

January 19, 2012

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Chairman Schapiro:

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 write to you today to encourage the Securities and Exchange Commission (“SEC”) to engage in expanded public outreach and consideration of alternatives before moving forward with a public release of proposed rules implementing Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). We specifically recommend that the SEC:

- Hold a roundtable discussion of experts and stakeholders to better understand the potential issues and unintended consequences that may flow from the implementation of the pay ratio disclosure requirements outlined in Section 953(b);
- Consider engaging in negotiated rulemaking to ensure thorough and well-balanced input that minimizes unintended consequences;
- Follow the requirements as outlined in Executive Orders 13563 and 13579 to identify alternative approaches and choose the least burdensome means of implementing the rule;¹ and

¹ On September 6, 2011 the SEC issued a press release stating that it would comply with the retrospective look back provisions outlined in Executive Orders 13563 and 13579. It is unclear if the SEC will abide by the prospective rulemaking requirements embodied in these Executive Orders.

- Submit the proposed rule to the Office of Information and Regulatory Affairs (“OIRA”) review process to better understand the cost-benefit implications of the pay ratio disclosure requirements.

A more thorough discussion of our concerns is provided below.

Section 953(b) and Current Legislative Activities

Section 953(b) of the Dodd-Frank Act requires a new corporate disclosure stating:

- 1) The median of the annual total compensation of all employees of an issuer, except the Chief Executive Officer (“CEO”), as calculated in accordance with Item 402(c)(2) of Regulation S-K of the Securities Exchange Act;
- 2) The annual total compensation of a CEO; and
- 3) The ratio of the median annual compensation of all employees to the CEO compensation.

It should be noted that Section 953(b) was inserted into the Dodd-Frank Act without any hearings to discuss the matter. Representative Nan Hayworth proposed a bill, H.R. 1062, the Burdensome Data Collection Relief Act, to repeal Section 953(b) in light of the concerns noted below. H.R. 1062 was reported out of the House Financial Services Committee by a bipartisan vote and is currently awaiting action by the full House of Representatives.

Regulatory Burdens and Cost-Benefit Analysis

The corporate disclosure regime is designed to provide information that is useful to investors when making investment decisions. While it may be of general interest to some investors for much different purposes, it is unclear how the pay ratio disclosure will be material for the reasonable investor when making investment decisions. The ratio will inevitably vary widely among industries or businesses without any relevance to the financial performance of a company. Accordingly, additional consideration of any possible benefit to be provided by this disclosure must be considered in the rulemaking process and weighed against the costs discussed below.

Moreover, while compliance with the pay ratio provision may seem straightforward, there are significant hurdles and burdens faced by the business community in attempting to comply with it. In order to promulgate thoughtful rules, the undersigned Associations encourage the SEC to engage the business community in order to determine the full impact that this future rule may have on operations, budgets and corporate resources. There is a widespread misperception that this information is readily available at the touch of a button. This could not be further from the truth.² Investors who have taken the time to educate themselves on how companies would have to comply with the rule are beginning to understand this. Accordingly, we ask that you use your authority to host a roundtable discussion to gather information from the people that will handle the practical compliance with this rule. This roundtable discussion should be designated part of the rulemaking record.

Companies may have tens of thousands of employees stretched out over dozens of countries. This is especially the case for our country's largest companies with operations around the world. Obtaining the data will be difficult and time-consuming as the definition of compensation among countries will vary widely, and companies will face difficulties attempting to rationalize compensation with currency fluctuations.

Given the lack of discussion about the practical implications of Section 953(b) prior to its enactment, it is of utmost importance during these difficult economic times that implementing regulations are carefully and thoughtfully proposed. Furthermore, the SEC should use caution during the rulemaking process to ensure that the economic consequences do not outweigh the objectives of the rule.³

² The sheer administrative burden to compile this data has been covered extensively in other comment letters. *See, e.g.*, Comment letter from Tim Bartl, Center On Executive Compensation, to SEC (Nov. 11, 2011). To provide an idea of the significant expenses related to this administrative burden, a member company of one of the undersigned Associations has estimated that to produce the pay ratio disclosure, it will cost roughly \$7.6 million and take approximately 26 weeks. Additionally, a separate member company has been unable to produce a complete cost estimate for the pay ratio, but has estimated that determining just one component—the actuarial value of the various pension benefits its employees receive—will cost approximately \$2 million annually.

