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DREAMWORKS ANIMATION SKG

October 5, 2006

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OFFICE OF THE SECRETARY

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

Re: Comments on Proposed Rule for Executive Compensation Disclosure – Sec. Act Rel. 8735, File Number S7–03–06 (Aug. 29, 2006)

Dear Ms. Morris:

On behalf of DreamWorks Animation SKG, Inc. (the "Company"), I am writing to provide our comments on the above-captioned proposal of the Securities and Exchange Commission (the "Commission" or "SEC") to require compensation disclosure for up to three non-executive employees.[1]

At the outset, I would like to thank the Commission for reviewing public comments, including our own, concerning the Commission's first proposal of this provision, and for not adopting this aspect of the executive compensation rulemaking along with the numerous other provisions the Commission did approve. We are also grateful for the opportunity to present our comments on the revised version of the proposed rule.

For the reasons stated in this letter, the Company remains opposed to this provision. We strongly urge the Commission not to adopt it.

I. Introduction

The Company

The Company is principally devoted to developing and producing computer-generated ("CG") animated feature films, and has approximately 1,280 full- and part-time employees. The Company competes with other CG-animated film and visual effect studios, production companies, movie studios and entertainment companies for employees. Competition for many of the Company's employees is intense. The Company's success depends to a significant extent on its ability to identify, attract, hire, train and retain qualified creative, technical and managerial personnel.

[1] The proposal is set forth in Securities Act Release 8735 (Aug. 29, 2006), 71 Fed. Reg. 53267 ("Reproposing Release").

Background of the Re-Proposal

On January 27, 2006, the Commission proposed for public comment major amendments to its executive compensation disclosure rules.[2] Many of the proposals were "principles-based" disclosure provisions, where the Commission expresses a general principle and requires the registrant to apply such principles in determining whether a matter is material to investors. As initially proposed, Item 402(f)(2) of Regulation S-K would have required disclosure of total compensation and job description for up to three non-executive employees whose total compensation during the last completed fiscal year was greater than that of any of a registrant's named executive officers ("NEOs").

On August 29, 2006, the Commission adopted many of the proposed executive compensation disclosure rules but did not approve proposed Item 402(f)(2).[3] Instead, the Commission proposed a revised version of this standard for public comment. The Commission's intention "is to provide investors with information regarding the most highly compensated employees who exert significant policy influence by having responsibility for significant policy decisions."[4]

II. The Commission Should Not Adopt the Proposal

The Company remains strongly opposed to the proposal to require disclosure of non-executive officers' compensation. Even as modified, the proposal:

- is unclear and difficult to implement;
- will not provide material information to shareholders;
- will invade employee privacy interests and negatively affect employee morale; and
- will undermine the ability of businesses to retain key employees.

Proposed Disclosure Requirement is Unclear and Difficult to Implement

Under the recently approved rules, compensation disclosure will cover the principal executive officer ("PEO"), the principal financial officer ("PFO") and the registrant's three most highly compensated *executive officers* other than the PEO and PFO. The term "executive officer" is defined in Rule 3b-7 to mean a registrant's

[2] Sec. Act Rel. 33-8655 (Jan. 27, 2006), 71 F.R. 6542 ("Proposing Release").

[3] See Executive Compensation and Related Person Disclosure, Sec. Act Release 33-8732A (August 29, 2006) [71 F.R. 53158].

[4] Reproposing Release, 71 F.R. at 53268.

> "president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or *any other person who performs similar policy making functions for the registrant*." 17 C.F.R. Section 240.3b-7 (emphasis added).

If an officer performs a policy making function or any person performs similar policy making functions for the registrant, such person, by definition, is an "executive officer." If a person is an "executive officer," such person is already subject to extensive executive compensation disclosure (depending upon his or her compensation level). In the Reproposing Release, the Commission proposes to create, for disclosure purposes, a new class of employees who are not executive officers but "who exert significant policy influence by having responsibility for significant policy decisions."[5]

Determining whether an employee is an "executive officer" of a registrant is itself no simple task, and indeed has been the subject of extensive litigation in other contexts.[6] In light of the existing difficulty determining which employees are executive officers, it seems inappropriate and unworkable to compel registrants to attempt to sub-classify those employees who do not perform a policy making function according to whether or not they have responsibility for significant policy decisions or exert policy-making influence. With respect to employees who have responsibility for significant policy decisions, it is unclear why the existing definition of "executive officer" does not encompass them. With respect to policy-influencing employees, determining whether an employee exerts a policy-making influence would call for a highly factual, and ultimately subjective, analysis that would be exceedingly difficult for registrants to make. "Influence" depends upon a myriad of factual matters, including shifting personal relationships of which management may not even be completely aware.

Given the lack of clarity and precision in the proposed disclosure standard, there is a strong likelihood of inconsistent application. Uneven application of the disclosure standard would significantly diminish the usefulness of the standard to investors because of lack of comparability across registrants.

