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## CLOSED-END FUND GOVERNING DOCUMENTS: THE DEFENSE AGAINST SHAREHOLDER ACTIVISM

*With the increase in closed-end fund shareholder activism in recent years, it has become increasingly important for funds to have provisions in their governing documents designed to protect them and their shareholders from the predatory tactics of short-term activist investors. This article discusses certain governing document provisions that have been in focus in recent interactions with such activists.*

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Shareholder activism in closed-end management investment companies (“closed-end funds”) registered under the Investment Company Act of 1940 (the “1940 Act”) has increased in recent years.<sup>1</sup> Shareholder activism may involve engaging in public campaigns to attempt to influence the fund’s corporate governance and/or management or to demand that a closed-end fund consider a significant transaction, such as a tender offer, merger, open-ending, or liquidation. It also may involve commencing proxy contests to attempt to elect the activist’s preferred candidates to the fund’s board of directors, or to pursue other actions, such as a termination of the fund’s investment advisory contract with its current investment manager. These actions are designed to further the shareholder activist’s own interests in realizing a short-term profit on its investment in the fund, and often are adverse and detrimental to the fund’s long-term shareholders.

Accordingly, many closed-end funds include provisions in their governing documents designed to protect the fund and its shareholders from the predatory tactics of short-term activist investors. These include, among others, provisions relating to: classified boards of directors; director qualifications; advance notice of shareholder proposals; exclusive board authority to adopt, amend, and repeal bylaws; shareholders’ ability to call shareholder meetings; and supermajority voting requirements to merge or open-end the fund. This article discusses certain provisions that have been in focus in recent interactions with closed-end fund shareholder activists, including provisions (1) specifying the matters on which shareholders have the right to vote, (2) requiring a majority vote for the election of directors, (3) selecting forums for disputes, and (4) relating to preferred share voting rights. These are discussed in this article.

### **SPECIFYING MATTERS ON WHICH SHAREHOLDERS HAVE THE RIGHT TO VOTE**

A closed-end fund’s charter or bylaws may specify that shareholders have the power to vote only on certain

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<sup>1</sup> See, e.g., Investment Company Institute, *Closed-End Fund Activism* (2024), <https://www.ici.org/system/files/2024-05/cef-activism.pdf>.

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