



AMERICAN BENEFITS
COUNCIL

November 26, 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-

Dear Ms. Murphy,

On behalf of the American Benefits Council, we are writing to urge the Securities and Exchange Commission (“SEC” or “Commission”) to grant at least 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 (the “Proposed Rule”).¹

The American Benefits Council (“Council”) is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to health and retirement plans that cover more than 100 million Americans.

Since passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), the Council has met with representatives of the SEC and has previously submitted written comments about proposed rulemaking that relates to the

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

pay ratio disclosure requirements of Section 953(b) of the Dodd-Frank Act.² Those comments have reflected our ongoing efforts to provide insights – both qualitative and quantitative -- drawn from information provided by our member public companies, who uniformly share serious concerns about the burden of this proposed disclosure.

We appreciate that that the Proposed Rule provides public companies with certain needed flexibility in preparing the pay ratio disclosure. Nevertheless, we continue to have major reservations about the pay ratio disclosure requirement. Moreover, we believe an extension of the comment period for the Proposed Rule is critical if the SEC desires to provide affected and interested parties with a fair and reasonable opportunity to respond substantively, with relevant data, to the numerous requests for comments that are set forth in the Proposed Rule. As stated well in another extension request:

On the one hand, the rule requests comments within 60 days of publication 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].” On the other hand, the proposal seeks comments on numerous 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.”³

Our organization has already sent several core questions to our membership in order to immediately provide the SEC with concrete data of the kind it seeks. Please consider the following for a sense of the information we consider critical, and a sampling of the initial issues being raised by our members:

While some companies have indicated that they may be able to comply with the pay-ratio rule by using statistical sampling, their ability to do so varies significantly. Moreover, early input suggests that even those member companies that can comply will have to use significant internal and external resources to do so. In some instances, the costs are extremely high. As one company reports:

2 See our November 5, 2010, letter to the SEC regarding executive compensation provisions of the Dodd-Frank Act, *available at* http://www.americanbenefitscouncil.org/documents/finserv_execcomp-letter110510.pdf, and our January 19, 2012 group letter to SEC addressing pay ratio matters, *available at* http://www.americanbenefitscouncil.org/documents2012/payratio_sec-groupletter011912.pdf.

³ Request for extension filed by American Insurance Association, et al., October 9, 2013, *available at* <http://www.sec.gov/comments/s7-07-13/s70713-163.pdf> (its footnotes omitted from this letter).

We have determined that the calculation of median compensation on a worldwide basis would be extremely costly and nearly impossible. We estimate that whatever the cost of implementing the final rule, it would be 20-30 times higher if foreign workers are included in the calculation.

We believe we need more information from our members to better identify where the greatest costs associated with preparing a statistical sample would be. Several of our member companies have indicated that fairly significant internal costs as well as external/vendor costs are anticipated, but even rough estimates of the annual costs are uncertain at this time without more time for member input.

There are many different drivers behind estimating the compliance costs associated with the Proposed Rule. These include (1) identifying the relevant compensation elements to use in determining the company's median employee compensation, (2) determining how to obtain the necessary compensation data from payroll systems that may differ between operating units, locations, and countries, (3) weighing the computer and data collection requirements, and (4) considering the requirements of foreign law from a privacy, currency conversion, and processing perspective. SEC senior counsel Anne Krauskopf acknowledged the depth of the data collection challenges at a recent ABA Business law meeting. As noted in BNA's Nov. 22nd article, she acknowledged the SEC's desire for comments on "quantifying the costs of compliance," with differentiation between "both initial and ongoing costs."

Beyond these specifics, several of our multinational member companies have indicated that they have multiple payroll systems in the various countries in which they operate and that the process in the Proposed Rule will not be manageable in any practical sense if their global workforce needs to be considered. Quantifying compliance costs under those circumstances simply requires more processing time.

Finally, we need more time in order to obtain information from member companies as to how helpful it would be to limit the application of the Proposed Rule to only domestic employees. Early indications are that it would be critically important to many of our members. What problems would remain if foreign employees are not included is still unclear but capable of further comment with a time extension. It seems to us that that would be very important information to have in trying to make the rule practical and workable.

The input noted above has come from a very small percentage of our member companies, but does provide a preliminary sense of the compliance burden that the Proposed Rule would impose, despite its flexibility. Unfortunately, the timing is too tight for us to obtain many more responses – let alone detailed responses -- before the current December 2nd deadline.

The complexity of the Proposed Rule and the data-heavy comments that the SEC has

requested combine to require more than the current 60-day comment period if interested parties are to have a reasonable opportunity to review the Proposed Rule, collect the data requested by the SEC, and provide helpful and responsive commentary to the SEC. Adherence to a December 2nd end to the comment period will deprive the SEC of informed data identifying the problems with the rule and about how best to shape a workable final rule. That rush will exponentially magnify the compliance costs for public companies, without advancing the interests of their investors and the general public.

Our membership has been surprised by the short comment period for this Proposed Rule, partly because the Dodd-Frank Act did not impose a deadline for the issuance of a pay ratio disclosure rule, but more so because the SEC itself has recognized – repeatedly – the complex and difficult issues that should factor into identifying a workable regulation. We agree with others that a 60-day extension of the comment period will not necessarily ensure that the Commission will receive the type of information it is requesting. Nevertheless, the absence of an extension will foreclose any possibility for the submission of more comprehensive survey data and thoughtful analysis.

Overall, we appreciate the SEC's acknowledgement that it does "not have data that can be used to analyze the likelihood or potential magnitude of these impacts."⁴ The pay ratio disclosure mandate in Section 953(b) is not subject to a statutory deadline, and the Proposed Rule does not need to be hastily finalized – especially at the expense of allowing for informed comments on the Proposed Rule. We urge the SEC to extend the comment period, at least for an additional 60 days, in order to permit regulated companies to respond thoughtfully and quantitatively to the numerous points for which the SEC has asked for information regarding the Proposed Rule.

Thank you for in advance for your attention to this request. If further information or a meeting would be helpful please contact us right away.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley".

Lynn D. Dudley
Senior Vice President, Retirement and
International Benefits Policy
American Benefits Council

⁴ Pay Ratio Disclosure, *supra* note 2, at 60,588.