DC

DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-0402

02011019

926480
NO ACT
PE 10-12-01
132-02319

December 18, 2001

Act 1934
Section
Rule 14A-8
Public Availability 12/18/2001

David K. Thompson
Senior Vice President
Assistant General Counsel
The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521-0609

Re: The Walt Disney Company
Incoming letter dated October 12, 2001

Dear Mr. Thompson:

This is in response to your letter dated October 12, 2001 concerning the shareholder proposal submitted to Disney by the United Association S&P 500 Index Fund. We also have received a letter from the proponent dated November 8, 2001. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all the correspondence will also be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Martin P. Dunn
Associate Director (Legal)

cc: United Association S&P 500 Index Fund
c/o Financial Investors Trust
370 Seventeenth Street
Suite 3100
Denver, CO 80202-5627

CRGH

FINANCIAL INVESTORS TRUST

FINANCIAL INVESTORS TRUST
370 Seventeenth Street
Suite 3100
Denver, Colorado 80202-5627
Tel: (800) 298-3442
Fax: (303) 825-2575

November 8, 2001

Securities and Exchange Commission
Office of the Chief Counsel
Division of Corporate Finance
Judiciary Plaza
450 Fifth Street, N.W.
Washington, D.C. 20549

RE: Response to The Walt Disney Company's Letter for Omission of Stockholder Proposal

Ladies and Gentlemen:

On behalf of the United Association S&P 500 Index Fund (hereinafter "the Fund"), we are responding to the October 12, 2001 letter from The Walt Disney Company (hereinafter "Disney") seeking a no-action letter regarding its intention to omit the Fund's shareholder proposal calling upon the Company to "adopt a policy that in the future the firm that is appointed to be the Company's independent accountants will only provide audit services to the Company and not provide any other services."

The Company seeks to omit the proposal pursuant to Rule 14a-8(j)(7) on the ground that it relates to the ordinary business operations of the Company.

The Fund respectfully submits that the Company has confused the ordinary business of "selecting" auditors (see the numerous rulings cited by the Company on pages 3-4 of its letter) with the broad policy sought in the proposal to ensure that whoever the Company selects to be its independent accountant is truly "independent" by removing the potential for conflicts of interest that is created if the accountant renders "other" services to the Company in addition to its audit service.

To put it plainly, the Fund's proposal does not seek, nor does it care, who the Company selects to be its independent accountant. All that the Fund's proposal seeks is protection that the independent accountant's objectivity is not compromised by receiving payment for other services to the Company.

There can be no doubt that this is a serious, widespread issue of enormous concern to shareholders. The new disclosure rules that the SEC put in effect in 2001 have generated such startling revelations as:

--AOL Time Warner paying its "independent" accountants $7.9 million for audit work and $51.1 million for other work;

--AT&T paying its "independent" accountants $7.9 million for audit work and $48.3 million for other work;

--Eli Lily paying its "independent" accountants $3.2 million for audit work and $28.9 million for other work;

--Exxon Mobil paying its "independent" accountants $18.3 million for audit work and $65.3 million for other work;

--Ford paying its "independent" accountants $18 million for audit work and $70 million for other work;

--General Electric paying its "independent" accountants $18 million for audit work and $79.7 million for other work;

--J.P. Morgan Chase paying its "independent" accountants $21.3 million for audit work and $84.2 million for other work;

--Sprint paying its "independent" accountants $2.5 million for audit work and $55.4 million for other work.

--Veritas paying its "independent" accountants $800,000 for audit work and $17.7 million for other work.

The Company argues on page 2 of its letter that it uses its "independent" accountant to perform other work for it because it is cost efficient and it has safeguards in place to ensure that its audits are conducted in an objective and impartial manner.

The Fund submits that those same types of arguments could have been used in the various audit scandals that have occurred in recent years that spurred the SEC to require the disclosure of payments to accountants. For example: Arthur Andersen agreed to pay Sunbeam investors $110 million to settle a lawsuit alleging the audit firm had fraudulently misrepresented the company's earnings performance in the late 1990s (IRRC Corporate Governance Highlights, May 11, 2001, page 3); PriceWaterhouseCoopers agreed to pay $55 million to settle a class action lawsuit alleging it defrauded Microstrategy investors by approving financial reports that inflated the company's earnings and revenues (id.); Ernst & Young paid $335 million to settle charges that it certified financial statements that fraudulently inflated earnings for Cendant (id.); and Arthur Andersen and individual partners were fined more than $7 million by the SEC for allegedly filing false and misleading audit reports at Waste Management (Chicago Tribune, June 20, 2001, page 1, Section 3).

