

MEMO# 23943

November 10, 2009

Draft ICI Letter on Proposed Revisions to Rules Requiring Internet Availability of Proxy Materials

[23943]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 29-09
SEC RULES COMMITTEE No. 65-09
SMALL FUNDS COMMITTEE No. 20-09 RE: DRAFT ICI LETTER ON PROPOSED REVISIONS TO
RULES REQUIRING INTERNET AVAILABILITY OF PROXY MATERIALS

As you know, the Securities and Exchange Commission recently proposed changes to the proxy rules under the Securities Exchange Act of 1934 that are intended to improve the “notice and access” model for furnishing proxy materials to shareholders. [\[1\]](#) Attached is a draft comment letter on the proposal.

The draft letter expresses a mixed view. It commends the Commission for seeking improvements in the notice and access model for proxy voting, but it expresses disappointment that the proposal fails to address the mandatory separation of the proxy card from the notice, something that we see as a major impediment to a successful model. The draft letter suggests that the proposed amendments, while helpful on the margins, will ultimately fail to substantially increase shareholder participation in proxy solicitations where the notice and access model is used.

Accordingly, the letter strongly encourages the Commission to revisit the mandatory separation of proxy cards and notices. We argue that it does not further the Commission’s policy goal of preventing uninformed voting. Instead, it simply adds steps, confusion, and

costs to the proxy voting process. (With respect to costs, please note the question for members embedded in the draft.) The letter suggests that allowing issuers to include proxy cards in the initial mailing will substantially improve shareholder participation rates.

The draft letter also comments on three other aspects of the proposal. First, it supports the proposal to move to a 30-day deadline for mailing the notice, reduced from the current 40-day deadline. This is consistent with earlier comments by the Institute and guidance on the timing for delivering proxy materials. Second, we support the proposed changes designed to increase flexibility with respect to the contents of the notice, particularly the proposal to allow issuers to accompany the notice with an explanation of the notice and access model. Again, this is consistent with earlier comments by the Institute. Finally, in response to a request for comment on whether the fees charged by proxy distribution service providers have affected the use rates of the notice and access model, the draft letter notes that Institute members who have employed the notice and access model have not found it to generate substantial cost savings.

Comments on the proposal are due on November 20th. If you have comments, questions or suggested edits on the draft letter, please contact me at 202-371-5430 or rcg@ici.org no later than the close of business on Wednesday, November 18th.

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Securities Regulation - Investment Companies

[Attachment](#)

endnotes

[\[1\]](#) See Amendments to Rules Requiring Internet Availability of Proxy Materials, SEC Release Nos. 33-9073, 34-60825, and IC-28946, 74 Fed. Reg. 53954 (Oct. 21, 2009) (the “Release”). See also ICI [Memorandum](#) No. 23895, dated Oct. 22, 2009.

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