The proposed rule would be exceedingly difficult for registrants to interpret and implement and would not provide investors with comparable information among various registrants. Accordingly, the Commission should not adopt it.

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[5] Reproposing Release, 71 F.R. 53268. In the course of two succeeding paragraphs in the Reproposing Release, the Commission, without explanation, uses three different formulations for the new class of potentially disclosable employees: (i) "employees [that] exert significant policy influence"; (ii) "highly compensated policy-makers"; and (iii) employees "who exert significant policy influence by having responsibility for significant policy decisions."

[6] Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Livingston, 566 F.2d 1119 (9th Cir. 1978); Colby v. Klune, 178 F.2d 872 (2d. Cir. 1949); Jammies International v. Nowinski, 700 F.Supp. 189 (S.D.N.Y. 1988).

Information Will Be of Limited Value to Shareholders

The compensation of the NEOs will be subject to voluminous tabular and narrative disclosure under the new rules. In pursuing compensation disclosure of certain non-executive officers, the Commission posits that this disclosure "should assist in placing in context and permit a better understanding of the compensation structure of the named executive officers and directors."[7] The Commission does not adequately explain, however, in the Reproposing Release why the Compensation Disclosure and Analysis (that companies will be required to provide beginning in 2007) will not be sufficient to put into context and elaborate upon the compensation structure of the named executive officers.[8]

We believe that several additional points relating to the materiality of the subject information should be considered:

First, the amounts involved are unlikely to be material from a financial point of view. If the amounts are material, they should be covered in the Management's Discussion and Analysis of Results of Operations and Financial Condition pursuant to Item 303 of Regulation S-K. The Commission has not explained why this category of expense (non-executive employee compensation expense), more than any other expense item, should be separately disclosed.

Second, the compensation of the non-executive employees does not implicate corporate governance matters. In general, compensation committees do not set the compensation of the non-executive employees, which is instead set by management in response to market forces. The Commission has not asserted in the Proposing or Reproposing Releases, nor does the administrative record establish, that there are any conflicts of interest or other corporate governance concerns inherent in setting non-executive compensation.

Finally, in all likelihood, the non-executive employees whose compensation would be disclosed would vary from year to year. The lack of continuity in this disclosure would occur because the compensation of non-executive employees frequently is influenced by an extraordinary or non-recurring payment, such as a one-time award upon joining the company or a bonus for a particular event. As Institutional Shareholder Services stated in its comment letter, "these three individuals may change each year depending on their total compensation figures. The lack of continuous and consistent disclosure further dilutes the need for such information."[9]

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[7] Reproposing Release, 71 F.R. 53268.

[8] "The [Compensation Discussion and Analysis] will be an overview providing narrative disclosure that *puts into context* the compensation disclosure provided elsewhere....The purpose of the Compensation Discussion and Analysis is to provide material information about the compensation objectives and policies for named executive officers..." Securities Act Release 33-8732A (September 8, 2006), 71 F.R. 53164 (emphasis added).

[9] Letter from Martha L. Carter, Ph.D., Senior Vice President and Managing Director – Corporate Governance, Institutional Shareholder Services to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, (March 28, 2006).

Though the non-executive employee may only show up once in the compensation disclosure, and the information would be of limited value to shareholders, the employee would suffer an unwarranted invasion of his or her privacy, as discussed immediately below.

Invade the Privacy of Employees and Undermine Employee Morale

The proposed rule would constitute an unwarranted intrusion into the personal privacy of employees. In the United States, information concerning compensation is generally considered personal and confidential. Indeed, many areas of our laws – e.g., tort law, the Freedom of Information Act and discovery laws -- recognize that employees have a reasonable expectation of privacy in their compensation information.

When the Commission first began requiring individual compensation disclosure of a small subset of executive officers, it did so due to the prevailing belief that greater disclosure would strengthen corporate governance functions at both the shareholder and director levels.[10] In essence, the perceived public benefits of enhanced disclosure were deemed to outweigh the detriment to the affected individuals. As discussed above, compensation disclosure of non-executive employees does not implicate corporate governance concerns. In this instance, the hypothetical benefits to stockholders from public disclosure of non-executive compensation pale in comparison to the very real harm to employees from disclosure of sensitive compensation information.

The Commission also asks in the Reproposing Release whether it should require that the three additional employees be named. This requirement obviously would constitute an even greater invasion of the employees' privacy, and the Company vigorously opposes it. Additionally, whether the disclosure is accompanied by the specific names of the subject employees or merely a description of such person's function, the most avid readers of this disclosure are likely to be fellow employees. This holds the very real prospect of significantly undermining employee morale -- because compensation information of non-executive officers is generally not disseminated within an organization -- or causing compensation expenses to increase as employees to seek to match the compensation of the disclosed individuals.

