INVESTMENT ADVISER ASSOCIATION

October 23, 2006

Via Electronic Mail

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Executive Compensation and Related Party Disclosure (File No. S7-03-06; Release Nos. 33-8735; 34-54380; IC-27470)

Dear Ms. Morris:

We appreciate the opportunity to comment on the Commission's new rules on executive compensation and related persons disclosure. The Investment Adviser Association[1] supports the Commission's efforts to provide greater transparency in the area of executive compensation. We believe the new Rule adopted by the Commission in August (the "Executive Compensation Rule"),[2] will greatly assist the investing public in assessing whether the compensation packages for senior management at a company establish appropriate economic incentives for management to act in the best interests of shareholders.

However, we do not believe the Commission should adopt its proposal to require additional disclosure of the job descriptions and total compensation received by up to three additional employees if such employees exert significant policy influence at the company, at a significant subsidiary of the company or at a principal business unit, division or function or the company and such individuals' total compensation is greater than that of any of the named executives (the "Proposal").[3] We respectfully urge the Commission to reject the Proposal as currently framed because we believe the negative impacts that the Proposal will have on the financial services industry, including the investment advisory profession, greatly outweigh any benefit to the investing public to be gained from the disclosure of such compensation information.

[1] The Investment Adviser Association (formerly the Investment Counsel Association of America) is a not-for-profit association that represents the interests of SEC-registered investment adviser firms. Founded in 1937, the Association's current membership consists of more than 450 firms that collectively manage in excess of $6 trillion for a wide variety of individual and institutional clients. For more information, please visit our web site: www.investmentadviser.org.

[2] *Executive Compensation and Related Person Disclosure;* SEC Release Nos. 33-8732A, 34-54302A, IC-27444A, File No. S7-03-06 (Aug, 29, 2006).

[3] *Executive Compensation Disclosure,* SEC Release Nos. 33-8735, 34-54380, IC-27470, File No. S7-03-06 (Aug. 29, 2006).

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The Proposal Is Overbroad and Lacks Clarity.

The Proposal's disclosure requirement focuses on highly compensated employees "who exert significant policy influence by having responsibility for significant policy decisions." The Proposal does not define "responsibility for significant policy decisions," but requires publicly traded advisers to consider, and select from, various senior professionals across multiple functions. Particularly troublesome is the Proposal's suggestion that an investment professional's duties may rise to the level of such responsibility. Within investment management firms, this will be a difficult task fraught with ambiguity, because the business model employed by many firms vest significant investment autonomy with portfolio managers and other related professionals. Such autonomy should not be equated with exercising a significant policymaking role. Indeed, we are concerned that portions of the release accompanying the Proposal could be read to suggest that senior investment professionals (such as chief investment officers or head traders) should be *presumed* to have responsibility for significant policy decisions.[4] For example, a senior investment professional may play an active role in the investment oversight process, including setting investment policies, in addition to handling portfolio management responsibilities. We do not believe, however, that these additional oversight responsibilities make them policy-setters from a corporate governance perspective. The Proposal's discussion of "significant policy decisions" provides no compelling rationale for this result.

Further, the disclosure requirement contemplated by the Proposal is arbitrary, in the sense that it singles out a small number of non-executive employees for disclosure about their compensation. As currently drafted, the Proposal may result in compensation disclosure for three individuals who have no influence on the strategic direction of the issuer, contrary to the Proposal's stated goals. As noted below, this disclosure could have significant adverse effects, including making it easier for others to poach investment talent, creating internal conflict among employees, and producing an unfair competitive disadvantage for companies that make such disclosures.

Similarly, the Proposal's focus on highly compensated employees at "significant subsidiaries" is potentially overbroad and not reasonably designed to elicit information important to shareholders. Compensation determinations at a subsidiary have little relevance, and provide no useful context, for shareholders of the parent company. It is not unusual for investment management operations to be organized as separate operating companies under a single corporate umbrella. The levels and approaches to control over

[4] "Nor, as a general matter, would investment professionals (such as a trader, or a portfolio manager for an investment adviser who is responsible for one or more mutual funds or clients) be deemed to have responsibility for significant policy decisions at the company, at a significant subsidiary or at a principal business unit, division or function simply as a result of performing the duties associated with those positions. *On the other hand, an investment professional, such as a trader or portfolio manager, who does have broader duties within a firm (such as, for example, oversight of all equity funds for an investment adviser) may be considered to have responsibility for significant policy decisions*." Proposal, at 6 (emphasis added).

the subsidiaries' operations can vary dramatically from firm to firm, providing little or no basis for comparison of compensation practices, much less context for shareholders who are reviewing the disclosures.[5]

The Proposal Will Not Provide Additional Meaningful Information to Investors.

