HARVARD BUSINESS LAW REVIEW Online

DODD-FRANK, COMPENSATION RATIOS, AND THE EXPANDING ROLE OF SHAREHOLDERS IN THE GOVERNANCE PROCESS

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I. Introduction

Congress, in adopting the Dodd-Frank Act,[1] sought to correct some of the abuses believed to have contributed to the financial crisis of 2008-2009. Executive compensation was one of them. Formulas used to determine compensation were thought to promote a short-term perspective that encouraged excessive risk taking.[2] As a result, financial regulators were given the authority to review compensation practices for risk.[3] Likewise, the Act sought to strengthen the integrity of the compensation approval process[4] and to increase clawbacks of performance-based compensation following certain restatements.[5]

Not all compensation provisions, however, were designed to address risk. Some were inserted in an effort to expand the role of shareholders in the governance process. Addressed primarily under the rubric of fairness,[6] the Act gave shareholders an advisory

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1 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank" or "the Act").

2 S. REP. NO. 111-176 (2010), *available at* http://thomas.loc.gov/cgi-bin/cpquery/?&item=&&sid=cp111FTCKo&&refer=&&r_n=sr176.111&&dbname=cp111&&sid=cp111FTCKo&&sel=TOC_446491&&sid=cp111FTCKo&r_n=sr176.111&dbname=cp111& (noting that legislation addresses "executive compensation practices that promoted excessive risk-taking").

3 *See* Dodd-Frank Act § 956. Even before the adoption of Dodd-Frank, the SEC required disclosure by public companies of relationship between compensation policies and risk. *See* Regulation S-K, 17 C.F.R. § 229.402(s) (2011). The provision was adopted in 2009. *See* Proxy Disclosure Enhancements, Exchange Act Release No. 61175 (Dec. 16, 2009).

4 Dodd-Frank Act § 952. The SEC has proposed implementing rules with respect to these requirements. *See* Listing Standards for Compensation Committees, Exchange Act Release No. 64149 (March 30, 2011).

5 Dodd-Frank Act § 954.

6 S. REP. NO. 111-176, *supra* note 3 ("Congress is empowering shareholders in a public company to have a greater voice on executive compensation and to have more fairness in compensation affairs.").

vote on executive compensation.[7] At the same time, Dodd-Frank expanded the information available to shareholders making the determination. Specifically, Section 953(b) required disclosure of a ratio that compared CEO and employee compensation.[8] Although hardly noticed at the time of adoption, the provision eventually generated considerable controversy and engendered serious calls for repeal within Congress.

This article will do several things. First, it will examine the role of compensation ratios in the debate over executive compensation. Second, the article will discuss Section 953(b), including the broad regulatory authority retained by the Securities and Exchange Commission ("SEC" or "Commission") in implementing the provision. Finally, the article will analyze the current controversy surrounding the provision.

II. Compensation and Ratios

Ratios have long been part of the debate over executive compensation. They typically rely on average CEO compensation as the numerator and average employee compensation as the denominator. In general, they have been used to show the relative increase of CEO compensation over time.[9]

Ratios, however, have not been a particularly useful metric for shareholders. For one thing, they are not computed on a company-specific basis. For another, they are not determined in a consistent fashion. While average CEO compensation can, for the most part, be computed on a uniform basis,[10] there is considerable variance with respect to employee compensation. Ratios may rely on the amount paid to the "average production

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[7] Dodd-Frank Act § 951.

[8] Dodd-Frank Act § 953.

[9] Indeed, for the most part, ratios have shown a substantial growth in CEO compensation compared to employees. *See* Joel Seligman, *Rethinking Private Securities Litigation*, 73 U. CIN. L. REV. 95, 114 (2004) ("These decisions coincided with a dramatic increase in the ratio of the compensation of the corporate CEO to that of the average corporate blue collar employee. In 1980, this ratio was 42 to 1; by 1990, it had grown to at least 120 to 1; by 2000, it was estimated to be at least 475 to 1."). *See also* Jeffrey N. Gordon, *Essay: "Say on Pay": Cautionary Notes on the UK Experience and the Case for Shareholder Opt-In*, 46 HARV. J. ON LEGIS. 323 (2009) ("By the mid-2000s the changing ratio in the compensation level of CEO versus line-worker--from 20-1 in the 1950s to a purported approximate of 350-1 today--created controversy in the political realm as well as the boardroom."). For an example of ratios used to show increasing CEO compensation outside the United States, see THE HIGH PAY COMMISSION, INTERIM REPORT: MORE FOR LESS: WHAT HAS HAPPENED TO PAY AT THE TOP AND DOES IT MATTER? (2011), *available at* http://highpaycommission.co.uk/wp-content/uploads/2011/09/HPC-IR.pdf.

