Industry Track Panel #9: Activism in CEFs Roundtable Discussion

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CHUCK JAFFE: Good afternoon, everybody. Thanks for joining us and sticking around till the end. My name is Chuck Jaffe, I'm a financial journalist and talk show host, and I am the host of *The NAVigator* podcast, which is the Active Investment Company Alliance podcast which we produce each week. This is Industry Track Panel #9, it is "Activism in Closed-End Funds". I have a very diverse panel here, I will spend some of my time moving out so that I can actually see them, because the hardest job may be reining them in on this one, but there's a lot to talk about so we're going to dive right in. But first things first, I want to point out I'm not an expert in closed-end funds, these guys are, so I'm going to do my best to get out of their way and let them go at it. Believe me when I say that we can fill this time without questions from the audience, but we want to make sure we get your questions, so while we're going to try to leave some time for the end, if you've got a question, you want to get it to me, feel free to write it down, get it passed over to me, walk over, I'll be here, and if you've got something that we can add in earlier, be happy to include that. Now this panel represents four very different roles within the industry, as a result, they have very different perspectives on activism in closed-end funds, which should keep things lively, so here's the 10 second intro on each. Mike Taggart is closed-end fund specialist at abrdn, which basically has him in the investor relations role working on the company's North American closed-end funds with all shareholders. Ron Mass is managing partner and chief investment officer at Almitas Capital, which is an RIA firm. He provides investment management services to institutions, high-net-worth individuals, family foundations and more, investing both domestically and internationally, and the international will definitely be coming into play during this discussion. Brian Schaffer is a partner at Prosek Partners, where he provides investor communications counsel to senior management, the board of directors, helping them through special situations including proxy contests, takeovers, and more. And Aaron Morris is a partner at Morris Kandinov, which represents investors and institutions in all manner of corporate governance cases. Gentlemen, to start your engines here, I want to throw out a number. In May of this year the Investment Company Institute issued a report which showed that a record number of traditional closed-end funds were under pressure from activists compared with any year back to 2000. ICI's president said at the time that activist investors disruptive tactics are damaging the sector in pursuit of their own short-term profits. I will point out the irony in the idea that the ICI represents fund companies whose tactics, taken in pursuit of profits, sometimes damage investors and often lead to activism. Still, is today's activism mostly the same kind of thing that closed-end funds have experienced historically? Or has activism devolved into a series of basically arbitrage plays? Is there a difference between arbitrage activism and the rest of activism?

MIKE TAGGART: If I could start, if you don't mind? So I do think you've opened up a good point, Chuck, that we like to talk about activists, and there's a spectrum, right? So on the one hand, or on one end of the spectrum, and I'm going to plagiarize here, I hope somebody sitting up here with me doesn't mind, on the one hand you have longer term investors who are more suggestionists, so they're investors who make suggestions to management but they're longer term investors and they're very smart. Then along the line you have long-term investors and they actually perform due diligence on your funds, and some of them are in the audience, and they do their annual due diligence calls and that sort of thing. Then at the other extreme you have large investors who may actually hedge out their underlying positions of the funds that they're in, and once they achieve their objectives they're out of the fund within three months, or as the data shows, typically shows they're out of their funds in three months. There's a wide range of what maybe the fund industry says, "Oh, these are all activist investors," and I think there are nuances in there, and maybe the industry should be a little careful when we're painting with such a broad brush of how we label people or firm, because I think sometimes by doing so we're not really doing ourselves a favor by doing that.

RON MASS: I would say that I think an activist is an arbitrager and that they're looking at the calculation, if they can buy a fund at 15% discount or 20% discount, and they can accumulate enough of it and then they can force some type of action, we're always doing the calculation, "Well, we're not an activist," as Mike mentioned or a suggestionist would like to have dialogue with funds and suggest things that might improve corporate governance for everyone. I think an activist is looking at that calculation, we're looking at that calculation because we're trying to see should an activist come on board, what would happen, how much the discount would likely narrow, how long it would take? And so I think that's the way an activist thinks, what's that profitability, what's the odds, what are the legal costs, what's the timeframe and all that? Maybe Phil Goldstein, maybe since I'm not an activist, but we are being pushed to do activism by our client base who's seeing the tremendous results of some of the activist investors and are asking us if that's something that we should consider and add to our toolbelt. So it's always a dialogue with our investors, but maybe I should go down, sit down and read some research, and Phil should come up and take my place.

