

MEMO# 20093

June 8, 2006

NYSE Proxy Working Group Report; Conference Call Scheduled for Thursday, June 15th

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20093] June 8, 2006 TO: SEC RULES COMMITTEE No. 25-06 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 13-06 SMALL FUNDS COMMITTEE No. 14-06 RE: NYSE PROXY WORKING GROUP REPORT; CONFERENCE CALL SCHEDULED FOR THURSDAY, JUNE 15TH In April 2005, the New York Stock Exchange created a working group (the "Working Group") to review NYSE rules governing the proxy voting process. The Working Group was asked to focus on: (1) NYSE Rule 452, which governs the circumstances under which a broker may vote on certain "routine" proposals if the beneficial owner of the stock has not provided specific voting instructions; and (2) Rule 465, which governs fees paid by listed companies to brokers for the distribution of proxy materials. Members of the Working Group included representatives from issuers, broker-dealers, law firms, institutional investors, and individual investors. Representatives from the Securities and Exchange Commission and the National Association of Securities Dealers also participated in the discussions. The Working Group heard presentations from a number of groups, including the Institute.¹ The Working Group recently issued a report recommending changes to the NYSE's proxy rules.² According to the Report, the Working Group's single objective was to develop recommendations that would create a more effective and efficient voting system for investors. The Report is summarized below. Comments on the Report are due to the NYSE no later than Friday, June 30th. The Institute will hold a conference call on Thursday, June 15th at 2:00 p.m. EST to discuss the Report. The dial-in number 1 A copy of the Institute's submission is attached to this memorandum. 2 See Report and Recommendations of the Proxy Working Group to the New York Stock Exchange (June 5, 2006) ("Report"). The Report is on the NYSE's website at http://www.nyse.com/pdfs/REVISED_NYSE_Report_6_5_06.pdf. The NYSE also retained a company to conduct an investor attitudes survey to gain a better understanding of investors' knowledge of the existing proxy voting process. The survey is available on the NYSE's website at http://www.nyse.com/pdfs/Final_ORC_Survey.pdf. 2 for the call is 1-888-455-9643 and the pass code is BLUE. If you plan to participate on the call, please send an email to Barbara Watkins at bwatkins@ici.org. If you are unable to participate on the call, please provide your comments before the call to Dorothy Donohue by phone (202.218-3563) or email (ddonohue@ici.org). The Working Group recommended that the NYSE amend Rule 452 to make the election of directors a "non-routine" matter. Accordingly, brokers would no longer be permitted to vote the shares of beneficial owners who do not give specific voting instructions with respect to any election of directors. The

Report explains that this recommendation was based on the recognition that directors have authority over the most fundamental issues of corporate governance. In recognition of the significant consequences that this recommendation would have for issuers, the Working Group also made several related recommendations, which are described below. (1) The Report recommends that any plan to amend Rule 452 to make the election of directors a “non-routine” matter include as a critical component a large-scale education effort to inform shareholders about the mechanics of the proxy voting process. In particular, the Report recommends that the NYSE work with the SEC, the listed company community, and other appropriate groups to develop a significant investor education effort to inform investors about the proxy voting process and the importance of voting. (2) The Report recommends that the NYSE support SEC review of its existing shareholder communication rules to make it easier for issuers to communicate with beneficial owners. In connection with this, the Report states the Working Group’s belief that there is a significant need for more effective communications between issuers and shareholders and that the NYSE should convene another committee, which would include representatives of all of the groups involved in the shareholder communication process, to consider how to improve communications between issuers and beneficial owners. (3) The Report recommends that the NYSE continue to evaluate the future need for broker discretionary voting under Rule 452. The Report states that as part of this effort, it is important to consider the critical role broker voting has played in allowing issuers to achieve quorums for shareholder meetings, and that this issue should be addressed as part of any change to Rule 452. (4) The Report recommends that the NYSE engage an independent third party to analyze and make recommendations regarding the structure and amount of fees paid pursuant to Rule 465. The Report recommends that, following completion of this review, the NYSE consider revising the existing fee schedule and related issues as appropriate. (5) The Report recommends that the NYSE request that the SEC study the role of groups making voting decisions over shares that they do not own (e.g., institutional advisory services and proxy 3 voting groups), recognizing the potential for possible conflicts and/or other issues given the multiple roles such groups may have in the proxy system. Dorothy M. Donohue Associate Counsel Attachment (in .pdf format)