

MEMO# 18008

September 15, 2004

PROPOSED CHANGES TO NYSE CORPORATE GOVERNANCE REQUIREMENTS; YOUR VIEWS REQUESTED BY SEPTEMBER 21ST

[18008] September 15, 2004 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 37-04 SEC RULES COMMITTEE No. 78-04 RE: PROPOSED CHANGES TO NYSE CORPORATE GOVERNANCE REQUIREMENTS; YOUR VIEWS REQUESTED BY SEPTEMBER 21st The Securities and Exchange Commission has asked for comments on proposed changes to the corporate governance requirements in Section 303A of the New York Stock Exchange's Listed Company Manual.¹ The Release explains that since Section 303A was approved last year, the NYSE staff has received numerous requests for clarification and interpretation. In response to these requests, the NYSE published a series of Frequently Asked Questions relating to Section 303A on its website.² As discussed in the Release, the NYSE has proposed to clarify Section 303A consistent with the NYSE staff interpretations and published FAQs. Comments on the NYSE's proposal are due to the Commission no later than September 29th. The Institute is considering whether to file a comment letter on the proposal. If you have comments on the proposal, please provide them to me by phone (202.218-3563), fax (202.326- 5827), or email (ddonohue@ici.org) no later than September 21st. The most significant aspects of the Release are summarized below. Because most of the proposed changes do not apply to closed-end investment companies or exchange-traded investment companies, those that do are specifically noted. Independent Directors. Section 303A.02(a) would be amended to clarify that listed companies are required to identify which of their directors have been deemed independent. Compensation Committee. Section 303A.05 would be amended to clarify that the non-Chief Executive Officer compensation on which the listed company's compensation committee should focus is that of the executive officers. ¹ See SEC Release No. 34-50298 (August 31, 2004) [69 FR 54328 (September 8, 2004)] ("Release"). See also Institute Memorandum to Closed-End Investment Company Members No. 93-03 and SEC Rules Members No. 158-03 [16783] (November 19, 2003) (summarizing the NYSE's final corporate governance rules). ² The NYSE's website is <http://www.nyse.com>. ² Audit Committee. Section 303A.07(c) would be amended to clarify that the audit committee of each listed company (including closed-end investment companies) must meet to review and discuss the company's financial statements and must review the company's specific Management's Discussion and Analysis disclosures. Certifications and Affirmations. Section 303A.12(c) would be added to specifically require that all listed companies (including closed-end investment companies and exchange-traded investment companies organized as open-end investment companies) submit annual and interim written affirmations to the NYSE.³ Interim written affirmations

would need to be submitted each time a change occurs to the board or any of the committees subject to Section 303A. According to the Release, the affirmations will be the means for listed companies to provide the NYSE with ongoing details of compliance or non-compliance with Section 303A. The Release also states that the proposed change clarifies the NYSE's intention to carry forward the written affirmation requirement currently found in Section 303 of the Listed Company Manual. Dorothy M. Donohue Associate Counsel 3

Section 303A.12 currently requires each listed company chief executive officer to: certify to the NYSE each year that he or she is not aware of any violation by the company of NYSE corporate governance listing standards; and promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of Section 303A.

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