

**MEMO# 35877**

October 8, 2024

# **SEC Institutes Proceedings on NYSE Proposed Rule Change to Exempt Closed-End Funds from Annual Shareholder Meeting Requirement**

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TO: ICI Members

Closed-End Investment Company Committee SUBJECTS: Closed-End Funds RE: SEC Institutes Proceedings on NYSE Proposed Rule Change to Exempt Closed-End Funds from Annual Shareholder Meeting Requirement

On October 4, 2024, the SEC issued an order (the "Order") instituting proceedings to determine whether to approve or disapprove a proposed rule change, originally filed on June 21, 2024, to amend Section 302.00 of the New York Stock Exchange (NYSE) Listed Company Manual to exempt closed-end funds (CEFs) registered under the Investment Company Act of 1940 (1940 Act) from the requirement to hold annual shareholder meetings.[\[1\]](#) Instituting proceedings gives the SEC an additional 90 days to determine whether to approve or disapprove the rule proposal, with an option to extend consideration an additional 60 days. Interested persons are invited to submit written data, views, and other comments within 21 days after the Order's publication in the Federal Register. As of today, the Order has not been published in the Federal Register, but we expect publication to occur in the next few days, meaning the comment period deadline will likely be sometime near the end of October.

After summarizing the comments received on the proposed rule change—both in support and in opposition—the SEC instituted proceedings to allow for additional analysis of the proposed rule change's consistency with the Securities Exchange Act of 1934 ("Exchange Act") and, in particular, with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The SEC noted that while it has consistently recognized the importance of the

annual shareholder meeting requirement to the protection of investors and the public interest, the SEC has recognized that, in limited circumstances, the exchange requirement to hold an annual shareholder meeting may not be necessary for certain issuers of specific types of securities where the holders of such securities do not directly participate as equity holders or vote in the annual election of directors or generally on the operations or policies of the listed company. The SEC stated it had open questions related to whether the proposal was consistent with Section 6(b)(5) of the Exchange Act and its requirement, among other things, that the rules of a national securities exchange be designed "to protect investors and the public interest."

In particular, the SEC raised the fact that while it had previously approved a similar exemption for ETFs, there are important differences between CEFs and ETFs. Specifically, shares of CEFs often trade at prices that are less than, or at a "discount" to, the funds' NAV per share. In contrast, while ETFs may trade at a discount, it is often to a much lesser degree than CEFs. While the NYSE notes that ETFs are already exempt from the annual shareholder meeting requirement, the NYSE does not discuss or explain the differences between ETFs and CEFs. Such differences may result in investor protection concerns for CEF shareholders with respect to eliminating the right to an annual shareholder meeting that may not be present for ETF shareholders.

Moreover, the SEC stated its concerns with the sufficiency of NYSE's analysis and whether the NYSE had met its burden to demonstrate that its proposal is consistent with the Exchange Act. The NYSE does not discuss whether the fact that CEF shares may trade at a large discount to NAV would raise any investor protection concerns with eliminating the annual shareholder meeting requirement. The NYSE also does not discuss the extent to which CEF investors participate in, and benefit from, annual shareholder meetings. In addition, while the NYSE discusses how certain requirements set forth in the 1940 Act are designed to protect CEF investors and the public interest, the NYSE does not discuss how its specific proposal to exempt CEFs from the annual shareholder meeting requirement would be designed to protect CEF investors and the public interest.

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#### **Notes**

[1] Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend Section 302.00 of the NYSE Listed Company Manual to Exempt Closed-End Funds Registered Under the Investment Company Act of 1940 From the Requirement to Hold Annual Shareholder Meetings, Exchange Act Release No. 101257 (Oct. 4, 2024), available at <https://www.sec.gov/files/rules/sro/nyse/2024/34-101257.pdf>.