X. The SEC Adopts New Pay Ratio Rule

A. Introduction

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).[1] Included in the Act was a provision that mandated the Securities and Exchange Commission (SEC) to implement a new pay ratio rule.[2] Five years later, on August 5, 2015, the SEC promulgated a final rule, requiring public companies to disclose a pay ratio, which compares the compensation of a company's chief executive to the compensation of the company's median employee.[3] In implementing the final rule, the SEC reacted to concerns about potentially burdensome compliance costs by constructing a more flexible rule.[4] However, this flexibility has only increased criticism coming from supporters of the rule, without appeasing opponents.[5] Overall, the new pay ratio rule, and the arguments that it has sparked, reflect decades' old debate about government regulation and income inequality.

This article will explore the debate over the pay ratio rule from its initial proposal to its final implementation. Section B

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[1] *See H.R.4173 - Dodd-Frank Wall Street Reform and Consumer Protection Act*, CONGRESS.GOV, https://www.congress.gov/bill/111th-congress/house-bill/4173 (last visited Jan 5, 2016) [perma.cc/MVK7-GCT3].

[2] Press Release, SEC, SEC Proposes Rules for Pay Ratio Disclosure (Sept. 18, 2013), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539817895 [perma.cc/J6DU-DQN4] ("The Securities and Exchange Commission . . . propose[d] a new rule that would require public companies to disclose the ratio of the compensation of its chief executive officer (CEO) to the median compensation of its employees.").

[3] Press Release, SEC, SEC Adopts Rule for Pay Ratio Disclosure (Aug. 5, 2015), https://www.sec.gov/news/pressrelease/2015-160.html [perma.cc/597M-PZMD].

[4] *See id.*

[5] *See, e.g.,* Peter Eavis, *Companies to Be Required to Reveal C.E.O.'s vs. Workers' Pay*, N.Y. TIMES, Aug. 6, 2015, at B1 ("Some labor union researchers, however, said that the agency appeared to give up too much ground in the final rule."); *see also* Thaya Knight, Opinion, *A Misbegotten Political Jab at CEO Pay*, WALL ST. J., Aug. 11, 2015, at A11 ("The rule is unrelated to the SEC's mission, imposes significant costs on public companies and will do little to achieve its intended goals.").

provides an overview of the legislative history that led to the rule's inclusion in the Dodd-Frank Act. Section C provides an overview of the arguments provided by both supporters and opponents in response to the SEC's proposed rule. Section D examines the SEC's reaction to the public comments and the changes made to the final rule. Section E explores the continuing debate arising after the implementation of the final rule and future expectations of both supporters and opponents.

B. Legislative History

In 1965, the average chief executive of a major American company earned approximately twenty times more than the company's typical employee.[6] By 2013, average chief executives were earning approximately 200 times more than their typical employees.[7] Some studies estimate that this number is closer to 300.[8] Even accepting the more conservative estimates, these numbers highlight the exorbitant growth in executive compensation relative to that of employees over the past few decades.

Reflecting on these changes, and recognizing wealth disparity as an issue that needed to be addressed, Senator Robert Menendez of New Jersey pushed for the inclusion of Section 953(b), the pay ratio directive, in the Dodd-Frank Act.[9] Senator Menendez believed the provision was necessary because "we have middle-class Americans who have gone years without seeing a pay raise, while

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[6] Lawrence Mishel & Alyssa Davis, *CEO Pay Continues to Rise as Typical Workers Are Paid Less*, 380 ECON. POL. INST. 2 (2014).

[7] Elliot Blair & Phil Kuntz, *CEO Pay 1,795-to-1 Multiple of Wages Skirts U.S. Law*, BLOOMBERG BUS. (Apr. 30, 2013), http://www.bloomberg.com/news/articles/2013-04-30/ceo-pay-1-795-to-1-multiple-of-workers-skirts-law-as-sec-delays [http://perma.cc/2MZ7-SEVS].

