

**MEMO# 18843**

May 11, 2005

## **DRAFT ICI LETTER ON REVIEW OF NYSE PROXY VOTING RULES**

©2005 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. [18843] May 11, 2005 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 20-05 SEC RULES COMMITTEE No. 34-05 RE: DRAFT ICI LETTER ON REVIEW OF NYSE PROXY VOTING RULES The New York Stock Exchange has formed a working group to review its rules governing proxy voting by NYSE members.<sup>1</sup> The NYSE invited the Institute to participate in a meeting of the working group on April 25th. John Baumgardner of Sullivan & Cromwell, outside counsel to the Institute, made a presentation to the working group on behalf of the Institute. We have prepared the attached draft letter to confirm the Institute's views as presented to the working group. The letter discusses the interests of open-end and closed-end funds in proxy voting both as investors and as issuers. It focuses primarily on proxy voting issues affecting funds as issuers. The letter expresses support for the current system under which NYSE rules permit brokers, in the case of routine items, to vote shares for which they have not received instructions from the beneficial owner. It expresses concern that elimination of broker voting, which some have advocated, would harm funds and their shareholders. It suggests that, if the working group were to recommend substantial changes to proxy voting by brokers, consideration should be given to requiring echo voting in certain circumstances. For example, where a registered investment company solicits proxies on any uncontested matter (routine or non-routine), brokers could be required to echo vote shares for which voting instructions are not received. The letter indicates that the Institute has no specific recommendations at this time regarding the possibility of expanding the definition of contested election as an alternative to eliminating broker voting on routine matters. Please provide any comments on the draft letter to the undersigned at 202/326-5822 or frances@ici.org by Tuesday, May 17th. Frances M. Stadler Deputy Senior Counsel Attachment (in .pdf format) 1 The working group is made up of representatives of NYSE listed companies, NYSE member organizations, institutional investors (including a large mutual fund firm), individual investors and the legal community.

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