COMMENT LETTER

April 10, 2006

ICI Comments on Executive, Director Compensation Proposal (pdf)

April 10, 2006 Ms. Nancy M. Morris Secretary U.S. Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549-9303 Re: Executive Compensation and Related Party Disclosure; File No. S7-03-06 Dear Ms. Morris: The Investment Company Institute1 applauds the Commission for its efforts to improve information about the compensation paid to executives and directors of public companies.2 The proposed amendments reflect a comprehensive and balanced approach that should help investors better understand the complex and varied executive pay packages that are common in today's corporate environment. As significant investors in securities, investment companies welcome more extensive and meaningful disclosure in the area of executive compensation. Information about a company's compensation policies and the elements of executive pay packages is important to investors because it focuses on the compensation paid to the individuals who are the company's decision makers. This information is a critical part of the total mix of information that funds analyze in deciding whether to invest in the company or, if already invested, whether to continue to hold the company's stock. Investors will greatly benefit from the Commission's proposal to require public companies to provide detailed disclosure, in plain English, regarding each component part of an executive's pay package. This disclosure, which will consist of both tabular and narrative information, will significantly improve the ability of funds and other investors to evaluate whether the interests of a company's key 1 The Investment Company Institute is the national association of the U.S. investment company industry. More information about the Institute is available at the end of this letter. 2 SEC Release Nos. 33-8655; 34-53185; IC-27218 (Jan. 27, 2006), 71 Fed. Reg. 6542 (Feb. 8, 2006) ("Proposing Release"). Ms. Nancy M. Morris April 10, 2006 Page 2 of 4 policy makers are aligned with those of the company's shareholders, and whether policy makers are properly incentivized to maximize value for shareholders. Knowing, for example, that a company's CEO will receive a large windfall on the sale of the company could change an investor's views about that company. In addition, more transparent and more detailed disclosures will make it harder for a company to obscure any compensation arrangement that is inconsistent with shareholder interests. Just as the requirement to expense stock options has influenced how companies award them, so too should improved transparency of executive compensation encourage greater corporate responsibility in the awarding of pay packages to top executives. The Institute also supports the proposed Compensation Discussion and Analysis ("CD&A") section, which is designed to enhance investor understanding of a company's compensation policies and awards. As described in the Proposing Release, the CD&A is intended to put a company's tabular and narrative disclosures into context by providing material information about the company's compensation objectives and policies for the named executive officers. For the CD&A to add real value for investors, it must contain clear and concise information and avoid boilerplate disclosure. We therefore urge the Commission to adopt the proposed requirement that companies must provide the CD&A in plain English. The Proposing Release requests comment on whether the proposed disclosures regarding executive compensation could be provided in a form that permits interactive capability in proxy statements made available on the Internet. The Commission's interest in this issue reflects a growing recognition that the Internet has enormous potential to transform the delivery of information to investors and to the marketplace at large. The Institute strongly supports the Commission's efforts in this area and stands ready to assist the Commission in determining how the Internet can be used to improve the accessibility, utility, and quality of the disclosures made by all issuers, including investment companies.3 The Proposing Release also requests comment on the proposed requirement for disclosing the total compensation paid to up to three non-executive employees. Among other things, the Proposing Release asks whether this information is material to investors, whether disclosure of this information will cause competitive harm, and whether disclosure of this information is consistent with the overall goals of the proposal. In the Institute's view, this information is not meaningful to funds and other investors because these employees do not perform policy making functions for the company. The fact that a salesman, for 3 See Paul Schott Stevens, Revolution in Real Time: Using the Internet to Inform Investors Better, Address at the National Press Club, Washington D.C. (Feb. 14, 2006); Investment Company Institute, "Mutual Fund Investors' Use of the Internet, 2005," Fundamentals, Vol. 15, No. 2, February 2006 ("Institute Study"). A text copy of Mr. Stevens' speech is available on the Institute's public website at http://www.ici.org/home/06_npc_stevens_spch.html#TopOfPage, and an archived webcast of the speech may be viewed at http://www.connectlive.com/events/ici0206/. The Institute Study is available on the Institute's public website at http://www.ici.org/home/fm-v15n2.pdf. Ms. Nancy M. Morris April 10, 2006 Page 3 of 4 example, happens to earn more in a given year than any of the company's named executive officers will have little, if any, impact on an investor's decision to buy or sell the company's stock. Non-executive employees generally have limited ability to affect the terms of their pay packages; instead, their compensation is influenced by market forces based on the functions they perform. From the investor's perspective, the principal concern regarding non-executive compensation is the extent to which the company has awarded stock options, because of the dilutive effect these awards could have on the company's stock. The Commission's rules already require that this information be disclosed. We also believe there are potentially significant drawbacks to this provision. The Institute strongly recommends that the Commission evaluate whether the proposed disclosure would harm public companies by making it easier for competitors to identify and hire away a company's top creative or other talent. The Institute also recommends that the Commission evaluate whether any benefit of this disclosure would be outweighed by the potential administrative burdens on companies of having to track and value their employees' pay packages to determine whether this disclosure is required in a given year. * * * The Institute appreciates the opportunity to comment on this important proposal. If you have any questions about our comments or would like any additional information, please contact me at 202/326-5815, Amy B.R. Lancellotta at 202/326-5824 or Rachel H. Graham at 202/326-5819. Sincerely, /s/ Elizabeth R. Krentzman General Counsel cc: The Honorable Christopher Cox The Honorable Cynthia A. Glassman The Honorable Paul S. Atkins The Honorable Roel C. Campos The Honorable Annette L. Nazareth John W. White, Director Division of Corporation Finance Susan Ferris Wyderko, Acting Director Division of Investment Management Ms. Nancy M. Morris April 10, 2006 Page 4 of 4 About the Investment Company Institute ICI members include 8,554 open-end investment companies (mutual funds), 654 closed-end investment companies, 162 exchange-traded funds, and 5 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately $8.802 trillion (representing 98 percent of all assets of US mutual funds); these funds serve approximately 89.5 million shareholders in more than 52.6 million households. In addition, the ICI's membership includes 178 associate members, which render investment management services exclusively to non-investment company clients.
