STEPHEN A. KEEN

May 16, 2006

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: File No. S7-03-06 Executive Compensation and Related Party Disclosure

Dear Ms. Morris:

This letter is in response to a proposal made by Mr. John C. Bogle, President of Bogle Financial Markets Research Center, in his letter of April 10, 2006. The proposal is "*that mutual funds be required to disclose the aggregate dollar amount of direct and indirect compensation paid to the five highest-paid executives of their manager and distributor.*" Others have written in support of this proposal. (*See*, William Michael Cunningham and Creative Investment Research, Inc., Apr. 20, 2006). According to an article in the Boston Global on April 28, the Securities and Exchange Commission (the "Commission") intends to give this proposal serious consideration.

I cannot claim to have Mr. Bogle's experience or credentials. [1] However, someone should point out for the record that his proposal is without legal justification and would represent a marked change in disclosure policy. I believe that the objections to his proposal can be summed up in the expression "*it's none of their business.*" This is both literally and figuratively true for mutual fund shareholders with regard to the compensation of management company executives.

It is literally true because ownership of a mutual fund share does not create an ownership interest in the mutual fund's manager. As Mr. Bogle acknowledges, "nearly all mutual funds are operated by *separate* management companies …." (Emphasis added) Section 12(d) of the Investment Company Act prohibits a mutual fund from holding securities issued by its investment adviser. Section 17(d) prohibits joint ventures and joint transactions between a mutual fund and its investment adviser. These provisions make it practically impossible for a mutual fund share to represent even an indirect legal or financial interest in the mutual fund's management company.

Given the lack of any legal interest in a separate management company, it follows that mutual fund shareholders have no say in the selection and compensation of the management company's executives. Mutual fund shareholders do not elect the management company's directors, approve executive compensation plans or vote on major acquisitions. Mutual fund shareholder do not benefit if the management company's share price rises or suffer if it falls

[1] These comments are based on over twenty-years of experience as a securities attorney and as an investor. The views expressed are my own and should not be attributed to my law firm or to any of my current or former clients.

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as a result of the executives leadership. Mandating disclosure of compensation paid to management company executives to mutual fund shareholders would not change any of this.

While mutual fund shareholders may benefit indirectly from a well managed company capable of attracting talented professionals and developing innovative funds, this is equally true of the management company's other clients. It is true, in fact, of almost any customer of any business. Nevertheless, the law has always respected the distinction between a customer and an owner by giving the latter exclusive say in the management of his business. The Commission also implicitly accepts this distinction insofar as it requires public broker/dealers and investment advisers to disclose executive compensation only to their shareholders, rather than to each of their clients. Mr. Bogle offers no reason for the Commission to change its policy for one particular class of investment management clients.

The expression is figuratively true because the business of an investment management company is much more than the management of its mutual funds' investments. Just as auto executives do not spend their time assembling cars and airline executives do not spend their time flying planes, management company executives generally do not spend their time managing client portfolios. To operate in a highly competitive market, management companies require talented executives who are strong leaders. Thus, when management companies pay more for top executives, they are paying for skills that have nothing to do with the day-to-day management of their mutual funds.

Because compensation of the management company's executives is "none of their business," mutual fund shareholders do not require disclosure of the compensation paid to these executives. Mutual fund shareholders have no means of putting this information to any constructive use. Mutual fund shareholders cannot elect a new slate of directors for the management company. Nor do they have shares in the management company to sell. Although the mutual fund's board of directors might conceivably use the information to request a reduction in the management company's fees, they would still have no legal means of assuring a commensurate reduction in the compensation paid to the management company's executive officers. Most importantly, once the advisory fees were reduced, the fund would have no interest in whether the management company reduced the compensation to these executives.

Of course, some investors could refuse to invest in funds managed by companies with "excessive" executive compensation packages. However, the fund's expense ratio provides a more complete and accurate gauge of the potential impact of expenses on a fund's performance. Does Mr. Bogle seriously contend that a rational investor would select a fund with a higher expense ratio if the manager's executives were less well compensated? If not, then why would investors need any disclosure beyond the expense ratio itself?

Finally, I would urge the Commission not to do anything that would further muddle the public's understanding of the relationship between a mutual fund and its investment adviser. Investors are best protected by drawing a bright line between a mutual fund's assets and the assets of its manager. This line cuts both ways, and regulations that blur the line in either direction make it harder to enforce. Once paid, advisory fees belong to the management company and not to the fund or its shareholders. The management company is then free to

spend the fees in any lawful manner it chooses. The mutual fund shareholders have no right to control or demand an accounting of these expenditures.

In conclusion, "the previous omission of compensation data for mutual fund executives" is not an oversight to be rectified. Congress and the Commission have historically limited disclosure of executive compensation to those with a direct financial interest in the enterprise. In no other context has the Commission required, or any one proposed, to mandate disclosure of executive compensation to a firm's customers or clients, regardless of how important a product or service is to those who buy it. Thus, the "exclusion" of mutual fund executives is entirely consistent with existing compensation disclosure requirements. I therefore, urge the Commission to reject Mr. Bogle's proposal.

Cordially,

Stephen A. Keen