

**MEMO# 23802**

September 17, 2009

## **Proposed Changes to NYSE Corporate Governance Requirements; Comments Requested by September 28th**

[23802]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 20-09  
ETF ADVISORY COMMITTEE No. 29-09  
SEC RULES COMMITTEE No. 55-09 RE: PROPOSED CHANGES TO NYSE CORPORATE GOVERNANCE REQUIREMENTS; YOUR COMMENTS REQUESTED BY SEPTEMBER 28TH

The Securities and Exchange Commission has asked for comment on proposed changes to Section 303A of the New York Stock Exchange's Listed Company Manual. [\[1\]](#) The Release explains that Section 303A, which was added to the Listed Company Manual in 2003, imposes corporate governance requirements on NYSE-listed companies and focuses mainly on director independence and the duties of the audit, nomination and compensation committees of the board. The proposal would amend Section 303A to clarify certain disclosure requirements, codify certain interpretations, and replace certain disclosure requirements by incorporating into the NYSE's rules the applicable disclosure requirements of Regulation S-K. The most significant aspects of the Release affecting closed-end funds and exchange-traded funds are summarized below.

Comments on the proposal are due to the Commission no later than October 5th. If you have any written comments that you want the Institute to consider including in a comment letter on the proposal, please forward them by email to [ddonohue@ici.org](mailto:ddonohue@ici.org) no later than Monday, September 28th.

Audit Committee. Section 303A.00 (Introduction) would be amended to clarify that companies listing in conjunction with an initial public offering must be in compliance with the Securities and Exchange Commission's audit committee requirements set forth in Rule 10A-3 of the Securities Exchange Act of 1934 (incorporated into the NYSE's corporate governance rules as Section 303A.06), as of the listing date. The listing date would be defined as the date the company's securities first trade on the NYSE. Section 303A.00 also would be amended to clarify that companies listing in conjunction with an initial public offering may phase in compliance with the three person audit committee minimum by having one member by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date. These proposed changes would apply to both closed-end funds and ETFs.

Under the proposal, language would be added to the commentary to Section 303A.07 to make clear that, if a closed-end fund chooses to voluntarily include a "Management's Discussion of Fund Performance" in its Form N-CSR, its audit committee would be required to meet to review and discuss it. Under the proposal, it would be clarified that telephonic conference calls constitute meetings for purposes of this section if allowed by applicable corporate law, but that polling directors is not allowed in lieu of a meeting.

Shareholder Approval of Equity Compensation Plans. Under the proposal, Section 303A.00 would be amended to clarify that closed-end funds are subject to Section 303A.08, the provision regarding shareholder approval of equity compensation plans.

Certification Requirements. Under the proposal, chief executive officers no longer would be required to certify to the NYSE each year that they are not aware of any violations by the company of NYSE listing standards. Listed companies would be required, however, to notify the NYSE in writing after any executive officer of the listed company became aware of any non-compliance with Section 303A. Currently such notification is required in the event of any executive officer becoming aware of "material" non-compliance. This requirement would apply with respect to both closed-end funds and ETFs.

Effective Date. The proposed changes to Section 303A of the Listed Company Manual would become effective January 1, 2010 if approved by the SEC.

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

[\[1\]](#) See SEC Release No. 34-60653 (September 11, 2009) [74 FR 47831 (September 17, 2009)] ("Release").

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