



The Forum for Sustainable and Responsible Investment

Via Email

December 2, 2013

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

Re: *File Number S7-07-13: Proposed rule to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act*

Dear Ms. Murphy:

I am writing on behalf of US SIF: The Forum for Sustainable and Responsible Investment, the U.S. membership association of investors and financial professionals engaged in sustainable and responsible investing ("SRI").¹ At the start of 2012, \$3.74 trillion out of \$33.3 trillion of assets under professional management in the United States—11 percent of the market—were held by individuals, institutions, investment companies or money manager that practice SRI.² US SIF's members include investment management and advisory firms, mutual fund companies, research firms, financial planners and advisors, broker-dealers, banks, credit unions, community development organizations, non-profit associations, and pension funds, foundations and other asset owners. We express our strong support for the U.S. Securities and Exchange Commission's proposed rule to implement Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Proposal).³ We respectfully request consideration of our comments on the Proposal.

One of US SIF's key organizational priorities is increased disclosure of corporate environmental, social and governance information. We thus fully support the disclosure of a CEO-to-worker pay ratio because this data benefits investors as well as other important stakeholders (such as employees). Our members take their proxy voting responsibilities seriously and strongly support transparency by companies to inform their investment decisions as well as voting their shares. We believe that the information sought through this rule will assist investors to exercise both responsibilities.

¹ For more information on US SIF and our members, please visit our website at www.ussif.org.

² US SIF Foundation: *2012 Report on Sustainable and Responsible Investing Trends in the United States*. Executive summary available at http://www.ussif.org/files/Publications/12_Trends_Exec_Summary.pdf.

³ Pay Ratio Disclosure, Securities Act Release No. 9,452, Exchange Act Release No. 70,443, 78 Fed. Reg. 60,560 (proposed Oct. 1, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23073.pdf>.

The proposed rule strikes an appropriate balance between providing potentially useful information to investors and limiting company compliance costs. This letter includes comments focusing on certain key issues for US SIF members.

US SIF would like to underscore the following broad points.

1. **Disclosure of CEO-to-worker pay ratio is material to investors.** High pay disparities inside a company can hurt employee morale and productivity, and have a negative impact on a company's overall performance. For example, pay disparity problems can send a negative message to the workforce that the contributions of all employees are not important to the company. Disclosure of the median employee pay will help investors better understand companies' overall compensation approach. Investors will use this information as the basis for informed investment and proxy voting decisions. Pay ratio disclosure provides a valuable additional metric for evaluating and voting on executive compensation practices and Say-on-Pay proxy proposals. In its comment letter to the Commission dated November 15, 2013, Walden Asset Management, a US SIF member, provides a concrete example: *"Evidence of a 3-to-5 year period of stagnant returns to shareholders and median employee wages in conjunction with significantly increasing CEO pay would be relevant to investors as they evaluate the performance of members of the Board Compensation Committee. Conversely, investors would likely assess board members and executive compensation practices more favorably if operating results, median employee wages, shareholder returns, and CEO compensation were all determined to be in alignment long-term."*⁴
2. **Investors need CEO-to-worker pay ratio data in order to incorporate compensation practices into financial analysis.** Pay ratio disclosure allows investors to evaluate CEO pay levels in the context of companies' internal compensation structures. As required by Dodd-Frank Section 953(b), the Proposal appropriately requires companies to disclose the median pay of all employees. This information helps investors analyze the Compensation Committee's effective leadership, as well as assess warning signals with a company's compensation plan. There is general affirmation among institutional investors that good governance is important for protecting long-term shareowner value. Conversely, companies with governance or compensation problems set off warning lights for investors. With access to pay ratio data, investors would have information that may help better assess risks. Investors would be able to use this data both longitudinally, over time with a single company, and in a cross-comparison within an industry. The data would be used to better understand or predict a variety of issues, including workforce satisfaction, labor force turnover and investment in human capital.
3. **The Proposal allows flexibility in how the median compensation of non-principal executive officer ("non-PEO") employees is calculated and allows issuers to provide this information without undue difficulty or expense.** Therefore, in our opinion, arguments that the Proposal would be overly burdensome, that the data is too complex to assemble and verify, or that companies are not capable of tracking employee compensation adequately to compute median compensation are simply not valid.

⁴ Walden Asset Management letter to the Securities & Exchange Commission dated November 15, 2013.

Filings Subject to the Proposed Disclosure Requirements

The pay ratio disclosure would provide a key metric to evaluate executive compensation, and we agree with the SEC's conclusion that the proposed pay ratio disclosure "*should be placed in context with other executive compensation disclosure, such as the summary compensation table...and the compensation discussion and analysis..., rather than provided on a stand-alone basis.*"⁵

Registrants Subject to the Proposed Disclosure Requirements

We acknowledge that the pay ratio disclosure requirements apply only to those registrants that are required to provide summary compensation table disclosure pursuant to Item 402(c). While we understand the SEC's reasons for several exemptions from the proposed rule for emerging growth companies, smaller companies and foreign private issuers⁶, we are, nonetheless, uncomfortable with these proposed exemptions. For example, emerging growth companies, smaller reporting companies and foreign private issuers are investments that may involve risk. Thus, like all investments, investors will evaluate these companies and consider executive compensation practices in that evaluation. Extending the rule to new companies may help attract investors to these companies. Mandating pay disclosure for emerging and smaller companies will assist such companies in incorporating pay disclosure and pay disparity issues early on. Considering that the SEC has included considerable flexibility in the proposed rule, such as allowing companies the choice to identify the median using their full employee population or use statistical sampling or another calculation method, we believe these companies should be included in the proposed pay ratio. These extensions, in our view, would be consistent with the aims of Dodd-Frank.

