

Investment Management Alert

Thomas A. DeCapo

Partner / Boston
617.573.4814
thomas.decapo@skadden.com

Kenneth E. Burdon

Counsel / Boston
617.573.4836
kenneth.burdon@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

Four Times Square
New York, NY 10036
212.735.3000

500 Boylston Street
Boston, Massachusetts 02116
617.573.4800

Proposed Amendments to the Federal Proxy Rules: Considerations for Closed-End Funds

On November 5, 2019, the Securities and Exchange Commission (SEC) issued two releases proposing a number of amendments to the federal proxy rules. The first would change certain procedural requirements relating to the submission of shareholder proposals and the ability of issuers to exclude resubmitted proposals. The second release proposed amendments relating to the proxy voting advice business, particularly with respect to exemptions from the proxy filing requirements for a proxy advisory firm's voting recommendations. A detailed description of both releases is available in our November 7, 2019 article regarding these proposals, "[SEC Proposes Amendments to the Proxy Rules Regarding Shareholder Proposals and Proxy Voting Advice.](#)"

Closed-end fund industry participants should strongly consider submitting comments on these proposals that would benefit the closed-end fund industry. These comments could seek published views of the SEC in the final rulemaking, or changes to the proposed rules.

For example, the SEC recently issued guidance regarding the proxy voting responsibilities of investment advisers.¹ The SEC could expressly state that it is consistent with an investment adviser's fiduciary obligations under the Investment Advisers Act to determine to "mirror" vote² its clients' holdings in a closed-end fund rather than follow the recommendation of a proxy advisory firm on a particular proposal.

Additionally, closed-end fund industry participants may wish to suggest that closed-end funds be subject to their own tailored resubmission thresholds for shareholder proposals. Shareholder participation in closed-end fund shareholder meetings is typically low, especially with respect to the long-term retail shareholders for whom closed-end funds are designed. This dynamic often skews voting results and makes the metric of "votes cast" at the meeting unrepresentative of the overall shareholder base's support for a particular proposal. Closed-end fund industry participants may therefore wish to argue for subjecting the resubmission thresholds for closed-end fund shareholder proposals to a "percentage of all outstanding voting shares" metric. They may also wish to argue for implementing a similar standard for proxy advisory firms to judge the "success" of a precatory shareholder proposal or a contested board vote.

¹ Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Advisers Act Rel. No. 5325 (Aug. 21, 2019). See also Skadden client alert "[SEC Provides Guidance on Investment Advisers' Proxy Voting Responsibilities, Proxy Voting Advice Rules](#)" (Aug. 26, 2019).

² A "mirror" vote is a direction to vote shares held in the same proportion as the vote of all other holders.

Investment Management Alert

We believe there are several other comments helpful to closed-end funds that could be pursued. Comments on the proposals will be due 60 days after publication of the proposing releases in the Federal Register, or likely sometime in January 2020.

We have been engaged in an active dialogue with the closed-end fund industry on the topic of shareholder activism, and believe that the time is ripe to pursue these and other topics with the SEC.