ICI The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE
Washington, DC // Brussels // London // www.ici.org

April 11, 2025

By Electronic Transmission

The Honorable Paul S. Atkins
Chairman, Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

Re: Recommendations for Innovation and Investor Protection

Dear Chairman Atkins:

The Investment Company Institute (ICI)[1] and its members congratulate you on your confirmation as the new Chair of the Securities and Exchange Commission (SEC). Your distinguished record, years of experience in the industry, and history of service at the SEC will be instrumental to ensuring the strength, fairness, and integrity of our financial markets. We look forward to working with you to promote the interests of registered funds and the more than 120 million investors they serve.

Given the breadth of its membership and the various regulatory matters that affect the asset management industry, ICI has many policy recommendations, and, ideally, the SEC would pursue them all. While each of these recommendations would advance the Commission's tripartite mission of protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation, we recognize that resources are finite, and the SEC has to balance this work with other important initiatives. Therefore, in this letter, we have prioritized those recommendations that we believe would have the greatest positive impact for investors and ask that the Commission take them up as soon as possible.[2]

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[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $39.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $9.3 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] These priorities are not in rank order and in submitting this list of key ICI priorities, we do not mean to suggest that other items—whether put forward by ICI or others—are not deserving of the SEC's attention.

ICI's Commission Rulemaking Priorities

1. Restoring the ability of funds[3] to cross trade fixed-income securities;
2. Reforming the fund proxy system;
3. Updating requirements for in-person voting by fund directors;
4. Adopting electronic delivery of information as the default delivery option; and
5. Reconsidering and repealing some or all of the recent amendments to the fund names rule.[4]

ICI's Commission and Staff Action and Exemptive Relief Priorities

1. Enabling a new or existing fund to offer both mutual fund and ETF share classes;
2. Allowing closed-end funds to more flexibly invest in private funds;
3. Updating the framework for fund co-investments; and
4. Removing the annual shareholder meeting requirement for listed closed-end funds.

We briefly describe each of these recommendations in the Appendix.

If you have any questions, or if we can be of assistance in any way, please contact us at eric.pan@ici.org or paul.cellupica@ici.org.

Sincerely,

/s/ Eric J. Pan
President & CEO

/s/ Paul Cellupica
General Counsel

Attachment

cc: The Honorable Mark T. Uyeda
The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw
Natasha Vij Greiner, Director, Division of Investment Management

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[3] References to "funds" or "regulated funds" herein refer to mutual funds, ETFs, and other funds registered under the 1940 Act.

[4] Investment Company Names, SEC Release No. 33-11238 (Sept. 20, 2023), available at https://www.sec.gov/files/rules/final/2023/33-11238.pdf. With respect to another recent SEC rule adoption, we remain concerned that the 2024 Form N-PORT amendments will: (i) drastically increase the publication frequency of full fund portfolio holdings disclosures and other detailed information (from quarterly to monthly); and (ii) substantially shorten the timeframe for such filings (from 60 days after the end of a fiscal quarter to 30 days after the end of each month). We are greatly encouraged that Commissioner Uyeda in his remarks to the ICI's 2025 Investment Management Conference, indicated that the SEC staff is developing recommendations on re-proposing certain aspects of those amendments. Remarks to the Investment Company Institute's 2025 Investment Management Conference, Mark T. Uyeda, Acting Chairman (March 17, 2025), available at https://www.sec.gov/newsroom/speeches-statements/uyeda-ici-031725#_ftnref23.

Appendix

Restore funds' ability to cross trade fixed-income securities

Rule 17a-7 under the 1940 Act permits the purchase and sale of securities between a fund and certain affiliates, subject to detailed conditions to protect against potential abuses (*e.g.*, dumping of unwanted securities; pricing that favors one side of a trade over the other). Cross trading generates benefits to each fund and its investors that otherwise would not have been realized if each fund had transacted with a third-party dealer on the open market. These benefits include lower transaction costs, reduced settlement risk, and greater efficiencies with respect to portfolio management and compliance with investment policies. ICI conservatively estimates that in 2020 alone, cross trading fixed-income securities saved funds and their shareholders nearly $329 million and advisers' clients generally (i.e., funds and other clients) more than $390 million.[5]

To be eligible for cross trading, a security must have a "readily available market quotation." In its December 2020 rulemaking on fair valuation, the SEC narrowly redefined that term in a way that adversely affected funds' ability to cross trade fixed-income securities. The SEC at that time indicated that potential rule revisions were on its rulemaking agenda, before dropping this item in 2021. Following the 2021 compliance date of the fair value rule and related guidance, funds' ability to cross trade fixed-income securities has been severely restricted.