MIKE TAGGART: He was up here last year.

BRIAN H. SCHAFFER: I appreciate the nuance that Mike points out, but I think in reality the vast majority of activism is practiced by a small handful of activists themselves. It's Saba, it's Bulldog, it's Karpus, and when you think about the fact that Saba in particular has filed 238 13D and amendments year to date in 2024, that's not a constructive investor, that's an arbitrage investor, and by his own admission he is an arbitrage investor. So I think we have to look at it based on what they're telling us and based on what they're doing through their own filings, and certainly in their own actions and what they're pushing for in their agendas that, yeah, they're activists and they're having long-term harm on the industry. The last panel talked about the fact that there's 20% fewer funds over the last five years and 30% fewer funds over the last 10 years, and that is not because of mergers, there's only been a small handful of mergers. The majority of these funds are getting pushed to open-end, pushed to liquidate by the small group of activists who are practice an arbitrage strategy.

MIKE TAGGART: Right, but I would argue they're one end of the spectrum, and I think everybody would agree that they're considered an activist. I would also argue that some people would consider Ron to be an activist, where I would argue that Ron is not an activist. So there's a spectrum.

BRIAN H. SCHAFFER: But there's fewer Rons than there are, or fewer [inaudible 0:08:05]

MIKE TAGGART: Right, but I would argue that there are way more Rons, and those folks get lumped in with, "Oh, they're evil activists." No, they're just concerned shareholders, right? But yeah, at the other end of the spectrum, yeah, those are short-term arbitragers.

BRIAN H. SCHAFFER: I just think the barbell is a little bit more weighted towards the professionals than the Rons of the world.

RON MASS: Not to digress too much, but if I go back to the UK, 20-25, 30 years ago, firms like Elliott were in the UK with activism when they had wide discounts, and what the industry decided to do is make a lot of changes in response, and a lot of constructive changes. I think activism can be a good thing. I used to be a portfolio manager managing closed-end funds, and I always felt guilty if my fund trades at a discount, I have shareholders who back then were paying a premium to NAV to buy my shares, and then that fund goes to a discount and they've been harmed because they've lost money because that fund went to a discount and the board didn't do anything about it. And in the UK, the Elliotts of the world and others were very aggressive, Carousel, and you had a lot of other names, many you haven't necessarily heard of, but the industry decided that they needed to put in some better practices, discount control mechanisms where funds institute buybacks if discounts reach a certain level, conditional tender offers where they have continuation votes, where shareholders can vote every few years of whether to continue, and they also change practices of directors where a director shouldn't be on more than a certain number of boards, they shouldn't chair more than a certain number of boards, and they shouldn't be on a board more than nine years and be considered independent. What happened is discounts narrowed, you saw a lot more funds, the UK market used to be smaller than the US market. Today the UK market is actually a larger in market cap than the US market, it's been more vibrant. I think the reason is because the industry cleaned up their act and decided to have more independence of directors and better corporate governance. I think the challenge in the US is that funds have resorted to more legal means to stifling investors rather than taking steps, positive steps.

Although I will say in the last year there's been tremendous positive steps, increased share buybacks, conditional tenders, some of the things earlier panels were talking about, higher distribution rates, things that help the funds trade better. On the earlier panels they talked about it, I think that's a tremendous positive step. Firms like BlackRock have bought back millions and millions of shares, which has been very accretive to investors. So I will say I think things are getting better, but I think you have to think about what's the root of the problem? Not are activists good or bad or are they destroying the market? It's what are the funds and the directors doing to protect investors?

