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Chair Mary Jo White
Commissioner Luis Aguilar
Commissioner Kara Stein
Commissioner Daniel Gallagher
Commissioner Michael Piwowar
Electronic submission
c/o

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

Re: Pay Ratio Disclosure, File No. S7-07-13

Dear Chair and Commissioners,

On behalf of more than 300,000 Public Citizen members and supporters, we write to express strong support for the U.S. Securities and Exchange Commission's proposal requiring disclosure of the CEO-to-worker pay ratio as mandated by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Disclosing the ratio of CEO-to-worker pay at individual companies is critical and will provide material information for investors. Significant pay disparities inside a company can harm both employee morale and productivity and can detract from the firm's overall performance. Disclosure of the median employee pay will help investors better understand companies' overall compensation approach to developing their human capital, the economists' term for the aggregate competencies of labor that yield financial value.

Investors will also be able to use CEO-to-worker pay ratios as an additional metric for decision making when evaluating say-on-pay votes and on other executive compensation issues. Pay ratio disclosure helps investors evaluate CEO pay levels in the context of companies' larger internal compensation structures. Investors will be able to see how the ratio changes over time at individual companies and to compare the pay ratio of companies within industries.

As required by Dodd-Frank Section 953(b), the proposed rule appropriately requires companies to disclose the median pay of all of their employees. Given labor market trends, many US publicly traded companies feature a workforce whose majority are based outside the United States, or, when domestic, work part-time. Investors would receive an incomplete picture of their company's pay practices if these foreign-based employees were excluded from the disclosure, or if the part-time workers were translated into full-time-equivalents.

We commend the Commission for proposing to reduce compliance costs as much as possible without reducing the benefits to investors. The proposed rule gives companies considerable flexibility with the option of using sampling or using payroll data to calculate the median. We also support the Commission's proposal to permit companies to provide supplemental disclosure on their overall workforce compensation practices.

Key Issues

Investor interest

Investors support this ratio because it yields information relevant to investment decisions. This should be the guiding principle by which the Commission obliges its statutory mandate to structure the rule. It should be sufficient that investors declare their interest in this information to refute any claim that the rule lacks benefit.

As the *New York Times* editorialized:

"The information is vital. It would allow investors to more accurately judge the effect of pay structures on company performance. It would inform investors' votes on executive pay, because it would be a benchmark for determining whether executive pay is excessive. It would help regulators and policy makers detect bubbles and impending crashes, because those often correlate to widening pay gaps. It would help alert consumers and taxpayers to companies where work forces are underpaid, even as executive pay soars, a circumstance that often requires taxpayer dollars be spent on assistance to low-wage workers."[1]

Explained Tim Macready, chief investment officer of the Christian Super pension fund in Australia, "Executive pay at some companies is excessive and leads to a number of risks, in particular the risk of damage to the company's social license to operate and the risk of worsening employee morale." He explained that the pay ratio is a "useful metric in identifying and dealing with both of these risks."[2] (US regulators should be mindful of the views of international investors in the competition to attract global capital.)

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[1] New York Times editorial board*, Exposing the Pay Gap,(* Sept. 24, 2013)*, available at:* http://www.nytimes.com/2013/09/25/opinion/exposing-the-pay-gap.html?_r=1&

[2] Elliot Blair Smith & Phil Kuntz **,** *CEO Pay 1,795-to-1 Multiple of Wages Skirts U.S. Law,(* April 30, 2013) Bloomberg, available at: http://www.bloomberg.com/news/2013-04-30/ceo-pay-1-795-to-1-multiple-of-workers-skirts-law-as-sec-delays.html

A number of commenters, as the Commission's proposed rule notes, have already proffered thorough, robust filings.[3]

Benefit of this ratio for investors

While the statute does not elaborate on the purpose for providing the ratio, investors can use this ratio as they use other figures that are provided for company comparisons such as earnings growth, the price/earnings multiple, and others. In virtually every form of financial or corporate analysis, ratios are necessary. The pay ratio is important because it provides CEO pay with context, similar to unit pricing in a grocery store. The ratio can be used to compare compensation between CEOs, pay with growth, or pay with profits.[4]

Given these and many other benefits to investors, it cannot fairly be claimed that the CEO pay ratio yields no utility, as many of its opponents argued. Further, should the eventual rule be challenged in court, it would be clear that the Commission adequately considered the existence of declared value of this pay ratio to investors.

Excessive CEO and senior management pay can detract from shareholder value

There is abundant reason for shareholders to evaluate CEO pay, and the pay of the workforce.

