



# Americans for Financial Reform Education Fund

Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F St NE  
Washington, DC 20549-1090

July 30, 2024

**Re: Self-Regulatory Organizations; Proposed Rule Changes: New York Stock Exchange LLC. SR-NYSE-2024-35**

Dear Secretary Countryman:

The Americans for Financial Reform Education Fund (AFREF) appreciates this opportunity to comment on the New York Stock Exchange's proposal to exempt closed-end funds from the requirement to hold annual shareholder meetings. The Securities and Exchange Commission should reject this proposal which would unnecessarily shield closed-end funds and closed-end fund managers from investor accountability. This exemption unnecessarily deprives shareholders in closed-end funds of an important venue to raise and vote on issues relevant to the proper governance and performance of closed-end funds.

Though this proposal points to the lack of parallel legal protections around requiring annual shareholder meetings for public operating companies, investors in closed-end funds deal with unique challenges that justify the need for annual shareholder meetings.

AFREF recognizes the distinct benefits of closed-end funds (compared to open-end funds) since the lack of redemptions for the fund manager allows a closed-end fund to invest more in illiquid, higher-yielding investments. However, the lack of transparency around the valuation and performance of those less liquid holdings raises concerns that can be remedied through annual shareholder meetings.

## **Issues around the valuation of illiquid assets can be raised at annual shareholder meetings**

Shareholders rely on the fund manager's assessment of the valuation of closed-end funds that are invested in illiquid assets without adequate price discovery, but this valuation can be quite opaque and shareholders should be able to raise these valuation governance issues at annual shareholder meetings. Shareholders frequently challenge the closed-end fund advisers' the valuation of assets, especially illiquid assets, that determine the fund's net asset value. "Many

organizations don't have written processes on how they perform valuation tasks, so it can change substantially from person to person," fund intelligence service Altus Group recently wrote.<sup>1</sup>

The fund advisors' valuation can be substantially different (typically higher) than the value the underlying assets are priced at for other investors. At certain points of time, that valuation gap may be significant. For example, some closed-end funds specifically targeting investments in the \$1.7 trillion private credit market,<sup>2</sup> can see sharp differences in valuations between the fund and other third parties that trade the underlying private credit exposures. *Bloomberg* found that some closed-end funds had overvalued their private credit assets by as much as one-third to one-half. For instance, the junior debt of certain companies were marked at 90 cents on the dollar, while that same loan was reported to be worth closer to 60 cents on the dollar by other holders.<sup>3</sup>

Those discrepancies over valuation, including valuations that inflate the fund's asset value, in turn, can increase the fees that shareholders pay the fund adviser.<sup>4</sup>

The closed-end fund governance issues over transparent valuation and fee structures would become a greater issue if legislation currently being considered by the Congress were enacted. The House of Representatives passed a bill that would allow closed-end funds to own up to 100 percent of their assets in illiquid, private market assets compared to the current 15 percent limit.<sup>5</sup> Many closed-end fund issuers have supported such a change.<sup>6</sup> This change would allow closed-end funds to increase the concentration of illiquid assets that rely on valuations that would make it harder for shareholders to assess the net asset value of the closed-end fund.

### **Annual shareholder meetings should be kept for closed-end funds**

Annual shareholder meetings for closed-end funds allow shareholders to raise concerns about fund governance, valuations, and other issues either in the form of 14a-8 shareholder proposals to address issues in a fund or to demand that funds replace their board members who fail to

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<sup>1</sup> Greenwood, John. Altus Group. Closed-end funds seeing demand for greater valuation transparency. Apr 9, 2024. [Closed-End Funds Seeing Demand For Greater Valuation Transparency | Altus Group Insights](#)

<sup>2</sup> Lenas, Elizabeth and Leipsic, Adrian Rae and Yudin, David. Cleary Gottlieb. Seven Things to Know About Private Credit Funds. <https://content.clearygottlieb.com/private-funds-bulletin/seven-things-to-know-about-private-credit-funds/index.html>

<sup>3</sup> Brown, Silas and Benitez, Laura and Sage, John and Hidalgo, Kat and Schneider, Ellen. Bloomberg News. Flawed Valuations Threaten \$1.7 Trillion Private Credit Boom. Feb 27, 2024. <https://www.bloomberg.com/news/articles/2024-02-28/how-private-credit-market-boom-is-hiding-potential-valuation-problems>

<sup>4</sup> Benjamin F. Edwards. Closed-End Funds. <https://www.benjaminfedwards.com/your-investment-needs/products-services/closed-end-funds/>

<sup>5</sup> Congress.gov. H.Amdt.854 to H.R. 2799. <https://www.congress.gov/amendment/118th-congress/house-amendment/854?s=a&r=6>

<sup>6</sup> OpenSecrets. Clients lobbying on H.R. 2799: Expanding Access to Capital Act of 2023. [https://www.opensecrets.org/federal-lobbying/bills/summary?id=hr2799-118&start=1&page\\_length=25](https://www.opensecrets.org/federal-lobbying/bills/summary?id=hr2799-118&start=1&page_length=25)

exercise their fiduciary duties.<sup>7</sup> The Securities and Exchange Commission has already weakened or muddied the applicability of some closed-end shareholder rights and the ability to bring non-binding 14a-8 proposals in closed-end funds through multiple determinations on whether fund advisers can exclude those proposals from being voted on during the shareholder meeting,<sup>8</sup> based on the applicability of differing state laws.<sup>9</sup>

The NYSE proposal to eliminate annual shareholders meetings would eliminate a critical venue for shareholders to raise important governance issues that are widespread in closed-end funds. Without annual shareholder meetings, this proposal risks letting legitimate shareholder concerns or disagreements from rapidly escalating into litigation.<sup>10</sup>

We appreciate your consideration of our letter. For additional questions please do not hesitate to contact Andrew Park at [andrew@ourfinancialsecurity.org](mailto:andrew@ourfinancialsecurity.org).

Sincerely,

Americans for Financial Reform Education Fund

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<sup>7</sup> Crovitz, Sara P. Stradley Ronon. Fund proxy voting: What's the board's role? <https://www.stradley.com/-/media/files/publications/2020/fund-board-views--crovitz--1212020.pdf?rev=6902c106bd6546f8a75c719164528130>

<sup>8</sup> Securities and Exchange Commission. Nuveen Funds. Feb 16, 2024. <https://www.sec.gov/investment/nuveen-14a-8-021624>

<sup>9</sup> Securities and Exchange Commission. BNY Mellon Municipal Income, Inc. Mar 8, 2024. <https://www.sec.gov/investment/bny-mellon-14a-8-030824>

<sup>10</sup> NAV Valuation & Advisory LLC. Shareholder disputes. <https://www.navvaluation.com/categories/Shareholder-Disputes>