The SEC should amend Rule 17a-7 to restore funds' ability to cross trade fixed-income securities, subject to appropriate guardrails that recognize the SEC's legitimate policy concerns.

Reform the fund proxy system

The 1940 Act imposes a heightened threshold for shareholder approval of certain actions, including changes to fundamental investment policies, approval or modification of investment advisory and principal underwriting contracts and certain distribution arrangements, and mergers of affiliated funds. This is often referred to as the "1940 Act Majority" standard. Funds generally face difficulty meeting this standard because of its high quorum requirement (greater than 50% of outstanding shares). Among other challenges, retail investors—who collectively own the large majority of fund shares—are difficult to reach and far less likely than institutional investors to vote proxies. An ICI analysis of fund proxy campaigns from 2012 to 2019 found that the costs of 145 proxy campaigns over this period totaled $373 million, a sizeable share of which was attributable to follow-up solicitations.[6]

The SEC should create additional ways for funds to satisfy the 1940 Act Majority standard. For example, this could involve coupling a lower quorum requirement with a higher affirmative vote requirement. The SEC also should consider allowing certain actions, such as changes to certain

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[5] *Rule 17a-7 at the Crossroads: The Right Path Forward*, ICI (April 2021). This paper also includes detailed policy recommendations.

[6] *Analysis of Fund Proxy Campaigns: 2012–2019*, ICI (Dec. 2019). Further, these figures are understated because they did not account for all campaigns or time spent on them by management personnel.

fundamental investment policies, to proceed without shareholder approval, subject to appropriate investor protections (*e.g.*, fund board approval and advance notice to shareholders).

Also, the 1940 Act generally requires that at least two-thirds of a fund's board of directors be elected by the fund's shareholders, strictly limiting the ability of fund boards to add new directors or fill vacancies without obtaining shareholder approval. Fund shareholders typically bear the (potentially significant) proxy costs associated with routine director elections. Even a relatively straightforward director election campaign can be very expensive: one fund complex's 2018 proxy campaign to elect directors cost nearly $50 million, due to the number of fund shareholders and the attendant costs of preparing, printing, and mailing even one set of proxy materials to each shareholder.[7] These disincentives can lead to extended periods between the identification of potential board members and their election, which can deprive shareholders of new expertise and perspective for months, if not years. These negative impacts may have a chilling effect on a fund board's ability to refresh its membership.

Given these challenges, fund boards should be permitted to appoint a greater number of new independent directors without shareholder approval. It is appropriate to rely on the business judgment of the then-serving independent directors to evaluate potential candidates and assess any potential conflicts of interest.

Update requirements for in-person voting by fund directors

The 1940 Act was amended in 1970 to require that a fund board approve certain matters (*e.g.*, annual renewals of advisory and underwriting contracts or the selection of an independent auditor) at an in-person meeting. Since 1970, technology and videoconferencing capabilities have vastly improved.

Over the years, the SEC has permitted temporary exceptions to the in-person voting requirements for unforeseen circumstances such as illness, weather events, natural disasters, and travel disruptions. More recently, in response to the COVID-19 pandemic, the SEC provided temporary relief allowing fund boards to approve all required matters virtually, subject to certain conditions.

The SEC should grant permanent relief that provides fund boards with discretion to hold required approval meetings either in person or through videoconferencing. Fund boards are well suited to determine whether their meetings can and should be held virtually based on their fiduciary duty to each fund they serve. Through written policies and procedures, fund boards could specify the intended frequency of in-person meetings, identify whether particular matters must be discussed in person, and establish parameters for meetings with remote participation (*e.g.*, technology and security protocols).

Adopt electronic delivery of information as the default delivery option

Electronic delivery of disclosures provides a variety of benefits, including more dynamic communication through use of images and video; opportunities for layered disclosures; enhanced ability to access, read, and search documents; and expedited communication to fund

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[7] *Id*. at 20.

shareholders. Given changes in technology and investor demographics, electronic delivery should be the default method for communication with fund investors, who would retain the option for a paper copy to be mailed.

The SEC should pass a rule to make electronic delivery of fund disclosure documents the default.

Reconsider and repeal some or all of the recent amendments to the fund names rule

The fund names rule (Rule 35d-1 under the 1940 Act) addresses the use of certain fund names that the SEC believes are likely to be materially deceptive or misleading. In September 2023, the SEC adopted amendments that significantly expand the rule's scope and funds' compliance obligations ("Names Rule Amendments"). ICI engaged extensively with the SEC on the Names Rule Amendments when they were initially proposed, filing multiple comment letters and meeting several times with the SEC staff and Commissioners to discuss our concerns, emphasizing the numerous interpretive challenges and associated compliance burdens.

