

**MEMO# 33549**

May 26, 2021

## **Draft ICI Comment Letter on the SEC's Re-Opened Universal Proxy Proposal; Comments Requested by June 2**

[33549]

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TO:

Closed-End Investment Company Committee  
Proxy Issues Working Group  
SEC Rules Committee  
Small Funds Committee

RE: Draft ICI Comment Letter on the SEC's Re-Opened Universal Proxy Proposal; Comments Requested by June 2

Last month, the Securities and Exchange Commission re-opened the comment period for its 2016 universal proxy proposal.<sup>[1]</sup> The proposal would amend the proxy rules to mandate the use of universal proxy cards in contested director elections at shareholder meetings.<sup>[2]</sup> As proposed, the amendments would apply the universal proxy requirements to operating company issuers, but not to registered investment companies or business development companies ("BDCs," and together with registered investment companies, "funds") as issuers. At the time, 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.<sup>[3]</sup>

The Commission now is reopening the comment period for the proposal, citing to the many developments in proxy contests, corporate governance, and shareholder activism that have occurred since the 2016 Proposal was published, including with respect to closed-end funds and BDCs. The Re-Opening Release asks several questions, including whether the proposed amendments should apply to funds. Comments on the Re-Opening Release are due on June 7.

In response to the Re-Opening Release, ICI has prepared the attached draft comment letter. Please review the draft letter and provide any written feedback to Ken Fang at [kenneth.fang@ici.org](mailto:kenneth.fang@ici.org) or Matt Thornton at [matt.thornton@ici.org](mailto:matt.thornton@ici.org) **by close of business on Wednesday, June 2.**

The draft letter continues to support adoption of the universal proxy requirements,

substantially as proposed in 2016. Although it welcomes the re-opening of the comment period, it states that nothing in the intervening five years since the proposal was issued warrants changes to the proposal's treatment of funds.

The draft letter focuses on post-2016 developments and is divided into three parts. The first part provides background and additional information related to the recent surge in closed-end fund activism. The second part explains why ICI continues to believe that the Commission should not apply the universal proxy requirements to funds. The last part reiterates our support for universal proxy requirements on behalf of funds as investors in underlying operating companies. Where possible, the letter provides updated data to respond to certain of the Commission's questions and requests for information.

Kenneth Fang  
Associate General Counsel

Matthew Thornton  
Associate General Counsel

James Duvall  
Economist

#### **endnotes**

[1] See Reopening of Comment Period for Universal Proxy, Sec. Exch. Act Rel. No. 91603 (Apr. 16, 2021) ("Re-Opening Release"), *available at* <https://www.sec.gov/rules/proposed/2021/34-91603.pdf>. For a summary of the Re-Opening Release, *please see* ICI Memorandum No. 33487 (Apr. 19, 2021), *available at* <https://www.ici.org/memo33487>.

[2] See Universal Proxy, Sec. Exch. Act Rel. No. 79164 (Oct. 26, 2016) ("2016 Proposal"), *available at* [www.sec.gov/rules/proposed/2016/34-79164.pdf](http://www.sec.gov/rules/proposed/2016/34-79164.pdf). The proposal would, among other things: require each soliciting party in a contested director 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. For a summary of the 2016 Proposal, *please see* ICI Memorandum No. 30377 (Nov. 1, 2016), *available at* <https://www.ici.org/memo30377>.

[3] See Letter from Dorothy M. Donohue, Deputy General Counsel, ICI, to Brent J. Fields, Secretary, SEC, dated Dec. 19, 2016 ("2016 ICI Comment Letter"), *available at* <https://www.sec.gov/comments/s7-24-16/s72416-1431117-129844.pdf>. For a summary of the 2016 ICI Comment Letter, *please see* ICI Memorandum No. 30489 (Dec. 19, 2016), *available at* <https://www.ici.org/memo30489>.

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