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July 21, 2015

The Honorable Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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Dear Secretary Fields:

Re: File Number S7-07-13
Proposed Rules for Implementing the Pay Ratio Disclosure Provision
of Section 953(b) of the Dodd-Frank Wall Street Reform and
Consumer Protection Act

This letter is submitted on behalf of Business Roundtable, an association of the chief executive officers of leading U.S. companies. Our member companies produce \$7.2 trillion in annual revenues and employ more than 16 million employees worldwide. Business Roundtable companies comprise more than a third of the total value of the U.S. stock market, annually pay more than \$230 billion in dividends to shareholders, generate more than \$470 billion in sales for small and medium-sized businesses and invest \$190 billion in research and development—equal to 70 percent of U.S. private research and development spending. Our members also give more than \$3 billion a year in combined charitable contributions.

We are writing in response to the June 4, 2015 technical analysis and the June 30, 2015 extension of the technical analysis¹ prepared by the Division of Economic and Risk Analysis at the U.S. Securities and Exchange Commission (SEC or Commission) related to the SEC's CEO pay ratio proposed rule² (Proposed Pay Ratio Rule) to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). We also reiterate and supplement earlier comments Business Roundtable submitted on December 2, 2013.³

¹ Available at <http://www.sec.gov/comments/s7-07-13/s70713-1556.pdf> and <http://www.sec.gov/comments/s7-07-13/s70713-1559.pdf>.

² Available at <http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23073.pdf>.

³ Available at <https://www.sec.gov/comments/s7-07-13/s70713-565.pdf>.

The Relevance and Usefulness of the Analysis by the Division of Economic and Risk Analysis is Unclear

We have reviewed the technical analysis and extension of the technical analysis (collectively, the Technical Analysis) prepared by the Division of Economic and Risk Analysis (Division) dated June 4, 2015 and June 30, 2015, respectively. We appreciate the thought the Division put into assessing the impact of excluding some employees from the pay ratio calculation. It is imperative that in adopting the final rule that the Commission reduce the extraordinary costs and burdens the Proposed Pay Ratio Rule would place on companies and their investors and address legal impediments, such as privacy laws in foreign jurisdictions detailed in our prior comment letter.

In commenting on the Technical Analysis we are constrained in two respects. First, neither the Commission nor the staff has provided any guidance as to how the Technical Analysis might be used or relied upon by the Commission. It appears that the general objective is to seek ways to allow companies to exclude certain employees in an effort to reduce the cost and burden of compliance. While this is an objective we strongly support, it would be speculative to provide specific comments without fully understanding the Commission's planned application of the analysis.

Second, we point out that in many ways the Technical Analysis illustrates the heart of the problem with the Proposed Pay Ratio Rule. The Analysis uses as its starting point several different pre-assembled, documented and harmonized compensation databases that government and academic researchers have spent thousands of hours constructing, verifying and updating. Any statistical analysis of compensation data—including the calculation of the median worker—would be straightforward once a harmonized compensation database was constructed. However, the vast majority of private-sector companies lack an easy and efficient way to gather compensation data from operating divisions around the world, since they use a wide range of different and often incompatible payroll systems. More importantly, compensation is an ill-defined term across various international jurisdictions, as the allocation of social benefits, health care and national, regional and local taxes paid for by employees and companies is often inconsistent. Taken as a whole, this situation make comparisons extremely difficult.

In some cases, companies operate in excess of 150 divisions around the world. Requesting of this information from local staff (perhaps in many dozens of languages), converting this data from multiple software systems and platforms and merging, defining and integrating this data into a single harmonized database create the most significant burden of the Proposed Pay Ratio Rule. *Quite simply, the costs and burdens mushroom rapidly once more than one payroll system is involved and when multiple international operations are factored in.* Therefore, even a seemingly sizeable reduction in the employees covered is unlikely to result in a concomitant reduction in costs and burdens. Unless all non-U.S., part-time and seasonal employees are

excluded from the pay ratio calculation, the costs and burdens on companies imposed by the SEC's final rule will likely be exponentially higher than if the calculation were limited to full-time U.S. employees only.⁴

The Proposed Pay Ratio Rule would Impose Substantial Costs and Burdens on Companies and, In Turn, on Investors

Based on further conversations with Business Roundtable member companies and economists undertaken since our December 2, 2013 comment letter in our effort to identify reasonable, cost-effective steps companies could follow to comply with the Proposed Pay Ratio Rule, we continue to find that the Proposed Pay Ratio Rule would place enormous and inescapable costs and burdens on companies and their investors.