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[10] The Commission adopted major reforms to executive compensation disclosure in 1992. See *Executive Compensation Disclosure*, Securities Act Release 33-6962 (Oct. 16, 1992), Fed Sec. L. Rep (CCH) ¶ 85,056. In adopting the 1992 revisions, the Commission was reacting to the perceived "deficiency in the structure of corporate governance that must be rectified." Lowenstein, *Reflections on Executive Compensation and a Modest Proposal for (Further) Reform*, 50 SMU L. Rev. 201, at *215-216 (Sept./Oct. 1996); see also Keller, *Executive Compensation Disclosure, in Executive Compensation Reporting 1993: Living with the New Rules* at 15-16 (PLI 1993) (one of the premises of the 1992 rules is that improved disclosure of executive compensation would result in "strengthening the exercise of corporate governance at both the shareholder and director levels").

Jeopardize the Ability to Retain Key Employees

In our initial comment letter, we voiced concern that non-executive compensation disclosure would jeopardize the Company's ability to retain its key employees. The Company's employees work in a variety of capacities in the development and production of CG animated films. Competition for many of these employees is intense. Our success depends to a significant extent on our ability to identify, attract, hire, train and retain qualified creative, technical and managerial personnel. The compensation disclosure of certain non-executive employees would give the Company's competitors a material advantage[11] in competing against us for these employees by giving our competitors access to this highly sensitive and confidential information. The Commission's modification of the proposal to limit disclosure to employees with responsibility for significant policy decisions does not ameliorate this concern.

III. If the Commission Adopts the Proposal, It Should Modify It

If the Requirement is Adopted, It Should Be Keyed to "Policy-Making Authority"

If the Commission determines to adopt the disclosure provision in question, the Company believes that it would be far preferable for the new disclosure standard to be based upon whether the non-executive employee has "policy making authority" rather than whether the employee exerts a policy making influence. A test based upon "policy making authority" would be easier to administer, since the Company knows which employees have authority over various substantive areas. On the other hand, whether an employee is "influencing" policy would be exceedingly difficult to administer. Determining whether an employee exercises policy making "influence" would require a registrant to make a highly subjective determination based upon shifting personal relationships and other potentially unknowable factual matters. The certifying officers would have personal exposure for the accuracy of these subjective determinations.

Reference Group for Non-Executive Employees

The Commission proposes to require disclosure of the compensation of registrants' three most highly compensated employees, whose total compensation for the last year was greater than that of *any* of the named executive officers. From time to time, CEOs and other corporate officers receive zero or nominal compensation for a variety of reasons. Although reduced compensation arrangements are not standard industry practice, they are not unprecedented.[12] In

[11] Certain of the Company's primary competitors operate as divisions or units of business organizations that are much larger than the Company. As a result, the Company's competitors may not be required to make similar disclosures with respect to comparable employees.

[12] For example, in addition to my own situation, we understand that the principal executive officers of Alexander's, Inc., Apple Computer, Inc., Capital One Financial Corp., Duke Energy Corporation, ENESCO Group, Inc., Ford Motor Co., Fossil, Inc., Global Signal, Inc., Hospitality Properties Trust, Kinder Morgan, Inc., Kinder Morgan

some cases, corporate executives take zero cash compensation and in other cases they may take no compensation at all in a given year. In any event, it is undeniably in the interests of shareholders for executives to enter into these arrangements when they are willing to do so.

The proposal is written in such a way that, where CEOs or other executives receive zero or nominal compensation, it could increase the number of non-executive employees for whom disclosure must be provided. This is an unfair result to these issuers and particularly to the employees whose privacy interests are being compromised by the disclosure in question.

Although there may be a variety of ways to address these anomalous situations, we believe that the appropriate manner is to exclude the compensation of the principal executive officer and principal financial officer in determining the compensation threshold for disclosure of non-executive officer compensation. The PEO and PFO are included as NEOs without regard to their respective levels of compensation. Thus, it would be more equitable to key disclosure of non-executive employees to the other NEOs (i.e., excluding the PEO and PFO), since they are designated as NEOs not solely on the basis of their positions but rather also on the level of their compensation.

IV. Conclusion

As discussed above, this rulemaking proposal involves factual distinctions that are confusing and unworkable. In addition, from a public policy point of view, the very real costs of the rule (e.g., intrusion upon privacy interests and advantages conferred on business competitors) outweigh the scant benefit to the public, which is ill-defined. For these reasons, we strongly oppose adoption of the proposal. We appreciate the opportunity to convey our views to you.

Sincerely,

Jeffrey Katzenberg
Chief Executive Officer
DreamWorks Animation SKG, Inc.

Energy Partners L.P., Salesforce.com, Inc., Thornburg Mortgage, Inc., Univision Communications, Inc. and USANA Health Services, Inc. received no salary or bonus for their respective 2005 fiscal years.