[10] Companies must disclose total compensation for the CEO using a common formula. *See* Regulation S-K, 17 C.F.R. § 229.402 (2011). Nonetheless, variations exist. Ratios used an average of CEO compensation, something that could vary depending upon the group selected. *See* SARAH ANDERSON, ERIC BENJAMIN, JOHN CAVANAGH, & CHUCK COLLINS, INSTITUTE FOR POLICY STUDIES, EXECUTIVE EXCESS 2006: DEFENSE AND OIL EXECUTIVES CASH IN ON CONFLICT, *available at* http://www.faireconomy.org/files/ExecutiveExcess2006.pdf (average CEO compensation for 350 companies with revenues above $1 billion). Likewise, administrative changes to the formula used for calculating CEO compensation could alter ratios over time. *See* Executing Compensation and Related Person Disclosure, Exchange Act Release No. 54302A (August 26, 2006).

worker"[11] or "private sector" employee.[12] Some look to the minimum wage.[13] They can exclude particular sub-categories of employees[14] or resort to medians rather than means.[15]

The lack of consistency and the absence of firm specific data minimize the ability to use the metric to assess CEO compensation within a particular company. Thus, while they can demonstrate broad trends in compensation, they have not been particularly helpful in providing shareholders with a tool for assessing the reasonableness of compensation in their own company.

III. Dodd Frank and Compensation Ratios

Sponsored by Senator Menendez of New Jersey and originally part of separate legislation,[16] the requirement to disclose compensation ratios was inserted into the Senate version of Dodd-Frank during committee deliberations. Apparently a late addition, the provision generated no meaningful legislative history.[17]

The requirement addressed many of the concerns that limited the value of

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[11] *See* ECONOMIC POLICY INSTITUTE, MORE COMPENSATION HEADING TO THE VERY TOP, http://www.stateofworkingamerica.org/files/images/orig/8-Wages_ceo_pay.png (last visited Oct. 6, 2011).

[12] *See* ANDERSON, ET AL., *supra* note 11 (average pay for private sector workers in 2005 as determined by U.S. Department of Labor, with average including part-time employees). Others have referred to the compensation paid to the "average" worker. *See* Lawrence Mishel, *CEO-to-Worker Pay Imbalance Grows*, ECONOMIC POLICY INSTITUTE (June 21, 2006), *available at* http://www.epi.org/economic_snapshots/entry/webfeatures_snapshots_20060621/.

[13] *See* HERITAGE INSTITUTE, SPOTLIGHT ON CEO COMPENSATION, *available at* http://www.heritageinstitute.com/governance/compensation.htm#The_Ratio_of_Average_CEO_and_Worker (last visited Oct. 6, 2011).

[14] Larry Bumgardner, *High CEO Pay Could Draw Renewed Attention in Election Year*, 11 GRAZIADIO BUS. REV. (2008), *available at* http://gbr.pepperdine.edu/2010/08/high-ceo-pay-could-draw-renewed-attention-in-election-year ("One could plausibly argue that the ratio is likely overstated somewhat by including only 350 large companies for CEO pay, and by considering part-time employees in the average worker calculation.").

[15] FREDERIC W. COOK, THE BUSINESS ROUNDTABLE, RESEARCH ON CEO COMPENSATION FOR BUSINESS ROUNDTABLE (2006), *available at* http://www.shrm.org/hrdisciplines/compensation/Documents/20060705002ExecutiveCompensationResearch_FWC_62906.pdf (noting that with respect to an average, "outliers pull the averages up above the median" and that "[m]edian statistics are more representative of the practices of a large group"). While most compensation ratios used averages, at least one study relied upon the median and produced a substantially lower ratio. *See* Bumgardner, *supra* note 15 ("By contrast, a separate study released in 2006 by a CEO group, the Business Roundtable, concluded that the ratio was starkly lower-179 to 1.").