Significantly, it has been noted by many commenters, including Business Roundtable, that companies do not typically structure their global human resource systems in ways that provide ready access to the data needed to conduct the calculation proposed by the SEC. It is important to understand that a critical reason companies have not done this is that the legal, cultural and operational disparities that exist around the world mean there is no discernable business benefit from collecting and harmonizing this type of information. This would not change with the imposition of the Proposed Pay Ratio Rule; there is no business benefit to this exercise.

In summary, regardless of one's view of the merits underlying Section 953(b) and the Proposed Pay Ratio Rule, the endless scenarios and related implementation realities we considered and analyzed demonstrate that *the Proposed Pay Ratio Rule would be unduly costly and burdensome, would result in inconsistent information among companies and, therefore, would generate immaterial, if not misleading, information to investors.*

Section 953(b) Imposes on the SEC an Irreconcilable Conflict with the SEC's Broader Statutory Mandate

Section 953(b) imposes conflicting and irreconcilable mandates on the SEC by directly undermining the Commission's central statutory objective, as set forth by the Exchange Act, to protect investors, maintain fair and orderly markets and promote capital formation. In the interest of the SEC and all its constituencies – investors, registrants and the public at-large – we believe that where such a conflict exists it is incumbent upon the SEC to formally notify Congress of the problematic and unresolvable contradiction (including the reasons it believes it lacks authority to resolve the contradiction) and recommend a solution or, at a minimum, request clarification from Congress. Accordingly, like many who have spent extensive time

⁴ Note, however, that even a formulation limited to U.S. employees only begins to address the costs and burdens problem; calculation of the pay ratio number would still be a costly task and the information garnered would still be immaterial, if not misleading, to investors.

examining Section 953(b) and the Proposed Pay Ratio Rule, we believe no reasonable approach to pay ratio can be crafted to provide investors with meaningful information. Furthermore, we restate that this exercise would not provide investors any material information on which they can make informed decisions. Therefore, we maintain the position that full repeal of Section 953(b) is in the best interests of investors and is in service of the SEC's core mission.

If, however, full repeal proves unworkable, significant changes, as discussed in our prior comment letter and expanded upon below, should be made to Section 953(b) and the Proposed Pay Ratio Rule. In summary, Congress should amend Section 953(b) to provide that the pay ratio calculation be designed to be far less costly and burdensome – and *the SEC should use its exemptive and interpretative authority to the maximum extent possible.*

Section 953(b) Should Be Repealed or, Alternatively, Amended and the SEC Should Exercise its Exemptive and Interpretative Authority to the Maximum Extent

As the Commission and its staff are well aware, the SEC's core mission is to balance three interdependent objectives necessary to maintain the United States' position as the world's leading capital markets center: "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."⁵ Central to its efforts to protect investors is the SEC's requirement that public companies disclose material information. We note that in describing its mission, the Commission states that "only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions."⁶

Further, Section 3(f) of the Exchange Act requires that the Commission, whenever it is engaged in rulemaking under the Exchange Act, "consider or determine whether an action is necessary or appropriate in the public interest," and also requires the Commission to "consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."⁷ These objectives are fundamental to the SEC's ability to preserve the public's faith in the capital markets.

We believe that the disclosures mandated by Section 953(b) of the Dodd-Frank Act and the Proposed Pay Ratio Rule will provide investors with immaterial and, in many circumstances, misleading information. This, therefore, puts the Proposed Pay Ratio Rule and implementation of Section 953(b) squarely at odds with the SEC's core mission. As discussed in our prior comment letter, the federal securities laws are intended to provide disclosure of material information to investors to enable them to make informed investment and voting decisions. However, the disclosures required by the Proposed Pay Ratio Rule and Section 953(b) will be arbitrarily dependent on issues having nothing to do with a company's performance and impacted by so many variables, such as differences in business models like those listed on

⁵ The Commission discusses its mission on its website at <http://www.sec.gov/about/whatwedo.shtml>.

⁶ *Id.*

⁷ Securities Exchange Act of 1934, P.L. 112-158, p. 39.

