

MEMO# 26601

October 23, 2012

Draft ICI Comment Letters in Response to Proposed Rule Changes by the NYSE and Nasdaq to Modify Listing Rules for Compensation Committees; Member Comments Requested by October 30

[26601]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 37-12
ETF ADVISORY COMMITTEE No. 40-12
SEC RULES COMMITTEE No. 65-12 RE: DRAFT ICI COMMENT LETTERS IN RESPONSE TO PROPOSED RULE CHANGES BY THE NYSE AND NASDAQ TO MODIFY LISTING RULES FOR COMPENSATION COMMITTEES; MEMBER COMMENTS REQUESTED BY OCTOBER 30

Recently, the Securities and Exchange Commission (“SEC”) published for comment notices of proposed rule changes by the New York Stock Exchange LLC (“NYSE”) and the NASDAQ Stock Market LLC (“Nasdaq”) [\[1\]](#) to modify their listing rules relating to compensation committees and compensation advisers to comply with Rule 10C-1 under the Securities Exchange Act of 1934. [\[2\]](#) ICI has prepared draft comment letters, which are attached and briefly summarized below. If you have comments on the draft letters, please provide them to Jennifer Choi at jennifer.choi@ici.org by Tuesday, October 30.

In the notices, the NYSE and Nasdaq propose to amend their listing rules for compensation committees to comply with the requirements of Rule 10C-1, which, among other things, require each member of a listed issuer’s compensation committee to be a member of the board of directors and to be “independent” as defined in the listing standards. The NYSE and Nasdaq propose to exempt from their revised listing rules issuers that are currently exempt from their existing compensation committee requirements. Therefore, as proposed, closed-end and open-end funds registered under the Investment Company 1940 Act would be exempt from the proposed requirements.

The draft letters strongly support this approach. The draft letters state that registered investment companies, as significant investors in U.S. public companies, generally support the proposals to strengthen the effectiveness of compensation committees. The letters also fully support the proposals to exempt investment companies from these requirements

because of the fundamental structural differences between investment companies and operating companies. The letter urges the Commission to approve the proposed rule changes filed by the NYSE and Nasdaq.

Jennifer S. Choi
Senior Associate Counsel – Securities Regulation

[Attachment](#)

endnotes

[1] See SEC Release No. 34-68011, 77 FR 62541 (Oct. 15, 2012) (notice of NYSE proposed rule change), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-10-15/pdf/2012-25278.pdf>; SEC Release No 34-68013, 77 FR 62563 (Oct. 15, 2012) (notice of Nasdaq proposed rule change), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-10-15/pdf/2012-25281.pdf>. For a summary of the notices, see ICI Memorandum No. 26585 (Oct. 15, 2012), available at http://www.ici.org/my_ici/memorandum/memo26585.

[2] New Rule 10C-1 under the Securities Exchange Act of 1934 implements Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. See Listing Standards for Compensation Committees, Release Nos. 33-9330; 34-67220 (June 20, 2012), available at <http://www.sec.gov/rules/final/2012/33-9330.pdf>. For a summary of the adopting release, see ICI Memorandum No. 26253 (June 21, 2012), available at http://www.ici.org/my_ici/memorandum/memo26253.