

MEMO# 20150

June 30, 2006

Draft Institute Comment Letter on NYSE Proxy Working Group Report; Your Comments Requested by July 10th

©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. [20150] June 30, 2006 TO: SEC RULES COMMITTEE No. 29-06 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 15-06 SMALL FUNDS COMMITTEE No. 16-06 RE: DRAFT INSTITUTE COMMENT LETTER ON NYSE PROXY WORKING GROUP REPORT; YOUR COMMENTS REQUESTED BY JULY 10TH As we previously informed you, a working group created by the New York Stock Exchange recently issued a report reviewing NYSE rules regarding the proxy voting process.* The Report recommended, among other things, that the NYSE amend Rule 452 to make the election of directors a “non-routine” matter. The Institute has prepared a draft comment letter on the Report. A copy of the letter is attached and summarized below. We plan on filing the comment letter with the New York Stock Exchange by mid-July. Please provide any comments you have on the draft letter to Dorothy Donohue by phone (202.218-3563) or email (ddonohue@ici.org) no later than July 10th. The draft letter states that the Institute agrees with the Working Group’s observation that shareholder voting for directors is an important component of good corporate governance. It also states that the Working Group’s recommendation puts all issuers, including investment companies, “between a rock and a hard place” because shareholders typically do not understand the proxy process, typically choose not to vote, and in most cases, cannot be contacted by the companies in which they own an interest and so can not be convinced to vote their shares. Therefore, if brokers are not permitted to vote on uncontested elections of directors, funds will have significant difficulties achieving quorums and getting directors elected. The draft letter states that to address these concerns, the NYSE should continue to allow brokers to vote uninstructed shares on uncontested director elections while it undertakes a vigorous * See Institute Memorandum to SEC Rules Committee No. 25-06, Closed-End Investment Company Committee No. 13-06, Small Funds Committee No. 14-06 [20093], dated June 8, 2006 (summarizing Report and Recommendations of the Proxy Working Group to the New York Stock Exchange (“Report”)). 2 campaign to educate shareholders about the proxy process and the importance of voting with the goal of convincing them to exercise their right to vote. In addition, the NYSE should recommend that the Securities and Exchange Commission revise its rules to permit issuers to contact their shareholders. The draft letter states that only after these efforts are undertaken and the NYSE is satisfied that shareholders will exercise their right to vote without requiring undue cost and effort on the part of issuers should director elections become “non-routine.” The draft letter states that,

alternatively, the NYSE should permit brokers to exercise proportional voting with respect to shares for which voting instructions are not received. The draft letter also urges the NYSE to exempt closed-end funds from the NYSE's annual meeting requirement. Dorothy M. Donohue Associate Counsel Attachment (in .pdf format)

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