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March 20, 2017

Acting Chair Michael Piwowar
Commissioner Kara Stein
Securities and Exchange Commission
100 F St, NE
Washington D.C. 20

Dear Commissioners,

On behalf of more than 400,000 members and supporters of Public Citizen, we strongly object to Commissioner Michael Piwowar's attempted usurpation of a congressionally mandated statute regarding CEO pay disclosure with his request for issuer comment on unexpected implementation problems.

Section 953b of the Dodd-Frank Wall Street Reform and Consumer Protection Act, requires that publicly traded firms disclose the CEO's pay as a multiple of the median-paid employee of the firm. It is one of the simplest (and most demanded) of the Wall Street reform rules mandated by the law. The final rule allows firms any reasonable means to measure the median, including a sampling. As firms already know what they pay employees, including through individual tax filings, this measurement will be easy.

On February 6, without first holding a commission meeting, Piwowar directed the agency to publish a request for comment on this finalized rule. This effort is troubling for a number of reasons.

First, Piwowar explains this process as one step that may lead him to direct the staff to "reconsider the implementation of the rule." Under the Administrative Procedures Act, such a step requires a vote of the commission, but Piwowar's action did not follow such a vote.

Second, Piwowar has constructed his invitation to be effectively exclusive to issuers. Piwowar states, "I am seeking public input on any unexpected challenges that issuers have experienced." On its face, the only constituency that is in a position to opine on such unexpected challenges are issuers. Investors, in other words, are apparently not invited to comment. Yet the SEC's primary mandate is investor protection and this rule is geared towards providing information that they have demanded.

Third, this rule is final and firms are required to comply, beginning Jan 1, 2017. His proposed delay may confuse an issuer of good faith prepared to implement this simple rule.

Finally, it is not Piwowar's privilege to stifle this rule; indeed, it is his obligation to implement this mandate.

We believe Piwowar has repeatedly breached his statutory obligations to implement this rule.¹ At the time of final adoption, Piwowar stated that he opposed the statute and that he voted against the final rule because he considered that the commission should direct the staff to consider other matters he considered more important first. Only in a universe where time runs backwards could Piwowar's wish to save staff time make any sense. And now, Piwowar pirouettes and proposes to expend staff time to delay the rule.

A number of members of Congress share our concerns about Piwowar's extra-legal mischief. Reps. Keith Ellison (D-Mass) and Maxine Waters (D-Calif), who is also the ranking member of the House Financial Services Committee joined with more than three dozen colleagues to contest Piwowar's actions.² Sen. Robert Menendez (D-N.J.) led a Senate letter.

Importance of Rule

Public Citizen believes this is an important investor information disclosure. This ratio will help investors understand better how to vote on say-on-pay questions on the annual proxy statement where they approve CEO pay. These votes become increasingly important in helping investors examine how a company allocates its capital. CEO pay is not a trivial figure. The percentage of corporate profits spent on senior executive pay has risen from 5% in 1990 to 10% in 2010.³

In addition to misallocation of capital, excessive CEO pay is associated with poor performance.⁴ Excessive pay is associated with fraud.⁵ Destructive incentive dynamics figured at the center of the Wall Street crash, where large bonuses turned on speculative trading.⁶ The pay ratio can open

¹ *Dissenting Statement of Michael Piwowar*, SECURITIES AND EXCHANGE COMMISSION (Aug 5, 2015), <https://www.sec.gov/news/statement/dissenting-statement-at-open-meeting-on-pay-ratio-disclosure.html>

² Letter from Keith Ellison et al, (March 14, 2017) <http://www.politico.com/f/?id=0000015a-d52a-d536-a37b-d57f77900001>

³ Lucian Bebchuk, *The CEO Pay Slice*, Harvard University Law School, (September, 2010), available at: http://www.law.harvard.edu/faculty/bebchuk/pdfs/Bebchuk-Cremers-Peyer_CEO-Pay-Slice_Sept2010.pdf

⁴ Lucian Bebchuk, *The CEO Pay Slice*, Harvard University Law School, (September, 2010), available at: http://www.law.harvard.edu/faculty/bebchuk/pdfs/Bebchuk-Cremers-Peyer_CEO-Pay-Slice_Sept2010.pdf

⁵ Janice Kay McClendon, *Bringing the Bulls to Bear: Regulating Executive Compensation to Realign Management and Shareholders' Interests and Promote Corporate Long-Term Productivity* (Winter 2004). Wake Forest Law Review, Vol. 39, No. 4, 2004.

