

**MEMO# 20485**

October 13, 2006

## **Draft ICI Comment Letter on SEC Compensation Disclosure Proposal; Conference Call on October 19th**

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20485] October 13, 2006 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 30-06 SEC RULES COMMITTEE No. 44-06 SMALL FUNDS COMMITTEE No. 26-06 RE: DRAFT ICI COMMENT LETTER ON SEC COMPENSATION DISCLOSURE PROPOSAL; CONFERENCE CALL ON OCTOBER 19TH As we indicated previously, the Securities and Exchange Commission is seeking comment on a modified proposal relating to the disclosure by public companies of compensation information for certain highly compensated employees.<sup>1</sup> This memorandum provides a brief history of the proposal and summarizes the Institute's draft comment letter. A copy of the draft letter is attached. The Institute will hold a conference call on Thursday, October 19th at 3:30 p.m. Eastern time to discuss the draft letter. The dial-in number for the call is 888-396-9924 and the passcode is 61809. Please email Stephanie Holly at [sholly@ici.org](mailto:sholly@ici.org) to let us know if you plan to participate on the call. If you cannot participate on the call, please provide any comments on the draft letter to Rachel Graham at [rgraham@ici.org](mailto:rgraham@ici.org) or 202/326-5819 before the call. Brief History Earlier this year, as part of its extensive rewrite of the disclosure rules for executive compensation, the SEC proposed to require each public company to disclose the total compensation paid in the last fiscal year to up to three employees who were not executive officers but whose total compensation exceeded that of any of the company's five named executive officers. The non-executive employees would have been identified by job description only. This new disclosure would have been in addition to detailed compensation information for each of the company's named executive officers. The Institute, and most other commenters addressing this provision, raised objections to the proposed 1 See Memorandum to Closed-End Investment Company Members No. 37-06, SEC Rules Members No. 73-06 and Small Funds Members No. 59-06 [20312], dated August 25, 2006. 2 disclosure.2 These objections included that: (1) information about compensation paid to non- executives would not be material to investors; (2) the disclosure could result in competitive harm to the company; and (3) administrative compliance could be burdensome and costly. The SEC has now modified its proposal so that it would apply only to employees – whether or not they are executive officers of the company – who have responsibility for significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division or function of the company. Summary of Draft Letter The draft letter expresses opposition to the SEC proposal on behalf of Institute members, which are significant investors in public companies. Separate sections of the letter discuss the proposal's application to “non-executive” employees of a company (i.e., individuals who are

not executives for the company or its subsidiaries, as well as executive officers at the subsidiary level who do not perform policy making functions for the company) and to executive officers of the company beyond the five named executive officers. With respect to non-executives, the draft letter asserts that compensation information for such employees is not material to investors because these employees do not serve a policy making function for the company. The draft letter also takes issue with the SEC's suggestion that this information would assist investors in understanding the compensation structure for a company's named executive officers. In particular, it points out that non-executive compensation is not set in the same manner as executive compensation but rather is market driven and could be highly variable from year to year. While acknowledging that the SEC has attempted to address commenters' concerns by focusing the disclosure on employees with "responsibility for significant policy decisions," the draft letter explains various problems with this approach and concludes that the resulting disclosure would not provide investors with meaningful information. The draft letter further asserts that requiring disclosure of non-executive compensation could have serious negative implications for public companies generally and large accelerated filers in particular, potentially leading to losses in value that would directly impact funds invested in those companies. The letter highlights that this disclosure could make it easier for competitors to lure away a company's top talent or could lead to employee departures for privacy reasons, either of which could result in a loss of customers and revenue. It also discusses the Institute's concern that administrative compliance with the proposed requirement could be very burdensome and costly for public companies. With respect to the proposal's application to additional executive officers, the draft letter contends that the disclosure of compensation information for such employees is not necessary to 2 See Memorandum to Board of Governors No. 15-06, Closed-End Investment Company Members No. 14-06, SEC Rules Members No. 35-06 and Small Funds Members No. 30-06 [19951], dated April 11, 2006 (summarizing the Institute's earlier comment letter). 3 achieve the SEC's stated goal of providing investors with a better understanding of the compensation earned by a company's named executive officers. It explains that funds and other investors should have a very clear understanding of such compensation once companies comply with the SEC's recent amendments to its executive compensation disclosure rules. The draft letter concludes by cautioning the SEC against expanding compensation disclosures beyond a company's five named executive officers. The letter remarks that such expansion could start down a slippery slope, with no clear line as to where the disclosure should stop. In particular, the draft letter mentions that there have been calls in the past to extend compensation disclosure to fund portfolio managers and the executives of private advisory firms that manage funds. It reminds the SEC that the advocates favoring such disclosure may have agendas that are distinct from the purpose of the federal securities laws, which is to ensure that investors and the marketplace have access to meaningful information on which to base sound investment decisions. Rachel H. Graham Associate Counsel  
Attachment (in .pdf format)