[16] The legislation was the Committee on Banking, Housing, and Urban Affairs.

[17] The only mention of the provision in the Senate Report accompanying the legislation was a brief reference by the minority. *See* S. REP. NO. 111-176, *supra* note 3 ("Although provisions like this appeal to popular notions that chief executive officer salaries are too high, they do not provide material information to investors who are trying to make a reasoned assessment of how executive compensation levels are set. Existing SEC disclosures already do this."). *See also* 156 Cong. Rec. S4075 (daily ed. May 20, 2010) (statement of Sen. Shelby) ("The grab bag includes puzzling items, like a . . . provision that requires disclosure of the ratio of the median employee's compensation to the chief executive officer's compensation. It looks to me like the way is being paved to achieve so-called 'social justice' in income distribution. This is another disturbing example of the government getting its nose under the private sector's tent.").

compensation ratios to shareholders. Section 953(b) of Dodd-Frank imposed a mandatory formula for calculating the statistic.[18] Moreover, it provided for the determination of ratios on a company-specific basis and mandated the use of medians rather than averages.[19] Implementation was, however, accomplished in a highly complicated fashion. Rather than simply require disclosure of the ratios, the provision in three instances cross-referenced or incorporated portions of existing regulations. The result was substantial discretion on the part of the SEC in implementing the requirement.

Specifically, Section 953(b) provided that ratio disclosure must appear in Item 402 of Regulation S-K (or its successor),[20] the SEC provision defining executive compensation.[21] In effect, Congress opted to write a portion of Item 402, transforming a regulation into a statute.[22] As a consequence, the Commission could amend or rewrite Item 402 with respect to most compensation matters but, once implemented, could not eliminate ratio disclosure.

Congress also referred to SEC regulations in defining the breadth of the disclosure requirement. Section 953(b) provided that ratio disclosure was to appear "in any filing of the issuer described in section 229.10(a)."[23] Because Item 10(a) referred to periodic reports, the reference suggested that the ratios were to be disclosed on a quarterly if not more frequent basis.[24] Congress, however, left the Commission with the discretion to reduce the frequency through amendments to Item 10.[25] Deletion of the words "or other" after "annual report" in Item 10 would eliminate the ratios from all periodic reports except the Form 10-K, effectively requiring only annual disclosure of the information.[26]

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18 Dodd-Frank Act § 953(b).

19 *Id.* ("[T]he median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer"). Interestingly, calculation of the median cannot include CEO compensation. The elimination of a single person from the determination of the median is not likely to have any meaningful effect on the calculation. The same would not be true had employee compensation been computed based upon averages.

20 *See* id. ("The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)").

21 17 C.F.R. § 229.402.

22 Regulations affirmed in legislation are elevated to the status of law. Smith v. Whitney, 116 U.S. 167, 181 (1885) ("This legislative recognition of the Navy Regulations of 1870 'must,' as was said by Chief Justice Marshall of a similar recognition of the Army Regulations in the act of April 24, 1816, ch. 69, § 9, 3 Stat. 298, 'be understood as giving to these regulations the sanction of the law.'").

23 17 C.F.R. § 229.10(a).

24 Disclosure in multiple filings does not necessarily require multiple calculations. The SEC could require a single calculation but mandate that the same calculation appear in an assortment of filings (perhaps through incorporation by reference).

25 Where Congress did not intend for the SEC to have the authority to amend the applicable language, it said so. *See infra* note 31.

26 *See* 17 C.F.R. § 229.10(a)(2) (applying Regulation S-K to "annual or other reports under sections 13 and 15(d)"). The savings clause contained in Item 10(a) would prevent the amendment from having any effect on the applicability of Regulation S-K to quarterly and current reports. *See* 17 C.F.R. § 229.10(a) (providing that Regulation S-K applied to "any other document required to be filed under the Exchange Act, to the extent provided

Finally, Section 953(b) prescribed the method for calculating employee compensation by referencing Item 402(c)(2)(x), the subsection that defined the CEO's total compensation.[27] Congress specifically limited the SEC's authority to change the formula by requiring application of the standard "in effect on the day before the date of enactment of this Act."[28] The SEC nonetheless retained considerable discretion over the formula. The reference to Item 402 specified the categories of compensation that were to be considered[29] but did not prescribe the method of calculating the categories. That was left to the administrative discretion of the SEC.[30]

The provision, therefore, provided a broad role for the SEC in developing and applying ratio disclosure. The SEC retained the authority to determine the frequency of ratio disclosure and the method used to calculate employee compensation.

