

MEMO# 30399

November 15, 2016

Member Call on November 21 to Discuss SEC's Proposed Universal Proxy Requirements

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TO: Closed-End Investment Company Committee

SEC Rules Committee

Small Funds Committee RE: Member Call on November 21 to Discuss SEC's Proposed Universal Proxy Requirements

As you know, the SEC recently issued 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 proposes to exempt registered investment companies and business development companies from the universal proxy requirements, the SEC requests comment on a number of items related to the proposed exemption. We plan to submit a comment letter to the SEC supporting the exemption for funds, and addressing the perspective of funds as investors in operating companies. Comments on the proposed amendments are due on January 9, 2017.

We will hold a conference call on Monday, November 21 from 2:00-3:00 p.m. ET, to discuss the proposal and potential comments. If you plan to participate in the call, please RSVP to Jennifer Odom (jodom@ici.org) to ensure that we have sufficient telephone lines available. **The dial-in number for the call is (800) 475-4935 and the passcode is 24781.**

Provided below is a summary of the SEC's requests for comment on the exemption for funds and BDCs, as well as a brief discussion of the proposal's impact on funds as investors.

SEC Requests for Comment on Exemption for Funds and BDCs

The proposal recognizes the many significant differences between funds and BDCs and operating companies, and we plan on supporting the SEC exempting funds and BDCs from the proposed universal proxy requirements.

In particular, the SEC's proposing release highlights the following five differences between

funds and BDCs on one hand, and operating companies on the other, that suggest the economic effects of the proposed universal proxy system may be different for funds and BDCs.

- 1) It is unclear whether there is a current demand for split-ticket voting among shareholders of funds and BDCs.
- 2) The effects of the proposed amendments on the costs of contested elections may differ for funds and BDCs to the extent that their shareholder base differs from that of operating companies.
- 3) The effect of the proposed amendments on voting outcomes may differ to the extent funds and BDCs have a different shareholder base than operating companies.
- 4) Specific features of the governance environment could make the effects of the proposed amendments on the outcomes of director election contests different for funds and BDCs compared to their effects for operating companies. For example, funds and BDCs that are part of larger complexes generally have unitary or cluster board structures that are not observed in operating companies.
- 5) The effects of universal proxies on the incidence of contested director elections could differ for funds and BDCs.

The proposing release also notes that the proposed universal proxy amendments could have a differential economic effect on open-end funds, closed-end funds, and BDCs because of the differences in the structures of these types of investment companies. The release observes that director election proxy contests at open-end funds are rare, but that they sometimes do occur among closed-end funds and BDCs.

The SEC requests comments on whether, and if so, the extent to which a universal proxy requirement would affect investment companies or various types of investment companies differently. The SEC also requests information and data that would help them understand and quantify differences in the likely economic effects of applying the proposed amendments to investment companies as compared to operating companies and to different types of investment companies. In particular, the SEC requests a number of different statistics on proxy contests at investment companies and the characteristics of the shareholder base for different types of investment companies.

Funds as Investors

The SEC's proposed mandatory universal proxy requirement also would, if adopted, permit funds and BDCs as well as any other investor, in contested elections, to place directorial candidates on the ballots of companies in which they are invested. To do so, the investor would have to solicit shareholders representing at least a majority of the shares entitled to vote on the election of directors. The proposal also would require the investor to file its definitive proxy statement with the Commission within a certain timeframe. We would like to explore members' views on this aspect of the proposal.

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endnotes

[1] See ICI Memorandum No. 30372 (Nov. 1, 2016), *available at* https://www.ici.org/my_ici/memorandum/memo30372.

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