The Proposal will not add anything significant or meaningful to the total mix of information that will already be provided to the investing public under provisions of the newly adopted Executive Compensation Rule. Because non-executive compensation is generally set by management rather than the board of directors, the information will not shed any light on the functioning of the board. Such compensation is simply one component of a company's operating expenses. Further, the proposed disclosure will not provide investors and research analysts with any additional insight into a company's management structure or governance practices. The Proposal assumes a connection that does not exist between compensation determinations with respect to executive management of an issuer, and those of subsidiaries or business units, no matter how distant or different in management, organization, or structure. Depending on the type of business a company is in, the individuals covered by the Proposal may change from year to year in light of market conditions and other factors, giving no basis for a comparison from one year to the next. Moreover, the compensation structures for a company's top producers may be structured so differently from management's that a comparison is at best meaningless and at worst misleading.[6] In its Release, the Commission suggests that such disclosure would be useful because it would assist in placing into "context" the compensation structure for a company's named executive officers and directors. We respectfully disagree as investors typically evaluate management compensation by comparing companies in the same sector or industry – and not by comparing management's compensation on an intra-company basis. We submit that the new disclosure requirements for management's Compensation Disclosure and Analysis will more than adequately serve to place a company's compensation structure into the appropriate context.

The Proposal Will Have Adverse Consequences for the Investment Advisory Profession.

The Proposal would also create an unfair competitive disadvantage for publicly traded asset management firms. The investment advisory profession is highly competitive and firms are constantly under pressure to recruit and retain talented

[5] We note that the Proposal does not speak to and should not reach subsidiary operations that are both independent and autonomous from an operational, regulatory, and most importantly, structural perspective, where an issuer has no connection to or impact on the compensation arrangements and the shareholders of the issuer have no rights to nor would they ever receive any portion of such compensation expenses should they be decreased. This structure arises principally in acquisition settings, where the acquiring issuer (which functionally becomes a partner rather than a parent to the acquired firm) structurally relinquishes any rights to (i) oversee the allocation of the operating expenditures of the acquired entity, and (ii) recapture as cash flow or profit any portion of the operating expense not used for compensation.

[6] For example, an employee's compensation may be sales-based, while executive management's compensation is tied to performance of the issuer's stock relative to other companies in the industry.

investment professionals. Even though the Proposal only requires disclosure of the job descriptions of the three most highly compensated non-executive employees, it is highly likely that the identity of an asset management firm's three most highly compensated "portfolio managers" will be readily ascertainable by the firm's employees and competitors. Disclosure of such highly sensitive information could cause substantial harm to our profession. For example:

- Disclosure of such information would make it easier for one company to "poach" investment talent from other firms and thus would have the perverse effect of increasing total compensation costs, as companies would be forced to spend even more to retain talent.

- Such disclosure would also create internal conflict among a disclosing company's employees who will be given knowledge of their peers' total compensation.

- The Proposal would also create an unfair competitive disadvantage for publicly traded investment advisory firms and could accelerate an exodus of investment talent to private firms and hedge fund managers.

We also note that many publicly traded investment adviser firms have worldwide operations that are subject to foreign laws and jurisdictions. Global employers with large worldwide operations will have to examine, track, and maintain detailed payroll and compensation plans and information worldwide. This will place a significant burden and unnecessary cost on such firms.

Conclusion

The newly adopted Executive Compensation Rule will provide investors and research analysts with appropriate and useful information in assessing publicly traded companies. We urge the Commission to give the new rule an opportunity to work before imposing requirements that will have negative effects on investment advisory firms. If the Commission nevertheless decides to proceed with the Proposal, we request that it more narrowly tailor its scope to achieve its stated policy goals and remove any references to senior investment professionals from the final release.

Please do not hesitate to contact us if we may answer any questions or provide any additional information regarding these important issues.

Sincerely,

David G. Tittsworth

DAVID G. TITTSWORTH
Executive Director

Cc: Hon. Christopher Cox
Hon. Paul S. Atkins
Hon. Roel C. Campos
Hon. Annette L. Nazareth
Hon. Kathleen A. Casey