

**MEMO# 21655**

September 24, 2007

## **Draft Institute Comment Letter on SEC Proposals Regarding Shareholder Access; September 26th Conference Call**

[21655]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 34-07  
SEC RULES COMMITTEE No. 71-07  
SMALL FUNDS COMMITTEE No. 35-07 RE: DRAFT INSTITUTE COMMENT LETTER ON SEC PROPOSALS REGARDING SHAREHOLDER ACCESS; SEPTEMBER 26TH CONFERENCE CALL

As you know, the Securities and Exchange Commission recently published for comment two proposals relating to Rule 14a-8 under the Securities Exchange Act of 1934. [\[1\]](#) The Institute's draft comment letter in response is attached and briefly summarized below.

Comments on the proposals are due to the SEC on October 2nd. The Institute will hold a conference call to discuss the Institute's draft comment letter on Wednesday, September 26th at 2:30 Eastern time. The dial-in number for the call is 888-942-9692 and the pass code is 48882.

If you plan on participating in the call, please let Kathy Craft know via email ([tlegal@ici.org](mailto:tlegal@ici.org)) as soon as possible, but no later than September 25th. If you are unable to participate on the call but have comments on the draft letter, please provide them prior to the call to Dorothy Donohue by phone at (202) 218-3563 or email ([ddonohue@ici.org](mailto:ddonohue@ici.org)).

When we discussed the proposals on a conference call in August, the consensus of the members participating on the call was to oppose the proposal permitting shareholders to include in company proxy materials their proposals for bylaw amendments related to the election of directors. Subsequent to that call, the Institute's Executive Committee discussed the proposal, the views expressed by members, and other considerations relating to the Institute's comments. The Executive Committee concluded that, for a number of

reasons, the Institute should support shareholder access to the proxy. They also concluded that the letter should support meaningful conditions for eligible shareholders to assure that any requirements regarding a shareholder's access to a company's proxy statement strike the right balance to permit long-term shareholders with a significant stake in the company to have a voice in their company's corporate governance, without unreasonably interfering with the responsibility of a company's directors and officers to manage the company.

The Institute's draft comment letter reflects the Executive Committee's view and supports shareholder access with meaningful conditions for eligibility. Other specific comments and recommendations in the draft letter include:

- Strong support for the Commission's approach of limiting access to a company's proxy statement to shareholders who have acquired shares without the intent of changing or influencing the control of the issuer, so that shareholders who are precluded from filing a Form 13G (e.g., those who are seeking to open-end a closed-end fund) would not be eligible to rely upon the rule;
- A recommendation that proxy access should be granted only to shareholders with a substantial stake in the company so that their interests can be reasonably expected to align with long-term shareholders, stating that the proposed greater than five percent threshold is the absolute minimum necessary to achieve this goal and that the Commission should seriously consider a higher threshold;
- Support for a reasonably long holding period, stating that the Commission's proposed one year holding period is the minimum necessary to achieve this goal but that the Commission may want to consider a longer holding period;
- Support for requiring all shareholder proponents, including shareholders of mutual funds, to file a Schedule 13G so that the company's shareholders and the securities market is informed about the essential characteristics of the shareholder(s) proposing bylaw procedures for the nomination of company directors;
- Support for applying existing disclosure requirements for solicitations in opposition to nominating shareholders and their nominees so that shareholders have adequate information about a director nominee and the person(s) promoting that candidate;
- Strong support for the Commission clarifying the permissibility of electronic shareholder forums and recognizing this as an important element of the Commission's continuing efforts to facilitate greater use of electronic media to better serve investors; and
- A recommendation against changes to Rule 14a-8 relating to non-binding shareholder proposals based upon the Commission's general request for comment on those types of changes, and instead a recommendation that the Commission should use the response to its general request for comment to formulate and propose specific amendments along those lines.

Dorothy M. Donohue  
Senior Associate Counsel

[Attachment](#)

## endnotes

[1] See Institute [Memorandum](#) to SEC Rules Committee No. 61-07, Closed-End Investment Company Committee No. 26-07, and Small Funds Committee No. 31-07 [21424], dated August 2, 2007 (summarizing the proposals).

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