

MEMO# 35797

July 31, 2024

ICI Submits Comment Letter in Support of NYSE Proposed Rulemaking Exempting Closed-End Funds from Annual Meeting Requirement

[35797]

July 31, 2024

TO: ICI Members

Investment Company Directors

Closed-End Investment Company Committee SUBJECTS: Closed-End Funds RE: ICI Submits Comment Letter in Support of NYSE Proposed Rulemaking Exempting Closed-End Funds from Annual Meeting Requirement

On July 30, 2024, ICI submitted a comment letter to the SEC in support of NYSE's proposed amendments to Section 302.00 of the NYSE Listed Company Manual ("Manual") that would exempt closed-end funds ("CEFs") listed on the NYSE from holding an annual meeting ("[Proposal](#)"). ICI supports eliminating the NYSE's annual meeting requirement for listed CEFs because it is superfluous to the requirements in the 1940 Act, unnecessarily burdens listed CEF shareholders with millions of dollars in expenses,[\[1\]](#) and has been misused to facilitate the very harms the 1940 Act seeks to prevent. To protect long-term shareholder interests in a manner consistent with Congressional intent, ICI urged the SEC to adopt the NYSE's proposed rule change to eliminate the annual meeting requirement for listed CEFs.

The annual meeting requirement for listed CEFs is creating an end-run around the very investor protections the 1940 Act is intended to provide and enables the very harms that Congress and the SEC identified when formulating the 1940 Act. Further, annual meetings frequently lack fulsome retail investor participation and allow for a paradigm where a minority investor with an outsized influence over the proxy machinery can engage in conduct that harms other listed CEF shareholders. More broadly, emboldened by short-term profit-seeking, activist activity has soared recently and is rendering unsustainable the listed CEF market.[\[2\]](#) At a time when the unlisted CEF market is booming and demand for ETFs shows little signs of slowing down, there were no listed CEF launches in 2023 and 2024 listed CEF IPO activity has been de minimis.[\[3\]](#) These developments are to the detriment of long-term retail shareholders who use listed CEFs to gain exposure to a wide array of income-producing assets in the public and private global markets, including many assets

that are difficult to access in other investment products and a wrapper that allows asset managers to maintain investment strategy conviction during market volatility. The CEF wrapper also allows investors to gain levered exposure to asset classes beyond the leverage levels permitted by other registered fund wrappers.

Among all investment companies registered with the SEC under the 1940 Act, which includes mutual funds, ETFs, unlisted CEFs, UITs, and money market funds, only listed CEFs are required to hold annual meetings. This annual meeting requirement is not derived from federal or state law, but rather is a vestige of exchange listing standards that predates the 1940 Act and reflects the bygone thinking that investment companies—which were then in their infancy and not well understood—should be treated as generally akin to operating companies. Since then, Congress passed the 1940 Act, which explicitly enumerates the specific instances in which shareholder voting is required in lieu of imposing annual meetings, and every major state where investment companies incorporate or organize has removed any annual meeting requirement for registered investment companies, including CEFs. Given that the NYSE requirement first was applied to CEFs before the enactment of the 1940 Act, the necessity of the continued application of the annual meeting requirement to CEFs must be re-evaluated in light of the 1940 Act's protections.

While ICI submitted its own comment letter, several trades (IAA, SIFMA, SIFMA-AMG, and IRI) submitted a [joint trade letter](#) in support of ICI's comment letter. At this time, according to the SEC's website, over 1,000 retail investors have written to the SEC urging them to adopt the NYSE's proposal as well.

Kevin Ercoline
Assistant General Counsel

Notes

[1] See ICI, Analysis of Fund Proxy Campaigns: 2012-2019 at 2 (Dec. 2019), available at https://www.ici.org/system/files/attachments/19_ltr_proxyanalysis.pdf (finding that cost estimates across 145 proxy campaigns totaled \$373 million in accrued costs).

[2] See James Duvall, et al., The Closed-End Fund Market 2023, ICI Research Perspective, Vol. 30, No. 5 at 1, 5 & 7 (May 2024), available at www.ici.org/files/2024/per30-05.pdf (showing that as activist activity has increased, the number of listed CEFs has fallen for 12 consecutive years and is down 36 percent from year-end 2011).

[3] From year-end 2022 to year-end 2023, the number of ETFs offered to investors increased by 261 and the number of non-traditional CEFs, inclusive of unlisted CEFs and BDCs, increased by 29, while the number of listed CEFs decreased by 25 with no new listed CEFs launched in 2023. See ICI, 2024 Investment Company Fact Book at 66, 70-71 & 76 (64th ed. 2024), available at <https://www.icifactbook.org/pdf/2024-factbook.pdf>.