ICI has been actively working with our members to implement the Names Rule Amendments, including by leading a working group consisting of nearly 400 representatives from our member firms. Through our work with members and discussions with industry participants and external counsel, it has become clear that the complexities and costs associated with implementation far exceed what members initially contemplated. The Names Rule Amendments affect, and require collaboration among, multiple departments, and implementation steps are numerous and complex.

Since the Names Rule Amendments were adopted, ICI has also continued to engage with SEC staff, meeting with them multiple times to inform them of the industry's progress and associated obstacles, and to discuss revising existing FAQs, drafting new FAQs, and extending the compliance date. As a result of this engagement, the SEC staff issued updated FAQs in January, and the Commission extended the compliance dates in March. Throughout this process, the SEC staff was receptive to our concerns, and we are grateful for their collaborative engagement and their time and effort spent preparing the guidance and extension.

Even with the benefit of updated FAQ guidance and additional compliance time, however, the Names Rule Amendments present significant interpretive and operational challenges, and we continue to believe that the costs associated with implementation and ongoing compliance vastly outweigh any limited investor protection benefits. The SEC should reconsider and repeal some or all of the Names Rule Amendments to avoid imposing these unnecessary costs and ongoing compliance burdens on funds and, ultimately, investors.

Enable a new or existing fund to offer both mutual fund and ETF share classes

In the 2000s, the SEC granted one fund sponsor exemptive relief to offer mutual funds with an ETF share class. It has not done so since. Other fund sponsors are required to operate two separate funds—a mutual fund and an ETF—even where the assets are managed in the same strategy.

Since 2023, more than 50 fund sponsors have filed applications seeking relief to offer funds with both mutual fund and ETF share classes. These applications seek to address SEC concerns that shareholders in either class could be disadvantaged (for example, that shareholders of the ETF class could be disadvantaged by cash transactions in the mutual fund class).

Permitting a single fund to offer both mutual fund and ETF share classes would promote efficiency and economies of scale and provide optionality for fund investors. An adviser, which owes a fiduciary duty to the entire fund, would only be expected to offer a fund in this structure where the structure is believed to be in the best interests of the ETF share class, the mutual fund share class, and the fund as a whole. The SEC should act upon the pending applications and develop reasonable conditions that will allow greater use of this fund structure by fund sponsors.[8] The structure would make available to investors a variety of options that will promote competition to their benefit.

Additionally, the SEC should expand permissible asset classes for semi-transparent ETFs. Under SEC Chair Jay Clayton, the SEC issued exemptive relief to several fund sponsors to permit the operation of "semi-transparent ETFs" that do not disclose their full holdings daily. These exemptive orders were limited to ETFs investing in U.S. exchange-traded equities, however. The requirement to disclose full holdings daily continues to prevent some active managers from entering the ETF market. Expansion of the asset classes in which a semi-transparent ETF may invest could also encourage active managers to enter the market, providing investors with more options and increasing competition in the ETF industry. Trading in semi-transparent active ETFs has functioned well to date, suggesting that expansion of asset classes would be appropriate. This could be done through the exemptive order process, thus allowing the SEC to evaluate asset classes on a case-by-case basis.

Allow closed-end funds to more flexibly invest in private funds

The SEC staff currently prohibits a closed-end fund from investing more than 15 percent of its net assets in privately offered funds, unless the closed-end fund's shares are available only to accredited investors who make minimum initial investments of at least $25,000. Private funds have grown enormously in number and variety in the past two decades, but ordinary investors have been unable to participate in them. The SEC should allow closed-end funds that are offered to retail investors to invest in private funds, subject to board oversight, limitations on leverage and transactions with affiliates, and other provisions of the 1940 Act. As a result, retail investors could gain exposure to the same opportunities for investment returns from alternative asset classes enjoyed by affluent investors.

Additionally, if the 15 percent limitation is removed, such closed-end funds investing in private funds would be logical options to become allocations in a target date fund. However, under Rule 12d1-4 *(i.e.,* the fund of funds rule), this would be prohibited as the closed-end fund, as a

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[8] We acknowledge and appreciate that the recently filed amended and restated application for exemptive relief to offer ETF share classes followed "productive conversations with the SEC staff."