Employees Included in the Identification of the Median

We are pleased that the SEC's proposed rule is consistent with Section 953(b) by expressly requiring disclosure of the median of the annual total compensation of "*all employees,*" including non-U.S. employees and full-time, part-time, seasonal or temporary workers employed by the registrant or any of its subsidiaries.⁷ We believe the law intends, as its chief architect, Senator Robert Menendez (D-NJ) indicated in his comment letter to you, that the disparity statistics include both U.S. and non-U.S. workers. In a global economy with increased outsourcing, comprehensive information about a company's pay and employment practices are material to investors. For example, in the retail industry, part-time workers represent a significant portion – if not the majority – of a company's workforce. The exclusion of non-U.S. and non-full-time employees would diminish the validity of the pay ratio disclosure to investors and provide an incomplete picture of a registrant's practices.

In the US SIF letter to you dated April 21, 2011, we recommended 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. However, this recommendation is *in addition to*, not in lieu of, the proposed disclosure covering *all* employees.

⁵ 78 Fed. Reg. at 60,563.

⁶ Registrants that qualify as emerging growth companies under the JOBS Act are not subject to Section 953(b), smaller reporting companies are not required to calculate compensation in accordance to Item 402(c)(2)(x), and foreign private issuers and MJDS (U.S.-Canadian Multijurisdictional Disclosure System) filers are exempted from Item 402 disclosure.

⁷ 78 Fed. Reg. at 60,565.

We also believe that the requirements should not be limited to employees that are employed directly by the registrants. Consistent with the Section 953(b), the requirements must cover employees on an enterprise-wide basis, including both the registrant and its subsidiaries.⁸ Investors analyze companies on an enterprise-wide basis, including subsidiaries, to properly determine risks and opportunities.

Identifying the Median

We agree with the SEC that the proposed pay ratio requires the median as the point of comparison, which is consistent with Section 953(b). We agree with commenters that a potential purpose of the pay ratio disclosure is to allow investors to evaluate the annual total compensation of the PEO within the context of the registrant's internal compensation practices.⁹ We also agree with commenters who have suggested that companies should be permitted to identify the median through statistical sampling techniques or other statically reasonable methods and that *"a primary benefit of the pay ratio disclosure would be providing a company-specific metric that investors could use to evaluate the PEO's compensation within the context of his or her own company."*¹⁰

Disclosure of Methodology, Assumptions and Estimates

We agree with the proposed requirement that registrants disclose information about the methodology and material assumptions, adjustments or estimates used in identifying the median or calculating annual total compensation for employees. We agree that registrants should be required to include a narrative discussion of the ratio and its components (including methodology and assumptions used), together with supplemental information about employee compensation structures and policies in order to provide additional context for the ratio. Supplemental information about a registrant's overall workforce compensation practices, such as the composition of its workforce, use of seasonal workers and part-time workers, and outsourcing, is critical information that should be disclosed. The disclosure of the calculation methodology and any supplemental information will ensure that the calculations were done correctly and that investors can analyze pay dispersion within a company and compare pay dispersion between companies. The disclosure of methodology and material assumptions provide context and a framework within which to evaluate a company's investment outlook. However we would caution against lengthy technical and detailed discussions that may distract or confuse investors reviewing the company's compensation discussion and analysis.

Timing of Disclosure

We recommend that the pay disclosure be limited to annual proxy statements. We agree with the SEC that, as proposed, the *"pay ratio disclosure be updated no earlier than the filing of a registrant's annual report on Form 10-K or, if later, the filing of a proxy or information statement for the registrant's annual meeting of shareholders (or written consents in lieu of such a meeting), and in any event not later than 120 days after the end of its fiscal year."*¹¹

⁸ *Id.* at 60,565.

⁹ *Id.* at 60,569.

¹⁰ *Id.* at 60,572.

¹¹ *Id.* at 60,578.

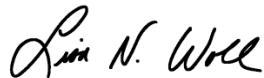
Status as “Filed” Not “Furnished”

We strongly support that pay ratio information be deemed “filed” and not “furnished” for purposes of the Securities Act and Exchange Act. Section 953(b) refers to the pay ratio information being disclosed in the registrant’s “filings” with the Commission. Therefore, we are pleased to see that the Commission is proposing that the pay ratio information be “filed.” We believe that any concerns from registrants about difficulties in verifying information under the “filed” standard are mitigated by the flexibility allowed by the SEC, including tailoring the methodology to reflect facts and circumstances and a transition period designed to give registrants sufficient time to develop and implement compliance procedures.¹²

Thank you for taking our views into consideration and for the opportunity to comment. We commend the Commission for proposing a flexible rule that will be extremely valuable to investors and other stakeholders without placing inappropriate burdens on companies.

If you have any questions regarding the contents of this letter, please contact me directly at lwoll@ussif.org or 202-872-5358.

Sincerely,



Lisa N. Woll
CEO

¹² *Id.* at 60,580.