AARON T. MORRIS: Yeah, Ron, I think it's a good point to note that the activists in the US, everyone in this room knows the fund boards are weak in most cases, and the activists really supplement the pressure that I think personally the fund boards should be applying more than they do. If you don't have a fund board that's actively looking at discount, actively looking at performance and actually doing something, and most of them aren't until someone shows up on their door, you need someone to show up on their door. At the end of the day, activists are just shareholders who are getting out and actually doing something. I think it's important in the US market to have vocal shareholders that will hold the management accountable.

BRIAN H. SCHAFFER: I think that's a little bit of a misnomer. I think this idea that the fund boards are sitting on their hands, they're not actually trying to put initiatives through, and look how many that get blocked by activists, whether it's a term fund that wants to continue as a perpetual fund, and it's outperforming and all of a sudden you have an activist that's trying to block that, or you have fund mergers that the funds want to put through that the activists are trying to block. At the same time though, you talk about weak boards at the fund complexes, but then you look at the nominees or the quality, or really the lack thereof, that the activists are putting forth, and in some instances it's almost a mockery. You're seeing family members, grandsons, sons-in-law, being nominated with no experience to sit on board, If you had quality candidates and people who wanted to work with the boards, like you see in operating companies, you mentioned Elliott earlier, somebody had mentioned Elliott earlier, when Elliott goes after a company and they nominate directors, they usually nominate CEOs of former competitors, they're not nominating people with absolutely no experience. I think it'd be great in theory if they were holding people accountable by putting up quality candidates, but we're just not seeing that.

AARON T. MORRIS: I think to be intellectually honest, it doesn't matter if you put up Bill Gates, you'll never see a fund board say, "Oh, come on, come on in." I've never seen it, and in some of the funds that are being targeted are the lowest hanging fruit. I mean, you could put a monkey up and shareholders would vote for them because the discount's been so bad, the performance has been so bad, it's not about your credentials at that point, it's about who's actually going to do something because this fund board's not going to?

RON MASS: I would argue though that when you look at some of these large fund complexes, they have directors that are sitting on 50 or even 100 different boards, they're getting paid $500,000, in some cases over $600,000 a year, that's a pretty good job to be retired and get a bunch of free donuts and coffee and sit in a handful of meetings every quarter. Maybe you have to go to monthly meetings or monthly calls, but still $600 grand's not a bad job for someone to do that. And if you're getting paid that much by a large fund complex, then how independent really are you going to be? If you start to upset the apple cart by saying, "Hey, we should change this," or "We should buy back shares aggressively which will lower management fees potentially," I think they're in a real quandary because that conflict of interest that they're on so many different boards. Just a plug for abrdn, they tend to have much more diverse board members where they're not on 50 boards, they tend to pick much more diversity of their boards as opposed to someone that's on 50 or 100 different boards.

MIKE TAGGART: I have 16 funds and nine boards, and every three months I have to report to nine boards, and after three days, yeah, I'm kind of just a wreck.

RON MASS: Wow, that's a lot of free donuts and coffee.

MIKE TAGGART: Yeah, that's not that much free donuts and coffee.

AARON T. MORRIS: Good governance isn't always easy.

MIKE TAGGART: Well, to your point about, oh, they just kind of skate through things, that's not my experience. I just basically go home, and I won't admit in front of these people that I cry in my pillow for two subsequent days.

CHUCK JAFFE: Let me jump in here for just a second, and I will point out that as somebody who's been covering the closed-end fund business for more than 30 years as a journalist, that when I was first talking to John Cole Scott's father and learning about closed-end funds, that was a time when the public investors saw activists as wearing the white hat, and now they don't necessarily, and that, no matter what you want to say on it, is still one of the biggest issues, et cetera, in terms of how the public perceives closed-end funds. I now want to move and kind of show how each of you is impacted by activism in your roles, I'm going to start with Mike on this one. Mike, as you helped abrdn in its closed-end fund strategies, is activism in any way, shape or form impacting the decisions you make about what you're going to offer? And how, if at all, does it impact the investors that you deal with? Since you have both sides, you're dealing with your fund boards, but you're also the conduit to investors.

