

MEMO# 24000

December 8, 2009

SEC Approves Amendments To NYSE Corporate Governance Requirements; January 1, 2010 Effective Date

[24000]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 59-09
ETF ADVISORY COMMITTEE No. 41-09
SEC RULES MEMBERS No. 132-09 RE: SEC APPROVES AMENDMENTS TO NYSE
CORPORATE GOVERNANCE REQUIREMENTS; JANUARY 1, 2010 EFFECTIVE DATE

The Securities and Exchange Commission recently approved proposed changes to Section 303A of the New York Stock Exchange's Listed Company Manual. [\[1\]](#) Section 303A comprises the NYSE's corporate governance standards for listed companies. The amendments to Section 303A 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 amendments affecting closed-end funds and exchange-traded funds ("ETFs") are summarized below.

Audit Committee. Section 303A.00 (Introduction) has been amended to clarify that companies listing in conjunction with an initial public offering must comply with the SEC's audit committee requirements set forth in Rule 10A-3 under 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 is defined as the date the company's securities first trade on the NYSE. Section 303A.00 also has been 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 changes apply to both closed-end funds and ETFs.

The amendments add language 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 is required to meet and review it. The amendments also clarify that telephonic conference calls constitute meetings for purposes of this section if allowed by applicable state corporate law.

Shareholder Approval of Equity Compensation Plans. The amendments clarify that closed-end funds are subject to Section 303A.08, the provision regarding shareholder approval of equity compensation plans.

Certification Requirements. Under the amendments, a listed company is no longer required to disclose in its annual report to shareholders: (i) its chief executive officer’s certification regarding any non-compliance filed with the NYSE; and (ii) any chief executive officer/chief financial officer’s certification required to be filed with the SEC regarding the quality of the listed company’s public disclosure.

Despite the Institute’s objections, [\[2\]](#) the amendments require listed companies to notify the NYSE in writing after any executive officer of the listed company becomes 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. The Release states that the SEC believes that it is not unreasonable for the NYSE to require a listed company to notify it when the company becomes aware that it is out of compliance with the NYSE’s listing standards.

The certification requirements apply to both closed-end funds and ETFs.

Effective Date. The changes to the Listed Company Manual will become effective January 1, 2010. [\[3\]](#)

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endnotes

[\[1\]](#) See SEC Release No. 34-61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (“Release”). See also SEC Release No. 34-60653 (September 11, 2009), 74 FR 47831

(September 17, 2009) (proposing the amendments).

[2] See [Memorandum](#) to Closed-End Investment Company Members No. 44-09, ETF Advisory Committee No. 32-09, and SEC Rules Members No. 105-09, dated October 8, 2009 (summarizing the Institute's comment letter).

[3] The text of the rule amendments may be accessed at <http://nysemanual.nyse.com/LCMTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F3&manual=%2Ficm%2Fsections%2Ficm%2Dsections%2F>.

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