

August 2, 2017

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Clayton:

Re: Reconsideration of CEO Pay Ratio Rule Implementation

Jamie Dimon
JPMorgan Chase & Co.
Chairman

John Hayes
Ball Corporation
Chair, Corporate
Governance Committee

Joshua Bolten
President & CEO

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading U.S. companies. Our member companies produce more than \$6 trillion in annual revenues and employ nearly 15 million employees worldwide. The combined market capitalization of Business Roundtable member companies is the equivalent of nearly one-quarter of total U.S. stock market capitalization, and they annually pay more than \$220 billion in dividends to shareholders, generate more than \$400 billion in revenues for small and medium-sized businesses and invest \$100 billion annually in research and development.

On March 23, 2017, we submitted a letter in response to Acting Chairman Piwowar's request for public comments on the implementation of the CEO pay ratio rule adopted by the Securities and Exchange Commission (SEC) pursuant to Section 953(b) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*.¹ In that letter, we outlined significant concerns with the CEO pay ratio rule — both in its current form and in principle — and expressed our belief that the rule should be repealed. We continue to believe that the rule should be repealed because disclosing CEO pay ratios will not advance the SEC's three-part mission of: (1) protecting investors, (2) maintaining fair, orderly, and efficient markets, and (3) facilitating capital formation. In light of your remarks at the Economic Club of New York on July 12, 2017, however, we want to emphasize specific changes we believe should be made to the rule, pending its full repeal.

As more fully discussed in our March comment letter, we believe the rule should be changed to exclude employees located outside of the United States in determining the median employee. Doing so would create a more consistent common denominator in the many variables that exist in formulating the ratio. In addition, we suggest that non-full time employees be exempt from

¹ See Business Roundtable comments on Statement on Reconsideration of Pay Ratio Rule Implementation, available at <https://www.sec.gov/comments/pay-ratio-statement/cl13-1664780-148922.pdf> (last visited July 14, 2017).

the rule to provide some protection against distorted results. We believe both of these changes would lessen some of the problematic aspects of the ratio disclosure, while significantly reducing the cost of compliance.

Exclusion of Employees Located Outside of the United States Creates a More Consistent Common Denominator

Including employees located outside of the United States complicates the determination of the median employee and provides many opportunities for variances, making the ratio more confusing to the Main Street investor. A company with employees located outside of the United States must determine (and explain in plain English in its proxy statement) the consistently applied compensation measure used to determine the median employee. Some of our members have said that this, in itself, is difficult given the breadth and complexity of their workforces and the variety of business models, staffing strategies and compensation and benefit arrangements, including government-provided benefits, that comprise an employee's total compensation package.

The rule contains a data privacy exception and a *de minimis* exception to the requirement that a company include in its total employee population all employees located outside of the United States. The international data privacy law regime is complex and ever-changing, and a company's *de minimis* analysis could change from one year to the next. This creates a scenario whereby a company may be required to include different employee populations from year to year in the determination of the median employee, which introduces an opportunity for fluctuations in inputs based on factors irrelevant to the company's compensation practices and outside of the company's control. Therefore, the inclusion of employees located outside of the United States in the CEO pay ratio calculation will render a company's CEO pay ratio even less meaningful – and more confusing – to the public invested in the long-term growth and health of the U.S. economy.

Entirely excluding employees located outside the United States when determining the median employee compensation will help to create a more consistent common denominator *over time*. While the employee population base of companies with employees located both inside and outside the United States often changes based on business strategies, the health or decline of local economies, and other factors, comparing the population of companies' employees *within* the United States would provide a much more consistent common denominator, which will reduce variances over time and could provide a more consistent ratio over time.

Exempting Non-Full Time Employees Helps Protect Against Distortion

We also suggest that the CEO pay ratio rule be revised to exclude part-time, seasonal and temporary workers. Requiring that part-time, seasonal and temporary workers be included in the analysis will have a disproportionate impact on the CEO pay ratios of companies that

employ relatively large amounts of those types of workers, such as companies in the retail industry and certain service industries. For companies whose workforces are largely comprised of part-time, seasonal or temporary employees, it is possible and even likely that the median employee will be a part-time or seasonal employee, whose total annual compensation could not be annualized. Requiring a company to include in its analysis part-time, seasonal and temporary workers could actually disincentivize a company from utilizing the services of those types of workers for fear of a negative reaction to its CEO pay ratio. Yet, those types of non-traditional employment opportunities are extremely important to students, retirees, working parents or second earners. We suggest that a company be required to analyze its full-time U.S. employee population only, which would provide some protection against distorted results and poor investment decisions based on inaccurate interpretations of the ratio.

Exclusion of Data Collection for Employees Outside of the United States and Non-Full Time Employees Would Significantly Reduce Compliance Costs

Another benefit of removing from the total employee population employees located outside of the United States and exempting non-full time employees from the rule is the resulting reduction in compliance costs. Gathering the information necessary to comply with the CEO pay ratio rule requires a significant manual data collection effort for non-U.S. employees, since many – if not most – companies do not maintain centralized payroll and benefits information for such employees or contractors. Furthermore, relying on the rule’s data privacy exemption is both costly and time consuming and a company must undergo a separate analysis to determine whether the 5 percent non-U.S. employee *de minimis* exception applies. According to one study, permitting registrants with employees located outside of the United States to exclude those non-U.S. employees would reduce compliance costs by 47 percent.² In addition, as noted by former SEC Commissioner Daniel Gallagher at the SEC open meeting to consider adoption of the final pay ratio rule, excluding employees located outside of the United States and non-full time employees could save companies an estimated aggregate of \$788 million in compliance costs.³ By changing the rule to exclude from the analysis employees located outside of the United States and non-full time employees, these compliance costs could be saved, freeing up those resources to be channeled toward more productive uses.

For the reasons stated above, pending repeal of Section 953(b), we respectfully reiterate our recommendation that the rule be revised to exclude employees located outside of the United States, and we ask that the rule also be revised to exempt non-full time employees.

² See Center on Executive Compensation Comments on Proposed Pay Ratio Disclosure, available at <http://www.sec.gov/comments/s7-07-13/s70713-572.pdf> (last visited March 8, 2017).

³ “Dissenting Statement at an Open Meeting to Adopt the “Pay Ratio” Rule,” SEC Commissioner Daniel M. Gallagher (August 5, 2015), available at <https://www.sec.gov/news/statement/dissenting-statement-at-open-meeting-to-adopt-the-pay-ratio-rule.html>.

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Thank you for considering our comments and recommendations. We would be happy to discuss our concerns or any other matters that you believe would be helpful. Please contact Maria Ghazal, Senior Vice President & Counsel of Business Roundtable, at [REDACTED] or [REDACTED].

Sincerely,

A handwritten signature in black ink that reads "John Hayes". The signature is written in a cursive style with a large initial "J" and "H".

John Hayes
Chairman, President and Chief Executive Officer
Ball Corporation
Chair, Corporate Governance Committee
Business Roundtable