"second-tier" fund," would have more than 10 percent of its assets in "private funds."[9] Thus, a target date fund, as a "first-tier fund" in a three-tier structure, would be prohibited from investing in the closed-end fund pursuant to Rule 12d1-4(b)(3).[10] Such a result severely limits target date funds from being able to replicate the returns and exposure of model portfolios, which often allocate to the private markets via closed-end funds. While this issue would likely become more acute if the 15 percent limitation for closed-end funds investing in private funds were to be removed, it is also currently limiting investment flexibility for funds seeking exposure to certain securitization vehicles, such as collateralized loan obligations ("CLOs"), that rely on Sections 3(c)(1) or (7) and are thus defined as "private funds" under Rule 12d1-4. The SEC should review how the 10% limit in the fund-of-funds rule applies to private funds generally, but also should exempt from the 10% limit certain fund structures like CLOs and tender option bond (TOB) vehicles that rely on Section 3(c)(7) as a matter of convenience, but are more akin to other types of excluded investment companies.

Update the framework for fund co-investments

The ability of regulated funds to invest in attractive opportunities in private markets is often facilitated when they can invest alongside private funds advised by the same adviser or sub-adviser. However, the framework that the SEC has applied to such co-investments has impeded the ability of retail investors to participate in these opportunities.

The ability of regulated funds to invest alongside affiliates, including affiliated private funds, is governed by Section 17(d) of the 1940 Act and Rule 17d-1 thereunder, which are designed to prevent overreaching in connection with joint transactions involving a fund and its affiliated persons. The SEC has issued numerous exemptive orders permitting a closed-end fund, including business development companies (BDCs), and one or more other funds and their affiliates to enter into co-investment transactions, subject to certain conditions. However, the exemptive orders set forth a complex and rigid set of conditions that are based on unrealistic and outdated assumptions about, for example, the nature of follow-on investments and the appropriate role of independent directors with respect to individual investment decisions. Further, the relief provided extends only to closed-end funds.

As a first step, we support approval of the application before the SEC filed by FS Credit Opportunities Corp., *et. al*, and noticed by the SEC on April 3, 2025 ("FS Co-Investment Application"), which would update the co-investment framework and resolve many of the practical and operational challenges that exist under the SEC's current conditions for co-investment relief. ICI supports the advancement of the conditions laid out in the FS Co-Investment Application and believes approving co-investment applications with those conditions on a going forward basis—or otherwise providing class relief consistent with those conditions—

[9] "Private fund" is defined in Rule 12d1-4 as an issuer that would be an investment company under section 3(a) of the 1940 Act but for the exclusions from that definition provided for in section 3(c)(1) or section 3(c)(7).

[10] *See* Rule 12d1-4(b)(3) (the "complex fund structures" prohibitions).

would reflect a more principles-based co-investment framework, with a focus on board oversight as opposed to board pre-approval.

While the FS Co-Investment Application is unequivocally a step in the right direction in reforming the co-investment framework, it does not resolve every issue. After that application is granted, there would still remain a number of significant unresolved issues related to co-investment with respect to which ICI and the industry would hope to engage with the SEC, including: (1) a potential safe harbor or other relief from the "same terms, same price, same class, and same security" condition; (2) principal transaction relief regarding portfolio companies that are classified as downstream affiliates; and (3) expansion of co-investment relief to mutual funds and ETFs.

Remove the annual shareholder meeting requirement for listed closed-end funds

The 1940 Act does not require listed closed-end funds to hold annual shareholder meetings, nor do other federal securities laws or state laws applicable to such funds. Stock exchange rules—which, in the case of the New York Stock Exchange (NYSE), predate the enactment of the 1940 Act—are the only authority that requires annual shareholder meetings.

The annual meeting requirement for listed closed-end funds has created an end-run around the investor protections the 1940 Act is intended to provide and enables harms that Congress and the SEC identified when formulating the 1940 Act. Further, annual meetings frequently lack fulsome retail investor participation and allow for scenarios where a minority investor with an outsized influence over the proxy machinery can engage in conduct that harms other shareholders. After obtaining a controlling interest in a closed-end fund, an activist can force liquidity events or other actions—such as a change in investment strategy or even ouster of the fund adviser—that benefit the activist at the expense of the fund and its shareholders.

Exempting listed closed-end funds from an exchange's annual meeting requirement would not weaken shareholder voting rights. The 1940 Act preserves shareholder rights to elect directors in specified situations and further protects shareholder voting rights by reserving to shareholders certain decisions involving significant fund actions and governance and operational changes.

Both the NYSE and Cboe BZX Exchange, Inc. have proposed listing rule changes to remove the annual meeting requirement for listed closed-end funds. The SEC should work with the exchanges to remove this outdated requirement, subject to appropriate conditions.