IV. The Ongoing Debate

The imposition of ratio disclosure caused little controversy during the debate over Dodd-Frank. As implementation approached, however, vigorous opposition developed over the merits of the provision.[31] Critics asserted that calculation of median compensation for employees would be costly[32] and logistically difficult. [33] In addition,

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in the forms and rules under that Act."). So long as the forms for quarterly and current reports provide for the applicability of Regulation S-K, it would apply even if unmentioned in Item 10(a).

[27] The statute specifically requires application of Item 402(c)(2)(x) of Regulation S-K. 17 C.F.R. § 229.402(c)(2)(x).

[28] Dodd-Frank Act § 953(b) ("For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act."). The Commission could, therefore, amend the provision and change the method used to calculate total compensation for top executive officers. The amendment would not, however, apply to the calculation of the median compensation paid to employees.

[29] *See* 17 C.F.R. § 229.402(c)(2)(x). The seven categories are salary, bonus, stock awards, stock options (with both stock awards and stock options measured by their value on the award date), other incentive pay, changes in pension value and other deferred compensation, and all other compensation.

[30] Thus, for example, 17 C.F.R. § 229.402(c)(2)(ix) provides that perquisites are included in CEO compensation only if they exceed $10,000. The SEC could impose similar thresholds throughout the other categories, effectively limiting employee compensation to the amounts paid in cash.

[31] Although not proposing rules to implement ratio disclosure, the SEC did invite comments. *See* http://www.sec.gov/comments/df-title-ix/executive-compensation/executive-compensation.shtml.

[32] *See* Center on Executive Compensation, *The Dodd-Frank Pay Ratio Is Unduly Burdensome and Contrary to Sound Disclosure Policy*, Hearing on Legislative Proposals to Promote Job Creation, Capital Formation, and Market Certainty Subcommittee on Capital Markets and Government Sponsored Enterprises House Committee on Financial Services (March 16, 2011), *available at* http://www.hrpolicy.org/downloads/2011/c11-34%20House%20Fin%20Svcs%20Cmt%20Testimony%20March%2016%202011%20FINAL.pdf.

[33] *See* Letter from Retail Industry Leaders Association (Oct. 27, 2010), *available at* http://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-43.pdf; Letter from Center on Executive Compensation (Sept. 1, 2010), *available at* http://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-10.pdf. One solution might be the use of sampling. *See* Letter from Center on Executive Compensation (Aug. 11, 2011), *available at* http://aflcio.org/corporatewatch/capital/upload/AFL-CIO-Comment-Letter-on-Dodd-Frank-Section-953-b.pdf

they challenged the value of the information, asserting in part that the ratios did not provide a meaningful basis for comparison.[34]

The concerns attracted attention in Congress. The Burdensome Data Collection Relief Act called for the repeal of Section 953(b) in its entirety.[35] On June 22, 2011, the House Financial Services Committee approved the legislation by a vote of 33-21. The accompanying report reiterated the concerns about the immateriality of the information and the burdensome nature of the calculation.[36] Attempts in the committee to rewrite Section 953(b) to simplify the formula and limit the frequency of disclosure were defeated. While the matter has not yet passed the House, opposition in the Senate has surfaced.[37]

V. Compensation Ratios Going Forward

Most of the concerns expressed over ratio disclosure can be fixed in the rulemaking process,[38] something that the SEC has indicated will occur before the end of 2011.[39] As discussed, the SEC has considerable flexibility to limit the frequency of disclosure.[40] Likewise, while Congress prescribed the categories used in determining employee compensation, the SEC retains broad discretion to determine how these categories are calculated.[41] As for the treatment of part-time and overseas workers, there

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[34] Letter from Center on Executive Compensation, *supra* note 34. *See also* Brett Harsen, Matt Ward, & Ted Buyniski, *Dodd-Frank Act: The Importance of Putting CEO Pay Multiples into Context* 1 (Radford), *available at* http://www.globalequity.org/geo/sites/default/files/Radford_Whitepaper_DoddFrank_CEO_Pay_Multiples.pdf ("A company involved only in semiconductor chip design will have a much lower CEO pay multiple than a similar entity that designs and fabricates the chips because the latter has a large workforce of lower-paid manufacturing workers. A company that has moved a segment of its workforce to lower cost countries will have a higher CEO pay multiple than one whose workforce is based solely in the United States."). Some have described the ratio as "overly simplistic." *Id*.