[8] Mishel & Davis, *supra* note 6, at 7. *But see* Glenn Kessler, *Clinton's Claim that CEOs Make 300 Times More Than American Workers*, WASH. POST (Apr. 16, 2015), http://www.washingtonpost.com/blogs/fact-checker/wp/2015/04/16/clintons-claim-that-ceos-make-300-times-more-than-american-workers/ [http://perma.cc/C9LU-V4J7].

[9] *See* Letter from Sen. Robert Menendez, et al., Members of Cong., to Charles G. Tharp, Chief Exec. Officer, Center on Executive Compensation (July. 6, 2011), *available at* http://www.menendez.senate.gov/news-and-events/press/menendez-fights-efforts-to-repeal-his-provision-to-require-disclosure-of-ceo-to-typical-worker-pay [http://perma.cc/5A4B-9KKX].

C.E.O. pay is soaring."[10] Senator Menendez explained that the pay ratio would serve as a "simple benchmark" to "help investors monitor both how a company treats its average workers and whether its executive pay is reasonable."[11] Therefore, Menendez envisioned the ratio directly benefiting investors while indirectly benefiting members of the general public.

This provision was unpopular with Republican lawmakers, who implored the SEC to delay consideration of the pay ratio rule until regulations more closely related to the 2008 financial crisis could be implemented.[12] For example, on March 14, 2011, Representative Nan Hayworth, with the support of Representative Scott Garrett and Representative Judy Biggert, introduced H.R. 1062 to the Committee on Financial Services.[13] The bill, known as the Burdensome Data Collection Relief Act, would have repealed Section 953(b). Representative Spencer Bachus, on behalf of the Committee, argued in support of this Act because it would "alleviate the enormous burden and complexity this provision poses to publicly traded companies, with very little, if any, corresponding benefit to investors."[14] The Committee Report also pointed out that Section 953(b) was "neither discussed nor debated during the Conference Committee's deliberations on the legislation."[15] The Committee favorably reported H.R. 1062 to the House by a vote of 33 to 21.[16] Nevertheless, "the bill died awaiting a vote by the House of Representatives."[17]

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[10] Eavis, *supra* note 5, at 1.
[11] *Id.*
[12] *See, e.g.,* Letter from Rep. Jeb Hensarling, et. al., Chairman, Comm. on Fin. Serv., to Hon. Mary Jo White, Chair, SEC (Nov. 24, 2014) ("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.").
[13] Burdensome Data Collection Relief Act, H.R. 1062, 112th Cong. (2011) ("A Bill to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to repeal certain additional disclosure requirements, and for other purposes.").
[14] H.R. REP. NO. 112-142, at 1 (2011) (Conf. Rep.).
[15] *Id.* at 1-2.
[16] *Id.* at 3 ("The Committee on Financial Services met in open session on June 22, 2011 and ordered H.R. 1062 favorably reported to the House by a record vote of 33 yeas and 21 nays . . . .").
[17] *See* Letter from Dennis E. Nixon, President and Chairman, Int'l Bancshares Corp., to Elizabeth M. Murphy, Sec'y, SEC (Nov. 25, 2013).

Similarly, in 2013, Representative Bill Huizenga introduced H.R. 1135, also titled the Burdensome Data Collection Relief Act, in an effort to repeal Section 953(b).[18] Representative Huizenga believed that the pay ratio provision was "an unnecessary and complex regulatory requirement that is not worth the cost," but his efforts to repeal the provision were also unsuccessful.[19]

C. The Proposed Rule and Public Comments

The SEC eventually voted to propose a new pay ratio rule in September 2013, with two Commissioners dissenting.[20] After the Commission published the proposed rule online, the Commission received over 287,000 public comments, both supporting and criticizing the proposed rule.[21]

Many who wrote in support of the rule were hopeful that it would provide greater transparency for investors about the overall efficiencies of a publically-traded company.[22] For example, Thomas P. DiNapoli, the New York State Comptroller, explained that when there is great disparity between the pay of executives and low-level employees, the latter "may suffer a decline in morale, commitment, and loyalty to their employer."[23] Therefore, DiNapoli concluded that it would be helpful for investors to know about pay disparity because high disparities can affect the overall performance of a company.[24] Supporters also pointed to the impact that compensation practices

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[18] Burdensome Data Collection Relief Act, H.R. 1135, 113th Cong. (2013).

