

MEMO# 30489

December 19, 2016

ICI Files Comment Letter with SEC on Proposed Universal Proxy Requirements

[30489] December 19, 2016 TO: ICI Members
Closed-End Investment Company Committee
SEC Rules Committee
Small Funds Committee SUBJECTS: Closed-End Funds
Fund Governance RE: ICI Files Comment Letter with SEC on Proposed Universal Proxy Requirements

On December 19, 2016, ICI filed a comment letter with the Securities and Exchange Commission on its proposed amendments to the federal proxy rules that would mandate the use of universal proxy cards in contested elections at annual meetings.[\[1\]](#) The proposal aims to align the manner in which shareholders vote by proxy with how shareholders vote in person at a shareholder meeting. Although the SEC proposed to exempt registered investment companies and business development companies from the universal proxy requirements, the SEC requested comment on a number of items related to the proposed exemption. ICI's comment letter is attached, and is summarized briefly below.

ICI's comment letter analyzes the proposal from two perspectives—funds as issuers with their own directors and shareholders, and funds as shareholders of the companies in which they invest.

From the perspective of funds as issuers, our letter supports the SEC's appropriate exclusion of funds from the proposed universal proxy requirements, in recognition of the many differences between funds and operating companies. The letter discusses why the burdens of applying the universal proxy requirements to funds would greatly outweigh any benefits. In particular, the letter highlights four significant differences between fund and operating companies as follows:

1. Funds are subject to Investment Company Act of 1940 requirements that supplement state law and provide specific rights to shareholders to approve fundamental features of a fund;
2. Funds' governance structures, which differ from those of typical operating companies, would be disrupted by split-ticket voting;
3. Funds typically have a different shareholder base than operating companies that will cause them to incur greater solicitation costs from contested elections; and
4. Fund investors have little reason to call for split-ticket voting.

From the perspective of funds as institutional investors, the letter asserts that funds would

find value in the proposal's alignment of voting options, whether by proxy or in person. The letter notes that this alignment would allow funds to vote more easily for a mix of both management and dissident nominees, while still requiring a dissident shareholder to clear an appropriately high threshold to receive access to a company's universal proxy.

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[Attachment](#)

endnotes

[1] See ICI Memorandum No. 30377 (Nov. 1, 2016), *available at* https://www.ici.org/my_ici/memorandum/memo30372; *Proposed Rule: Universal Proxy*, SEC Rel. Nos. 34-79164, IC-32339 (Oct. 26, 2016), *available at* <https://www.sec.gov/rules/proposed/2016/34-79164.pdf>.

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