MIKE TAGGART: I don't think we deal with investors. I've been in this role for 14-15 months now, I've always been looking at closed-end funds since 2010, I was always intrigued by the way abrdn went about its business with interacting with its investors, because they proactively engaged with all of their investors and I thought that was interesting that they proactively engaged. I met, and he may not remember this, but I actually met Phil Goldstein when I was at Morningstar, abrdn sponsored a webinar where it was three of, at the time, three of the largest activist investors. It was a webinar and I was at Morningstar so they had me moderate it here in New York. It was Phil, Barry Olliff from City of London, and a guy from Western, and I moderated it. I thought, well, that's interesting, why would a fund sponsor do that? I still don't know. But in my role, we proactively engage with all investors, and it's interesting, when I call on people for the first time, advisors, they don't understand what I'm doing, I think they think I'm a wholesaler and I'm using the closed-end fund hook to try to get in to sell mutual funds. But yeah, so we think it's important to proactively engage with our investors, and that includes the activists, so not only to do classic investor relations stuff, but just so that they know that there's actually a point of contact for them, so that when they due their annual due diligence meetings, they have a point of contact and I can organize the portfolio managers and make sure that we have a presentation ready for them. And any time they have a question, they can reach out to me and I can get an answer for them if I don't know it off the top of my head, to get it back to them quickly and just have an ongoing dialogue, and make sure that meet face to face at least once a year and that sort of thing. If they have concerns, I can turn around to product and let them know, and then obviously at the quarterly board meetings, let the appropriate board know that that investor, whether it's an activist or anybody else, know that that concern has been raised.

CHUCK JAFFE: Let me move this to Aaron. Aaron, as an attorney, my judgment of an attorney, you get paid to worry about every possible permutation of activism that comes down the pike. There are a lot of issues happening right now, from the New York Stock Exchange's proposals will eliminate annual meetings for closed-end funds, to the recently resolved case in Massachusetts where I live, which saw the court reject Saba Capital's challenge to the standard voting requirement that a majority of outstanding shares is necessary to win a contested election for a board of directors and more. But which are the hot button issues for you right now, not the ones that are maybe getting the headlines but aren't going to happen, but which are the hot button issues in activism for you?

AARON T. MORRIS: You just listed a lot of them, we could talk all day. Some of those have run their course, we've saw control share litigation run its course, at this point it's pretty clear you can't use a control share bylaw. There's a petition in the Supreme Court, it's not going anywhere, so that's kind of run its course. Maybe what's hot now is the issue we saw teed up in the Eaton Vance trial, whether or not you can use a majority of outstanding voting standard for a director election, pretty interesting result in that case. And then the pending poison pill litigation involving a BlackRock fund, maybe those two I'm watching the closest. The NYSE proposal to eliminate annual meetings for closed-end funds obviously would be a silver bullet, but it doesn't seem like it's going anywhere based on what we saw recently from the SEC. They're going to apparently further consider the potential disadvantages, seems unlikely to me that an investor protection organization is going to remove an annual meeting requirement that we've had for decades and that we rely on to engage with management. So maybe really it's the vote standard and it's the poison pill, and we should talk about Eaton Vance.

BRIAN H. SCHAFFER: Sure.

AARON T. MORRIS: Because it just happened and it's an interesting ruling.

BRIAN H. SCHAFFER: Yeah, I don't think the poison pill is as impactful. I also disagree slightly in the sense that I don't think the New York Stock Exchange rule, should it go through, is any form of a magic bullet or silver bullet, however you'd defined it. Solely from the fact that a number of fund complexes still have it in their charters that they have to have annual meetings, so they would have to go back and get the vote, and the reality is, yes it would have an impact on new listings, but the idea that annual meetings for all funds would go away. At the same time though, yes, it is something that's been in place for decades, but closed-end funds, as you are well aware, are the only registered investment company product that has annual meetings. Mutual funds don't have 'em, ETFs do it, so we're held to a different standard, and I think we can agree on the implementation and why that is but it doesn't mean that's not something that should change either.

