



April 6, 2006

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

Re: Comments on Proposed Rule for Executive Compensation and Related Party Disclosure – Sec. Act Rel. 8655, File Number S7-03-06

Dear Ms. Morris:

I am the Chief Executive Officer of DreamWorks Animation SKG, Inc. (the “**Company**”), and I want to thank you for the opportunity to provide the Commission with comments on the proposed amendments to the disclosure rules for executive and director compensation. I commend the Commission on its comprehensive efforts to enhance the transparency of executive and director compensation.

As part of the rulemaking initiative, the Commission has proposed the disclosure of total compensation and job descriptions for up to three employees who were not executive officers during the registrant’s last completed fiscal year and whose total compensation for such year was greater than that of any of the Company’s “named executive officers” (“**NEOs**”). On behalf of the Company, I respectfully submit this letter only with respect to this particular disclosure requirement, and request that the Commission not adopt this provision. As outlined below, we believe that several legitimate business reasons outweigh any public interest in the disclosure of such information.

Overview

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 conducts its business primarily in two studios – in Glendale, California, where it is headquartered, and in Redwood City, California. The Company’s Class A common stock is listed for trading on the New York Stock Exchange.

The Company’s employees work in the development and production of CG-animated films as producers, directors, animators, modelers, story artists, visual development artists, layout artists, editors, technical directors, lighters and visual effects artists, and development and production staff. Other Company employees are primarily engaged in supporting and developing animation technology or work on general corporate and administrative matters. The company competes with other CG-animated film and visual effect studios, production

companies, movie studios and entertainment companies for employees. The 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.

Discussion

As outlined in the Commission's proposing release, Proposed Item 402(f)(2) of Regulation S-K would require the disclosure of total compensation and job descriptions for up to three employees who were not executive officers during the last completed fiscal year and whose total compensation for such year was greater than that of any of the Company's NEOs. While the registrant would not be required to name the employees, it would be required to describe their job positions.

The proposal represents a marked departure from the Commission's longstanding policy of not requiring disclosure of non-executive employee compensation. In fact, when the Commission declined to adopt a similar proposal in 1978 with respect to other *executive officers* (other than NEOs), the Commission recognized and accepted many of the same arguments presented in this letter.¹ These arguments remain valid and indeed are even more compelling when applied to the current proposal which relates to *non-executive* employees.

If adopted, the Commission's proposed disclosure with respect to the compensation of non-executive employees would:

- invade the privacy of employees,
- reveal confidential and proprietary information to the Company's competitors and, thus, jeopardize the Company's ability to retain key employees,
- cause significant employee morale issues, and
- provide investors with information of limited value.

Invade the Privacy of Employees

As a starting point, we observe that there is a legal interest in protecting the privacy of an employee's compensation information. In the United States, information concerning an employee's compensation generally is considered personal and confidential. Indeed, in certain contexts (such as in Freedom of Information Act or tort litigation and discovery matters), federal and state law recognize an employee's privacy rights in information concerning his or her compensation. Notwithstanding this general public policy to protect

¹ In 1978, the Commission proposed rules that would require not only individual compensation data for each of the five most highly compensated executive officers or directors, but also disclosure of the names of the five most highly compensated executive officers or directors of the registrant or its subsidiaries, other than the persons already named, whose compensation exceeded \$150,000. See *Uniform and Integrated Reporting Requirements: Management Remuneration*, Sec. Act Release No. 33-6003 (Dec. 4, 1978), 1978 SEC LEXIS 175. The Commission ultimately determined not to adopt the latter provision.

an employee's compensation information, the Commission has required disclosure of the compensation of a small subset of executive officers because it deems such information to be in the public interest and important to investors.² In this regard, we note that the Commission generally does not require foreign private issuers to disclose executive compensation on an individual basis.³ Even if it is permissible in other contexts to publish compensation data that is not identified with particular employees, the proposed rule would require disclosure of the employees' job descriptions and, as a result, would make it very easy to identify the subject employees.

Jeopardize the Company's Ability to Retain Key Employees

Disclosure of compensation information with respect to non-executive employees would jeopardize the Company's ability to compete for the best talent in the marketplace. As noted above, the Company's employees work in a variety of capacities in the development and production of CG animated films. The competition for many of the Company's employees is intense. Indeed, 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. By expanding the compensation disclosure to non-executive employees, the Company's competitors would have a material advantage in competing against us for these employees by giving our competitors access to this highly sensitive and confidential information. Even if employees voluntarily disclose their compensation arrangements to other potential employers, it is another matter to require an employer effectively to hand deliver this information to its competitors, who will in turn use it to "cherry pick" the Company's most valuable employees.⁴ In deciding whether to adopt the

² The Commission adopted major reforms to executive compensation disclosure in 1992. See *Executive Compensation Disclosure*, Sec. 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").