³ President Obama has acknowledged the importance of approaching regulations carefully with his January 2011 Executive Order encouraging a regulatory process that “protects public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation . . . [using] the least burdensome tools for achieving regulatory ends.” *See* Executive Order 13563, Improving Regulation and Regulatory Review (Jan. 18, 2011); *see also* Barack Obama, “Toward a 21st-Century Regulatory System,” WALL ST J. (Jan. 18, 2011).

Unlike many mandates in Dodd-Frank, Section 953(b) does not include a deadline for promulgating regulations. Since there is no statutory deadline, we strongly urge the SEC to resist rushing into proposing regulations, given the substantial cost and implementation burdens that are likely to be imposed on companies. We acknowledge that Section 953(b) is more prescriptive than many Dodd-Frank requirements, but the SEC has been afforded the time to thoroughly analyze the economic impacts different alternatives will have on the U.S. economy at large. Thus, the SEC should consider how to provide the most flexibility for the least cost and minimize the disadvantages that unnecessary regulatory expenditures like this have on American businesses.

In addition, we urge using a negotiated rulemaking process that will allow a representative group of stakeholders on a negotiated rulemaking advisory committee to join with the SEC in developing a balanced and thoughtful rule that can both minimize the burdens and achieve that congressional intent of Section 953(b).

Furthermore, submitting a proposed rule through OIRA review will allow for increased scrutiny to better understand the cost and benefits of the pay ratio rules and aid the SEC in choosing the least burdensome means of implementing Section 953(b). This will ensure that the best and most practical approaches can be included in a proposed rule that will balance the perceived benefit of this disclosure against the implementation costs.

Conclusion

Thank you for your consideration of our request to carefully study the impact of any potential proposed rule implementing Section 953(b) of the Dodd-Frank Act as well as our request for an SEC roundtable discussion on this issue, submission of the proposed rule for OIRA review, and for the SEC to use the negotiated rulemaking process. While we understand that Section 953(b) represents a congressional mandate, the rulemaking to implement the pay ratio provisions needs to minimize the regulatory burdens upon the business community and promote investor protection by insuring that disclosures provide relevant information useful to investors when making investment decisions.

We are happy to meet with you or your staff to discuss our concerns in greater detail and assist the SEC in meeting these goals.

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Sincerely,

American Benefits Council
American Insurance Association
American Petroleum Institute
Business Roundtable
Center On Executive Compensation
Competitive Enterprise Institute
The Financial Services Roundtable
HR Policy Association
National Association of Manufacturers
National Association of Real Estate Investment Trusts
National Association of Wholesaler-Distributors
National Investor Relations Institute
National Restaurant Association
National Retail Federation
Property Casualty Insurers Association of America
The ERISA Industry Committee
The Real Estate Roundtable
Retail Industry Leaders Association
Securities Industry and Financial Markets Association
Society of Corporate Secretaries & Governance Professionals
Society for Human Resource Management
U.S. Chamber of Commerce
WorldatWork

cc: Securities and Exchange Commission:
Hon. Elisse B. Walter, Commissioner
Hon. Luis A. Aguilar, Commissioner
Hon. Troy A. Paredes, Commissioner
Hon. Daniel Gallagher, Commissioner

Securities and Exchange Commission – Division of Corporation Finance:
Ms. Meredith Cross
Mr. Lona Nallengara

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Ms. Paula Dubberly
Ms. Felicia Kung
Ms. Christina Padden

United States Senate

Hon. Tim Johnson
Hon. Richard Shelby

United States House of Representatives

Hon. Spencer Bachus
Hon. Barney Frank
Hon. Scott Garrett
Hon. Maxine Waters
Hon. Nan Hayworth