JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

November 24, 2014

The Honorable Mary Jo White
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair White:

We are troubled by your recent public comments that the Securities and Exchange Commission (SEC) is prioritizing completion of the "pay ratio" rule under Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Prioritizing completion of the pay ratio rule will continue the SEC's practice of misallocating limited resources to non-essential projects rather than completing rulemakings and other responsibilities central to fulfilling its statutory mission to protect investors, ensure fair, orderly and efficient markets, and facilitate capital formation.

While we understand your goal of completing congressionally-mandated rules as soon as possible, the pay ratio rule should not be at the top of the SEC's agenda.[1] Unlike a number of other mandatory provisions of the Dodd-Frank Act and the bipartisan Jumpstart Our Business Startups Act (JOBS Act) that have not yet been fully implemented by the SEC, Dodd-Frank Section 953(b) does not impose a deadline to complete the required rulemaking.[2]

Moreover, Section 953(b)'s requirement that public companies disclose the ratio of the median total annual compensation of all employees to that of the CEO does nothing to address the primary causes of the recent financial crisis.[3] In fact,

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[1] *See* Dissenting Statement of Commissioner Michael S. Piwowar at Open Meeting Regarding Municipal Advisors and Pay Ratio Disclosure, Sept. 18, 2013 ("Piwowar Pay Ratio Dissent"), http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370542565153#.VGPJMGcvdt0 ("Proponents of the pay ratio disclosure rule point to the Dodd-Frank Act's mandate as justification for moving forward on it today. But I point to our investor protection mandate, as well as our statutory mandate to consider the effects on competition, efficiency, and capital formation, as justification for not moving forward with a pay ratio disclosure rule.").

[2] *See* Dissenting Statement of Commissioner Daniel M. Gallagher Concerning the Proposal of Rules to Implement the Section 953(b) Pay Ratio Disclosure Provision of the Dodd-Frank Act," Sept. 18, 2013 ("Gallagher Pay Ratio Dissent"), http://www.sec.gov/News/Speech/Detail/Speech/1370539815919#.VFuaBGcvdt1 ("[T]he pay ratio mandate, unlike so many in Dodd-Frank, carries no congressionally imposed deadline. We need not act on it now or soon. It has, nevertheless, jumped to the front of the queue.").

[3] *See* Rüdiger Fahlenbrach and René M. Stulz, Bank CEO Incentives and the Credit Crisis, National Bureau of Economic Research Working Paper 15212, Aug. 2009, http://www.nber.org/papers/w15212.pdf.

no credible argument exists that the absence of a median pay ratio disclosure was a proximate cause of the financial crisis.

In contrast, the SEC has yet to complete its rulemaking responsibilities under Section 939A, one of the very few provisions of the Dodd-Frank Act that constructively addresses a key factor contributing to the recent financial crisis: investors' over-reliance on flawed credit ratings carrying the Federal government's "Good Housekeeping" seal of approval.[4] As you know, Section 939A mandated that the SEC remove all references to – or requirements to rely upon – credit ratings from its regulations within one year of enactment.

Prioritizing completion of the pay ratio rule will not advance the SEC's congressionally-mandated mission. To the contrary, because Section 953(b)'s pay ratio disclosures do not provide useful information about a company's operations, performance, or pay practices, such disclosures will be immaterial and, at worst, confusing to investors seeking to make informed investment decisions. As Texas-based Tesoro Corporation commented to the SEC, the pay ratio rule "will not provide valuable insight into management pay practices and will be a disservice to shareholders and investors who may not fully understand the complexities of the rule, but make investment decisions on its basis."[5] Ohio-based NACCO Industries pointed out in its comment letter that the intent and purpose of Section 953(b) "appears to be to embarrass companies and their [executive officers]. . . . The SEC disclosure requirements should not be used as a tool to further a political or social agenda."[6]

Complying with the pay ratio rule will also impose significant costs and burdens on U.S. companies already laboring under a record-breaking amount of government red tape. For example, total costs for the private sector to comply with the pay ratio rule are estimated to be as high as $710 million every year.[7] As the National Association of Manufacturers commented to the SEC, "the cost of compliance with [the pay ratio] rule will require a substantial diversion of company resources from productive investment to compliance activities. Manufacturers also have significant concerns about the impact of the cost burden of this requirement on