The Company's letter states on page 3 that it believes "the Commission has recognized the appropriateness of leaving basic responsibility for the maintenance of auditor independence, within the limits adopted in the Commission's rules, to each registrant's board of directors and audit committee."

The Fund strongly disagrees with the Company on this vital point. The Fund does not believe that the Commission's rules are intended to exclude shareholders from participating in the maintenance of auditor independence by preventing them from filing precatory proposals to remove conflicts of interest and to ensure true independence for auditors. The Fund does believe that a prime purpose of the Commission's disclosure rules on payments to accountants

was to provide information to shareholders on this critical subject so that shareholders could react in a responsible and meaningful way to the disclosures.

The Commission recently recognized the need for auditor independence in promulgating its Final Rule: Revision of the Commission's Auditor Independence Requirements, (File No. S7-13-00; Release 33-7919). This document identifies that "there is growing concern on the part of the Commission and users of financial statements about the effects on independence when auditors provide both audit and non-audit services to their audit clients. . . .[I]ncreases in the absolute and relative size of the fees charged for non-audit services have exacerbated these concerns. . . . [T]he rapid rise in the growth of non-audit services has increased the economic incentives for the auditor to preserve a relationship with the audit client, thereby increasing the risk that the auditor will be less inclined to be objective." The report goes on to detail and document various other adverse incentives that provision of non-audit services can create, and how these incentives can affect investor confidence in the independence of auditors.

Accordingly, the Commission expressed it belief "that disclosures that shed light on the independence of public companies' auditors assist investors in making investment and voting decisions."

The Fund submits that its proposal does precisely this.

If the Company truly believes that a precatory shareholder vote on removing conflicts of interest for "independent" accountants will be an arbitrary limitation on the power of management and the Board to exercise business judgment—which on its face seems inconsistent with the Company's admission on page 3 of its letter that it annually seeks shareholder ratification of its selection of independent auditors—the proper place to make that argument is in its response in its proxy statement to the proposal, not in a no-action letter.

Based upon the foregoing, the Fund respectfully requests that the Staff not grant the Company the advice the Company is seeking in its letter and that the Fund's proposal be included in the Company's proxy materials for the Company's 2002 annual meeting.

A copy of this letter is concurrently being forwarded to Mr. David K. Thompson, Senior Vice President and Assistant General Counsel to the Company.

Please contact the undersigned with any questions.

Very truly yours,

Russell C. Burk
Secretary

cc: Mr. David K. Thompson

The Walt Disney Company

David K. Thompson
Senior Vice President
Assistant General Counsel

1934 Act-Section 14(a)
Rule 14a-8(i)(7)

October 12, 2001

Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
Judiciary Plaza
450 Fifth Street, N.W.
Washington, D.C. 20549

Omission of Stockholder Proposal

Ladies and Gentlemen:

On behalf of The Walt Disney Company, I am enclosing a proposal submitted by a shareholder for inclusion in the Company's proxy materials for its 2002 annual meeting of shareholders. For the reasons set forth below, the Company intends to omit the proposal from its proxy materials and requests the Staff's advice, pursuant to Rule 14a-8(j) under the Securities Exchange Act, that it will not recommend enforcement action to the Securities and Exchange Commission if the proposal is omitted.

The Company currently expects to file definitive proxy materials with the Commission on or about January 4, 2002, and to commence mailing shortly thereafter.

The proposal, submitted by the United Association S&P 500 Index Fund, calls upon the Board of Directors of the Company to "adopt a policy that in the future the firm that is appointed to be the Company's independent accountants will only provide audit services to the Company and not provide any other services." A copy of the proposal is attached as Exhibit 1.

The Company believes that the proposal may be omitted from its proxy materials pursuant to Rule 14a-8(i)(7), on the ground that it relates to the ordinary business operations of the Company. The bases for the Company's belief that the proposal may be omitted on these grounds are set forth below.

As reported in our annual proxy materials, the Company retains its independent accountants, PricewaterhouseCoopers, to advise the Company on a number of matters in addition to its core auditing functions. These engagement decisions are made only when two conditions are met. The first is a determination that the firm's particular expertise, coupled with its knowledge of the Company and the Company's management and financial systems, provides substantial assurance of high-quality, focused, timely and useful results. The second is a determination that the engagement is consistent with the maintenance of auditor independence. Both of these determinations are reviewed regularly with the Audit Committee.

