

September 15, 2009

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Proxy Disclosure and Solicitation Enhancements (File No. S7-13-09)

Dear Ms. Murphy:

The Investment Company Institute¹ appreciates the opportunity to comment on the Commission's recent proposal to enhance the disclosures registrants are required to make about various elements of executive compensation and corporate leadership.² Although the proposal is wide-ranging, our comments focus on a single element: a new requirement that mutual funds and other management investment companies registered under the Investment Company Act of 1940 (collectively, "Funds") make disclosures relating to the Fund board's role in risk management.³

The Institute is firmly committed to supporting strong risk management practices in the Fund industry. Indeed, we have had a Risk Management Advisory Committee in place since 2005 to provide a forum for our members to discuss enterprise-wide risk management practices, and we routinely include panels and discussions on risk management at our industry conferences. We are also firmly committed to supporting meaningful improvements to Fund disclosure, and we have invested significant time and resources in continued efforts toward that end over the past three decades.

Nevertheless, we question the value of this particular disclosure proposal. It would require Funds to disclose, in proxy statements and statements of additional information ("SAIs"), "the extent of the board's role in the Fund's risk management and the effect that this has on the Fund's leadership

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$11.02 trillion and serve over 93 million shareholders.

² Proxy Disclosure and Solicitation Enhancements, SEC Rel. Nos. 34-60280, IC-28817 (July 10, 2009) ("Release"), which is available on the SEC's website at <http://www.sec.gov/rules/proposed/2009/33-9052.pdf>.

³ We understand that, in its comment letter, the Independent Directors Council expresses concern over elements of the proposal that would require subjective disclosure about directors or nominees. We share those concerns.

structure.”⁴ The Release explains 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...it is important for investors to understand the board’s, or board committee’s role in this area.”

We respectfully disagree. Without question, investors are interested in risk disclosure. But because of the nature of a Fund’s business, the risk disclosure that is of primary interest to a Fund investor, unlike investors in other types of public companies,⁵ relates specifically to the types of risks the Fund is taking in its portfolio (*i.e.*, investment risk). Funds, appropriately, provide extensive disclosure of those risks in their prospectuses.⁶ Funds also provide disclosure in SAIs about the general oversight responsibilities of the board with respect to the management of the Fund.⁷ It is hard to imagine that an investor, when evaluating the risks of investing in a Fund, would find additional SAI disclosure about the board’s oversight role in the area of risk management to meaningfully add to the current prospectus and SAI disclosure.

Even if this were the type of information an investor might find useful, the generic requirement to “disclose the extent of the board’s role” is vague, and therefore likely to generate disclosure that will be of little practical value. There are no regulatory requirements specifically imposing risk management requirements on Funds; indeed, the term “risk management” is undefined in the Federal securities laws. As a result, each firm currently decides for itself how best to identify and address its risks, and each board must decide its appropriate oversight role in this process. Thus, Funds are likely to interpret the disclosure requirement in different ways, either broadly, providing generic disclosure about the board’s oversight role, or narrowly, focusing on the Fund’s practices relating to risk management. Neither result would enhance investors’ ability to evaluate the Fund. Overly broad, generic disclosure would be of little value. Overly narrow descriptions of practices would not convey how effective (or ineffective) those practices are likely to be, and therefore might create a false sense of security about the Fund’s ability to cope with various risks. For all of these reasons, we do not believe that this disclosure “will provide important information to investors,” as the Commission suggests.

⁴ Proposed amendments to Form N-1A, Item 17(b)(1) (SAI disclosure). *See also* proposed amendments to Item 22(b)(11) of Schedule 14A (cross-referencing Item 407(h) of Regulation S-K) (proxy statement disclosure).

⁵ We note that this is the second recent proposal primarily designed for operating companies elements of which have been extended to investment companies in ways that do not appropriately reflect the differences between the two types of issuers. *See* SEC Release Nos. 33-9046, 34-60089, IC-28765 (June 10, 2009) (where the Commission did not account for the most prevalent types of investment company boards—unitary or cluster boards—or for other important differences between investment companies and operating companies in designing proxy access rules).

⁶ *See, e.g.*, Items 2, 3, 4 and 9 of Form N-1A.

⁷ *See, e.g.*, Item 17 of Form N-1A.

Moreover, the proposal seems to assume that Funds engage in certain risk management practices described in the Release. For example, the Commission asks “how does the board implement and manage *its* risk management function, through the board as a whole or through a committee, such as the audit committee?”⁸ At the very least, this kind of question, and indeed the simple fact that the Commission mandates disclosure about the board’s role in risk management, could imply a certain value judgment that the board ought to have a *direct* role in day-to-day risk management. As such, it does not take into account that the board’s role is one of *oversight*, not day-to-day management, and in any event may vary significantly depending on the context.

We do not intend to suggest that sound risk management policies and practices are not important. We are merely suggesting that if it is the Commission’s intent to impose specific requirements for risk management policies and practices, it should do so directly, rather than through statements in a release suggesting the appropriateness of certain board oversight practices.⁹ It should propose a rule or, as recommended by the Senior Supervisors Group last March, issue specific guidance on risk management practices and controls.¹⁰ Of course, any such rule or guidance would be a substantial undertaking, as it would have to be appropriately tailored for different kinds of issuers (such as investment companies). Nevertheless, we believe it would be a better approach to the regulation of risk management than the current proposal, which focuses on board oversight and mandates disclosure that would be of questionable value to investors.

⁸ Release, at text accompanying n. 75 (emphasis added).

⁹ Registrants and regulators alike, left to interpret the generic requirement to “disclose the extent of the board’s role,” will inevitably place undue emphasis on the Commission’s examples and they will become practical requirements. This is not an idle concern; similar statements in prior Commission releases have become practical requirements. For example, we understand that the Commission’s Office of Compliance, Inspections, and Examinations (OCIE) has cited Funds for the failure to have business continuity plans in place as a deficiency under Rule 38a-1, the rule that requires Funds to have written compliance programs reasonably designed to prevent violations of the Federal securities laws. Business continuity plans are not required under the Federal securities laws, but were mentioned in the release adopting Rule 38a-1. See SEC Release Nos. IA-2204 and IC-26299 (Dec. 17, 2003), at n.22 and accompanying text.

¹⁰ Last year, the Commission issued a report on risk management as part of its participation in the Senior Supervisors Group. *Observations on Risk Management Practices During the Recent Market Turbulence* (March 6, 2008), available at <http://www.sec.gov/news/press/2008/report030608.pdf>. The report included a recommendation for each national supervisor, including the Commission, to “review and strengthen its existing guidance on risk management practices” and the controls over those practices. To our knowledge, the Commission has not yet provided any such guidance.

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We appreciate your consideration of our views. If you have any questions about our letter, please feel free to contact me directly at (202) 326-5815 or Bob Grohowski at (202) 371-5430.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar
The Honorable Kathleen L. Casey
The Honorable Troy A. Paredes
The Honorable Elisse B. Walter

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U.S. Securities and Exchange Commission