Social Investment Forum

April 21, 2011

Ms. Elizabeth M. Murphy
Secretary
**Securities and Exchange Commission (SEC)**
100 F Street, NE
Washington, DC 20549-1090
RE: Comments Regarding Section 953(b) of the Dodd-Frank Act on Pay Disparity

Dear Ms. Murphy,

I am writing to you on behalf of the members of the Social Investment Forum (SIF), the U.S. membership association of investors and professionals engaged in the practice of socially responsible and sustainable investing or "SRI." As our *2010 Report on Socially Responsible Investing Trends in the United States* points out, SRI assets in the United States topped $3 trillion at the end of 2009, representing one in every nine dollars under professional management in the United States and up 34 percent since 2005, during a period when all U.S. assets under professional management only increased 3 percent. The practitioners of responsible and sustainable investing are an increasingly large constituency for the SEC.

We write to support Section 953(b) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, which tasks the SEC with developing a new rule to require corporate issuers to disclose in their proxy statements as part of their executive compensation disclosure the:

- "Median of the annual total compensation of all employees, except the CEO (or any equivalent position)";
- CEO's total annual compensation; and
- Ratio of these two figures.

A number of investors, including several of our members, have been active in submitting shareholder resolutions in recent years supporting corporate disclosure of similar pay disparity data. In fact, our members supported 23 pay disparity proposals to U.S. companies last year alone and struck withdrawal agreements with 13 companies that acknowledged the proponents' requests had merit and warranted further investigation and, in some cases, changes in corporate reporting practices. Some companies have come to this conclusion on their own and have set limits on pay disparity. For example, Whole Foods Market has a pay policy it calls "shared fate," which places a salary cap on the CEO and all executives that prevents any one of them "from being paid more in compensation (wages plus profit incentive bonuses)" than 19 times the average total compensation of all full-time employees in the company. The multiple of 19 is far below the prevailing pay disparity rates in the United States in 2009 of more than 263, even in the wake of the financial crisis, according to the report published by the Institute for Policy Studies (IPS) in September 2010, *Executive Excess 2010: CEO Pay and the Great Recession*.

**Recent CEO and worker pay trends:** Indeed, as the economy has begun to recover and companies receiving TARP funds have repaid the U.S. government, CEO pay packages have rebounded. Data from our member, GovernanceMetrics, based on 158 Standard & Poor's 500 index companies with the same CEO serving all of 2009 and 2010, indicates that median CEO pay, including salary and cash bonuses, as well as stock and options awarded in previous years that vested or were cashed in, increased 27 percent

910 17th Street, NW
Suite 1000
Washington, DC 20006
T 202 872 5361
F 202 775 8686
www.socialinvest.org

from $7.1 million in 2009 to $8.6 million in 2010, the highest pay levels GovernanceMetrics has recorded since 2007. Meanwhile, average compensation for workers in private industry grew just 2.1 percent in 2010, according to the Bureau of Labor Statistics.

Furthermore, a study by our member, Towers Watson, found that a typical CEO of a U.S. company with approximately $500 million in revenue received 39 times the total compensation of manufacturing employees, versus 32 times in the United Kingdom, 20 times in Germany, 16 times in Australia, and 11 times in Japan.[1] As noted earlier, the average ratio for S&P 500 companies as of 2009, according to the Institute for Policy studies, was 263.

**Clear risks:** While it is true that CEO pay increases were largely in line with profits and growth in stock prices, the jump in pay disparity tells a deeper story about these companies: gains in profits were mostly related to cost-cutting and layoffs, not through the creation of new business. As investors, we believe growing pay disparity levels point to long-term risks for companies. First, we believe that high levels of disparity breed mistrust in the work place that dampens productivity levels and leads to higher levels of voluntary employee attrition. Also, given public sentiment about CEO pay, excessive levels of executive pay and disparity can erode reputation and brand value.

