

October 9, 2013

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

Re: Request for Extension of Comment Period, Proposed Rule on Pay Ratio Disclosure; Release Nos. 33-9452; 34-70443; File No. S7-07-13; RIN 3235-AL47

Dear Ms. Murphy:

The undersigned organizations, institutions, and nonprofits interested in fostering entrepreneurship represent hundreds of thousands of businesses, small and large, and their professionals, from all sectors of the economy employing tens of millions of Americans. We have all played an active, ongoing part in providing comments and informing rulemakings implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), including sending comments to the Securities and Exchange Commission (“SEC”) on the pay ratio disclosure requirements of Section 953(b) of the Dodd-Frank Act prior to the issuance of a proposed rule.¹ Having reviewed the proposal to implement Section 953(b), the undersigned organizations hereby request a 60-day extension of the deadline for filing comments on the proposed Pay Ratio Disclosure rule published in the Federal Register on October 1, 2013 (“Proposed Rule”).²

We believe an extension is necessary if stakeholders and interested parties are to even begin to have a chance to provide the diverse, detailed, and complex information sought in the overlapping requests for comments contained in this Proposed Rule. On the one hand, the rule requests comments within 60 days on dozens of narrow, sensitive, and highly-technical company-specific issues. For instance, comments are solicited as to “how separate payrolls are maintained within a company across divisions or subsidiaries, how the compensation components that the current payroll systems record compare to the ‘total compensation’ as defined in [the Proposed Rule].”³ On the other hand, the proposal seeks comments on numerous

¹ See, e.g., January 19, 2012 Letter to the SEC concerning Section 953(b) of the Dodd-Frank Act.

² Pay Ratio Disclosure, 78 Fed. Reg. 60,560 (Oct. 1, 2013).

³ *Id.* at 60,588.

broad, complex macro-economic issues. For example, comments are requested on “adverse effects on competition, investment or innovation, the potential annual effect on the U.S. economy; any increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment, or innovation.”⁴ The Proposed Rule goes on to solicit separate comments to the Office of Management and Budget (“OMB”) on the data collections and burden analyses associated with nine separate forms and schedules. The request for comments concerning these documents is subject to the admonition that “comments are best assured of having their full effect if the OMB receives them within 30 days of publication.”⁵

Given the intricate nature of this rule and the diverse array of complex issues on which the SEC is specifically requesting comments, the 60 day comment period will not provide interested parties with the opportunity to review the Proposed Rule, collect the data requested by the SEC, and provide commentary. A 60 day comment period will hamper an informed rule making process leading to a flawed rule that will harm public companies and their investors.

When the SEC’s 60 day comment period is compared to the time other agencies have permitted on far less ambitious requests for comments, the reasonableness of an extension is clear. For example, we note that on September 24, 2013 the Food and Drug Administration (“FDA”) published a final rule establishing a “unique device identification system” for the labeling of medical devices that featured a 120-day comment period as originally proposed on July 10, 2012.⁶

While we are surprised by the abbreviated comment period for this Proposed Rule, we are also disappointed that the SEC did not undertake more rigorous pre-rule analysis. The SEC did not hold any public roundtables or accept any of the other suggestions made in our January 19, 2012 letter about better ways for the Commission to pursue this rulemaking. This is especially surprising given that Congress set no deadline for the issuance of a pay ratio rule. We also wish to note that even an extension of the comment period alone will not ensure that the Commission receives the type of information it is requesting.

⁴ *Id.* at 60,603.

⁵ *Id.*

⁶ Unique Device Identification System, 78 Fed. Reg. 58,786 (Sept. 24, 2013).

For example, the Commission acknowledges that the pay ratio disclosures may drive companies to reduce their reported compensation gap by making “changes to [their] business structure”⁷ that remove low wage manufacturing positions from their employee base. It concedes that this may lead affected companies to favor “outsourcing operations to third parties, including through the use of independent contractors, ‘leased’ workers or other temporary employees.”⁸ The SEC admits that it does “not have data that can be used to analyze the likelihood or potential magnitude of these impacts”⁹ and requests written comments on these and other foreseeable consequences of its proposal.

The iterative process of negotiated rulemaking, which we recommended the SEC use to implement Section 953(b), is far more likely to result in the SEC obtaining usable insights about the probability and magnitude of such foreseeable and economically significant reactions to this Proposed Rule. The SEC could still at least accept our suggestion to hold a series of roundtables to promote dialogue on these kinds of important and sensitive issues. Such roundtables may also inform and provide an opportunity for input by low-wage workers who may see their jobs impacted by outsourcing driven by the need to reduce the pay ratio spread.

We are disappointed that the SEC did not accept any of the suggestions made in our January 19, 2012 letter¹⁰ recommending processes by which the SEC could proceed with this substantively complex rulemaking on which it admits it still needs a great deal of data. The pay ratio disclosure mandate in Section 953(b) is not subject to a statutory deadline. Thus, there is no reason for the SEC not to follow a process that assures careful and workmanlike consideration of the significant economic and public policy concerns that the SEC acknowledges are raised by this Proposed Rule. At the very least, we hope that the SEC will grant our request for an extension of the comment period, for an additional 60 days, as it is necessary to permit a reasonable chance for regulated entities to respond to the array of information requested in this Proposed Rule.

⁷ Pay Ratio Disclosure, *supra* note 2, at 60,588.

⁸ *Id.*

⁹ *Id.*

¹⁰ See *supra* note 1.

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Thank you for your consideration of this request and we would be happy to discuss these issues at your convenience.

Sincerely,

American Insurance Association
Center On Executive Compensation
Competitive Enterprise Institute
HR Policy Association
National Association of Real Estate Investment Trusts
National Association of Wholesaler-Distributors
National Investor Relations Institute
National Restaurant Association
National Retail Federation
Retail Industry Leaders Association
Society for Human Resource Management
The Real Estate Roundtable
U.S. Chamber of Commerce
WorldatWork