CEO pay is not a trivial figure. The percentage of corporate profits spent on senior executive pay has doubled from 5% in 1990 to 10% in 2010.[5] Moreover, excessive CEO pay is associated with poor performance.[6] Excessive pay is associated with fraud.[7] Destructive incentive dynamics figured at the center of the Wall Street crash, where large bonuses turned on speculative trading.[8]

The pay ratio can also open a window into less tangible issues, such as morale, as a wide pay gap can translate into productivity problems at a corporate entity.[9] It is natural to express anger at pay inequity.[10]

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[3] We urge special attention to the submission of the AFL-CIO Office of Investment. This letter summarizes arguments and contains the proposal for statistical sampling, that the Commission has adopted. See comment letter, available at: http://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-78.pdf

[4] The utility of the pay ratio is succinctly explained in a comment letter from a portfolio manager with the Roylan Fund. See B.C. Collins, Roylan Fund, comment letter, , available at: http://www.sec.gov/comments/s7-07-13/s70713-88.htm

[5] Lucian Bebchuck, *The CEO Pay Slice,* , Harvard University Law School, (September, 2010), available at: http://www.law.harvard.edu/faculty/bebchuk/pdfs/Bebchuk-Cremers-Peyer_CEO-Pay-Slice_Sept2010.pdf

[6] Lucian Bebchuck, *The CEO Pay Slice,* , Harvard University Law School, (September, 2010), available at: http://www.law.harvard.edu/faculty/bebchuk/pdfs/Bebchuk-Cremers-Peyer_CEO-Pay-Slice_Sept2010.pdf

[7] Janice Kay McClendon, *Bringing the Bulls to Bear: Regulating Executive Compensation to Realign Management and Shareholders' Interests and Promote Corporate Long-Term Productivity* (Winter 2004). Wake Forest Law Review, Vol. 39, No. 4, 2004.

[8] Lucian Bebchuk, Alma Cohen, and Holger Spamann, *The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000-2008*, Yale Journal on Regulation, Vol. 27, 2010, pp. 257-282.

[9] Damon Silvers, policy director, AFL-CIO, *Testimony before the House Subcommmittee on Capital Markets*, available at: http://www.aflcio.org/Legislation-and-Politics/Testimonies/Silvers-before-subcommittee-on-capital-markets. Also: James Cotton, *Toward Fairness in Compensation of Management and Labor: Compensation Ratios, A Proposal for Disclosure*, Northern Illinois University Law Review, 1997.

Jim Collins, then a professor at Stanford Graduate School of Business, surveyed 1,500 companies over a 15-year period and identified those with superior financial performance. Not one of the "great" companies he identified had a high-paid, "celebrity" CEO, as he termed them.[11] "Celebrity CEOs turn a company into one genius with 1,000 helpers," taking focus away from the motivation and creativity needed from all of a company's employees, explained Collins.[12]

Desirable ratios

The ratio of CEO-to-worker pay has long been recognized as an important figure. Investment banker J.P. Morgan argued that CEO pay should not exceed 20 times the average worker's pay. Management consultant Peter Drucker advised clients that a 20-to-1 salary ratio is the limit beyond which they cannot go if they don't want resentment and falling morale to hit their companies.[13] Switzerland, generally viewed as a conservative pro-business bastion, recently considered a national law requiring a 12-1 ratio between the best and least paid workers at a firm.[14]

The ratio is not difficult to calculate

There appears to be some misunderstanding or misleading statements about how a median-paid employee is identified. According to the staff's discussion in the proposed rule, the following projected compliance costs were submitted by agents of the six corporations that met with representatives of the Commission:

- Approximately 201 to 500 hours per year, plus significant costs;
- $3 to $6.5 million for a multinational manufacturing company with 90 separate payrolls;
- $4.725 million for a multinational consumer products company (including an estimated 50 hours per country for employees located in 80 countries);
- $100 million dollars for a multinational company; and
- $350,000 to implement plus $100,000 a year for ongoing compliance for a global technology company."[15]

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[10] Prof. Frans de Waal, *Moral Behavior in Animals*, TED Talk, (April, 2012) available at -http://www.youtube.com/watch?v=-KSryJXDpZo

[11] Jim Collins, *Good to Great: Why Some Companies Make the Leap . . . and Others Don't*, (HarperBusiness, 2001).

[12] *Ibid.*

[13] Drucker Institute, *Comment Letter to the SEC on Section 953(b) of Dodd-Frank*, (February 17, 2011), http://thedx.druckerinstitute.com/wp-content/uploads/2011/02/SECcomment.pdf.; also, Lucian Bebchuk and Yaniv Grinstein, *The Growth of Executive Pay*, Oxford Review of Economic Policy, Vol 21 (2005).

[14] In a national referendum November 24, 2013, the proposal was defeated, with 34.7 percent of the population favoring the cap. The citizen referendum faced opposition from business groups and the Swiss Parliament. See John Hooper *Switzerland votes against cap on executive pay* The Guardian (Nov. 24, 2013), available at: http://www.theguardian.com/world/2013/nov/24/switzerland-votes-against-cap-executive-pay

[15] Federal Register, Oct. 1, 2013, at p. 60587; available at: http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23073.pdf

The six companies whose agents met with representatives of the SEC were: IBM, Johnson & Johnson, General Electric, Motorola Solutions, Exxon and Emerson Electric.[16] IBM qualifies as a "global technology" firm and may be assumed as the firm estimating compliance cost of $100,000. Johnson & Johnson presumably is the consumer products firm, estimating the cost at $4.725 million.[17] General Electric and Emerson Electronics both might be described as multinational manufacturing companies. Motorola Solutions is a telecommunications firm. By process of elimination, it appears that it is Exxon that claims that compliance would cost $100,000,000.00. Exxon employs 79,000 employees.[18] Exxon is claiming, in effect, that it would cost more than $1,000 per employee to calculate which one is the median-paid employee. Public Citizen does not find this figure to be credible.

