

MEMO# 32236

February 24, 2020

Draft ICI Submission to SEC on Closed-End Fund Activist Activity and Anti-Takeover Defenses; Comments Requested by Friday, February 28

[32236]

February 24, 2020 TO: Closed-End Investment Company Committee RE: Draft ICI Submission to SEC on Closed-End Fund Activist Activity and Anti-Takeover Defenses; Comments Requested by Friday, February 28

ICI has prepared the attached draft submission to the Securities and Exchange Commission describing the harmful impact that “activists” have had on closed-end funds and their shareholders, and recommending that the SEC take actions to ensure that funds can adequately defend themselves. The submission is divided into several sections that, among other things:

- Show how activists attempt to “takeover” closed-end funds, the growing intensity and sophistication of activist actions, and the negative impact takeover efforts have on closed-end funds and their long-term shareholders;
- Describe common takeover defenses that closed-end funds currently use; and
- Illustrate why such takeover defenses are consistent with the Investment Company Act of 1940 and the SEC’s policy goals.

In addition, there are several appendices providing detailed information and data about the prevalence and impact of activist takeover efforts on the closed-end fund industry; examples and case studies showing various activist activity and the harm they cause; and detailed legal analysis on various provisions under the Investment Company Act.

The submission responds to a 2010 SEC staff no-action letter that determined that a closed-end fund’s use of a certain anti-takeover defense restricting the right of a controlling shareholder to vote its shares was not consistent with the Investment Company Act.[\[1\]](#) The submission also follows meetings that ICI staff had with the SEC’s Division of Investment Management and former SEC Commissioner Robert Jackson.

ICI plans on submitting the document shortly and asks that you provide any written feedback on it **by close of business on Friday, February 28.**

Kenneth Fang
Assistant General Counsel

[Attachment](#)

endnotes

[1] 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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