

MEMO# 33487

April 19, 2021

SEC Reopens Comment Period for Its 2016 Universal Proxy Proposal

[33487]

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TO: ICI Members

Investment Company Directors SUBJECTS: Compliance

Disclosure

ESG

Fund Governance

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Operations

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Transfer Agency RE: SEC Reopens Comment Period for Its 2016 Universal Proxy Proposal

In 2016, the SEC proposed amendments to the federal proxy rules that would mandate the use of universal proxy cards in contested director elections at shareholder meetings.[\[1\]](#) The proposal aims to align the manner in which shareholders vote by proxy with how shareholders vote in person at a shareholder meeting.[\[2\]](#) However, the proposed amendments would not apply to registered investment companies ("funds") or business development companies (BDCs) as issuers.

Among other things, the proposed amendments would:

- Require each soliciting party in a contested election to distribute a universal proxy that includes the names of all candidates for election to the board of directors;
- Establish procedural requirements for dissidents and registrants to notify each other of their respective director nominees;
- Require the dissident in a contested election to solicit shareholders representing at least a majority of the shares entitled to vote on the election of directors; and
- Impose presentation and formatting requirements on universal proxy cards.

ICI submitted a comment letter that generally supported the proposal and strongly supported the SEC's decision to exclude funds as issuers from the proposal.[\[3\]](#)

The SEC never adopted these proposed amendments. But late last week, the SEC voted to

reopen the comment period for this proposal.^[4] The release notes that since 2016, "there have been important developments in proxy contests, corporate governance, and shareholder activism" and that "[c]ontested elections of directors for registered closed-end funds and BDCs have been more common in recent years, as compared to the few years preceding the 2016 Release."

In addition to requesting comment on the 2016 proposal generally, the SEC specifically seeks comment on over two dozen additional related topics. Over half of these items are designed to gather more information about whether the proposed amendments also should cover some or all fund types and BDCs. The public comment period will remain open for 30 days following publication of the release in the *Federal Register*.

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endnotes

^[1] *Universal Proxy*, SEC Release Nos. 34-79164, IC-32339 (Oct. 26, 2016), available at www.sec.gov/rules/proposed/2016/34-79164.pdf. See ICI Memorandum to Members No. 30377, dated November 1, 2016, for a more detailed summary of the proposal.

^[2] Under the current proxy rules, soliciting parties in a contested election—management and any dissident shareholders—are not required to provide all shareholders with a universal proxy card containing the full slate of nominees. Shareholders voting by proxy may submit their votes on either the registrant's or the dissident's proxy card but cannot pick and choose from nominees on both cards. Shareholders voting in person at a meeting, however, may select among all of the duly nominated director candidates proposed for election and vote for any combination of those candidates.

^[3] ICI's comment letter is available here: www.sec.gov/comments/s7-24-16/s72416-1431117-129844.pdf. More specifically, we stated that because of the many differences between funds and operating companies, the proposed rules would impose greater costs on funds with fewer meaningful benefits.

^[4] *Reopening of Comment Period for Universal Proxy*, SEC Release Nos. 34-91603; IC-34246 (Apr. 16, 2021), available at www.sec.gov/rules/proposed/2021/34-91603.pdf.