

**MEMO# 32279**

March 12, 2020

# **ICI Submits Report to SEC Recommending Action on Closed-End Fund Activist Activity**

[32279]

March 12, 2020 TO: ICI Members

Investment Company Directors SUBJECTS: Closed-End Funds RE: ICI Submits Report to SEC  
Recommending Action on Closed-End Fund Activist Activity

Earlier today, ICI submitted a report to the Securities and Exchange Commission recommending that the SEC take action to protect the interests of closed-end funds and their shareholders.[\[1\]](#) Specifically, ICI asks the Commission to withdraw a 2010 SEC staff no-action letter[\[2\]](#) that has empowered and emboldened a small group of activist investors to take steps intended to extract short-term profits at the expense of closed-end funds' long-term shareholders. The report also asks the Commission to issue guidance on the defenses that closed-end funds and their independent directors may use to defend against professional activist campaigns.

It is divided into several sections that, among other things:

- Show the negative impact that activist campaigns have had on closed-end funds and their shareholders, including the tactics that activists use to pursue their agenda, the growing intensity of their campaigns, and the harmful effects they have on closed-end funds;
- Describe certain common takeover defenses that closed-end funds currently use;
- Discuss relevant provisions under the Investment Company Act of 1940;
- Provide legal analysis as to why such takeover defenses are consistent with the Investment Company Act; and
- Explain how the use of the takeover defenses promotes the SEC's policy goals.

In addition, there are several appendices providing detailed information and data about: the prevalence and impact of activist campaigns on the closed-end fund industry; examples and case studies showing various activist activity and the harm they cause; and legal analysis on various provisions under the Investment Company Act. The report includes data and information ICI collected from public filings and our closed-end fund members through

a detailed survey.

Kenneth Fang  
Assistant General Counsel

#### **endnotes**

[1] See ICI, Recommendations Regarding the Availability of Closed-End Fund Takeover Defenses (March 2020), *available at* [https://www.ici.org/pdf/20\\_ltr\\_cef.pdf](https://www.ici.org/pdf/20_ltr_cef.pdf).

[2] See Boulder Total Return Fund, Inc. (pub. avail. Nov. 15, 2010), *available at* <https://www.sec.gov/divisions/investment/noaction/2010/bouldertotalreturn111510.htm>. In Boulder, a closed-end fund considered opting into a state control share act that would have restricted the rights of shareholders who own more than a certain percentage of an issuer's shares from voting those shares, unless the other shareholders restore those rights. In response to the sponsor's request, the SEC staff determined that opting into the statute would be inconsistent with the requirement in Section 18(i) of the Investment Company Act that every share of stock issued by a fund be "voting stock" and have "equal voting rights" with every other outstanding voting stock.

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