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October 8, 2009

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: New York Stock Exchange Notice of Filing of Proposed Rule Change To Amend Certain Corporate Governance Requirements (File No. SR-NYSE-2009-89)

Dear Ms. Murphy:

The Investment Company Institute<sup>1</sup> appreciates the opportunity to provide its views on the New York Stock Exchange's proposed amendments to certain of its corporate governance requirements set forth in Section 303A of the Listed Company Manual.<sup>2</sup> Investment companies are both shareholders of the companies in which they invest and issuers with their own directors and shareholders. Accordingly, we fully recognize the importance of effective corporate governance and generally support the Proposal,<sup>3</sup> which, among other things, would clarify certain provisions and make the NYSE's corporate governance disclosure requirements more consistent with corollary requirements established by the Securities and Exchange Commission. We recommend, however, modifying the part of the Proposal that would amend the certification provision applicable to listed company executive officers.

The Proposal would replace the current requirement that executive officers notify the NYSE after becoming aware of *material* non-compliance with Section 303A with a requirement to notify the NYSE of *any* noncompliance. The NYSE has not offered any rationale for the proposed change, and we have been unable to discern one. The policy underlying Section 303A generally is to enhance the accountability, integrity, and transparency of NYSE listed companies, and Section 303A's certification

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<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors and advisers. Members of the ICI manage total assets of \$11.2 trillion and serve over 93 million shareholders.

<sup>2</sup> See SEC Release No. 34-60653 (September 11, 2009) [74 FR 47831 (September 17, 2009)] ("Proposal").

<sup>3</sup> The Institute previously expressed its support for the NYSE taking the initiative to improve corporate governance by enhancing the role of independent directors and strengthening the oversight role of audit committees through the creation of the requirements in Section 303A. See Letter from Craig S. Tyle, General Counsel, Investment Company Institute to Mr. Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated May 8, 2003.

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requirement, in particular, is intended to focus senior management on the company's compliance with the listing standards. These policies have been adequately served by requiring executive officers to notify the NYSE of any material non-compliance with Section 303A. It would be burdensome on both listed companies and the NYSE if instead listed companies were required to provide the NYSE with meaningless notifications for minor or inadvertent breaches, potentially obfuscating examples of more serious non-compliance and unnecessarily diverting limited resources. Accordingly, we urge the NYSE to retain the materiality standard in the current rule. Not only would that continue to serve the purposes of the certification requirement, it also would make Section 303A more consistent with Commission rules,<sup>4</sup> helping to eliminate confusion and facilitate compliance by listed issuers with NYSE and Commission rules.

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The Institute appreciates the opportunity to comment on the proposal. If you have any questions regarding them, please do not hesitate to contact me at (202) 218-3563.

Sincerely,

/s/

Dorothy M. Donohue  
Senior Associate Counsel

cc: John Carey  
Chief Counsel, U. S. Equities  
Office of the General Counsel

New York Stock Exchange

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<sup>4</sup> See Rule 10A-3(a)(4) under the Securities Exchange Act of 1934 (providing that the rules of each national securities exchange must include a requirement that a listed issuer must notify the applicable national securities exchange promptly after an executive officer of the listed issuer becomes aware of any *material* noncompliance by the listed issuer with the requirements of Section 10A(m); Item 3.01 of SEC Form 8-K (requiring filing of Form 8-K if the registrant has notified the national securities exchange that the registrant is aware of any *material* noncompliance with a rule or standard for continued listing on the exchange); and Rule 38a-1 under the Investment Company Act of 1940 (requiring investment companies to annually report to their boards *material* compliance matters. (Emphasis added.)