

MEMO# 20979

March 22, 2007

Draft ICI Comment Letter on SEC Proposal to Require Issuers to Make Proxy Materials Available on the Internet; Conference Call March 29th

[20979]

March 22, 2007

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 10-07
SEC RULES COMMITTEE No. 29-07
SMALL FUNDS COMMITTEE No. 11-07 RE: DRAFT ICI COMMENT LETTER ON SEC
PROPOSAL TO REQUIRE ISSUERS TO MAKE PROXY MATERIALS AVAILABLE ON THE
INTERNET; CONFERENCE CALL MARCH 29TH

As we previously informed you, the Securities and Exchange Commission recently published for comment a proposal that would require issuers to furnish proxy materials to shareholders electronically through a “notice and access” model. [\[1\]](#) The proposal is largely based on the Commission’s voluntary “notice and access” program, which was adopted at the same time. [\[2\]](#) The Institute has prepared a draft comment letter on the proposal. The draft letter is attached and summarized below.

The Institute will hold a conference call on Thursday, March 29th at 11:30 am Eastern time to discuss the draft letter. The dial-in number for the call is 877/546-1567, and the passcode is 43869. Please let Tramece Jeffries know if you plan to participate on the call (tlegal@ici.org or 202/326-5818). If you cannot participate on the call, please provide any comments on the draft letter to Mara Shreck (mshreck@ici.org or 202/326-5923) or Frances Stadler (frances@ici.org or 202/326-5822) no later than 12:00 pm Eastern time on March 29th.

Summary of Draft Letter

The draft letter notes the Institute's strong support for the SEC's ongoing efforts to facilitate greater use of electronic media to better serve investors' information needs and preferences. It expresses concerns with the "notice and access" model and states that the Institute does not support the current proposal. The draft letter explains that several features of the proposal present practical difficulties for investment company issuers. It also states that the SEC should take a more considered approach and suggests that the Commission use the voluntary program as a learning opportunity before determining whether to require Internet availability of proxy materials in the future.

Features of the "Notice and Access" Proposal That Present Practical Difficulties

The draft letter explains that the requirement that a proxy card be sent, if at all, separately from and at least 10 days after the Notice, is problematic for a number of reasons. It states that separation of the proxy card from the Notice could negatively impact shareholder voting participation. The draft letter notes that this is of particular concern to investment company issuers, because they have a relatively high proportion of retail shareholders, who are less likely to vote than institutional shareholders.

In addition, the draft letter says that while sending a proxy card is technically optional, it is a practical necessity for investment companies to encourage sufficient voter response. Requiring that it be sent separately imposes the cost of an additional mailing, thereby substantially diminishing the cost savings anticipated by the Commission. The draft letter also explains that the requirement that the Notice be sent to shareholders 40 calendar days in advance of the shareholder meeting date, rather than 30 days as originally proposed for the voluntary model, will increase the many practical challenges involved in the proxy solicitation process.

The draft letter discusses other aspects of the "notice and access" model that impose costs on issuers. These include the requirement that issuers provide shareholders with a means of executing a proxy at the time they review the proxy statement on the Internet, such as an electronic voting platform or a telephone number. The draft letter indicates that proposed technical specifications for making proxy materials available on a website are problematic and are not necessary to achieve the Commission's objectives to protect shareholders' privacy. The draft letter suggests that the Commission should carefully weigh the costs of implementing the model against the corresponding benefits before proceeding with a mandatory model.

The draft letter also notes possible ERISA considerations that may diminish the benefits of the model.

The Process for Advancing Internet Communications

The draft letter recommends that the Commission evaluate experiences with the voluntary model before moving forward with a mandatory version. It states that understanding better the reasons why issuers choose not to use the model would be valuable. The letter notes that, to the extent some issuers use the model, their experiences may allow the Commission to gather information on matters such as the impact on shareholder voting rates and the number of shareholder requests for paper copies of the proxy materials. Such information would offer the Commission a more substantial basis for determining whether and how to move forward with requiring Internet availability of proxy materials in the future.

Mara Shreck
Assistant Counsel

[Attachment](#)

endnotes

[1] See ICI [Memorandum](#) No. 20829, dated January 30, 2007; Universal Internet Availability of Proxy Materials, SEC Release Nos. 34-55147 and IC-27672 (Jan. 22, 2007), 72 Fed. Reg. 4176 (Jan. 29, 2007) (“Proposing Release”), available at <http://www.sec.gov/rules/proposed/2007/34-55147.pdf>.

[2] See Internet Availability of Proxy Materials, SEC Release Nos. 34-55146 and IC-27671 (Jan. 22, 2007), 72 Fed. Reg. 4148 (Jan. 29, 2007), available at <http://www.sec.gov/rules/final/2007/34-55146.pdf>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.