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[4] As we wrote to your predecessor, Chair Walter, more than a year ago, it is imperative that the SEC complete its rulemaking responsibilities under Section 939A as soon as possible in order to reduce investor reliance on ratings, encourage investor due diligence, and increase competition among credit rating agencies.
[5] Letter from Tesoro Corporation to SEC, Nov. 21, 2013, http://www.sec.gov/comments/s7-07-13/s70713-442.pdf. *See also* Letter from National Retail Federation to SEC, Nov. 26, 2013, http://www.sec.gov/comments/s7-07-13/s70713-435.pdf ("[T]he Commission should ensure that reports issued under its auspices not frustrate the purposes for which the Commission was created: to provide useful, timely information for the investing public.").
[6] Letter from NACO Industries, Inc. to SEC, Dec. 2, 2013, https://www.sec.gov/comments/s7-07-13/s70713-519.pdf.
[7] *See* U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, The Egregious Costs of the SEC's Pay-Ratio Disclosure Regulation, May 2014, https://www.uschamber.com/sites/default/files/documents/files/Egregious-Cost-of-Pay-Ratio-5.14.pdf.

competitiveness."[8] In addition, several multi-national companies have commented that requiring them to include their global workforce in the calculation of median annual employee compensation would impose an enormous compliance burden. For example, Garmin Ltd. told the SEC,

> Like many issuers, we do not have a global payroll data system that includes all our employees, and thus, we expect that this data-collection exercise will require extensive manual calculations, significant staff hours, and hard-to-quantify costs. To produce this disclosure, we also will need to navigate through more restrictive data privacy laws in other nations and account for foreign currency fluctuations and differences in local benefit practices.[9]

The SEC cannot ignore the very real and permanent compliance costs that the pay ratio rule will impose on all public companies. By hindering the ability of U.S. businesses to grow, compete, and create jobs, the pay ratio rule will directly undermine the SEC's mandate to ensure efficient capital markets and facilitate capital formation.[10] It is for these reasons, among others, that the House Financial Services Committee in both the 112th and 113th Congresses passed – *with significant bipartisan support* – H.R. 1062 and H.R. 1135, respectively, both known as the "Burdensome Data Collection Relief Act," which would repeal Section 953(b).

Because the SEC has chosen to expend limited resources on the pay ratio rule, it is now significantly more difficult for the SEC to advance its capital formation mission, as well as complete mandatory rulemakings to implement the JOBS Act; conduct a comprehensive review of U.S. equity market structure; make fundamental revisions to the rules governing U.S. fixed income markets; and complete mandatory derivatives rulemakings to implement Title VII of the Dodd-Frank Act.[11] Furthermore, prioritizing the pay ratio rulemaking will inevitably delay work on other pressing initiatives, including but not limited to the SEC's

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[8] Letter from National Association of Manufacturers to SEC, Dec. 2, 2013, http://www.sec.gov/comments/s7-07-13/s70713-509.pdf. *See also* Letter from Dover Corp. to SEC Nov. 26, 2013, http://www.sec.gov/comments/s7-07-13/s70713-440.pdf ("[A]ny amount spent on collecting data, calculating the ratio and preparing the necessary disclosures would be better spent on investments in new markets, products and equipment for the benefit of . . . shareholders.").

[9] Letter from Garmin Ltd. to SEC, Nov. 11, 2013, http://www.sec.gov/comments/s7-07-13/s70713-331.pdf.

[10] *See* Piwowar Pay Ratio Dissent ("I am not only unable to support the pay ratio disclosure proposal, I object to the Commission even considering it. The Commission should not be spending any of its limited resources on any rulemaking that unambiguously harms investors, negatively affects competition, promotes inefficiencies, and restricts capital formation.").

[11] *See* Gallagher Pay Ratio Dissent ("We must . . . acknowledge as another cost of the [pay ratio] rule the decision not to do something else, something more pressing, something that would have yielded discernible benefits – a JOBS Act rulemaking to address the ongoing employment crisis in this country, perhaps, or something – anything – to do with the financial crisis – maybe, for example, the Dodd-Frank section 939A rulemaking that is years overdue.").

comprehensive review of public company disclosure requirements; the SEC's review of the definition of an "accredited investor," "qualified purchaser," and "qualified institutional buyer;" improvements to the regulatory regime for proxy advisory firms; and modernization of the communications between public companies and their shareholders.

During this period of sluggish economic growth and persistently high under and unemployment, it is imperative that the SEC place fair and efficient markets, ready access to capital, and the best interests of investors ahead of the desires of special interest groups. Accordingly, please provide a detailed description of the funds and man-hours expended to date on the SEC's pay ratio rulemaking no later than Friday, December 5, 2014.

We look forward to your prompt response.

Sincerely,

JEB HENSARLING
Chairman

SCOTT GARRETT
Chairman
Subcommittee on Capital Markets
and Government Sponsored Enterprises

BILL HUIZENGA
Vice Chairman
Subcommittee on Monetary Policy and Trade

cc: The Honorable Maxine Waters
The Honorable Carolyn Maloney