CITY OF LONDON
Investment Management Company Limited

March 27, 2009

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

Dear Ms. Murphy,

City of London Investment Management Company Limited ("City of London") is an investment adviser registered under the Investment Advisers Act of 1940. City of London advises various public and private investment funds and accounts, including large endowments, foundations and pension plans. City of London's expertise and interest is in the area of closed-end funds. Since 1991 on behalf of our clients, we have invested in closed-end funds in the U.S., London, and on other exchanges around the world. In this respect, we have a perspective that many other investors may not possess.

We write to provide comment to the Securities and Exchange Commission (the "Commission") on the proposed changes to New York Stock Exchange ("NYSE") Rule 452. These changes would, *inter alia*, eliminate broker discretionary voting for the election of directors for all issuers *except* companies registered under the Investment Company Act of 1940 (hereinafter, "registered investment companies"). *See* NYSE File No. SR-2006-92, Amendment No. 1, May 23, 2007 (hereinafter, the "Amendment").

City of London supports the proposed changes to NYSE Rule 452 except for one critical aspect: the registered investment companies exception is overbroad and antithetical to the purposes of the Rule 452 amendment to the extent it would include closed-end funds.

The stated goals of the proposed changes to NYSE 452 include promoting better corporate governance and transparency of the election process. To the extent the Amendment would preserve broker discretionary voting for closed-end funds, it would have precisely the opposite effect.

The primary rationale for the Amendment's exception, perpetuating broker discretionary votes for registered investment companies, concerns open-end mutual funds, which have disproportionately large retail shareholder bases and often need the assistance of broker discretionary votes to establish quorums at shareholder meetings. These issues have no similar rationale with respect to closed-end funds, which are little different than other public companies whose elections would no longer be affected by broker discretionary voting under new NYSE

The Barn 1125 Airport Road Coatesville, PA 19320
Telephone: (610) 380-2110 Facsimile: (610) 380-2116

Rule 452. Unlike open-end mutual funds, closed-end funds typically have institutional (non-retail) shareholder bases. Thus, the use of broker votes to establish quorums at shareholder meetings is less critical in closed-end funds than in open-end mutual funds. Moreover, abstaining to create the absence of a quorum can be a useful corporate governance tool for shareholders of closed-end funds with underperforming managements, particularly at closed-end funds with classified boards of directors. Under state laws, absent quorums, shareholders would have the ability to vote to change control in a single subsequent year's proxy contest, rather than having to engage in and win such contests in 2 or even 3 consecutive years, generally at prohibitive expense.

Further, unlike open-end mutual funds, whose shareholders can sell their shares for net asset value at the end of each day, closed-end funds typically trade at discounts to net asset value. Based on our years of experience in the closed-end fund sector, we have found that there is a direct link between poor corporate governance and wide discounts to net asset value at which closed-end fund shares trade. "Voting with our feet" is not a viable option for closed-end fund investors, as that requires selling at a discount to net asset value. When closed-end funds trade at a significant discount, and the fund manager refuses or is incapable of taking steps necessary to close the gap, the only economically viable options for shareholders of the fund to improve corporate governance is via steps to change management. Preserving broker discretionary voting for closed-end funds will curtail rather than promote shareholder efforts to improve corporate governance.

As the Commission is well aware, directors are charged to oversee the health and direction of the company. This oversight function is most effective when directors exhibit independence from management. Lower corporate governance standards often influence the level of independence demonstrated by the board of directors. In our experience, there is often a too-close relationship in closed-end funds between the fund's manager and the fund's purportedly independent board of directors. For this reason, limiting participation in closed-end fund director elections to the beneficial owners is absolutely essential to improving corporate governance. To allow broker discretionary voting, which can and often does block the preferences of shareholders that actively vote their shares, would be counter to the very goal of improving corporate governance underlying the proposed rule changes to NYSE 452. Boards of directors of closed-end funds should not benefit from this type of "protectionism."

Broker discretionary voting in closed-end fund board elections is one of the most important and contentious practices impeding abilities of shareholders to level the playing field with the managements of these companies. The effects of broker discretionary voting have much different and more pernicious effects on the rights of shareholders of closed-end funds than with respect to other investment companies. Indeed, closed-end fund elections have become one of the most vital battlegrounds in the shareholder democracy wars. *See, e.g., Daniels v. New Germany Fund, Inc.*, Civ. No. MJG-05-1890, 2006 WL 4523622 (D. Md. March 29, 2006); *Salomon Brothers Mun. Partners Fund, Inc. v. Thornton*, 410 F. Supp. 2d 330 (S.D.N.Y. 2006); *meVC Draper Fisher Jurvetson Fund I, Inc. v. Millennium Partners, L.P.*, 260 F. Supp. 2d 616 (S.D.N.Y. 2003); *Goldstein v. Lincoln National Convertible Securities Fund, Inc.*, 140 F. Supp. 2d 424 (E.D. Pa. 2001).

The corporate governance environment at closed-end funds has also been the topic of academic criticism over the past decade. *See, e.g.*, "Governance and Boards of Directors in Closed-end Investment Companies," Diane Del Guercio, Larry Y. Danna and M. Megan Patch, *Journal of Financial Economics*, Volume 69, Issue 1, July 2003, pages 111-152 (Tuck Symposium on Corporate Governance).

For the foregoing reasons, we respectfully ask the Commission to modify the proposed amendment to NYSE Rule 452 to carve out exempt closed-end funds from the NYSE's recommendation that discretionary broker voting be perpetuated for *all* registered investment companies.

Sincerely,

Barry M. Olliff
Chief Investment Officer
City of London Investment Company Limited