

**MEMO# 24077**

January 13, 2010

# **SEC Approves NYSE Amex Proposal Regarding Broker Voting on Elections of Directors and Investment Advisory Contracts**

[24077]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 1-10  
ETF ADVISORY COMMITTEE No. 1-10  
SEC RULES COMMITTEE No. 2-10  
SMALL FUNDS COMMITTEE No. 1-10 RE: SEC APPROVES NYSE AMEX PROPOSAL  
REGARDING BROKER VOTING ON ELECTIONS OF DIRECTORS AND INVESTMENT ADVISORY  
CONTRACTS

The Securities and Exchange Commission has approved, and is seeking comment on, a proposal filed by NYSE Amex LLC ("NYSE Amex") to amend NYSE Amex Equities Rule 452 and Section 723 of the NYSE Amex Company Guide. [\[1\]](#) Under the amendments: (i) broker discretionary voting for the election of directors is eliminated for all issuers except registered investment companies; and (ii) NYSE Amex interpretations related to broker voting on investment company advisory contracts are codified in Rule 452. The amendments became effective on January 1, 2010. The Release states that, notwithstanding the January 1st effective date, the amendments will not apply to any meeting that was originally scheduled to be held prior to January 1, 2010 but was properly adjourned to a date on or after January 1st.

Comments are due to the Commission no later than February 2, 2010. If there are issues that you would like to the Institute to consider including in a comment letter on the

proposal, please contact me by phone at (202) 218-3563 or email at [ddonohue@ici.org](mailto:ddonohue@ici.org).

## **Broker Discretionary Voting on Election of Directors**

NYSE Amex's amendments are identical to amendments to NYSE Rule 452 recently approved by the Commission. [2] In particular, they eliminate broker discretionary voting for the election of directors for all issuers except registered investment companies. The Release states that the amendments are consistent with the Commission's stated expectation that self-regulatory organizations would make changes to their rules to conform to the NYSE's amended rule on broker voting.

## **Voting on Investment Advisory Contracts**

The proposal also codifies prior NYSE Amex interpretations of Rule 452 to preclude discretionary broker voting on: (i) a material amendment to an investment company's investment advisory contract; and (ii) an investment company's investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940 or the rules thereunder. [3] The NYSE Amex interpretation tracks a recently codified NYSE interpretation. [4]

Dorothy M. Donohue  
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### **endnotes**

[1] See Securities Exchange Act Rel. No. 61292 (January 5, 2010), which is available at <http://www.sec.gov/rules/sro/nyseamex/2010/34-61292.pdf> ("Release"). While the amendments are currently effective, the Commission has the authority to abrogate the amendments within 60 days of filing if it believes that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Securities Exchange Act of 1934.

[2] See [Memorandum](#) to Closed-End Investment Company Members No. 28-09, ETF Advisory Committee No. 21-09, SEC Rules Members No. 75-09, and Small Funds Members No. 43-09 [23633], dated July 15, 2009.

[3] For example, broker discretionary voting is not be permitted with respect to an advisory contract between an investment company and a new investment adviser due to an assignment of the investment company's investment advisory contract, including an assignment caused by a change in control of the investment adviser that is a party to the assigned contract.

[4] See note 2 above.

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