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ICI VIEWPOINTS

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ICI and IDC Oppose SEC's One-Size-Fits-All Approach to Proxy Access

ICI and the Independent Directors Council (IDC) have filed a friends-of-the-court brief with the U.S. Court of Appeals for the District of Columbia Circuit. Our brief supports the Business Roundtable's and the U.S. Chamber of Commerce's lawsuit, which seeks to vacate the proxy access rules recently adopted by the Securities and Exchange Commission. Our brief urges the Court to vacate the proxy access rules solely as applied to investment companies.

Some background: The SEC rules would permit shareholders to place their director nominees on a company's proxy statement. ICI has a long record on these issues: we don't oppose proxy access rules per se, and we support in principle the SEC's efforts to further enfranchise shareholders. But we think the SEC rules in their present form are unsuited to the unique structure of fund companies and fund boards—and could increase costs for investors if implemented.

Our brief—which focuses exclusively on issues affecting registered investment companies, such as mutual funds and exchange-traded funds—demonstrates that the SEC focused on how its new proxy access rules would apply to operating companies and failed to consider the very different context presented by funds. As a result, the SEC adopted a "one-size-fits-all" standard that fails to take into account the extensive regulatory requirements and governance structure that are unique to investment companies. In the words of the brief:

"The SEC's ill-conceived regulation of the $11.5 trillion fund industry was arbitrary and capricious. The fund industry is simply too important, and its structure too distinct, for the SEC to regulate as an afterthought. The [Business Roundtable and Chamber of Commerce] petition for review should be granted, and the rule vacated to the extent that it applies to funds."

Here are five key points made in our brief about why sweeping funds under the new proxy access rules is a bad idea.

- Federal law provides unique protection to fund shareholders.
- Under the new rules, funds and their shareholders would lose important efficiencies that are unique to funds.
- In many instances in the past, the SEC has recognized the unique regulatory oversight of funds and has allowed for exceptions or has tailored rules to take these differences into account.
- In adopting the rule, the SEC relied on empirical studies that expressly excluded

funds.
- The SEC failed to consider fully the rule's effect on efficiency, competition, and capital formation.

For More Information

- Read more on our brief in our news release
- Read the comment letter from ICI on the SEC rules
- Read the comment letter from IDC on the SEC rules
- Learn more about ICI's work on corporate and fund governance

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