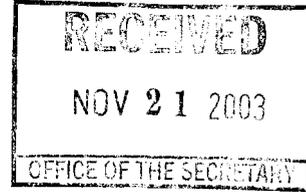




#1

November 21, 2003



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

Re: Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the American Stock Exchange Relating to Enhanced Corporate Governance Requirements Applicable to Listed Companies (File No. SR-Amex-2003-65)

Dear Mr. Katz:

The Investment Company Institute' appreciates the opportunity to comment on the American Stock Exchange proposal to enhance corporate governance requirements for its listed companies.<sup>2</sup> We commend the Exchange for taking this initiative to improve corporate governance by enhancing the role of independent directors and strengthening the oversight responsibilities of audit committees.<sup>3</sup> The Institute's perspectives on the proposal are as both investors in and issuers of securities. As investors in equity securities, the Institute's members rely on high-quality financial reporting to make investment decisions. Accordingly, the Institute generally supports the proposal, which we believe will serve to enhance the interests of investors by improving the governance structure of listed companies and the integrity of financial reporting. The remainder of our letter is from the perspective of investment companies as issuers.

We are pleased that the proposal recognizes that, because closed-end investment companies "are subject to pervasive federal regulation" it is not necessary or appropriate to apply to them the proposed corporate governance requirements, with the exception of proposed new audit committee requirements to the extent required by Rule 10A-3.<sup>4</sup> We strongly concur that, with respect to closed-end investment companies, existing regulatory requirements satisfy many of Amex's policy goals, thereby making it unnecessary to apply the proposed requirements with respect to: independent directors; director nominations; executive compensation; and codes of conduct and ethics. We also concur with Amex that it is not necessary to apply the proposed

<sup>1</sup> The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,672 open-end investment companies ("mutual funds"), 603 closed-end investment companies, 107 exchange-traded funds and 6 sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.946 trillion, accounting for approximately 95% of total industry assets, and over 90.2 million individual shareholders.

<sup>2</sup> SEC Release No. 34-48706 (October 27, 2003) [68 FR 62109 (October 31, 2003)] ("Proposing Release").

<sup>3</sup> We note that Amex's proposal is consistent with Rule 10A-3 under the Securities Exchange Act of 1934, which directs the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements mandated by Section 301 of the Sarbanes-Oxley Act of 2002. SEC Release Nos. 33-8220; 34-47654; IC-26001 (April 9, 2003) [68 FR 18788 (April 16, 2003)].

<sup>4</sup> Proposing Release at 62120.

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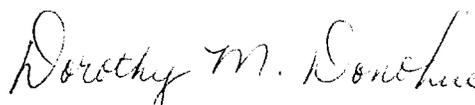
corporate governance requirements to exchange-traded investment companies, given the nature and structure of these companies, except to the extent required under Rule 10A-3.

We also are pleased that the provisions of the Amex proposal are very similar to analogous provisions in the NYSE and Nasdaq rules recently published by the SEC.<sup>5</sup> Such a coordinated approach ensures that the self-regulatory organizations do not compete on the basis of differences in their rules, encouraging a "race to the bottom" to attract new listings, to the ultimate detriment of investors.<sup>6</sup>

\* \* \* \*

We appreciate the Commission's consideration of our comments on this important proposal. If you have any questions or need additional information, please contact me at (202)218-3563.

Sincerely,



Dorothy M. Donohue  
Associate Counsel

cc: Claudia Crowley  
Vice President, Listing Qualifications  
American Stock Exchange LLC

Annette L. Nazareth  
Director  
Division of Market Regulation

Paul G. Cellupica  
Assistant Director  
Division of Investment Management

Securities and Exchange Commission

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<sup>5</sup> See SEC Release No. 34-48745 (November 4, 2003) [68FR 64154 (November 12, 2003)]. In connection with each of the three self-regulatory organization corporate governance proposals, the SEC provided the bare minimum 21-day period for interested persons to comment. As the Institute has noted several times in the past, providing the public with only 21 days does not constitute meaningful opportunity to comment. We urge the SEC to lengthen the public comment period for any future significant self-regulatory organization rule proposals.

<sup>6</sup> We recommend that, consistent with the NYSE and Nasdaq proposals, Amex make clear in any adopting release that, while it does not require any audit committee members to satisfy the definition of audit committee financial expert set forth in Item 401(e) of Regulation S-K, a board may presume that such person qualifies as a financially sophisticated audit committee member.