

MEMO# 33241

March 17, 2021

Speech by SEC Acting Chair Lee on Disclosure of Fund Proxy Voting

[33241]

March 17, 2021 TO: ICI Members
Accounting/Treasurers Committee
ESG Advisory Group
ESG Task Force
Proxy Working Group
SEC Rules Committee SUBJECTS: Disclosure
ESG
Fees and Expenses
Investment Advisers RE: Speech by SEC Acting Chair Lee on Disclosure of Fund Proxy Voting

On March 17, 2021, SEC Acting Chair Allison Herren Lee gave a speech at ICI's 2021 Mutual Funds and Investment Management Conference discussing the importance of fund proxy voting, disclosure of information about funds' proxy votes, and structural voting issues that pose challenges to funds.[\[1\]](#) Acting Chair Lee is concerned that SEC regulations have not kept pace with the increased role of institutional investors in corporate governance, and asked for the audience's help in considering updates to the SEC rules that govern fund proxy voting and disclosure. Her speech focuses on the following areas:

Trends Affecting Proxy Voting

Acting Chair Lee notes two key trends that necessitate updates to SEC rules and guidance on proxy voting. First, the growth in households invested in funds, primarily index funds, and second, the increasing demand for investments in vehicles with ESG strategies. Lee believes that the rise of passive index funds, while beneficial to retail investors in many ways, may operate "to the detriment of corporate accountability—and on ESG matters in particular." Her concern is that funds may not always reflect investor preferences in their proxy voting. She believes that addressing this "agency cost" is a key corporate governance issue.

Fund and Adviser Proxy Voting

Acting Chair Lee outlines the fiduciary obligations that apply to advisers' and funds' proxy voting, and notes the role of proxy voting in corporate oversight. Citing academic papers, she states that many have questioned how well index funds have used their proxy voting power to hold corporate managers accountable, and notes the example of securities

lending. She explains that advisers to index funds may face a conflict when they engage in securities lending because the adviser may receive fee splits or revenue sharing, creating an incentive to lend out the fund's portfolio securities, or not recall lent securities, rather than voting those shares. She states that advisers must balance the revenue received from securities lending that benefits fund shareholders (through lower costs) against the value to shareholders from exercising oversight of portfolio companies through proxy voting.

Turning to the SEC's 2019 guidance on proxy voting responsibilities, Acting Chair Lee asserts that, while deciding how to vote requires due diligence, "deciding not to exercise voting rights requires equally careful consideration." She is concerned that the Commission's 2019 guidance has weighed this determination against voting proxies, without sufficient data or support. She believes the guidance should be revisited to "ensure that fiduciaries understand how to weigh competing concerns of all types" in determining whether and how to vote proxies.

Form N-PX and Disclosure of Fund Voting

Acting Chair Lee notes that Form N-PX is almost 20 years old and that the disclosures are unwieldy, difficult to understand, and difficult to compare across fund complexes. She explains that retail investors need more insight into how funds vote proxies, especially with the interest in ESG shareholder proposals. Noting the Commission's unadopted proposal to require disclosure of "say on pay" votes in Form N-PX, Lee recommends SEC rulemaking to address that unfinished Dodd-Frank Act rulemaking, as well more broadly update Form N-PX to make it more useful for investors. She recommends, in particular, standardizing voting disclosures, structuring and tagging the data in the form, providing information on the number of shares voted versus the number of shares available to vote,[\[2\]](#) and facilitating more timely disclosure. She has asked the SEC staff to provide options on updating the form.

Interim Recommendations for Increasing Fund Voting Transparency

Acting Chair Lee is concerned that only market participants who can pay a premium for commercial data and can analyze the SEC's existing unstructured data on proxy voting have significant insight into fund proxy voting activity. Until the SEC engages in the rulemaking she recommends, Lee suggests that the Commission sort and organize Form N-PX disclosures and other data so that investors can better understand how funds vote their proxies. She has asked the SEC staff to develop options for the Commission to improve transparency using existing data sources, including possibly a public website to present this information.

Structural Voting Issues for Funds

Finally, Acting Chair Lee acknowledges that funds face challenging structural voting issues including, for funds as issuers, difficulties in obtaining a quorum, as well as, for funds as investors, obtaining information about their votes. She notes the challenges funds face with respect to voting because their shares are held through intermediaries, making it difficult to identify shareholders, as well as difficulties in communicating directly with investors.[\[3\]](#) She also references the challenges funds and advisers face, when exercising voting authority, in obtaining end-to-end vote confirmation. She asserts that problems obtaining a quorum and problems confirming fund votes deserve attention as part of the Commission's attempts to modernize the proxy voting system.

endnotes

[1] SEC Acting Chair Allison Herren Lee, Every Vote Counts: The Importance of Fund Voting and Disclosure (March 17, 2021), *available at* <https://www.sec.gov/news/speech/lee-every-vote-counts>. On March 15, Acting Chair Lee gave a speech on meeting investor demand for climate and ESG information and issued a request for comment on climate change disclosures. For a summary, *please see* ICI Memorandum No. 33196 (March 15, 2021), *available at* https://www.ici.org/my_ici/memorandum/memo33196 and ICI Memorandum No. 33195 (March 15, 2021), *available at* https://www.ici.org/my_ici/memorandum/memo33195.

[2] Lee acknowledges that some of these issues, such as timeliness of disclosure and identification of shares voted vs. shares available will also need to be addressed through improvements to the “proxy plumbing” process.

[3] The latter issue relates to the difficulty of communicating with “objecting beneficial owners” or OBOs, which issuers may only communicate with through a securities intermediary, compared to “non-objecting beneficial owners” or NOBOs, who do not object to having their names and addresses provided to issuers.