[19] Mary Hughes, *Pay Ratio Provision Not Worth Cost, Repeal Bill Sponsor Huizenga Says*, BNA, (March 20, 2013), http://huizenga.house.gov/news/documentsingle.aspx?DocumentiD=325003 [https://perma.cc/8EW4-42G7?type=source].

[20] *See* Pay Ratio Disclosure, 80 Fed. Reg. at 50107.

[21] *See id.* at 50108.

[22] *See id.* at 50108-09 ("Most of these individuals supported the proposed rule or the pay ratio disclosure because they believed it would: inform shareholders about executive compensation matters, especially with regard to say-on-pay voting . . . .").

[23] Letter from Thomas P. DiNapoli, N.Y. State Comptroller, to Elizabeth M. Murphy, Sec'y, SEC (Nov. 27, 2013).

[24] *See id.* ("These disclosures would help the Fund to identify companies that are being run for the enrichment of a few executives, rather than being operated efficiently for the benefit of all their shareholders.").

can have on shareholder value.[25] The Nathan Cummings Foundation explained that the corporate earnings that go toward executive pay could instead be used to improve the company, thereby increasing shareholder value.[26] Therefore, the Foundation agreed that shareholders have a right to know about this information.[27]

However, there was also a resounding call from opponents of the rule to provide for great flexibility in calculating median employee pay in order to help reduce costs.[28] The potential cost of calculating median employee pay was one of the many complaints about the rule.[29] One proposal to reduce costs was to limit the disclosure mandate to full-time, United States employees.[30] For example, Garmin, Ltd. explained that it has thousands of oversees employees, but lacks a system that tracks global payroll data.[31] The National Association of Manufacturers offered an interesting perspective by speaking for companies that "had nothing to do with the financial crisis," but would still be affected by this new rule.[32] According to the Association, the pay ratio rule was a costly endeavor that would not improve the financial system because it threatened job growth.[33] Therefore, many companies, especially companies with global employees, objected to the rule because the

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[25] *See* Pay Ratio Disclosure, 80 Fed. Reg. at 50108-09 ("Most of these individuals supported the proposed rule or the pay ratio disclosure because they believed it would . . . demonstrate a company's focus on its long-term health as opposed to short-term gains that benefit its executives at the expense of its shareholders.").
[26] Letter from Laura Campos, Dir. of S'holder Activities, The Nathan Cummings Found., to Elizabeth M. Murphy, Sec'y, SEC (Nov. 21, 2013).
[27] *See id.*
[28] *See* Pay Ratio Disclosure, 80 Fed. Reg. at 50132 ("A large number of commenters indicated that they supported the flexibility permitted in the proposed rule generally, or more specifically supported the flexibility of the proposed rule in permitting registrants to choose a methodology for calculating the median.").
[29] *See id.* at 50110.
[30] *See, e.g.,* Letter from Kevin M. Burke, President and CEO, American Apparel & Footwear Assoc., to SEC (Dec. 23, 2013).
[31] Letter from Kevin Rauckman, CFO and Treasurer, Garmin Ltd., to Elizabeth M. Murphy, Sec'y, SEC (Nov. 11, 2013).
[32] Letter from Carolyn Lee, Senior Director, Nat'l Ass'n of Manufacturers, to Elizabeth M. Murphy, Sec'y, SEC (July 6, 2015).
[33] *See id.*

costs of compliance would be enormous, with little corresponding benefit.[34]

Another frequent complaint from opponents was that the information disclosed in the ratio was either already publically available or would be useless to investors.[35] Channeling this sentiment, Timothy J. Bartl, President of the Center for Executive Compensation, suggested that the rule would "provide no useful information to investors," while simultaneously imposing significant costs on corporations.[36] Many opponents of the proposed rule were also apprehensive about the potential use by shareholders of the information in a pay ratio to compare companies when, in fact, the factors that determine compensation vary widely across companies and sectors.[37] In the proposed rule, the SEC referred to the ratio as a "company-specific metric."[38] Nevertheless, New York Comptroller DiNapoli wrote approvingly of the "comparative information" provided by the pay ratios regarding "internal compensation structures."[39] Similarly, the AFL-CIO Housing Investment Trust alleged that the ratio would "facilitate the comparison of companies in various industries and across industries."[40] Opponents hold that using the information in the ratio to compare companies is a fruitless exercise that will simply mislead investors.