³ See Sec. Act Release 7747, 1965 WL 87202 (Nov. 16, 1965) (requiring compensation information only for management as a group and recognizing that "most foreign issuers do not make such disclosures in their own countries as to individual directors and officers"); Exch. Act Rel. 8067 (April 28, 1967), 1967 WL 88914 (adopted). See also Sec. Act Rel. 6003 (Dec. 4, 1978), 1978 SEC LEXIS 175, at * 10 - * 13 (in declining to adopt amendment to proxy rules that would have required disclosure of executive officers and directors over a certain dollar threshold, in addition to disclosure of five most highly compensated executive officers and directors, Commission noted with regard to executive officers of foreign subsidiaries "the increased danger of acts of terrorism, including kidnapping and ransom demands, if salaries of the heads of foreign subsidiaries are publicly known"). The Commission's decision indicates the need to balance the benefits and costs of disclosure.

⁴ Cf. Sec. Act Rel. 6003 (Dec. 4, 1978), 1978 SEC LEXIS 175 (in response to the 1978 proposals to expand executive compensation disclosure, commentators warned that expanded compensation disclosure would create "a danger of pirating of employees by competitors willing to pay a higher salary"); *Purdy v. Burlington Northern and Santa Fe Railway Company*, 2000 WL 34251818, at * 1 (parties sought TRO against publication of employee compensation information by name, arguing that "publication of the

proposal, the Commission should consider the impact on a company's ability to retain talented employees.⁵

Cause Significant Employee Morale Issues

Requiring disclosure of non-executive compensation data could also lead to significant morale issues with the Company's employees. It is inevitable that some employees will take issue with their respective rankings when this sensitive information is disclosed, and create unnecessary and counter-productive strife with their fellow employees and the Company. As noted above, while the proposed regulation does not require publication of the non-executive employees' names, requiring disclosure of their positions will make it easy for employees to identify the other employees for whom compensation disclosure is given.

Provide Investors with Information of Limited Value

We believe the disclosure of compensation information for non-executive employees would provide investors with information of limited value.

Unlike executive officers, particularly the named executive officers, non-executive employees are not individuals who have policy-making authority or ultimate authority over a registrant's strategic decisions. While we agree that comprehensive disclosure concerning the company's most highly-paid policy makers is relevant to an investor from a corporate governance perspective, it is unclear how employee compensation would be of significant value to an investor when that employee has no policy-making authority. Moreover, these three non-executive employees may change from year to year depending on their total compensation. If the proposed rules were adopted, investors may not have continuous and consistent compensation information for these non-executive employees.

In addition, there are no inherent conflicts of interest in the setting of non-executive compensation as there has been with executive compensation. Historically, the process of setting executive compensation was vulnerable to conflicts of interest as executives may have been involved in setting their own compensation or the compensation of others who in turn set their compensation. Disclosure of compensation of non-executive employees does not involve the same concerns. Non-executive employees do not set their own compensation or the compensation of executive officers and, therefore, there is no significant risk of conflicts of interest. Moreover, the Commission does not cite any abuses, such as conflicts of interest, in the process for setting non-executive employee compensation or any evidence suggesting that the compensation of non-executive employees is set by any means other than by market

information would undermine internal morale as well as expose the [employer] to 'cherry-picking' by their competitors").

⁵ The Commission in its rulemaking proceedings must consider the impact of its rules on competition. Section 32(a)(2) of the Securities Exchange Act of 1934.

forces.⁶ Therefore, non-executive employee compensation does not present the same public policy concerns as disclosure of compensation for a registrant's policy-making executives.

In the proposing release, the Commission states that:

[w]e are proposing this requirement so that shareholders will have information about *the use of corporate assets* to compensate extremely highly paid employees in a company.

As a matter of disclosure policy, it is unclear why the compensation costs of non-executive employees (as compared to any other expense of the Company) should be singled out for special treatment. From a quantitative viewpoint, such information typically is far from material. Shareholders do have an interest in monitoring the use of corporate assets, but not in monitoring non-executive compensation any more than any other category of expenses (some of which may be much larger). Non-executive employment expenses are determined on the basis of ordinary market forces and, because the employees in question are not executives and do not perform policy-making functions, are not tainted by possible conflicts of interest.

Conclusion

Again, I greatly appreciate and support the Commission's efforts to enhance transparency with respect to executive and director compensation. Yet, we believe that the Commission's proposed disclosure requirement for non-executive employees does not serve the public interest in light of the fact that such disclosure would (i) invade an employee's personal privacy, (ii) reveal confidential and proprietary information to the Company's competitors and, thus, jeopardize the Company's ability to compete for, and retain, key employees, (iii) cause significant employee morale issues, and (iv) provide investors with information of limited value. As such, the Company respectfully requests that the Commission not adopt the disclosure requirement for non-executive officers as proposed by Item 402(f)(2) of Regulation S-K.

I thank you again for giving me the opportunity to comment on the proposed rule, and would welcome the opportunity to discuss our comments with you in greater detail at your convenience.

Sincerely,



Jeffrey Katzenberg
Chief Executive Officer
DreamWorks Animation SKG, Inc.

⁶ See also Lowenstein, *supra* at * 201 (distinguishing executive compensation from compensation of movie stars on the basis of public perception that studio and movie star deal at arm's length).