[35] Burdensome Data Collection Relief Act, H.R. 1062, 112th Cong. (2011).

[36] *See* H.R. REP. NO. 112-142 (2011), *available at* http://financialservices.house.gov/UploadedFiles/HR1062hreport.pdf. An amendment designed to fix the major concerns over the calculation of the ratio was defeated by a 27-25 vote. *Id*. at 4.

[37] U.S. Senators Robert Menendez (D-NJ), Tom Harkin (D-IA), Sherrod Brown (D-OH), and Carl Levin (D-MI) sent a letter to Charles G. Tharp, CEO of Center on Executive Compensation, urging the organization to reconsider its position and to "stop shielding your member companies from revealing this basic information." Letter to Charles G. Tharp (Jul. 6, 2011), *available at* http://menendez.senate.gov/download/?id=c374a0b8-8413-4bab-a4a7-dd54ce712aff.

[38] At least one company has already disclosed a compensation ratio. *See* MBIA Inc., Proxy Statement (Form DEF 14A) (filed March 18, 2011) ("The average and median salary for all employees other than the NEOs (385 employees) were $151,700 and $130,000, respectively. The average and median salary and bonus for all employees were $223,000 and $165,000, respectively. These compare to Mr. Brown's salary of $500,000 (3.3 times average and 3.9 times median) and salary and bonus of $2,300,000 (10.3 times average and 14.0 times median) for 2010."), *available at* http://www.sec.gov/Archives/edgar/data/814585/000119312511070813/ddef14a.htm.

[39] *See Implementing Dodd-Frank Wall Street Reform and Consumer Protection Act — Upcoming Activity*, WWW.SEC.GOV, http://www.sec.gov/spotlight/dodd-frank/dfactivity-upcoming.shtml (last visited Oct. 11, 2011).

[40] *See supra* text accompanying notes 24-27.

[41] *See supra* text accompanying notes 29-33. Others have suggested the use of sampling techniques. *See* Letter from Meridian Compensation Partners (Oct. 19, 2010), *available at* http://www.sec.gov/comments/df-title-

may be little administrative discretion over the issue.[42]

With respect to the materiality of the information, ratios have particular importance in the era of "say on pay." An advisory vote on compensation gives shareholders an opportunity to comment on the reasonableness of CEO pay. Reasonableness, however, requires context. Metrics that allow for a comparison of pay practices among public companies can assist in providing the requisite context.[43] Moreover, the ratios provide a mechanism for the first time for assessing the reasonableness of the compensation within each particular company.[44]

Variations in the ratio that arise from differences in business models or geographic reach can be addressed through accompanying disclosure. Companies can explain the relevant differences through the use of narrative and additional ratios. Moreover, such information will likely have the benefit of providing shareholders with additional insight into the calculation of CEO compensation and the company's employment practices.[45]

The most significant impact of the ratio may, however, be on the board of directors. The disclosure requirement effectively increases the information available to boards when setting executive pay. Some boards already take ratios into account when

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ix/executive-compensation/executivecompensation-49.pdf . *See also* Letter from Davis Polk (Nov. 16, 2010), *available at* http://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-51.pdf.

[42] *See* Letter from Senator Menendez (Jan. 19, 2011), *available at* http://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-59.pdf ("Specifically, I want to clarify that when I wrote 'all' employees of the issuer, I really did mean all employees of the issuer. I intended that to mean both full-time and part-time employees, not just full-time employees. I also intended that to mean all foreign employees of the company, not just U.S. employees."). The inclusion of part time workers and foreign workers in low wage countries will likely lower the median compensation paid to employees and increase the ratio. *See supra* note 15.