Thus, the Company has in the past elected to retain PricewaterhouseCoopers from time to time for such services as advice with respect to filings with the Commission and consultations and assistance on various tax, accounting, information system and business process matters. In such cases, the Company has concluded that the firm's familiarity with the Company's businesses and affairs can substantially enhance its ability to provide needed support in an effective and cost-efficient manner. In other cases, where such familiarity is not required, the Company can, and does, routinely retain other accounting firms to provide non-audit services.

This discretion to determine the best allocation of tasks among accounting (and other) firms is an essential component of the ability of the Board and the Audit Committee to discharge their statutory responsibilities under Delaware law, as well as their fiduciary responsibilities to the Company and its shareholders. The shareholder proposal, if implemented, would significantly hamper the ability of the Board of Directors, and in particular the Audit Committee, to exercise these responsibilities.

The Company does not believe that the retention of this discretion undermines in any way the Company's ability to monitor and ensure the independence of the Company's auditors. Company officers and the Audit Committee continually monitor and evaluate the performance of PricewaterhouseCoopers in both its auditing services and its non-audit services, the fees paid for all such services, and the compatibility of the non-audit services with the maintenance of the firm's independence.

Furthermore, in accordance with guidelines of the American Institute of Certified Public Accountants and PricewaterhouseCoopers' internal control procedures, PricewaterhouseCoopers has processes in place to ensure that its audits are conducted in an objective and impartial manner, including the mandatory rotation of the engagement partner, an independent concurring partner review of each audit and periodic review by another major accounting firm of its audit practices.

In addition to these internal procedures, the Company annually seeks shareholder ratification of the Company's selection of its independent auditors for the current fiscal year, and will do so again in 2002. The 2002 proxy statement will, moreover, contain the new disclosures relating to fees paid to auditors required by Item 9(e) of Schedule 14A, as well as the required disclosure of the Audit Committee's consideration of whether the provision of non-audit services is compatible with maintaining the independence of the Company's accountants. These reports will, as the proxy rules contemplate, provide shareholders with information necessary to enable them to determine whether to ratify the Company's selection of PricewaterhouseCoopers as the Company's independent auditors for 2002.

We are well aware of the Commission's concerns with respect to the relationship between non-audit services and the maintenance of auditor independence, as set forth in the recent revisions of its rules relating to auditor independence requirements (Exchange Act Release No. 43602, November 21, 2000). But we also recognize the Commission's carefully balanced approach to the issue. As the Commission noted in the executive summary of the Release, "After careful consideration of the arguments on all sides, . . . we have determined not to adopt a total ban on non-audit services, despite the recommendations of some, and instead to identify certain non-audit services that, if provided to an audit client, render the auditor not independent of the audit client" (Exch. Act Rel. No. 43602, CCH Fed. Sec. L. Rep. ¶86,406 at 83,992-83,993). The Release goes on to note that the Commission "recognize[s] that not all non-audit services pose the same risk to independence. Accordingly, under the final rule, accountants will continue to be able to provide a wide variety of non-audit services to their audit clients." Id. at 83,993. In reaching this conclusion, we believe the Commission has recognized the appropriateness of leaving basic responsibility for the maintenance of auditor independence, within the limits adopted in the Commission's rules, to each registrant's board of directors and audit committee.

This conclusion is consistent with the conclusions reached by the Staff in numerous no-action requests over an extended period of time, concurring in the view that stockholder proposals relating to the selection a company's independent accountants, including criteria used in their engagement, may be omitted from proxy statements because they are matters relating to the conduct of a company's ordinary business operations. For example, a stockholder proposal submitted to Pacific Gas and Electric Company, which would have required that the company select a new accounting firm every three years, was permitted to be excluded because the proposal dealt with a matter related to "the method and criteria used to determine the independent auditors selected." See *Pacific Gas and Electric Company* (available January 26, 1993). The Staff reached the same conclusion in *Southern New England*

Telecommunications Company (available February 11, 1991), relating to a proposal to limit the service of an independent auditing firm to four consecutive years and not more than six years in any ten consecutive years, and *Transamerica Corporation* (available March 8, 1996) (allowing exclusion from proxy statement of proposal requiring the company to select a new auditing firm every four years). See also *Monsanto Company* (available January 17, 1989) (proposal requesting that a competitive bidding process be used to select auditors); *Consumers Power Company* (available January 3, 1986) (proposal to require rotation of independent auditors at least every five years and implementation of a competitive process to select auditors); and *Firestone Tire & Rubber Company* (available November 25, 1980) (proposal recommending that the board of directors consider each year the practice of rotating auditors). All of these no-action letters appropriately recognize that the selection of auditors is appropriately a function of the conduct of a company's ordinary business operations.

