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July 6, 2015

Keith Higgins
Director,
Division of Corporation Finance
Securities and Exchange Commission
C/o Brent Fields
Secretary,
Securities and Exchange Commission,
100 F Street, NE,
Washington, DC 20549-1090.

Via email

Re: Potential effect on pay ratio disclosure of exclusion of different percentages of employees at a range of thresholds

File Number S7-07-13

Dear Director Higgins,

On behalf of more than 400,000 members and supporters of Public Citizen, we offer the following comment on the memo titled, "Potential effect on pay ratio disclosure of exclusion of different percentages of employees at a range of thresholds." This memo was prepared to assist the Commission in producing a long delayed rule implementing Section 953b of Dodd-Frank, and we hope they will move expeditiously to that end.

In summary, the agency analysis shows that random deletion of a certain percentage figure of the population of workers would lead to a slightly less accurate resulting CEO/median pay ratio by a slightly slightly less percentage figure. This can only mean that deletion of an entire percentage of workers who workers who are known to be less well paid than the average worker, such as seasonal, part-time, or or foreign workers, would necessarily result in an even greater change in the accuracy of that ratio. As ratio. As such, we believe this analysis underscores the need to oblige the intent of the statutory language, language, and consider all workers in the identification of the median.

Dodd-Frank Section 953(b) requires publicly traded companies to disclose the CEO's pay as a multiple of the median paid employee at the firm. Specifically, the statute provides the identification of "the median of the annual total compensation of ***all*** employees of the issuer."

Public Citizen believes translating this statute into code requires little more than rearranging a few commas and adding a word or two to the statutory language. The agency has proven adept at doing just that in regards to other provisions in Title 9 of Dodd-Frank. For example, this is what the SEC has proposed for implementation of Dodd-Frank Section 955 regarding executive pay hedging. We suggest the Commission consider a similar simple restatement for 953(b). We also believe that calculation of the ratio will be simple and inexpensive for companies. Firms must know what they pay their employees as they file tax forms for each employee, an obligation that applies to seasonal, part-time and foreign workers. We reject claims by some firms that such a calculation would be onerous as a specious argument abusive of the government's routine cost-benefit analysis.

Public Citizen and others who eagerly await this rule, already accept that firms may use statistical sampling to reduce their calculation costs. Firms need not take care with quantifying specific compensation for workers paid in the lowest, say 40 percent, such as bedding for Chinese factory workers, or the value of a hot dog at the company picnic. Instead, the firm must simply understand that a group of workers is paid below the median. The only care a firm must exercise is when it begins to zero in on the median itself, which would involve consideration of those workers that fall around the 50 percent compensation area.

The staff analysis begins with the question of what happens to the resulting ratio when an entire class of employees is excluded.[1] To accomplish this, the staff looks to other studies to identify the variance of wages. These variances range from .25 to .55. The studies from which these variance rates are derived, however, are imperfect substitutes for wage variance rates at actual private firms. As such, they understate the potential variance at actual private firms. Specifically, the Barth and BLS studies estimate variance within establishments as opposed to firms. A factory at a firm is an establishment and may have a lower variance of wages than if the headquarters, which is another establishment, is included. The BLS study addresses hourly wages, not annual wages. Those paid hourly are generally paid less than those paid annual salaries. The study using federal employment data (Hirsch) is also an imperfect proxy for private sector firms, as government pay ranges are widely understood to be less than in the private sector, as the staff acknowledges. In short, these variance figures are low.

Use of a random deletion also understates the impact of excluding a specific class of employees, namely those in foreign countries, part time, seasonable or temporary workers. A firm that terminates US employees to manufacture its widgets and uses foreign workers instead does so to save money. This is not a random selection of employees. Nor are part-time workers a random part of a work force; they are workers who are paid less than peers with the same job who work full-time. Seasonal workers are not part of a random work pool; they are bought in when workloads are high, and then dismissed—and not paid—when workloads fall off. A random deletion of a work force might take out the senior vice president for marketing at a firm. But we assume that the senior vice president for marketing is never a "seasonal" worker.

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[1] In a press release, the SEC explains that "the analysis will be informative for evaluating the potential effects on the accuracy of the pay ratio calculation of excluding different percentages of certain categories of employees, such as employees in foreign countries, part-time, seasonal, or temporary employees as suggested by commenters."

Consequently, this study explores how a *random* deletion of a workforce would affect the results in a calculation of the ratio of CEO pay to median pay, and necessarily understates the impact compared with a study of what a *specific* deletion of part-time or foreign workers would do to such a calculation.

The staff analysis and all the cited studies depend on lognormal distribution, which are normal distribution. We believe lognormal analysis may be inadequate for examining actual, individual firms which may be reflected in non-normal data. Simple sampling, as in political polling, can be a more direct short-cut that large firms could use.

We hope that this June 4 analysis evinces the SEC actually is paying attention to the rule-making. We hope that this analysis does not serve as a vehicle to claim a need for more time for review.

Congress approved this statute five years ago. Dozens of members of Congress have written the SEC specifically raising their concerns about tardy completion of the CEO pay ratio rule.[2] More than 120,000 individual investors have proffered comment, surely providing a robust resource for the staff to assess its merits.[3] More than 70,000 of these are members of Public Citizen.

Whereas Section 953(b) should have been codified with clerical efficiency, completion of this simple rule now serves as a barometer of the efficiency of the agency and its faithfulness to investors.

For questions, please contact me at [redacted], or [redacted]

Sincerely,

Bartlett Naylor

[2] See letter from Rep. Ellison et al, described in Bloomberg, available at: http://www.bloomberg.com/news/articles/2015-05-21/mary-jo-white-s-sec-is-the-agency-that-barely-moves

[3] Comment letters available at: http://www.sec.gov/comments/s7-07-13/s70713.shtml