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[34] *See* Pay Ratio Disclosure, 80 Fed. Reg. at 50121 ("Some commenters advocated for a *de minimis* exemption for non-U.S. employees because, as one of these commenters stated, excluding a small number of employees is unlikely to affect 'in a material way' the pay ratio and the nominal differences in ratios would be outweighed by the cost savings to registrants.").

[35] *See, e.g.,* Letter from Kevin Rauckman to Elizabeth M. Murphy, *supra* note 31 ("Our investors already receive a significant amount of information on our executive compensation practices through our proxy materials.").

[36] Letter from Timothy J. Bartl, President, Ctr. on Exec. Comp., to Elizabeth M. Murphy, Sec'y, SEC (Dec. 2, 2015).

[37] *See, e.g., id.* ("[D]ifferences in the companies' sizes and global reach, competitive and geographic labor market forces . . . and the mix of jobs within each company . . . would reduce the comparability of such disclosures across companies, making comparisons virtually meaningless.").

[38] Pay Ratio Disclosure, 80 Fed. Reg. at 50106.

[39] Letter from Thomas P. DiNapoli to Elizabeth M. Murphy, *supra* note 23.

[40] Letter from Lesylee White, Senior Vice President, AFL-CIO Hous. Inv. Tr., to Elizabeth M. Murphy, Sec'y, SEC (Dec. 2, 2013).

This notwithstanding, supporters pointed to uses of the ratio that transcend comparisons between different companies.[41] Most prominent is the use of the ratio to inform shareholders exercising their say-on-pay voting rights, enabling them to cast more educated votes regarding executive compensation.[42] For instance, the UAW Retiree Medical Benefits Trust explained that they would use the pay ratio "to evaluate companies' compensation policies and practices for purposes of proxy voting."[43] However, the Trust also wrote that it would use the ratio to "identify[] companies for engagement," which necessarily involves comparing companies based on the data provided by the ratio.[44]

Supporters of the pay ratio rule also discussed their concern for rising income inequality.[45] A letter signed by Representative Keith Ellison and thirty-one other Congressmen stated, "[T]he CEO-median employee pay ratio is critical to our national dialogue on income inequality and economic mobility."[46] Language such as this feeds opponents' fears that the ratio has political purposes beyond merely providing transparency for investors.[47]

D. SEC Adopts the Final Rule

After the sixty-day public comment period concluded, the Commission reevaluated the proposed rule and concluded that the

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[41] *See, e.g.,* Letter from Kerry Korpi, Director of Research & Collective Bargaining, American Federation of State County and Municipal Employees, to Elizabeth M. Murphy, Sec'y, SEC (Nov. 27, 2013).
[42] Pay Ratio Disclosure, 80 Fed. Reg. at 50114 ("[W]e understand the primary purpose of the pay ratio disclosure to be to inform shareholder's say-on-pay votes under Section 951 . . . .").
[43] Letter from Meredith Miller, Chief Corp. Governance Officer, UAW Retiree Med. Benefits Tr., to Elizabeth M. Murphy, Sec'y, SEC (Nov. 21, 2013).
[44] *Id.*
[45] *See, e.g.,* Pay Ratio Disclosure, 80 Fed. Reg. at 50153.
[46] Letter from Rep. Keith Ellison, et al., Members of Cong., to Elizabeth M. Murphy, Sec'y, SEC (Dec. 2, 2013).
[47] *See, e.g.,* Holman W. Jenkins, Jr., Opinion, *In an Election Year, Let's Agonize Over CEO Pay,* WALL ST. J., Aug. 12, 2015, at A9 ("Citing high CEO pay is a talking point that Democrats and their media allies never get tired of, but the rule won't alter the trajectory of executive compensation . . . .").