Economists have long warned about the risks of growing income inequality. For example, in a speech at a Treasury Department conference in Washington, DC, on March 13, 2007, former Federal Reserve Chairman Alan Greenspan said income inequality “is where the capitalist system is most vulnerable. You can't have the capitalist system if an increasing number of people think it is unjust.” The negative effects of societal inequality are documented in the recent book, *The Spirit Level: Why More Equal Societies Almost Always Do Better*, a comprehensive examination of three decades of data on a range of health and social problems in countries around the world.[2] Its authors, two U.K. epidemiologists, conclude that there are “pernicious effects that inequality has on societies: eroding trust, increasing anxiety and illness, [and] encouraging excessive consumption.” The authors claim that for each of eleven different health and social problems—physical health, mental health, drug abuse, education, imprisonment, obesity, social mobility, trust and community life, violence, teenage pregnancies and child welfare—outcomes are significantly worse in more unequal countries.

**Feasibility:** We understand corporations and several business associations have been voicing concerns about the feasibility of implementing the pay disparity section of Dodd-Frank and using this as a reason to call for its repeal and a barrier to its implementation. We believe Section 953(b) of the Dodd-Frank Act on pay disparity can be implemented and yield useful information to investors with a few clarifications:

- **Calculating CEO pay:** The law refers to Section 229.402(c)(2)(x) of Title 17, Code of Federal Regulations to define total compensation. Title 17 defines total compensation as “all plan and non-plan compensation awarded to or earned by” an executive. For the purposes of this calculation, we recommend that the calculation be based on the total CEO compensation figure presented in the Summary Compensation Table in the company’s proxy statement.

[1] Towers Watson (then Towers Perrin) “Managing Global Pay and Benefits,” 2005-2006.

[2] *The Spirit Level: Why More Equal Societies Almost Always Do Better,* Richard Wilkinson and Kate Pickett. London: Allen Lane, March 2009.

- **Workers outside the United States:** We believe the law intends, as its chief architect, Senator Robert Menendez (D-NJ) indicated in his comment letter to you, that the disparity statistic include both U.S. and non-U.S. workers. Therefore, we recommend that the SEC require two statistics, one on pay disparity with only U.S. workers and another for non-U.S. workers, so that investors can better study pay disparity trends and inherent risks. We realize that the purchasing power of earnings varies by country. Therefore, we do not object to adjusting the figures of the pay of foreign workers using purchasing power parity statistics, available from the Bureau of Labor Statistics. We recommend that any adjustments be noted as such, and the factors used in making those adjustments be clearly identified. At the same time, we acknowledge that a comparison of a U.S. CEO's pay to the median for U.S. employees is the most useful comparison as a factor for a compensation committee in establishing executive pay packages.

- **Part-time workers:** In industries such as retail, part-time workers represent a significant if not the majority of a company's workforce. Therefore, we recommend part-time workers' pay be part of the pay disparity calculation. To make them relevant to other employees, we believe companies could normalize their data by calculating a full-time equivalent pay level based on each part-time worker's pay level and a 40-hour, full-time work week.

- **Terminations, mid-year hiring, mergers and acquisitions:** We believe companies can just as easily normalize data to calculate full-year compensation data that are comparable for cases where employees were terminated or hired during the year, as well as in cases of mergers and acquisitions. In addition, corporations could add footnotes to their calculations to highlight these circumstances.

- **Benefit plans and other perks**: We believe companies should be able to include the dollar value of employee bonuses and contributions to benefits plans, including retirement savings, as long as these are footnoted. We acknowledge that these will vary by market, as some employees will receive healthcare benefits from the state, while others will not. We point out that this is yet another reason to offer U.S. and non-U.S. calculations for pay disparity. We believe other perks, such as employee discounts for merchandises and services, however, should be excluded from the calculation, as employees do not always take advantage of these offerings.

We look forward to continuing a discussion with the SEC staff as it proceeds with rulemaking on this portion of Dodd-Frank, and thank the staff for their time and attention to this important issue.

Sincerely,

Lisa N. Woll

Lisa N. Woll
CEO, Social Investment Forum