

MEMO# 33951

December 10, 2021

ICI's Draft Comment Letter on the SEC's Proxy Advice Proposal; Comments Due by December 20

[33951]

December 10, 2021

TO: Chief Compliance Officer Committee
Closed-End Investment Company Committee
Compliance Advisory Committee
Investment Advisers Committee
Operations Committee
Proxy Working Group
SEC Rules Committee
Small Funds Committee RE: ICI's Draft Comment Letter on the SEC's Proxy Advice Proposal; Comments Due by December 20

On November 17, the SEC proposed changes to its 2020 proxy advice amendments.^[1] Most notably, the proposal would rescind provisions in the 2020 amendments that would require proxy voting advice businesses (PVABs) to:

- make their advice available to the companies that are the subject of the advice at or before the time that they make the advice available to clients (e.g., funds and investment advisers); and
- provide their clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding the advice by companies.

Attached is ICI's draft comment letter. Please provide any comments you may have to me (mat.thornton@ici.org) by December 20. ICI intends to file this letter on December 23 (comments are due to the SEC by December 27).

Background and Summary of the Proposal

PVABs provide proxy voting advice to institutional investors, including investment advisers and funds. The SEC adopted proxy advice amendments in 2020 "so that investors who use proxy voting advice receive more transparent, accurate, and complete information on which to make their voting decisions, without imposing undue costs or delays that could adversely affect the timely provision of proxy voting advice."^[2]

The proposal would not fully unwind the 2020 amendments. But it would rescind the condition that PVABs adopt and publicly disclose written policies and procedures reasonably designed to ensure that:

- Companies that are the subject of proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the PVAB's clients; and
- Clients have a mechanism by which they can reasonably be expected to become aware of any written statements regarding the PVAB's proxy voting advice by companies, in a timely manner before the shareholder meeting.

Summary of ICI's Draft Comment Letter

In the draft letter, we support the SEC rescinding the 2020 amendments that would require PVABs to make their advice available to companies and alert their clients when companies respond to that advice. We believe that funds already vote their proxies based on accurate and complete information. We do not believe that the 2020 amendments would meaningfully improve the status quo, and more likely would negatively impact the timeliness and cost of proxy advice.

We also support the SEC rescinding the 2020 proxy voting guidance to investment advisers^[3] because it (i) duplicates the SEC's 2019 guidance to investment advisers, and (ii) requires technical disclosure about voting platforms that is not material to understanding how advisers satisfy their proxy voting responsibilities.

Matthew Thornton
Associate General Counsel

endnotes

^[1] *Proxy Voting Advice*, SEC Release No. 34-93595 (Nov. 17, 2021) (the "proposal"), available at www.sec.gov/rules/proposed/2021/34-93595.pdf. For a more detailed summary of this proposal, see Institute [Memorandum No. 33912](#), dated November 22, 2021.

^[2] *Exemptions from the Proxy Rules for Proxy Voting Advice*, SEC Release No. 34-89372 (July 22, 2020) at 1, available at www.sec.gov/rules/final/2020/34-89372.pdf. The 2020 amendments: (i) codified the SEC's interpretation that proxy voting advice generally constitutes a "solicitation" within the meaning of the Securities Exchange Act of 1934; (ii) conditioned the availability of certain existing exemptions from federal proxy rule requirements for PVABs upon compliance with additional disclosure and procedural requirements; and (iii) amended the proxy antifraud rule to clarify when the failure to disclose certain information in proxy voting advice may be considered misleading. For a more detailed summary of the 2020 amendments, see Institute [Memorandum No. 32636](#), dated July 24, 2020.

^[3] *Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, SEC Release No. IA-5547 (July 22, 2020), available at www.sec.gov/rules/policy/2020/ia-5547.pdf.

Copyright © by the 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.