

**MEMO# 31385**

September 13, 2018

# **SEC Staff Withdraws Proxy Advisory Firm Related Letters and Chairman Clayton Issues Statement about Nonbinding Nature of SEC Staff Views**

[31385]

September 13, 2018 TO: Closed-End Investment Company Committee  
Investment Advisers Committee  
SEC Rules Committee  
Transfer Agent Advisory Committee  
Unit Investment Trust Committee RE: SEC Staff Withdraws Proxy Advisory Firm Related Letters and Chairman Clayton Issues Statement about Nonbinding Nature of SEC Staff Views

We are bringing to your attention two important SEC actions that occurred today and announcing a member survey that we will be sending out in connection with the announcements. These matters are described in turn below.

## **Staff Withdrawal of Proxy Advisory Firm Letters**

The Division of Investment Management announced today that it has withdrawn the letters that the staff issued in 2004 to Egan-Jones Proxy Services (May 27, 2004) and Institutional Shareholder Services, Inc. (Sept. 15, 2004) regarding advisers' use of proxy advisory firms.[\[1\]](#)

As we previously informed you, SEC Chairman Clayton announced in July that the SEC staff would be hosting a roundtable this fall to hear from investors, issuers, and other market participants about whether the SEC's proxy rules should be refined.[\[2\]](#) The staff stated that with the pending roundtable and other policy considerations in mind, the staff recently reexamined these letters and taking into account developments since then, it was withdrawing those letters, effective today. The staff further stated it was providing this notice of withdrawal of the letters in order to facilitate the discussion at the upcoming roundtable and looks forward to receiving information and feedback from stakeholders with multiple perspectives at the roundtable, including on the staff guidance in Staff Legal Bulletin No. 20 (June 30, 2014), which also relates to advisers' use of proxy advisory firms. Notably, the bulletin remains in place.[\[3\]](#) The staff expects to utilize what it learns from stakeholders in any future recommendations to the Commission with respect to proxy

advisory firms.

ICI has been actively engaged in proxy issues for many years and issued a paper on funds' use of proxy advisory firms in 2015.<sup>[4]</sup> In connection with our work on proxy issues, while we have not conducted a member survey, some members informally informed us that they do not rely on the two no-action letters to execute their proxy voting responsibilities. We are very interested to know, in view of today's staff action, how the staff withdrawing these letters impacts your execution of, and processes regarding, proxy voting.

### **Chairman Clayton Statement Regarding Staff Views**

Also today, Chairman Clayton issued a statement regarding staff views reflected in compliance guides, letters, speeches, responses to frequently asked questions and responses to specific requests for assistance. He reiterated the Commission's longstanding position that all staff statements are nonbinding and create no enforceable legal rights or obligations of the Commission or other parties. Chairman Clayton also stated that he had instructed the directors of the Division of Enforcement and the Office of Compliance Inspections and Examinations to further emphasize this distinction to their staff. He also stated that, more generally, the SEC's divisions and offices, including, but not limited to, the Division of Corporation Finance, the Division of Investment Management and the Division of Trading and Markets, have been and will continue to review whether prior staff statements and staff documents should be modified, rescinded or supplemented in light of market or other developments.

### **Member Survey**

We will be sending out a short survey on Survey Monkey to assess the impact of the staff withdrawing the Egan-Jones and ISS letters. We also will be holding a member call next Friday, September 21 at 2:00 pm ET to facilitate member discussion of the impact. In the meantime, please feel free to reach out to me by email at [ddonohue@ici.org](mailto:ddonohue@ici.org) or phone at (202) 218-3563 to relay the impact on your firm.

**The dial in number for the call is 888-658-9303 and the passcode is 28315**

Dorothy M. Donohue  
Deputy General Counsel - Securities Regulation

[Attachment No. 1](#)

[Attachment No. 2](#)

#### **endnotes**

<sup>[1]</sup> See Statement Regarding Staff Proxy Advisory Letters (September 13, 2018), available at <https://www.sec.gov/news/public-statement/statement-regarding-staff-proxy-advisory-letter>. The letters are attached and are available on ICI's Proxy Voting Resource page at [https://www.ici.org/proxy\\_voting/resources](https://www.ici.org/proxy_voting/resources).

<sup>[2]</sup> Chairman Clayton's statement is available on the SEC's website at <https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process>.

[3] The bulletin is available on the SEC's website at <https://www.sec.gov/interps/legal/cfsib20.htm>.

[4] The report is available on the ICI's website at [https://www.ici.org/pdf/pub\\_15\\_proxy\\_advisory\\_firms.pdf](https://www.ici.org/pdf/pub_15_proxy_advisory_firms.pdf).

#### Attachments

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