

## Comment Letter on SEC Proposal to Require Disclosure of Equity Compensation Plans, April 2001

April 2, 2001

Mr. Jonathan G. Katz  
Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0609

**Re: Disclosure of Equity Compensation Plan Information  
(File No. S7-04-01)**

Dear Mr. Katz:

The Investment Company Institute<sup>1</sup> is pleased to comment on the Securities and Exchange Commission's proposed amendment to the disclosure requirements applicable to proxy statements and periodic reports under the Securities Exchange Act of 1934 ("Exchange Act").<sup>2</sup> The proposed amendments would require a registrant to disclose in its proxy statement or annual report filed on Form 10-K certain material features about each of its equity compensation plans. The purpose of the Commission's proposal is to enhance disclosure of the number of securities authorized for issuance under, and received by or allocated to participants pursuant to, equity compensation plans.

The Institute supports the Commission's initiative to enhance disclosure of equity compensation plan information to shareholders. Investment advisers, on behalf of their investment company and private account clients, review and cast their votes on thousands of proxy proposals every year, many of which pertain to the creation or amendment of stock option plans. As such, we have a keen interest in ensuring that shareholders receive full disclosure about equity compensation plans so that they can appropriately assess the impact such plans can have on their ownership.

Under the Commission's proposal, a registrant would be required to provide a table identifying each equity compensation plan in effect as of the end of the last completed fiscal year and containing certain material information.<sup>3</sup> A registrant would be required to disclose that information in its proxy statement whenever it is seeking shareholder action regarding a compensation plan, or in its annual report on Form 10-K (or Form 10-KSB, for small business issuers) whenever it is not seeking shareholder action on any such plan. The disclosure would be required whether or not the plans have received shareholder approval.<sup>4</sup> In this regard, the Institute agrees that it is appropriate to require disclosure of the material features of any equity compensation plan that has not received shareholder approval. We note, however, that it is also equally appropriate to require disclosure of any material amendments to any such plan as well. This would help alleviate concerns about the lack of disclosure about the potential dilutive effect of equity compensation plans.

The Institute strongly supports the Commission's proposal. By increasing the amount of information available to investors about a registrant's equity compensation program, the Commission's proposal would facilitate greater understanding of the forms and amounts of equity compensation paid to corporate management and employees. This, in turn, would make it easier for investors to make informed voting and investment decisions.

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The Institute appreciates the opportunity to express its views on the Commission's proposal. If you have any questions concerning our comments, or would like additional information, please contact me.

Sincerely,

Barry E. Simmons  
Associate Counsel

cc: David B. H. Martin, Director

Raymond A. Be  
Office of Rulemaking

Mark A. Borges  
Office of Chief Counsel  
Division of Corporation Finance

## ENDNOTES

<sup>1</sup> The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,391 open-end investment companies ("mutual funds"), 489 closed-end investment companies and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about \$7.2 trillion, accounting for approximately 95% of total industry assets, and over 83.5 million individual shareholders. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 368 associate members which render investment management services exclusively to non-investment company clients. A substantial portion of the total assets managed by registered investment advisers are managed by these Institute members and associate members.

<sup>2</sup> SEC Rel. Nos. 33-7944, 34-43892 (January 26, 2001); 66 Fed. Reg. 8731 (February 1, 2001) ("Proposing Release"). Specifically, the Commission proposes to amend Item 201 of Regulation S-B, Item 201 of Regulation S-K and Form 10-K, Form 10-KSB and Schedule 14A under the Securities Exchange Act of 1934.

<sup>3</sup> The information for each plan would include: (1) the number of securities that have been authorized for issuance by the registrant's board of directors; (2) the number of securities issued pursuant to equity awards made during the last completed fiscal year, plus the number of securities to be issued upon the exercise of options, warrants or rights granted during the last completed fiscal year; (3) the number of securities to be issued upon the exercise of outstanding options, warrants or rights; and (4) other than securities to be issued upon the exercise of outstanding options, warrants or rights, the number of securities remaining available for future issuance.

<sup>4</sup> Registrants would be required to identify, either in the table or through a narrative statement, which of the equity compensation plans, if any, was adopted without shareholder approval. For any such plans, the registrant would be required to provide a brief, narrative description of the material features of each such plan adopted during the last completed fiscal year.