AARON T. MORRIS: The timing is interesting. Closed-end funds introduce more issues that you want to engage with management with because of the liquidity, because you have to get out at a discount in poorly managed funds. To take that venue to engage with management away, especially right after the industry lost control share, we see what's going on.

BRIAN H. SCHAFFER: You can still call a special meeting. And as Mike will attest, you can still have investor relations, you can still go out and talk to your investors, and you should. The idea that you should disenfranchise an activist, they are a shareholder at the end of the day, like it or not they are a shareholder, so you should not disenfranchise anybody. So you can still have that dialogue, and if they still feel compelled to bring action against a fund, then they can call a special meeting and then try to exact that.

AARON T. MORRIS: Phil can tell me if a special meeting has ever been called, but the standards are usually high. It's a least a majority of outstanding, so they're just not comparable ways to be able to exert influence over management of a fund, which is key in the closed-end context.

BRIAN H. SCHAFFER: But I think you also have to look at the advantage of doing away with the annual meetings and that is the fees, those are substantial fees.

AARON T. MORRIS: Are they?

BRIAN H. SCHAFFER: They are. Yes, they absolutely are. There's a lot of data out there that will suggest that.

AARON T. MORRIS: If you've got the scale of justice here, and you're talking about a five or six figure number versus being able to engage with the managers of your fund, I don't know about that equation.

CHUCK JAFFE: Brian, as the follow-up again, if I'm representing the consumer, if I'm representing guys like Rich in Orchard Beach, Maryland who invest in closed-end funds and write me all the time, their problem with some of the things that they see is that it's not that difference between is it white hat activism and black hat activism, it's that when you start to talk about eliminating annual meetings, it looks like you're going to a place where it's lawless, where it's just getting that much more Wild West, not less Wild West.

BRIAN H. SCHAFFER: I think that's more of an optics issue than anything in reality, and I don't think that if you do away with annual meetings that boards are all of a sudden going to go rogue and start quote/unquote "misbehaving" or doing anything of that nature. They still have a fiduciary obligation at the end of the day, they are still bound by the 40 Act, you still have to have as a result of the 40 Act an independent board. So you're still going to have a lot of those checks and balances in place, you're just going to do away with the annual meeting requirement itself.

RON MASS: I would question though the boards and how independent they really are. It was enlightening to us when 15 years ago we started investing in the UK, and if we would buy three or 5% of a company's shares, we would actually have the board reach out to us and introduce themselves and ask how we feel about the company and ask if we want to talk to them. They'd usually want to talk to us without the manager present because they want to understand their shareholders and understand their views. And when we tried to reach out to board members of funds, if there's a fund that historically is trading at a wide discount, that's had poor performance and were concerned about it, we've asked to speak to board members, more often than not the answer that comes back is, "The board doesn't speak to shareholders, you need to speak to your manager." Well, in that case, the manager's the problem. I mean, I'm talking about more difficult issues. There's plenty of funds where the manager's doing a great job and there's no issues at all, but in those periods where you have funds that are performing poorly, that aren't taking steps to address the discount, they're producing poor share price and NAV returns, the protection to the investors is the independent board, and the independent boards often in the US behave very differently than countries like the UK and Australia in their closed-end fund markets where they really want to engage, they want to listen, and they'll take direction from the shareholders. If a lot of shareholders want something to happen, they'll put it in place whether the manager likes it or not. In fact, you've seen cases where one manager has underperformed over years and the board terminates that manager and changes the name of the fund to reflect the new manager, so instead of having a PIMCO fund, you might replace it with an abrdn fund.

MIKE TAGGART: There we go. I was about ready to cut your mic off till you said that.

AARON T. MORRIS: I think that that's the core issue, Ron. And you know more about international markets where you have that dynamic they need in the US. No one in this room wants there to be real competition at the contract level, and there isn't, right? You will never see that type of change in manager unless it's an advisor-driven transaction. Where if you saw that kind of competition at the contract level, if you had a board that actually said, "Hey, we might hire someone else to manage this money," it's never going to happen, I've never seen it happen, maybe Phil can remember a time. If you had that dynamic and you really had independent boards putting that kind of pressure, I think you'd feel differently about the extent to which shareholders need to directly engage.