⁶ Lucian Bebchuk, Alma Cohen, and Holger Spamann, *The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000-2008*, Yale Journal on Regulation, Vol. 27, 2010, pp. 257-282.

a window into less tangible issues, such as morale, as a wide pay gap can translate into productivity problems at a corporate entity...⁷⁸ It is natural to express anger at pay inequity.⁹

Jim Collins, then a professor at Stanford Graduate School of Business, surveyed 1,500 companies over a 15-year period and identified those with superior financial performance. Not one of the “great” companies had a high-paid, “celebrity” CEO, in his parlance.¹⁰ “Celebrity CEOs turn a company into one genius with 1,000 helpers,” taking focus away from the motivation and creativity needed from all of a company’s employees, explained Collins.¹¹

In fact, the vast majority of comments submitted following Piwowar’s invitation support the rule. This mirrors more than 200,000 comments filed during the formal rulemaking process. Many of these most recent comments come from investors. Many come from accounting experts attesting to the ease of implementation. A few come from firms. Notably, these firms do not bite at Piwowar’s fishing expedition for “unexpected challenges.” (Piwowar is unwittingly asking firms to confess to accounting inadequacy.) Instead, these few firms repeat unsubstantiated claims about high costs and investor apathy.

Industry lobbying

Piwowar’s effort reflects extensive industry lobbying to block this rule. Public Citizen has documented the lobbying effort. A Public Citizen report in 2011 found that industry lobbyists have spent more than \$4.5 million trying to avoid the rule’s completion.¹² It is impossible to ignore that the extensive industry lobbying effort, with specious claims about compliance expense and lack of investor interest, may be motivated by a wish to protect high senior management pay. Said Phil Angelides, who led the Financial Crisis Inquiry Commission, which investigated the economic collapse of 2008, “the fact that corporate executives wouldn’t want to display the number speaks volumes.”¹³

⁷ Damon Silvers, policy director, AFL-CIO, *Testimony before the House Subcommittee on Capital Markets*, available at: <http://www.aflcio.org/Legislation-and-Politics/Testimonies/Silvers-before-subcommittee-on-capital-markets>

⁸ James Cotton, *Toward Fairness in Compensation of Management and Labor: Compensation Ratios, a Proposal for Disclosure*, Northern Illinois University Law Review, 1997.

⁹ Prof. Frans de Waal, *Moral Behavior in Animals*, TED Talk, (April, 2012) available at -<http://www.youtube.com/watch?v=KSryJXDpZo>

¹⁰ Jim Collins, *Good to Great: Why Some Companies Make the Leap . . . and Others Don't*, (HarperBusiness, 2001).

¹¹ Interview with Jim Collins, *Great Answers to Good Questions, Fast Company*, (August 31, 2001)

¹² The lobbying figures cover disclosures that may include other policy issues. See: Negah Mouzoon and Bartlett Naylor *Two Cents*, Public Citizen, (April, 2011) available at: <http://www.citizen.org/documents/Two-Cents.pdf>

¹³ Eliot Blair Smith and Phil Kuntz *CEO Pay 1,795-to-1 Multiple of Wages Skirts U.S. Law*, Bloomberg (April 30, 2013), available at: <http://www.bloomberg.com/news/2013-04-30/ceo-pay-1-795-to-1-multiple-of-workers-skirts-law-as-sec-delays.html>

Conclusion

This rule is important. This rule came about after careful congressional consideration and reasoned, lengthy agency rulemaking. It should not be discarded because influential corporate interests oppose accountability. The Acting Chair should withdraw his effort.

For questions, please contact Bartlett Naylor at [REDACTED]

Sincerely,

Public Citizen