

**MEMO# 26585**

October 15, 2012

## **NYSE and Nasdaq File Proposed Rule Change to Modify Listing Rules for Compensation Committees**

[26585]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 35-12  
ETF ADVISORY COMMITTEE No. 36-12  
SEC RULES COMMITTEE No. 61-12 RE: NYSE AND NASDAQ FILE PROPOSED RULE CHANGE TO MODIFY LISTING RULES FOR COMPENSATION COMMITTEES

The Securities and Exchange Commission (“SEC”) has published for comment notices of proposed rule change by the New York Stock Exchange LLC (“NYSE”) and the NASDAQ Stock Market LLC (“Nasdaq”) to modify their listing rules for compensation committees. [\[1\]](#) The NYSE and Nasdaq are proposing these changes to their listing rules to comply with new Rule 10C-1 under the Securities Exchange Act of 1934, which implements Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. [\[2\]](#) Comments on the proposals are due by November 5, 2012.

SEC Rule 10C-1 directed the national securities exchanges to establish listing standards that, among other things, require each member of a listed issuer’s compensation committee to be a member of the board of directors and to be “independent” as defined in the listing standards. Generally, the proposals by the NYSE and Nasdaq would impose standards on the determination of “independent director” for purposes of the compensation committee, require compensation committees to have authority and adequate funding to engage advisers, and require compensation committees to consider certain independence factors before engaging a compensation consultant or other adviser.

Both the NYSE and Nasdaq propose to retain their existing exemptions from the compensation-related listing rules, including an exemption for management investment companies (i.e., closed-end and open-end investment companies). [\[3\]](#) ICI plans to submit comments on the proposals supporting the proposed exemptions for registered funds.

In the proposals, the NYSE and Nasdaq also provide for transition periods. The NYSE would require compliance with the compensation committee member independence standards by the earlier of the listed company’s first annual meeting held after January 15, 2014 or October 31, 2014. Nasdaq would require that standards relating to compensation

committee authority and compensation committee adviser independence become effective immediately. Listed companies would have until the earlier of their second annual meeting after the standards are adopted or December 31, 2014 to comply with the other provisions of the amended listing standards.

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#### **endnotes**

[1] See SEC Release No. 34-68011, 77 FR 62541 (Oct. 15, 2012) (notice of NYSE proposed rule change), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-10-15/pdf/2012-25278.pdf>; SEC Release No 34-68013, 77 FR 62563 (Oct. 15, 2012) (notice of Nasdaq proposed rule change), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-10-15/pdf/2012-25281.pdf>.

[2] Listing Standards for Compensation Committees, Release Nos. 33-9330; 34-67220 (June 20, 2012), available at <http://www.sec.gov/rules/final/2012/33-9330.pdf> (“Adopting Release”). For a summary of the Adopting Release, see ICI Memorandum No. 26253 (June 21, 2012), available at [http://www.ici.org/my\\_ici/memorandum/memo26253](http://www.ici.org/my_ici/memorandum/memo26253).

[3] SEC Rule 10C-1(b)(1)(iii)(A) exempts from the compensation committee member independence listing standards certain entities, including registered open-end management investment companies, listed in Section 10C(a)(1).