

March 4, 2022

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. S7-07-15; Reopening of Comment Period for Pay Versus Performance

Dear Ms. Countryman:

This letter is submitted on behalf of Business Roundtable, an organization whose members lead America's largest companies, employing over 20 million workers. Their companies' total value, over \$20 trillion, accounts for half of the value of all publicly traded companies in the United States. They spend and invest over \$7 trillion a year, helping sustain and grow tens of thousands of communities and millions of medium- and small-sized businesses.

INTRODUCTION

We appreciate the opportunity to respond to the request for comments included in the recently reopened comment period for the proposal by the U.S. Securities and Exchange Commission (the "Commission") to implement Section 953(a) of the Dodd-Frank Act (the "Proposal").¹ The Proposal would amend the current executive compensation disclosure rule to require a description of how executive compensation actually paid by a registrant related to the financial performance of that company ("pay versus performance").

Business Roundtable notes that the Proposal was originally published by the Commission in 2015, and no action has been taken on it since that time. Business Roundtable submitted a comment letter on the Proposal in 2015 urging the Commission to make several changes before any rule is adopted by the Commission.² Business Roundtable continues to urge the Commission to consider these comments as it looks to finalize the Proposal.

REOPENING OF COMMENT PERIOD AND ADDITIONAL REQUESTS FOR COMMENT

In the most recent Commission action on the Proposal, the Commission reopened the comment period and added multiple new questions about possible changes that it is

¹ *Reopening of Comment Period for Pay Versus Performance*, Release No. 34-94074 (January 27, 2022), <https://www.sec.gov/rules/proposed/2022/34-94074.pdf>.

² Comment Letter of the Business Roundtable, Submitted by John A. Hayes, Chairman, President and Chief Executive Officer, Ball Corporation and Chair, Corporate Governance Committee, Business Roundtable, Washington, District of Columbia, July 6, 2015, <https://www.sec.gov/comments/s7-07-15/s70715-53.pdf>.

considering for inclusion in a final rule. The additional disclosures contemplated in these new requests for comment would represent very substantive additions to the proposals made by the Commission in 2015, including around disclosure of additional financial performance measures beyond total shareholder return ("TSR"). We believe the additional disclosures contemplated in the new requests for comment would significantly exacerbate the concerns that Business Roundtable expressed in our 2015 comment letter, including, among others, with regard to the overly prescriptive nature of the proposed rules and the problem of proxy disclosure overload. Further, many of these possible additional disclosures are described in only the most cursory terms, such that the public would not have a meaningful opportunity for comment.

Close to seven years have passed since the Proposal was issued by the Commission. In that time period, as the Commission notes, executive compensation practices related to company performance have continued to develop and evolve. For example, there have been significant changes in compensation and other disclosures in response to investor focus and other factors, particularly in connection with risk, ESG and other performance metrics. Yet the Commission's release reopening the comment period does not offer updated data in support of the Proposal.

Business Roundtable believes that with the extensive passage of time, developments since 2015, and substantive nature of the new disclosures contemplated in the new requests for comment, the Commission should issue a revised proposal. Business Roundtable believes a revised proposal would be appropriate in any event due to the significant developments in compensation and disclosure since 2015, but certainly in the event that the Commission plans to adopt concepts not originally proposed. A revised proposing release would include regulatory text, the Commission's economic analysis and related materials that could be considered by commenters. We would look forward to providing our comments on a revised proposal.

CONCLUSION

Thank you for considering our comments and recommendations. We would be happy to discuss these comments or any other matters you believe would be helpful. Please contact Maria Ghazal, Senior Vice President & Counsel of Business Roundtable, at mghazal@brt.org or (202) 496-3268.