

MEMO# 28772

February 25, 2015

Member Call to Discuss SEC Proposal to Require Disclosure of Hedging by Employees and Directors; Monday, March 9 at 4:00 p.m. ET

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TO: SEC RULES COMMITTEE No. 6-15
ETF ADVISORY COMMITTEE No. 3-15
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 3-15
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 4-15 RE: MEMBER CALL TO DISCUSS SEC PROPOSAL TO REQUIRE DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS; MONDAY, MARCH 9 AT 4:00 P.M. ET

Recently, to implement Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the Securities and Exchange Commission ("SEC") proposed rule amendments to require certain companies to disclose whether they permit employees and directors to hedge their companies' securities. [\[1\]](#) The SEC is proposing to require closed-end funds that have shares listed and registered on a national securities exchange to provide the proposed disclosure. The SEC is not proposing to impose the requirement on other types of funds (i.e., mutual funds and exchange-traded funds). [\[2\]](#) The Proposing Release, however, specifically requests comment on whether the requirements should apply to additional types of funds and seeks input and data on the prevalence of hedging by employees and directors for all registered funds. ICI's memorandum summarizing the proposal is available at http://www.ici.org/my_ici/memorandum/memo28733.

Comments on the proposed rules are due by April 20. A member call to discuss possible ICI comments is scheduled for Monday, March 9 at 4:00 p.m. ET. If you would like to participate on the call, please respond to Kim Hair at kim.hair@ici.org.

Jennifer S. Choi
Associate General Counsel

endnotes

[1] Disclosure of Hedging by Employees, Officers and Directors, 80 FR 8486 (Feb. 17, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-17/pdf/2015-02948.pdf> (“Proposing Release”). Section 955 added new Section 14(j) to the Securities Exchange Act of 1934 (“Exchange Act”), which directs the SEC to require, by rule, each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or director, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities either (1) granted to the employee or director by the issuer as part of the compensation of the employee or director or (2) held, directly or indirectly, by the employee or director.

[2] Commissioners Piowar and Gallagher in a joint statement on the proposal stated that they would not have included listed closed-end funds within the scope of the rule. They also expressed concern that the release expressly seeks comment on whether to extend the disclosure requirement to all funds, including open-end funds. They noted that it will be important to receive comment from these other types of funds (e.g., mutual funds and ETFs) explaining what the impact of this rule would be on them. See Commissioners Daniel M. Gallagher and Michael S. Piowar, Joint Statement on the Commission’s Proposed Rule on Hedging Disclosures (Feb. 9, 2015), available at <http://www.sec.gov/news/statement/020912ps-cdmg-cmsp.html#.VN0PaChnCg0>.