final rule would benefit from greater flexibility.[48] Finding the legislative history lacking, the SEC concluded that the purpose of the rule was to provide shareholders and investors with evaluative information about "executive compensation practices" and overall company efficiencies.[49] Therefore, the Commission hoped that the final rule would "mitigate compliance costs and practical difficulties" without detracting from the general purpose of educating and informing shareholders.[50]

On August 5, 2015, the three Democratic members of the SEC, Chair Mary Jo White and Commissioners Luis A. Aguilar and Kara M. Stein, voted in favor of a final rule. The Commission found that the rule comports with their mission to protect and inform investors, while simultaneously providing companies with needed flexibility in calculating median pay.[51] Thus, the final rule provides companies with certain leeway, including the following: (a) the permitted use of statistical sampling and reasonable estimates in calculating median pay; (b) a *de minimis* exemption for non-United States employees; (c) cost-of-living adjustments for employees in jurisdictions other than the one in which the executive officer resides; (d) permission to calculate the median employee compensation only once every three years; (e) the ability to choose a determination date on any day within the last three months of a company's fiscal year; and (f) fixed transition periods for newly registered companies.[52] Further, the rule gives companies the choice to provide additional

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[48] Pay Ratio Disclosure, 80 Fed. Reg. at 50107 ("In implementing the statutory requirements, we have exercised our exemptive authority and provided flexibility in a manner that we expect will reduce costs and burdens for registrants, while preserving what we perceive to be the purpose and intended benefits of the disclosure required by Section 953(b).").

[49] *Id.* at 50105 ("Congress did not expressly state the specific objectives or intended benefits of Section 953(b), and the legislative history of the Dodd-Frank Act also does not expressly state the Congressional purpose underlying Section 953(b).").

[50] *Id.* at 50110.

[51] *Id.* at 50107 ("Notwithstanding the disagreement among commenters on the value of the pay ratio disclosure, in adopting the final rule we have sought to implement Congress's apparent determination that the pay ratio disclosure would be useful to shareholders.").

[52] *Id.*

data that they feel will assist investors in better evaluating the pay ratio.[53]

The two dissenting Republican members, Commissioners Daniel M. Gallagher and Michael S. Piwowar, provided numerous arguments against the final rule. Fundamentally, these two Commissioners believe that the SEC has a defined role, and that "addressing perceived income inequality is not the province of the securities laws or the Commission."[54] The dissenters point to the overly politicized goals of the rule as further evidence of the rule's illegitimacy, namely the desire to "shame" companies into reducing executive pay.[55] Commissioner Daniel M. Gallagher uses striking language to describe what he sees as a "nakedly political rule that hijacks the SEC's disclosure regime to once again effect social change desired by ideologues and special interest groups."[56] Commissioner Gallagher explains that the rule would have been more acceptable in his eyes if the scope of the word "employees," which was left undefined by Congress, was strictly limited to full-time, United States workers.[57] He estimates that this limitation would reduce the $1.3 billion cost of calculating the median employee pay by approximately $788 million.[58] Nevertheless, as it stands, Commissioner Gallagher concludes that the benefits of the rule fail to outweigh the costs, reducing the rule to a "useless" provision.[59]

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[53] Pay Ratio Disclosure, 80 Fed. Reg. at 50107 ("[W]e recognize the possibility that . . . the pay ratio disclosure may warrant additional disclosures from a registrant to ensure that, in the registrant's view, the pay ratio disclosure is a meaningful data point for investors . . . .").

[54] Daniel M. Gallagher, *Dissenting Statement at an Open Meeting to Adopt the "Pay Ratio" Rule*, SEC (Aug. 5, 2015), http://www.sec.gov/news/statement/dissenting-statement-at-open-meeting-to-adopt-the-pay-ratio-rule.html [https://perma.cc/4D4A-DES6].

[55] Michael S. Piwowar, *Dissenting Statement at an Open Meeting to Adopt the "Pay Ratio" Rule*, SEC (Aug. 5, 2015), http://www.sec.gov/news/statement/dissenting-statement-at-open-meeting-on-pay-ratio-disclosure.html [https://perma.cc/Z4NN-NWEN] ("Today's rulemaking implements a provision of the highly partisan Dodd-Frank Act that pandered to politically-connected special interest groups and, independent of the Act, could not stand on its own merits.").

