

MEMO# 31659

March 15, 2019

ICI Submits Comment Letter to SEC on Proxy Voting

[31659]

March 15, 2019 TO: ICI Members
Investment Company Directors SUBJECTS: Compliance
Disclosure
Fund Governance
Intermediary Oversight
Investment Advisers
Operations
Transfer Agency RE: ICI Submits Comment Letter to SEC on Proxy Voting

In 2018, proxy voting policy matters took on increased importance at the SEC. The SEC hosted a Proxy Roundtable in November,[\[1\]](#) and Chairman Clayton's December testimony to Congress[\[2\]](#) made clear that the SEC is considering reforms related to:

- The role of proxy advisory firms;
- The shareholder proposal process; and
- Proxy voting mechanics and technology (or more colloquially, "proxy plumbing").

The SEC is soliciting comments on proxy voting matters in advance of any proposed rulemaking, and today ICI submitted the attached comment letter in response.[\[3\]](#)

Summary of ICI's Comment Letter

ICI's comment letter addresses the three broad topics listed above. It points out that proxy voting is important to regulated funds in their dual roles as institutional investors and issuers. As institutional investors, regulated funds have specific proxy voting responsibilities with respect to their portfolio securities, as shaped by SEC rules and staff guidance. The letter quantifies these responsibilities, analyzes the types of proxy proposals on which funds vote, and describes how fund complexes (including fund advisers and boards) fulfill their obligations.

As issuers, regulated funds prepare proxy solicitation materials in connection with meetings of their shareholders and experience all of the challenges that accompany that process. The letter addresses how the SEC could improve this process for funds.

More specifically, we recommend that the SEC:

- Retain current SEC staff guidance on investment advisers' use of proxy advisory firms (i.e., SEC Staff Legal Bulletin No. 20),[\[4\]](#) which has been a useful resource for fund complexes and others;
- Consider requiring other institutional investors to disclose how they vote proxies (as regulated funds do), as a means of enhancing proxy voting transparency generally;
- Not require regulated funds to provide additional proxy voting disclosure because the amount, kind, and prominence of proxy-related disclosures that funds currently provide is appropriate for them (and outstrips disclosure required of any other institutional investors);
- Not require funds to "pass through" proxy votes to their shareholders, an idea that is misguided and impractical in view of its enormous operational burdens (i.e., a single fund votes hundreds or thousands of proxy votes each year; that fund may need to contact thousands, or even millions, of its shareholders to solicit voting feedback on each proposal; and existing communications and plumbing-related limitations impede its ability to do so), the lack of shareholder demand for this capability, and the high costs that would accompany it.
- Consistent with investors' need for independent, timely, and cost-efficient information from proxy advisory firms, consider exploring mechanisms by which companies could provide their views on proxy advisory firms' research and recommendations to investors, as a means of providing investors with a more complete "record" prior to voting;
- Explore modifying the resubmission thresholds, and/or imposing a meaningful "time out," in connection with unsuccessful shareholder proposals;[\[5\]](#)
- Consider revamping the shareholder proposal exclusion process[\[6\]](#) to enhance its consistency;
- Create a system whereby shareholders (including funds) could confirm that their proxy votes were tabulated in accordance with their voting instructions; and
- Permit funds to deliver proxy materials to their beneficial shareholders directly, irrespective of their status as objecting beneficial owners (OBOs) or non-objecting beneficial owners (NOBOs),[\[7\]](#) to improve communication between funds and their shareholders and reduce proxy costs.

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

Matthew Thornton
Assistant General Counsel

[Attachment](#)

endnotes

[\[1\]](#) U.S. Securities and Exchange Commission Roundtable on the Proxy Process Transcript

(Nov. 15, 2018), available at www.sec.gov/files/proxy-round-table-transcript-111518.pdf.

[2] *Testimony on Oversight of the US Securities and Exchange Commission*, SEC Chairman Jay Clayton, before the US Senate Committee on Banking, Housing, and Urban Affairs (December 11, 2018), available at www.sec.gov/news/testimony/testimony-oversight-us-securities-and-exchange-commission-0.

[3] See also Letter from Paul Schott Stevens, President and CEO, ICI, to Brent Fields, Secretary, SEC, dated November 14, 2018, available at www.sec.gov/comments/4-725/4725-4702049-176465.pdf). This prior submission presented, among other things, ICI's research and analysis of over ten years of proxy voting data.

[4] *Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms*, Staff Legal Bulletin No. 20 (June 30, 2014), available at www.sec.gov/interps/legal/cfslb20.htm.

[5] Exchange Act Rule 14a-8(i) provides 13 bases upon which a company may exclude a shareholder proposal, including a "resubmissions" exclusion. This provides that for a shareholder to be eligible to resubmit the same (or a similar) proposal, the proposal must have received at least 3, 6, and 10 percent shareholder approval for the first, second, and third submissions, respectively, each within the preceding 5 calendar years.

[6] In addition to "resubmissions," Rule 14a-8(i) provides 12 other bases upon which a company may exclude a shareholder proposal.

[7] The SEC adopted the NOBO-OBO rules that govern when an issuer may obtain a list of its "street name" shareholders who have not objected to such disclosure. These shareholders are "non-objecting beneficial owners," or "NOBOs," while "OBOs" are shareholders who have objected to the disclosure of their identities and share positions.