[43] Shareholders can make comparisons based upon the total compensation paid to the CEO. The utility of this statistic, however, is limited at least in part by the "Lake Wobegon" effect. *See* Letter from Americans for Financial Reform to Elizabeth M. Murphy (Mar. 23, 2011), *available at* http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2011/03/AFR-SEC-953b-3-23-11.pdf ("Existing requirements mandate disclosure of top executive compensation only, encouraging companies to focus unduly on peer to peer comparisons when setting CEO pay. These comparisons help lead to ever increasing levels of CEO pay by virtue of a 'Lake Wobegon' effect, where nearly all CEOs claim to be above the average CEO quality level.").

[44] By making shareholders better informed at the time they vote on compensation, they are in a position to give the board better "advice." *See* Shareholder Approval of Executive Compensation and Golden Parachute Compensation, Exchange Act Release No. 63768 n. 175 (Apr. 4, 2011) ("Even though each of the shareholder advisory votes required by Section 14A is non-binding pursuant to the rule of construction in Section 14A(c), . . . we believe these votes could play a role in an issuer's executive compensation decisions."). Calls for the use of similar ratios have arisen overseas. *See* WILL HUTTON, HUTTON REVIEW OF FAIR PAY IN THE PUBLIC SECTOR: FINAL REPORT 8 (March 2011) ("The Government should not cap pay across public services, but should require that from 2011-12 all public service organisations publish their top to median pay multiples each year to allow the public to hold them to account."), *available at* http://cdn.hm-treasury.gov.uk/hutton_fairpay_review.pdf.

[45] *See* Letter from Calvert Investment Management (May 27, 2011) ("Investors could use data on median pay to understand U.S. and global compensation trends, and to better understand issuer decisions to move certain operations and jobs overseas."), *available at* http://www.sec.gov/comments/df-title-ix/executive-compensation/executivecompensation-75.pdf.

determining compensation.[46] Because a bad ratio may be embarrassing,[47] the board has an incentive to alter compensation in order to avoid adverse disclosure.[48] Disclosure of the ratio may, therefore, impact the amount of compensation paid to employees and the CEO.[49]

VI. Conclusion

Ratio disclosure raises some legitimate logistical concerns over the method of computation and the frequency of disclosure. Most can be addressed and resolved by the SEC during the authority process. The addition of ratio disclosure, when coupled with say on pay, provides shareholders with a more meaningful ability to participate in the compensation process.

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[46] *See* Whole Foods Market, Annual Report 7 (Form 10-K) (2011) ("We also have a salary cap that limits the total cash compensation paid to any team member in a calendar year to 19 times the average annual wage of all team members. In addition, our co-founder and co-chief executive officer, John Mackey, has voluntarily set his annual salary at $1 and receives no cash bonuses or stock option awards."), *available at* http://www.sec.gov/Archives/edgar/data/865436/000110465910059917/a10-19737_110k.htm; El Paso Corporation, Proxy Statement (Form DEF 14A) (2011) ("We also believe that our executive compensation program must be internally consistent in order to motivate our employees as a whole to create stockholder value. We are committed to internal pay equity and our Compensation Committee monitors, on an annual basis, the relationship between the compensation of our named executive officers and the compensation of our non-managerial employees."), *available at* http://www.sec.gov/Archives/edgar/data/1066107/000095012311030217/h80859ddef14a.htm. *See also* James A. Cotton, *Toward Fairness in Compensation of Management and Labor: Compensation Ratios, A Proposal for Disclosure*, 18 N. ILL. U. L. REV. 157, 183 (1997) ("At Ben & Jerry's Homemade, Inc., in Waterbury, Vt., for example, top people get no more than seven times what the lowest-paid full-time person earns.").

[47] Cotton, *supra* note 46, at 182 (ratio disclosure "[t]o a large extent . . . will embarrass [directors] into trying to do the right thing rather than face questions at the stockholders meeting or at a meeting of financial analysts. Embarrassment is a rather large factor among a group that considers itself to be as special as this one does.").

[48] Menendez, *supra* note 38 (noting that disclosure will encourage "firms to take a harder look at the rising pay discrepancies between CEOs and their workers"). The rules of the SEC are often designed to affect substantive behavior inside the boardroom. *See* J. Robert Brown, Jr., *Essay: Corporate Governance, the Securities and Exchange Commission, and the Limits of Disclosure*, 57 CATH. U. L. REV. 45 (2008).

[49] The ratio can be reduced either by raising the median compensation paid to employees or lowering the total compensation paid to the CEO.