MEMO# 34504

December 5, 2022

ICI's Draft Paper on Fund Advisers' Stewardship Practices; Comments Due by December 23 (COB)

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TO: ESG Fund Disclosure Working Group
Investment Advisers Committee
Proxy Working Group
SEC Rules Committee
Small Funds Committee RE: ICI's Draft Paper on Fund Advisers' Stewardship Practices; Comments Due by December 23 (COB)

Over the past several years, certain investment advisers' proxy voting and engagement activities have drawn increased attention. For instance:

- Some antitrust commentators have questioned whether proxy voting, engagement, and other mechanisms pose risks to competition.
- Some politicians have raised concerns that some advisers are pushing a political agenda inconsistent with some of their investors' interests.
- Other politicians have pressed advisers to increase or enhance engagement with portfolio companies.

Federal authorities such as the SEC and FTC have addressed aspects of proxy voting and engagement recently. In 2022, the SEC issued a proposal that would require certain funds and advisers to provide disclosure about their environmental, social, and governance (ESG) investment and proxy voting and engagement practices.[1] In 2020, the FTC issued a request for information on acquisitions of voting securities and the "investment only" exemption from certain filing requirements of the Hart-Scott-Rodino Act.[2] Some members of Congress also have weighed in, with bills introduced in the Senate and House of Representatives meant to "deconsolidate" the voting authority of advisers of passively-managed funds and accounts with aggregated holdings exceeding a certain threshold.[3]

In sum, some strongly recommend that advisers become more engaged, while others fervently recommend that they pull back on their proxy voting and engagement activities.

In response to these developments, ICI believes it is important to promote a better understanding of fund advisers' stewardship activities—specifically, their proxy voting and engagement with portfolio companies—by investors, other market participants, regulators, and others. To that end, ICI has been working to outline and explain fund advisers' current stewardship practices and their associated legal requirements and limitations.

Linked below is our draft paper, which:

- Provides an overview of the asset management industry and the nature and variety of adviser/client relationships;
- Highlights the ways advisers vote proxies of, and engage with, portfolio companies on behalf of their clients; and
- Outlines legal parameters for engagement, including:
    - Adviser/client contractual terms and the adviser's fiduciary duty;
    - Federal securities laws and rules; and
    - Antitrust laws and rules.

We welcome your comments on this draft. Please provide any comments you may have to me (matt.thornton@ici.org) by December 23.

Matthew Thornton
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Notes

[1] Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, SEC Release No. 33-11068, 34-94985, IA-6034, IC-34594 (May 25, 2022), available at www.sec.gov/rules/proposed/2022/33-11068.pdf.

[2] FTC Advance Notice of Proposed Rulemaking, Premerger Notification; Reporting and Waiting Period Requirements, 85 Fed. Reg. 77042 (Dec. 1, 2020).

[3] See the INDEX Act, sponsored by Sen. Sullivan. Reps. Luetkemeyer and Huizenga have introduced a companion bill in the House of Representatives.