

COMMENT LETTER

February 24, 1999

Comment Letter on NYSE's Closed-End Fund Listing Criteria, February 1999

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Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: File No. SR-NYSE-99-02

Dear Mr. Katz:

The Investment Company Institute¹ appreciates the opportunity to comment on the proposed rule change filed by the New York Stock Exchange ("NYSE") relating to the listing eligibility criteria for closed-end investment companies registered under the Investment Company Act of 1940 ("closed-end funds").² The proposed rule change would implement a pilot program amending Section 1 of the NYSE Listed Company Manual to codify the specific eligibility listing criteria applied to closed-end funds. The Securities and Exchange Commission ("SEC") has approved the pilot program on a temporary basis for a three-month period ending on April 29, 1999.

Under the pilot program, if a closed-end fund has at least \$60 million in net assets, as evidenced by a firm underwriting commitment, the NYSE will generally authorize the listing of the fund. The NYSE also would retain the discretion to deny listing to a closed-end fund if it determines that, based upon a comprehensive financial analysis, it is unlikely that the closed-end fund will be able to maintain its financial status. The proposed rule change also notes that closed-end funds are subject to continued financial listing criteria and that if a fund is identified in an exception report listing companies below the NYSE's continued listing standards, it will be subject to the same compliance and monitoring procedures imposed upon any other NYSE-listed company identified in a report.

While it may be advisable to codify specific eligibility listing criteria for closed-end funds, the Institute opposes the proposed rule change for two reasons. First, we are concerned that the SEC has granted accelerated approval to allow the pilot program to be instituted without first allowing the industry the opportunity to comment. Second, we believe that adopting any such criteria should be done in a more careful and deliberate manner and with greater specificity and less uncertainty. For example, it is unclear from the release the

reason for proposing solely a net asset based eligibility listing standard; the rationale for the proposed \$60 million threshold; how this requirement will be applied (e.g., whether closed-end funds currently listed on the NYSE are grandfathered from the requirements of the proposed rule change); and whether there are any other listing standards and requirements (e.g., requirements regarding the minimum number of shareholders and outside directors, and whether closed-end funds are required to have audit committees).

We encourage the NYSE to reconsider its proposal. Towards that end, the Institute offers its assistance in developing appropriate eligibility listing criteria for closed-end funds.

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The Institute appreciates the opportunity to comment on this proposal. Any questions regarding our comments may be directed to the undersigned at (202) 371-5408.

Sincerely,

Ari Burstein
Assistant Counsel

cc: Paul F. Roye, Director
Division of Investment Management
Richard C. Strasser, Assistant Director
Division of Market Regulation
Securities and Exchange Commission

Catherine R. Kinney, Group Executive Vice President
N. Amy Bilbija, Counsel
New York Stock Exchange

ENDNOTES

1 The Investment Company Institute is the national association of the American investment company industry. Its membership includes 7,408 open-end investment companies ("mutual funds"), 449 closed-end investment companies, and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about \$5.468 trillion, accounting for approximately 95% of total industry assets, and have over 62 million individual shareholders.

2 Securities Exchange Act Release No. 40979, 64 FR 5332 (January 26, 1999).