

**MEMO# 22096**

January 4, 2008

## **Amex Proposes to Amend Annual Shareholder Meeting Requirements**

[22096]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 1-08  
UNIT INVESTMENT TRUST COMMITTEE No. 1-08  
ETF ADVISORY COMMITTEE No. 1-08 RE: AMEX PROPOSES TO AMEND ANNUAL  
SHAREHOLDER MEETING REQUIREMENTS

The Securities and Exchange Commission recently published for comment a proposal filed by the American Stock Exchange to amend its annual shareholder meeting requirements. [\[1\]](#) The proposed changes are summarized below.

Comments on the proposal are due to the SEC by January 18th. The Institute is considering submitting a comment letter on the proposal. Please provide any comments you would like us to consider including in such a letter by email ([htraeger@ici.org](mailto:htraeger@ici.org)) or phone (202.326-5920) as soon as possible but no later than Wednesday, January 9th.

Under the proposal, Section 704 of the Amex Company Guide would be amended so that only issuers of voting and non-voting common stock and voting preferred stock (and their equivalents) would be required to hold annual shareholder meetings. [\[2\]](#) This change would be accompanied by explanatory material, "Commentary .01," stating that passive business organizations in the form of a trust or the following types of securities would not be required to hold annual shareholder meetings: bonds and debentures; currency and index warrants; trust preferred securities; contingent value rights; equity-linked term notes; index-linked exchangeable notes; index-linked securities; currency-linked securities; commodity-linked securities; trust certificate securities; investment trusts based on

securities of individual issuers, stock indexes or debt instruments; equity derivatives; [3] trust issued receipts; commodity-based trust shares; currency trust shares; certain partnership units; and paired trust shares. [4] According to the Release, Amex has not generally required issuers of these securities to hold annual shareholder meetings, and the proposed change would clearly identify issuers subject to the annual meeting requirement.

In addition, under the proposal, any newly listed issuer would be required to hold an annual shareholder meeting within one year of the end of its fiscal year. The proposal also includes two exceptions to the annual shareholder meeting requirements. An issuer would not be required to hold an annual meeting if (1) its fiscal year is less than twelve months long as a result of a change in fiscal year end or (2) it is the same year in which the issuer completes its initial public offering. The Release explains that codifying this time frame and these exceptions would provide additional transparency to the annual meeting requirement.

Finally, under the proposal, Amex would eliminate the current provision that requires an issuer, who is unable to hold an annual shareholder meeting in a timely manner, to notify Amex and its shareholders of the reasons for the delay, and then to use good faith efforts to hold the meeting as soon as reasonably practicable in light of the circumstances causing the delay. The Release explains that Amex does not rely on this notification to monitor compliance with the annual shareholder meeting requirement but instead reviews an electronic database of public filings, other SEC filings, and proxy statements to determine compliance.

Heather L. Traeger  
Assistant Counsel

#### **endnotes**

[1] Securities Exchange Act Release No. 34-57016 (December 20, 2007), 72 FR 73911 (December 28, 2008) (“Release”). The Release is available at <http://www.sec.gov/rules/sro/amex/2007/34-57016.pdf>.

[2] The Release notes that the proposal is similar to changes approved by the SEC for the Nasdaq Stock Market and the New York Stock Exchange. See Securities Exchange Act Release No. 34-53578 (March 30, 2006), 71 FR 17532 (April 6, 2006) and Securities Exchange Act Release No. 34-54029 (June 21, 2006), 71 FR 37147 (June 29, 2006), respectively.

[3] According to the Release, this would include “portfolio depository receipts and index fund shares ... (collectively, ‘ETFs’).”

[4] Issuers also listing common stock or voting preferred stock, and their equivalents, must still hold an annual meeting for the shareholders of that stock.

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