Given the protective measures already in place and the disclosures required when independent auditors are selected for non-audit work, there is little chance for abuse and no benefit to the company or its shareholders from an arbitrary limitation on the power of management and the Board of Directors to exercise business judgment in the selection of auditors or other outside vendors.

Based upon the foregoing, the Company respectfully requests the advice of the Staff that it will not recommend enforcement action if the Company omits the proposal from the proxy materials for its 2002 annual meeting.

Pursuant to Rule 14a-8(j), six additional copies of this letter and the enclosures are enclosed. A copy of this letter is concurrently being forwarded to Mr. Burk.

If you have any questions, please contact the undersigned. Additionally, please acknowledge receipt of this filing by stamping the extra enclosed copy and returning it to our messenger.

Very truly yours,

David K. Thompson

Enclosure
cc: Mr. Russell C. Burk
Secretary, Financial Investors Trust

FINANCIAL INVESTORS TRUST
370 Seventeenth Street
Suite 3100
Denver, Colorado 80202-5627
Tel: (800) 298-3442
Fax: (303) 825-2575

September 10, 2001

Ms. Marsha Reed
Vice President/Secretary
The Walt Disney Co.
500 South Buena Vista Street
Burbank, CA 91521

RE: Shareholder Proposal

Dear Ms. Reed:

As secretary of Financial Investors Trust, I hereby submit on behalf of the United Association S&P 500 Index Fund the enclosed shareholder proposal on independent accountants services for inclusion in The Walt Disney Co. proxy statement to be sent to the Company's stockholders in conjunction with the 2002 annual meeting.

Also, enclosed is a letter from the Fund's custodian bank documenting the Fund's continuous ownership of the requisite amount of stock in The Walt Disney Co. for at least one year prior to the date of this letter. The Fund also intends to continue its ownership of at least the minimum number of shares required by SEC regulations through the date of the annual meeting.

The Fund will designate at a later date a representative to present the proposal at the 2002 annual meeting. Please call me with any questions.

Sincerely,

Russell C. Burk
Secretary

Enclosure

RESOLVED: That the shareholders of The Walt Disney Co. request that the Board of Directors adopt a policy that in the future the firm that is appointed to be the Company's independent accountants will only provide audit services to the Company and not provide any other services.

SUPPORTING STATEMENT

The Securities and Exchange Commission passed new proxy statement rules that took effect February 5, 2001, which require companies to disclose how much they pay their accounting firms for audit services and non-audit services.

The results have been startling. According to a Wall Street Journal article of April 10, 2001: "The nation's biggest companies last year paid far more money than previously estimated to their independent accounting firms for services other than auditing, newly disclosed figures show, renewing questions about whether such fees create conflicts of interest for auditing firms....At issue: How objective can an accounting firm be in an audit when it is also making millions of dollars providing the client with other services."

That Wall Street Journal article reported that of the 307 S&P 500 companies it had surveyed, the average fees for non-audit services were nearly three times as big as the audit fees.

The SEC's new disclosure rules did not take effect in time for the Company to disclose in its 2001 proxy statement how much it paid PricewaterhouseCoopers for audit and non-audit services in 2000, but the 2001 proxy statement did make it clear that PricewaterhouseCoopers performed such non-audit services as: "services related to filings with the Securities and Exchange Commission, services in connection with the monitoring of compliance with the Company's codes of conducts for licensees and manufacturers and consultations on various tax, accounting, information services and business process matters."

When the SEC was seeking comments on its accountant disclosure rules, substantial institutional investors urged that auditors should not accept non-audit fees from companies. The California Public Employees' Retirement System's General Counsel, Kayla J. Gillan, wrote: "The SEC should consider simplifying its Proposal and drawing a bright-line test: no non-audit services to an audit client." TIAA-CREF's Chairman/CEO John H. Biggs wrote: "...independent public audit firms should not be the auditors of any company for which they simultaneously provide other services. It's that simple."

It is respectfully submitted that it would be in the best interests of the Company's shareholders if the Board of Directors adopts a policy that in the future any firm appointed to be the Company's independent accountants shall only provide audit services to the Company and not provide any other services.

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

December 18, 2001

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The Walt Disney Company
Incoming letter dated October 12, 2001

The proposal requests that the board of directors adopt a policy that would prohibit Disney's independent accountants from providing non-audit services to the Company.

We are unable to concur in your view that Disney may exclude the proposal under rule 14a-8(i)(7). That provision permits the omission of a proposal that deals with a matter relating to the ordinary business operations of a registrant. In view of the widespread public debate concerning the impact of non-audit services on auditor independence and the increasing recognition that this issue raises significant policy issues, we do not believe that Disney may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Keir Devon Gumbs
Special Counsel