

MEMO# 23647

July 24, 2009

SEC Proposes Enhanced Governance Disclosure

[23647]

July 24, 2009

TO: INVESTMENT COMPANY DIRECTORS No. 20-09 RE: SEC PROPOSES ENHANCED GOVERNANCE DISCLOSURE

The Securities and Exchange Commission has proposed to enhance the compensation and governance disclosures required by public companies and, in some instances, by investment companies. [\[1\]](#) Two elements of the Commission's proposal of greatest interest to fund directors are enhanced director and nominee disclosure and new disclosure about the board's leadership structure and the board's role in the risk management process. Comments on the proposal are due to the SEC by September 15, 2009.

These proposals are discussed in more detail below.

1. Enhanced Director and Nominee Disclosure

The Commission's proposal would expand the disclosure required about individual directors and nominees and supplement the current director qualification disclosures. The proposal would require disclosure that describes, in light of the company's business and structure, the qualifications, attributes or skills that qualify that person to serve as a director and as a member of any committee that the person serves on or is chosen to serve on (if known). The proposal also would require disclosure of any directorships held by each director and nominee at any time during the past five years at public companies, and would lengthen the time during which disclosure of legal proceedings is required from five (as currently required) to ten years.

The proposal would extend these expanded disclosure requirements to funds in two ways. First, it would apply these expanded requirements to fund proxy and information statements where action is to be taken with respect to the election of directors. Second, it would require that funds include the expanded disclosures regarding director qualifications and past directorships in their statements of additional information ("SAIs").

The Release explains that the Commission believes that investors in funds, like investors in

other types of public companies, would find this information useful. The Commission specifically seeks comment on whether the expanded disclosure should, as proposed, apply to mutual funds and closed-end funds, and if so, where each of the disclosures should be required (e.g., proxy statements, SAs, and/or shareholder reports). The Commission also seeks comment on whether the disclosure requirement needs to be modified in any way to make it more appropriate for mutual funds or closed-end funds.

2. New Disclosure About Board Leadership Structure and the Board's Role in the Risk Management Process

The proposal would require disclosure of a board's leadership structure and why the board believes it is the best structure for it at the time of the filing. Specifically, a fund would be required to disclose whether the board chair is an "interested person" of the fund, and if so, whether the board has a lead independent director and what specific role the lead independent director plays in the leadership of the fund.

The proposal also would require disclosure about the board's role in the company's risk management process. The Release explains that the Commission believes that disclosure about the board's involvement in the risk management process should provide important information to investors about how a company perceives the role of its board and the relationship between the board and senior management in managing the material risks facing the company.

The Commission seeks comment on whether the expanded disclosure on the board's structure and role in risk management should, as proposed, apply to mutual funds and closed-end funds, and if so, where that disclosure should appear (e.g., proxy statements, SAs, and/or shareholder reports). The Commission also seeks comment on whether the requirement should differentiate between mutual funds and closed-end funds. Specifically, the Commission asks whether it should omit this requirement for closed-end funds because they generally hold annual shareholder meetings and their shareholders will receive this disclosure in annual proxy or information statements.

Lisa Chaikin Hamman
Associate Counsel

endnotes

[\[1\]](#) See Proxy Disclosure and Solicitation Enhancements, Investment Company Act Release No. 28817 (July 10, 2009) ("Release"), which is available at <http://www.sec.gov/rules/proposed/2009/33-9052.pdf>.