Appendix A. As a result and as the Commission acknowledges in the proposing release:

[U]sing the ratios to compare compensation practices between registrants without taking into account inherent differences in business models, which may not be readily available information, could possibly lead to potentially misleading conclusions and to unintended consequences.⁸

Many of these inherent differences, examples of which are listed on Appendix A, do not themselves rise to the level of material disclosure. This likely will lead to unaware investors reaching arbitrary and distorted conclusions with respect to corporate compensation practices. *Thus, instead of protecting investors, implementation of Section 953(b) will produce disclosure that is immaterial or even misleading.*

Implementation of Section 953(b) also is contrary to the SEC's objectives of market efficiency and facilitation of capital formation. We reiterate the concern expressed in our prior comment letter that the Proposed Pay Ratio Rule is unnecessarily burdensome, particularly given that, as acknowledged by the Commission, "neither the statute nor the related legislative history directly states the objectives or intended benefits of [Section 953(b) of the Dodd-Frank Act] or a specific market failure, if any, that is intended to be remedied."⁹ *Issuers and investors will incur significant costs in complying with a Proposed Pay Ratio Rule with no discernible benefit.*

As noted above, if full repeal of Section 953(a) is unachievable, we believe significant changes should be made to Section 953(b) and/or the Proposed Pay Ratio Rule. First and foremost, Congress should amend Section 953(b) to provide that the pay ratio calculation be designed to be far less costly and burdensome. Second, the SEC should use its exemptive and interpretative authority to the maximum extent possible to propose a rule that satisfies the statutory mandate to protect investors, maintain fair and orderly markets, and promote capital formation. Some basic steps taken by Congress and/or the SEC to achieve this include:

- Limiting the Proposed Pay Ratio Rule to full-time U.S. employees only.
- Revising Section 953(b) to provide that the pay ratio calculation be based on average compensation rather than the compensation of the median employee. This simple change alone would likely reduce the compliance costs and burdens on many companies by 90 percent or more, because it is the merging/integration of employee-by-employee compensation records from different payroll systems necessary to identify the median employee that is a central problem. Aggregate payroll data is much easier to compute, process, and report.¹⁰

⁸ 78 Fed. Reg. 60589 (Oct. 1, 2013).

⁹ *Id.* at p. 60582.

¹⁰ Another alternative approach would be to allow companies to use compensation data for the average U.S. worker in the company's industry or NAICS code. This data is readily available (see

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- Providing that the information required by the Proposed Pay Ratio Rule be furnished to the SEC rather than filed.

Thank you for considering our comments. We would be happy to discuss our concerns or any other matters that you believe would be helpful. Please contact me or Michael Ryan of the Business Roundtable at [REDACTED].

Sincerely,



John A. Hayes
Chairman, President and Chief Executive Officer
Ball Corporation
Chair, Corporate Governance Committee
Business Roundtable

JH/mr

C: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
Mr. Keith F. Higgins, Director, Division of Corporation Finance
Ms. Anne K. Small, General Counsel and Senior Policy Director

Attachment: Appendix A

<http://www.bls.gov/oes/current/oessrci.htm>) and likely would not differ greatly from the eventual estimate of the company's median worker. It might prove instructive if the Division of Economic and Risk Analysis conducted sensitivity analysis to show what percentage of companies' CEO pay ratios would be within, for example, the 10, 15, or 25 percent over-statement or under-statement thresholds under this approach.

Appendix A

Examples of Business Model Factors

1. The degree to which business operations are outsourced: The ratio of a company that substantially outsources labor is likely to be incomparable with the ratio of a company that does not.
2. The size of part-time or seasonal workforce: The ratio of a company that employs a significant number of such workers at its fiscal year-end is likely to be incomparable with the ratio of a company that has a steady workforce.
3. The degree to which internal versus external experts/professionals are used: The ratio of a company that hires outside experts is likely to be incomparable with the ratio of a company that builds internal expertise.
4. The degree to which workers are party to labor contracts or collective bargaining: The ratio of a company with significant labor contracts/obligations is likely to be incomparable with the ratio of a company that is not subject to collective bargaining arrangements.
5. The extent to which independent contractors are used: The ratio of a company that outsources certain business functions is likely to be incomparable with the ratio of a company that maintains those departments internally.
6. The level of experience of the CEO: The ratio of a company with a new CEO is likely to be incomparable with the ratio of a company that has had the same CEO for an extended period.
7. The differences in compensation systems between countries: For example, 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 and retirement benefits are provided exclusively by the national government. Under the Proposed Pay Ratio Rule, 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.¹¹
8. Economic differences between countries: For example, two employees hold similar jobs in two different countries, C and D. The employee in Country C receives total annual

¹¹ Excerpted from the ExxonMobil Proposed Pay Ratio Rule comment letter (Dec. 2, 2013), *available at* <http://www.sec.gov/comments/s7-07-13/s70713.shtml>.

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 Proposed Pay Ratio Rule the appearance is reversed.¹²

9. Currency differences between countries. For example, 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 Proposed Pay Ratio Rule, the company's pay ratio appears to widen over the same period, even if there has been no change in pay levels or practices.¹³

¹² *Id.*

¹³ *Id.*