

**MEMO# 32239**

February 25, 2020

# Industry Working Groups Examining How to Reform Proxy Plumbing

[32239]

February 25, 2020 TO: ICI Members SUBJECTS: Closed-End Funds

Compliance

Disclosure

Distribution

Exchange-Traded Funds (ETFs)

Fees and Expenses

Fund Governance

Intermediary Oversight

Operations

Transfer Agency RE: Industry Working Groups Examining How to Reform Proxy Plumbing

The SEC published two pieces of proxy-related guidance and issued two proxy-related proposals since August.[\[1\]](#) In addition, Chairman Clayton announced that in the longer term, the SEC may consider actions to modernize the proxy system to promote greater efficiency and accuracy in shareholder voting (*i.e.*, improvements to “proxy plumbing”).[\[2\]](#) To this end, the SEC staff has helped organize, but is not participating in, five informal working groups comprised of a wide range of market participants (including operating companies, asset managers, broker-dealers, service providers, law firms, and trade associations). The groups are described immediately below.

- The End-to-End Vote Confirmation Working Group is working to create a means for shareholders, including funds, to confirm that their proxy votes were received and properly registered by companies. (ICI Contacts: Matt Thornton and Joanne Kane)
- The OBO/NOBO Working Group is reevaluating the current SEC rules that prohibit funds and operating companies from contacting directly their “objecting beneficial owners” (OBOs) while permitting direct contact with “non-objecting beneficial owners” (NOBOs). (ICI Contacts: Dorothy Donohue and Joanne Kane)
- The Universal Proxy Working Group is exploring the feasibility and desirability of “universal proxies” for contested director elections, which would permit shareholders to vote by proxy for a mix of management and dissident director candidates. (ICI Contact: Matt Thornton)
- The Proxy Distribution Fees Working Group is reevaluating the current SEC and NYSE

framework regulating fees that intermediaries charge funds and operating companies to distribute their proxy statements to investors. (ICI Contacts: Dorothy Donohue and Joanne Kane)

- The Proxy Technology and Fundamental Reform Working Group intends to explore the feasibility of certain longer-term technologies (e.g., blockchain) and reforms that could more dramatically improve the proxy system. (ICI Contacts: Dorothy Donohue, Joanne Kane, and Matt Thornton)

ICI staff and several ICI member firms are members of each working group. Four of the five groups (all but the last) have had at least one meeting since November. These meetings have focused primarily on establishing the working groups' missions, identifying possible deliverables, and advancing them through sub-working groups.

On processing fees and NOBO/OBO issues, there is quite a divergence of views among the participants. On the end-to-end vote confirmation and universal proxy initiatives, there is much more consensus on achieving the targeted objectives, with the work relating more to creating an operationally workable solution across market participants (in the case of vote confirmation) and a balanced regulatory approach that does not unduly favor or disfavor parties in contested director elections (in the case of a universal proxy). It is unclear at this point what the output from these groups will be (or when it would be issued), but it could consist of written reports and/or rulemaking recommendations to the SEC.

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#### endnotes

[1] See ICI [Memorandum No. 31916](#) (August 22, 2019) and ICI [Memorandum No. 32048](#) (November 11, 2019) for summaries of the guidance and proposals, respectively. See *also* ICI's Proxy Voting Resource Center, *available at* [https://www.ici.org/proxy\\_voting](https://www.ici.org/proxy_voting).

[2] See, e.g., Chairman Jay Clayton, Statement Announcing SEC Staff Roundtable on the Proxy Process (July 30, 2018), *available at* <https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process>