[56] Gallagher, *supra* note 54.

[57] *Id*.

[58] *Id.*

[59] *Id.* ("Given that a majority of the Commission has opted for a hugely expensive rule over a much less expensive rule, with no demonstration that

Most glaringly, the two dissenting Commissioners proposed in their public statements that the SEC lacks authority to implement the rule altogether.[60] Commissioner Gallagher goes one-step further to explain that if the rule is meant to embarrass companies into reducing executive pay, it could be classified as a "naming and shaming" rule and, therefore, violate the First Amendment.[61]

E. Implications and Continuing Debate

Supporters and opponents continue to debate the scope of the rule, especially with regard to the intended beneficiaries. The SEC made it clear that the intended beneficiaries were investors.[62] However, in recent statements, Hillary Clinton shifted the focus to workers, saying "there's something wrong when CEOs make 300 times more than the American worker."[63] Clinton asserted that "workers have a right to know whether executive pay at their company has gotten out of balance, and so does the public."[64] Reflecting on these sentiments, Charles Elson, director of the John L. Weinberg Center for Corporate Governance at the University of Delaware noted, "The pay ratio was designed to inflame the employees."[65] Sarah Anderson, global economy project director of the Institute for Policy Studies, argued, "It makes a lot of sense to bring the C.E.O. pay ratio out of the shareholder realm and into the consumer's."[66]

Such statements alarm some opponents of the rule, including Thaya Knight of the Cato Institute, who contends that the mission of the SEC is to "protect investors, maintain fair, orderly, and efficient

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the benefits to be achieved by the more expensive rule justify those additional costs, I can only conclude that there is no reasoned basis for the Commission's action.").

[60] *See, e.g.*, Piwowar, *supra* note 55.

[61] Gallagher, *supra* note 54.

[62] *See* Pay Ratio Disclosure, 80 Fed. Reg. at 50107.

[63] Kessler, *supra* note 8.

[64] Drew Harwell & Jena McGregor, *This New Rule Could Reveal the Huge Gap Between CEO Pay and Worker Pay*, WASH. POST (Aug. 4, 2015), https://www.washingtonpost.com/news/on-leadership/wp/2015/08/04/this-new-rule-could-reveal-the-huge-gap-between-ceo-pay-and-worker-pay/ [https://perma.cc/2NGK-S7FD].

[65] Gretchen Morgenson, *Cause for Optimism in Curbing C.E.O. Pay*, N.Y. TIMES, Aug. 9, 2015, at BU1.

[66] *Id.*

markets, and facilitate capital formation."[67] She argues that by implementing the pay ratio rule, the SEC has abandoned its mission and unilaterally expanded its powers.[68] Similarly, Columnist Holman W. Jenkins, Jr. believes that the rule has no function except to feed the Democratic "chorus of grievance."[69] In obvious disagreement with the rule, Jenkins goes on to explain that the rule is part of a "circle of activism, rule-making and rhetorical triteness" that creates populist anger to be utilized by politicians.[70] Gretchen Morgenson expressed her belief that "few institutional shareholders appear to be distressed by excessive pay levels at companies whose shares they hold."[71]

Nevertheless, Knight does not anticipate that the rule will have much effect on executive pay because executives faced with reduced pay will simply find employment elsewhere.[72] Knight predicts that if companies do feel compelled to reduce their pay ratios, they will start from the bottom, replacing low-level, full-time employees with contractors and temps, who are exempt from the ratio.[73] Ronald Barusch of the Wall Street Journal agrees that the ratio will not change pay practices because activist investors seek to buy out companies that are spending more money than necessary.[74] If a company attempts to reduce its pay ratio by increasing the compensation of its median employees, the company will be spending more money relative to competitors.[75] Such a company

