

MEMO# 25513

September 22, 2011

SEC Announces Effective Date of Rule 14a-8 Amendments

[25513]

September 22, 2011

TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 71-11
ETF ADVISORY COMMITTEE No. 63-11
INVESTMENT COMPANY DIRECTORS No. 16-11
SEC RULES MEMBERS No. 114-11
SMALL FUNDS MEMBERS No. 60-11 RE: SEC ANNOUNCES EFFECTIVE DATE OF RULE 14A-8 AMENDMENTS

The Securities and Exchange Commission recently announced that the amendment to Securities Exchange Act Rule 14a-8 adopted by the Commission in August 2010 is effective as of September 20, 2011. [\[1\]](#) As amended, Rule 14a-8 requires companies, including registered investment companies, to include in the company's proxy materials shareholder proposals that seek to establish a procedure in the company's governing documents for the inclusion of one or more shareholder director nominees in the company's proxy materials ("private ordering" approach). [\[2\]](#) Related rule changes adopted concurrently with the amendment to Rule 14a-8 also are effective as of September 20. [\[3\]](#)

As we previously informed you, the SEC adopted, and then stayed, changes to the federal proxy rules to facilitate shareholders' ability to nominate directors of companies, including registered investment companies. [\[4\]](#) The SEC granted the stay pending resolution of the petition for review of Rule 14a-11 in *Business Roundtable et al. v. Securities and Exchange Commission*. [\[5\]](#) On July 22, 2011, the United States Court of Appeals for the District of Columbia Circuit issued an order vacating Rule 14a-11 and on September 14, 2011, the Court issued its mandate. Because the mandate concluded the litigation, the SEC's stay expired by its terms. The Court's order did not affect the amendment to Rule 14a-8, which was not challenged in the litigation, or the related rules and amendments adopted concurrently with the amendment to Rule 14a-8. [\[6\]](#)

Dorothy M. Donohue
Senior Associate Counsel

endnotes

[1] See Facilitating Shareholder Director Nominations, SEC Release Nos. 33-9259 (September 15, 2011) [76 FR 58100 (September 20, 2011)], available at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-20/pdf/2011-24118.pdf>.

[2] A shareholder proponent is required to have continuously held at least \$2000 in market value, or 1% of the company's securities entitled to be voted on the proposal at the meeting for a period of at least one year by the date the proponent submits the proposal.

[3] For example, Rule 14a-18 requires certain disclosures to be made if a shareholder submits a director nominee pursuant to a procedure set forth in the company's governing documents.

[4] See Investment Company Memorandum No. 24581, dated October 6, 2010, (summarizing the stay order), available at http://www.ici.org/my_ici/memorandum/memo24581.

[5] Rule 14a-11 would have required, under certain circumstances, companies to provide shareholders with the ability to vote for a shareholder(s)' nominees for director in the company's proxy materials.

[6] Investment Company Memorandum No. 24533, dated September 9, 2010 summarizes the changes to Rule 14a-8 and the related amendments and can be accessed at http://www.ici.org/my_ici/memorandum/memo24533.