

MEMO# 24139

February 18, 2010

Proposed Changes to NASDAQ's Press Release Requirements; Your Comments Requested by February 23rd

[24139]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 4-10
ETF ADVISORY COMMITTEE No. 6-10
SEC RULES COMMITTEE No. 8-10 RE: PROPOSED CHANGES TO NASDAQ'S PRESS RELEASE REQUIREMENTS; YOUR COMMENTS REQUESTED BY FEBRUARY 23RD

The Securities and Exchange Commission has asked for comment on proposed changes to press release requirements for companies listed on The NASDAQ Stock Market LLC ("Nasdaq"). [\[1\]](#) The Release explains that a number of Nasdaq rules require a company to disclose information in a press release. These rules were adopted at a time when issuing a press release was the only way to assure wide dissemination of an important event. Since that time Nasdaq has found that there is wide acceptance of Regulation FD compliant methods of disclosure, such as the use of Form 8-K, and where Nasdaq requirements duplicate Form 8-K requirements, companies are forced to make multiple disclosures about the same event. According to the Release, because Form 8-K disclosures are readily available to investors via the news media, Nasdaq has determined to modify several of its rules to permit disclosure either through a press release or by filing a Form 8-K when required by Commission rules. The most significant aspects of the Release affecting closed-end funds and exchange-traded funds ("funds") are summarized below.

Comments on the proposal are due to the Commission no later than March 1st. If you have any written comments that you want the Institute to consider including in a comment letter on the proposal, please forward them by email to ddonohue@ici.org no later than Tuesday, February 23rd.

Under the proposal, any fund would be permitted to make a public announcement by filing a Form 8-K when required by SEC rules, or by issuing a press release when: (1) the fund receives notice from Nasdaq that it does not meet a listing standard; (2) Nasdaq issues a Public Reprimand Notice to it; or (3) there is any change in the terms of a listed unit. Under the proposal, a fund that receives a deficiency notice from Nasdaq because it is late in filing a periodic report with the Commission still would be required to issue a press release announcing receipt of the deficiency notice.

Under the proposal, a fund would be required to make certain disclosures to the MarketWatch Department, rather than multiple departments of Nasdaq, when it receives notice from Nasdaq that the fund does not meet a listing standard or when Nasdaq issues a Public Reprimand Notice to the fund.

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endnotes

[1] See SEC Release No. 34-61461 (February 1, 2010) [75 FR 6241 (February 8, 2010)] (“Release”). The Release is available on the Commission’s website at <http://www.sec.gov/rules/sro/nasdaq/2010/34-61461.pdf>.

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