

**MEMO# 32874**

October 29, 2020

# **Draft ICI Comment Letter on the SEC Staff's Statement on Control Share Acquisition Statutes; Comments Requested by Wednesday, November 4**

[32874]

October 28, 2020 TO: Closed-End Investment Company Committee RE: Draft ICI Comment Letter on the SEC Staff's Statement on Control Share Acquisition Statutes; Comments Requested by Wednesday, November 4

ICI has prepared the attached draft comment letter to the Securities and Exchange Commission's Division of Investment Management responding to questions that it raised in its statement ("statement") on control share acquisition statutes.[\[1\]](#) The draft letter strongly supports the staff's statement and its simultaneous withdrawal of the *Boulder Total Return, Inc.* no-action letter.[\[2\]](#) It is divided into three sections that:

- Respond to questions raised in the statement;
- Address certain assertions made in comment letters responding to the statement; and
- Respond to certain questions raised in a staff speech regarding the ability of closed-end funds to provide retail investors with exposure to private offerings.[\[3\]](#)

The draft letter and statement follow a detailed report ICI submitted to the SEC recommending the withdrawal of the *Boulder* letter and related actions.[\[4\]](#)

ICI plans on submitting the comment letter shortly and asks that: 1) you please do not share it with others outside your firm; and 2) you provide any written feedback on it **by close of business on Wednesday, November 4, 2020.**

Kenneth Fang  
Assistant General Counsel

## [Attachment](#)

### endnotes

[1] See SEC Division of Investment Management, Control Share Acquisition Statutes (May 27, 2020), *available at* <https://www.sec.gov/investment/control-share-acquisition-statutes>. For a summary of the statement, *please see* ICI Memorandum No. 32487, *available at* [https://www.ici.org/my\\_ici/memorandum/memo32487](https://www.ici.org/my_ici/memorandum/memo32487).

[2] See Boulder Total Return Fund, Inc. (pub. avail. Nov. 15, 2010), *available at* <https://www.sec.gov/divisions/investment/noaction/2010/bouldertotalreturn111510.htm>. In Boulder, a closed-end fund considered opting into a state control share act that would have restricted the rights of shareholders who own more than a certain percentage of the fund's shares from voting those shares, unless the other shareholders restore those rights. In response to the request, the SEC staff determined that opting into the statute would be inconsistent with the requirement in Section 18(i) of the Investment Company Act that every share of stock issued by a fund be "voting stock" and have "equal voting rights" with every other outstanding voting stock.

[3] See Director Dalia Blass, Speech: PLI Investment Management Institute (Jul. 28, 2020), *available at* <https://www.sec.gov/news/speech/blass-speech-pli-investment-management-institute>. For a summary of the speech, *please see* ICI Memorandum No. 32646, *available at* [https://www.ici.org/my\\_ici/memorandum/memo32646](https://www.ici.org/my_ici/memorandum/memo32646).

[4] See ICI, Recommendations Regarding the Availability of Closed-End Fund Takeover Defenses (Mar. 2020), *available at* [https://www.ici.org/pdf/20\\_ltr\\_cef.pdf](https://www.ici.org/pdf/20_ltr_cef.pdf). For a brief summary of the report, *please see* ICI Memorandum No. 32279, *available at* [https://www.ici.org/my\\_ici/memorandum/memo32279](https://www.ici.org/my_ici/memorandum/memo32279).

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