investors better understand portfolio companies' approaches to managing their workforce," the

Connecticut state official went on to explain. "Underinvestment in the workforce can lead to costly operational, legal and reputational problems," she adds, "while skillful human capital management fosters innovation, superior execution and competitive advantage."

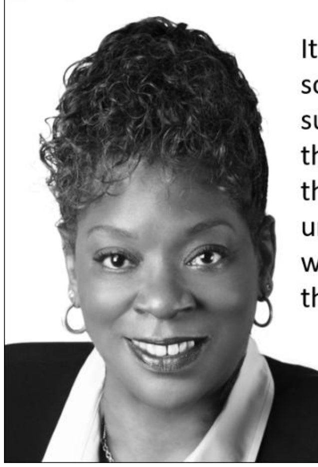
What about the claim that companies are facing difficulties complying with the new SEC disclosure mandate? As an investor, responds Nappier, she finds it "worrisome that some companies have such a tenuous grasp of their own labor costs that they say they are unable to identify the worker whose pay is at the median."

Nappier's views reflect those of the CEO selected by the *Harvard Business Review* as the best-performing executive in the world in 2016 — Lars Rebien Sørensen of the Danish firm Novo Nordisk.

"When we have too wide a disparity between executive compensation and workers' compensation," Sørensen has explained, "we create a barrier to the employee passion and engagement that all companies need to achieve their objectives. If there is too big a gap between what I earn and what a blue-collar worker at my company makes, it's going to create problems."

The flimsy arguments against pay ratio disclosure

In our 2013 comment letter you can find our detailed, five-page rebuttal to the big corporate lobby groups' five most common complaints about the pay ratio disclosure rule. We were in good company that year, as our comment letter was just one of more than 287,400 submitted in response to the SEC's final proposed rule. The vast majority were strongly in favor of the regulation, including statements from four state officials responsible for their state pension funds and more than two dozen other institutional investors and investment managers, including CalPERS (the manager of the largest U.S. pension fund), Trillium, Domini, and Walden Asset Management, as well as the Council of Institutional Investors.



It is worrisome that some companies have such a tenuous grasp of their own labor costs that they say they are unable to identify the worker whose pay is at the median."
-- Connecticut State Treasurer Denise Nappier

Given the outpouring of support for this regulation from the investment community, most corporations now appear to recognize the risk of claiming to have difficulty computing their median employee pay. Out of the more than 3,500 corporations that are subject to this disclosure requirement, the SEC comment page as of March 22 shows that only four — BorgWarner, Stein Mart, Flushing Financial, and Finish Line — have responded to your request to share their problems with this computation with the public.

Increased support for pay ratio disclosure – across the United States and internationally

In 2010, the U.S. Congress became the first national lawmaking body to adopt a CEO-worker pay ratio reporting requirement. The pay ratio disclosure concept has spread widely since then. As noted above, India adopted such a disclosure regulation in 2013, and the first ratios were reported in 2015. Disclosures like these, one Indian business publication editorial has noted, "drive home the point that income inequality is alive and well in corporate India" — and needs "reining in."

The UK's ruling Conservative Party, backed by the country's influential Investment Association, proposed a similar CEO-worker pay ratio disclosure regulation in November 2016, as part of a broader corporate governance reform.

The UK's current CEO-worker pay gap of 128:1, up from 47:1 in 1998, is "unhealthy and irrational."

– UK Prime Minister Theresa May

In the United States, city and state governments are also pursuing pay ratio reforms. In December 2016, the city council in Portland, Oregon, adopted the world's first tax penalty on corporations with extreme gaps between their CEO and worker pay. The law applies a surtax on the local business tax to publicly traded companies with wide pay gaps. The city's current business tax is 2.2 percent of local profits. The surtax is 10 percent of the business tax liability for companies with a CEO-median worker pay ratio of more than 100-to-1 and 25 percent if ratio is more than 250-to-1. More than 500 corporations do enough business in the city to be affected by the surtax, including many that are often at the top of the highest-paid CEO lists, such as Oracle, Walmart, Goldman Sachs, and Wells Fargo.

Since the Portland action, lawmakers have introduced similar legislation in five states (Connecticut, Rhode Island, Minnesota, Illinois, and Massachusetts), and members of the San Francisco Board of Supervisors are working on a municipal proposal. These efforts are driven by public outrage over overpaid CEOs that cuts across the political spectrum. A 2016 Stanford University poll found that average Americans grossly *underestimate* the typical size of executive paychecks, yet still — by a vast majority, 74 percent — believe that CEOs are overpaid.

Mindful of Congressional Republicans' efforts to undercut the U.S. federal disclosure regulation, many of these state and local level lawmakers are exploring ways to require corporations to report their pay ratios to sub-federal authorities as a condition of doing business in those jurisdictions. Thus, even if the federal disclosure rule were to be repealed, the momentum towards state and local-level reforms on the pay gap are unlikely to die.

In large states especially — think California and New York — authorities that enact disclosure mandates would have enough economic clout to get companies to report out their pay ratio data. Few major companies in the United States could afford to walk — or even inch — away from these markets.

In conclusion, the SEC "reconsideration" of Section 953(b) of the Dodd-Frank financial reform law doesn't just waste time and public resources. This pointless "reconsideration" also insults the hundreds of thousands of citizens and shareholders who have weighed in in support of this regulation, not to mention the elected officials who voted it into law seven years ago.

Sincerely,

Sarah Anderson

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