

**MEMO# 21185**

May 29, 2007

# **NYSE Files Amendment to Exempt Investment Companies from Broker Voting Proposal**

[21185]

May 29, 2007

TO: BOARD OF GOVERNORS No. 14-07

CLOSED-END INVESTMENT COMPANY MEMBERS No. 29-07

SEC RULES MEMBERS No. 54-07

SMALL FUNDS MEMBERS No. 33-07 RE: NYSE FILES AMENDMENT TO EXEMPT INVESTMENT COMPANIES FROM BROKER VOTING PROPOSAL

As we previously informed you, the New York Stock Exchange filed a proposal with the Securities and Exchange Commission in October 2006 to eliminate discretionary broker voting for the election of directors, including investment company directors. [\[1\]](#) On May 23rd, the NYSE filed an amended proposal with the SEC that would preserve discretionary broker voting for registered investment companies. [\[2\]](#) Accordingly, brokers would continue to be permitted to vote on any election of investment company directors on a discretionary basis if no instructions from beneficial shareholders are received.

The Release accompanying the amendment states that the NYSE's Proxy Working Group ("PWG") reviewed materials submitted by the Institute and other representatives of investment companies concerning the difficulties funds would have if discretionary broker voting were eliminated for director elections. The PWG attached particular significance to the Institute's research report delineating the increased costs and burdens that would be experienced by funds as a result of the proposal. [\[3\]](#) The PWG also considered the fact that investment companies are subject to distinct regulation under the Investment Company Act of 1940. The Release states that the PWG ultimately concluded that:

the unique regulatory regime governing investment companies made such companies sufficiently different from operating companies (regardless of size) that it was appropriate to treat such companies differently. Accordingly, the Proxy Working Group determined to amend its initial recommendation to the

NYSE with respect to Rule 452 to recommend that such changes to Rule 452 not apply to any company registered under the Investment Company Act of 1940.

According to the Release, the NYSE determined to amend its proposal to exempt investment companies based on the PWG's recommendation. We will keep you advised of further developments.

Ari Burstein  
Senior Counsel - Securities Regulation

**endnotes**

[1] See [Memorandum](#) to SEC Rules Members No. 95-06, Closed-End Investment Company Members No. 50-06, and Small Funds Members No. 77-06, dated October 25, 2006.

[2] See NYSE File No. SR-2006-92 ("Release").

[3] See Costs of Eliminating Discretionary Broker Voting on Uncontested Elections of Investment Company Directors (December 18, 2006).

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