

MEMO# 27109

March 13, 2013

Nasdaq Files Proposed Rule Change to Require Listed Companies to Have Internal Audit Function

[27109]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 25-13
INTERNAL AUDIT ADVISORY COMMITTEE No. 1-13
INVESTMENT ADVISER MEMBERS No. 22-13
ETF ADVISORY COMMITTEE No. 15-13
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 16-13 RE: NASDAQ FILES PROPOSED
RULE CHANGE TO REQUIRE LISTED COMPANIES TO HAVE INTERNAL AUDIT FUNCTION

The Securities and Exchange Commission ("SEC") has published for comment a notice of a proposed rule change by the NASDAQ Stock Market LLC ("Nasdaq") to require listed companies to have an internal audit function. [\[1\]](#) According to Nasdaq, the purpose of the proposed rule would be to ensure that listed companies have a mechanism in place to review and assess regularly their system of internal control and to identify any weaknesses and develop appropriate remedial measures. Nasdaq notes that the New York Stock Exchange LLC ("NYSE") has a similar requirement in Listed Company Manual Section 303A.07(c). The NYSE provision, however, does not apply to registered investment companies. The proposed rule by Nasdaq does not appear to include any exceptions. Comments on the proposed rule change are due on March 29, 2013.

The proposed rule would require each listed company to establish and maintain an internal audit function to provide management and the audit committee with ongoing assessments of the company's risk management processes and system of internal control. The proposed rule would require the audit committee to meet periodically with the internal auditors (or other personnel responsible for this function) and assist the Board in its oversight of the performance of this function. The audit committee also should discuss with the outside auditor the responsibilities, budget, and staffing of the internal audit function.

The proposed rule would permit listed companies to outsource the internal audit function to a third party service provider other than their independent auditor. The audit committee, however, must retain sole responsibility to oversee the internal audit function and may not allocate or delegate this responsibility to another board committee. The proposal would require each company listed on Nasdaq on or before June 30, 2013 to comply with the new

requirement by December 31, 2013. Companies listed after June 30 would be required to establish an internal audit function before listing.

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endnotes

[1] See SEC Release No. 34-69030, 78 FR 15075 (March 8, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-03-08/pdf/2013-05454.pdf>.

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