

**MEMO# 23829**

September 30, 2009

# **ICI Draft Comment Letter on Proposed Changes to NYSE Corporate Governance Requirements; Your Comments Requested by October 2nd**

[23829]

September 30, 2009

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 22-09  
ETF ADVISORY COMMITTEE No. 30-09  
SEC RULES COMMITTEE No. 57-09 RE: ICI DRAFT COMMENT LETTER ON PROPOSED  
CHANGES TO NYSE CORPORATE GOVERNANCE REQUIREMENTS; YOUR COMMENTS  
REQUESTED BY OCTOBER 2ND

The Institute has prepared the attached draft comment letter on proposed changes to Section 303A of the New York Stock Exchange's Listed Company Manual. [\[1\]](#) The draft letter is summarized below.

Comments on the proposal must be filed with the Securities and Exchange Commission by Monday, October 5th. Please provide your comments as soon as possible but no later than close of business on October 2nd to Dorothy Donohue by email ([ddonohue@ici.org](mailto:ddonohue@ici.org)).

The draft letter states that the Institute fully recognizes the importance of effective corporate governance and generally supports the proposal. The letter recommends, however, modifying the part of the proposal that would amend the certification provision applicable to listed company executive officers. In particular, the letter points out that the NYSE has not offered any rationale for replacing the current requirement that executive officers notify the NYSE after becoming aware of material non-compliance with Section 303A with a requirement to notify the NYSE of any noncompliance. The letter also points out that the policies underlying Section 303A generally and Section 303A's certification requirement, in particular, have been adequately served by requiring executive officers to

notify the NYSE of any material non-compliance with Section 303A. Further, it would be burdensome on both listed companies and the NYSE if listed companies were required to provide the NYSE with meaningless notifications for minor or inadvertent breaches, potentially obfuscating examples of more serious non-compliance and unnecessarily diverting limited resources. The letter concludes by urging the NYSE to retain the materiality standard in the current rule.

Dorothy M. Donohue  
Senior Associate Counsel

[Attachment](#)

**endnotes**

[1] See [Memorandum](#) to Closed-End Investment Company Committee No. 20-09; ETF Advisory Committee No. 29-09; and SEC Rules Committee No. 55-09 [23802], dated September 17, 2009 (summarizing the proposal).

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