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[67] Knight, *supra* note 5.
[68] *Id.* ("Such matters are unrelated to the SEC's mission, and the agency's move to stretch its power beyond its intended scope is a dangerous precedent.").
[69] Jenkins, *supra* note 47.
[70] *Id.*
[71] Morgenson, *supra* note 65.
[72] Knight, *supra* note 5.
[73] *Id.* ("More likely is that the company will try to goose the ratio from the other direction, by figuring out how to shed its lowest-paid employees.").
[74] Ronald Barusch, *Dealpolitik: Unintended Consequences of CEO Pay Ratio Rule?*, WALL ST. J. (Aug. 10, 2015), http://blogs.wsj.com/moneybeat/2015/08/10/dealpolitik-unintended-consequences-of-ceo-pay-ratio-rule/ [http://perma.cc/6S8G-RMK6?type=live] ("High median compensation of the rank and file (which will tend to produce lower CEO pay ratios) could attract activist investors like flies to honey.").
[75] *Id.*

would be attractive to an activist investor.[76] Barusch concludes that most executives would prefer the public shame of a high pay ratio to the alternative—namely losing their jobs when an activist investor buys their company.[77]

F. Conclusion

Even after the SEC voted to approve the final rule on August 5, 2015, the pay ratio has continued to be a topic of conversation for many, including presidential aspirants.[78] The SEC's attempts to provide greater flexibility while staying true to the purpose of the original provision has done little to silence the debate about the usefulness of the ratio. Many supporters fear that the increased flexibility in the rule will thwart efforts to alleviate income inequality.[79] However, opponents of the rule continue to aver that despite the flexibility, the rule remains a pointless, and potentially dangerous, provision.[80]

The United States Chamber of Commerce, which had initially proposed mounting a legal challenge to the rule, announced

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[76] *Id.*

[77] *Id.*

[78] *See, e.g.,* Press Release, Senator Bernie Sanders, Statement on CEO Pay Rule (Aug. 5, 2015), http://www.sanders.senate.gov/newsroom/recent-business/sanders-statement-on-ceo-pay-rule [http://perma.cc/DRQ2-HTF4] ("The decision to require companies to disclose how much more CEOs are paid than workers is an important step in the fight against income inequality."); Victoria McGrane and Joann S. Lublin, *SEC Approval of Pay-Gap Rule Sparks Concerns*, WALL ST. J., Aug. 6, 2015, at B3.

[79] *See, e.g.,* Eavis, *supra* note 5.

[80] *See, e.g.,* Press Release, Ctr. on Exec. Comp., Center on Executive Compensation Strongly Opposes Final Pay Ratio Rule (Aug. 5, 2015), http://www.execcomp.org/Docs/c15-37_Center%20PR-Pay%20Ratio%20Final%20Rule%20August%202015.pdf [http://perma.cc/PLB8-F9NQ] ("To the extent the pay ratio is used, it will only serve to mislead and potentially harm investors and the public by purporting to communicate information about a company's pay philosophy and human resources practices."); David Hirschmann, President and CEO, US Chamber of Commerce, Statement on SEC Pay Ratio Rule (Aug. 5, 2015), https://www.uschamber.com/press-release/us-chamber-statement-sec-pay-ratio-rule [https://perma.cc/R6N5-XX74] ("At best, pay ratio is a misleading, politically-inspired, and costly disclosure that fails to provide investors with useful, comparable data.").

in late October 2015 that it would abandon any legal action.[81] However, H.R. 414, a third Burdensome Data Collection Relief Act, which is aimed at overturning Section 953(b), was recently voted out of the Financial Services Committee and is currently awaiting a full House vote.[82] Therefore, it remains to be seen what practical effects the pay ratio rule will have on public companies, if it has any impact at all. For now, the rule provides new talking points for the increasingly contentious debate about wealth inequality.

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[81] *See*, Emily Chasan, *U.S. Chamber of Commerce Won't Challenge Pay Ratio*, WALL ST. J. (Oct. 20, 2015), http://blogs.wsj.com/cfo/2015/10/20/u-s-chamber-of-commerce-wont-challenge-pay-ratio/ [http://perma.cc/ZC7K-H3L3].

[82] *See*, *e.g., id.*; Press Release, Representative Bill Huizenga, Statement on SEC Pay Ratio Rule (Aug. 5, 2015), http://huizenga.house.gov/news/documentsingle.aspx?DocumentID=398229 [https://perma.cc/9SDA-TK84].

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