Perhaps these firm representatives mistakenly believe they must count the pay of each and every employee. But it would not be necessary to calculate the exact pay of each employee. If a firm with 100,000 workers pays 10,000 of them a minimum wage and employs them part-time, then this simply means the bottom 10% is established. The specific compensation of each of these in the bottom 10% need employees not be identified. If 30,000 are full-time and paid minimum wage, then the bottom 40% is established. If the next best paid 20,000 employees earn more than the minimum wage, then only about 5-10 percent of them need be examined to identify which is the median.

Moreover, if one reverse-engineers the ratio, the acceptance of an integer, or whole number means that a range of employee pay will, during the arithmetic division, yield the same integer.[19] We believe that use of a whole number will enable a firm to shorten the identification of the median because it will only need to look at a range of compensations. That will render unnecessary the identification of a single employee. It is the ratio that is important. Using a whole number in the ratio simplifies identification of the median in the following way. If the CEO is paid $7.25 million, and the exact median-paid employee makes $49,235.25, the ratio would be 147.251654. It would be sufficient for the company to report 147. This simplifies identification of the median since anyone making between $49,155.23 and $49,484.39 would actually generate the same ratio of 147, because this compensation falls between 146.51 and 147.49. In other words, if there are 1,000 employees who fall in this range, the effort is complete. This process is iterative. It is iterative in that once the sampling points to a pool of workers, the pool itself can be sampled. Of minor note, the lower the gap between the CEO and median-paid employee, the larger the pool from which the median is identified. The rounding of a lower ratio, such as 85, is .99/85 or 1.1 percent. That means median salaries within a 1.1

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[16] Executive Compensation: Title IX Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, meetings, visited Nov. 13, 2013; available at: http://www.sec.gov/comments/df-title-ix/executive-compensation/executive-compensation.shtml

[17] Of these, only Johnson & Johnson is a consumer products company, although it claims to operate in 60 and not 80 countries on its website. See the firm's website: http://www.jnj.com/our-news-center/backgrounder

[18] Exxon annual report, at p. 1, available at: http://www.sec.gov/Archives/edgar/data/34088/000003408813000011/xom10k2012.htm

[19] The statute requires that a firm determine, "(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer." The statute does not state that this median is exactly one individual.

percent range (+/- 0.55%) all yield the same ratio of 85. With a higher ratio, such as 1,335, the range of integer medians is much smaller, as .99/1,335 = 0.07% of the median salary.

Industry lobbying

The extensive industry lobbying effort to claim that the calculation of the ratio is complicated may be motivated by a wish to protect high senior management pay. Said Phil Angelides, who led the Financial Crisis Inquiry Commission that investigated the economic collapse of 2008, "The fact that corporate executives wouldn't want to display the number speaks volumes."[20]

Public Citizen has documented the lobbying effort. A Public Citizen report in 2011 found that industry lobbyists have spent more than $4.5 million trying to avoid the rule's completion. [21] This figure has undoubtedly grown in the two years since publication. Given that IBM contends it will cost $100,000 a year to comply, which we believe is exaggerated, that means the lobbying effort for one year could pay for the compliance costs that 45 companies of IBM's size would bear. IBM, of note, is the nation's second largest employer. [22]

Public Citizen respectfully requests the Commission consider our comments. The Commission serves investors, and Section 953b will serve investors, as the already prodigious comment docket attests. We believe every commissioner should approve this final rule.

Sincerely,

Lisa Gilbert, director of Public Citizen's Congress Watch division

Bartlett Naylor, financial policy advocate of Public Citizen's Congress Watch division

[20]Eliot Blair Smith and Phil Kuntz *CEO Pay 1,795-to-1 Multiple of Wages Skirts U.S. Law,* Bloomberg (April 30, 2013), available at: http://www.bloomberg.com/news/2013-04-30/ceo-pay-1-795-to-1-multiple-of-workers-skirts-law-as-sec-delays.html

[21] The lobbying figures cover disclosures that may include other policy issues. See: Negah Mouzoon and Bartlett Naylor *Two Cents*, Public Citizen, (April, 2011) available at: http://www.citizen.org/documents/Two-Cents.pdf

[22]IBM *Annual Report*, (2012), available at: http://www.sec.gov/Archives/edgar/data/51143/000104746913001698/a2212340z10-k.htm; also, Bureau of Labor Statistics, *Employment by major industry sector*, visited Nov. 14, 2013) available at: http://www.statisticbrain.com/u-s-largest-employers/