BRIAN H. SCHAFFER: I don't disagree with you, at the same time, we have seen it when activists have taken over boards and they ran a quote/unquote "process" to evaluate who should be the manager. They don't disclose who they considered, and low and behold they magically appoint themselves. All of a sudden when the shoe's on the other foot, you know, oh, it's okay, we can do what we want with it. We've seen this in other funds too, and they're like, "We'd like to let everybody out," and they do a tender and they let themselves out but they still trap everybody else in a fund with a different investment objective. I think it's one of these things where it's a great rallying cry until you take control of the fund, and then all of a sudden you do the exact same things that you've railed against, and we've seen this in at least four instances when activists have taken over funds.

RON MASS: What's wrong with solving the problem with just having better corporate governance? Like some of the panels earlier were talking about, maybe closed-end fund 3.0 where you have conditional tenders every year if the discount's wider than a certain level, or the funds are required to buy back shares if the discount gets to double digits, wouldn't that be a better solution? Because then you'd have narrower discounts, the fund management themselves can say all the great things they're doing, how much value they're creating, and if discounts are narrower, wouldn't it be better for the market overall because then you'd see a lot more funds created in good times?

BRIAN H. SCHAFFER: Of course, and I think a lot of boards do have those types of programs in place. Tender offers in my view though are, especially the smaller ones, the automatic triggers of 10% are really death by a thousand cuts because all you're doing is weakening the asset base. But certainly buybacks and other things like that are effective, and those things, they are in place today. Does every fund have that? No, but a majority of them are looking at these types of things and have them in place.

AARON T. MORRIS: The question is in an alternative universe with no activist pressure, how pervasive are-- you see the sequence, an activist shows up and now you've got board action, and that's what you want to see, right? How much independent board action would you see in the absence of pressure?

CHUCK JAFFE: But shouldn't part of the question be, if we're talking about a world in which activists have a role, shouldn't the ultimate decider be that if the closed-end fund world is a meritocracy, you survive on your merits, which ultimately in at least many activist cases they're suggesting you don't deserve to survive on your merits, so isn't that a process where somehow that should be decided?

BRIAN H. SCHAFFER: Well, I think in that instance it comes down to how do you actually measure that performance? And I think certainly discount to NAV is important, right? But I think people over index on discounts. If you're buying a product that is designed to perform over multiple market cycles and you try to apply a one, three or a five-year viewpoint on it, it's going to underperform. And if you look at an asset class like munis, and last year you had essentially 48 different muni funds being attacked by activists, if activists had their way and those muni funds went away, they would have all missed out on the upside year to date in 2024, and most of those funds or the average of those funds is doubling the Bloomberg Bond Index, so you would have taken away an investment vehicle, you would have taken away a retiree's money essentially, their income, if you just did away with munis because they had traded off in a high interest rate environment. I think when you look at it, the effectiveness of activists, you have to look at it over who's the product design for, what is the time horizon of the product, and is it doing what it's supposed to be doing at the end of the day, meeting its investment objective and returning distributions? Distributions is where the focus should be, not on is a short-term discount trading to NAV?

CHUCK JAFFE: Does that ultimately mean that the activist is not basically representative of the shareholder? In other words, if I took a closed-end fund and we said, "Here's this muni fund, let's take a look at our shareholders, let's take a look at who's being activist," and I recognize that the individuals maybe don't have as much money as the institutions do, but in terms of plurality, who's got people in there that we're basically saying that the activist investor, they represent their position but not the bulk of the money that has picked that fund for that investment?

BRIAN H. SCHAFFER: I think the answer is no, and I'll give you just one example going back to last year's BlackRock fights. There was two decks filed related to ISS, one was a supplemental deck. In that supplemental deck BlackRock disclosed the negotiations they had to reach a settlement with Saba to end all of this. Nowhere in what Saba was asking for was the word "governance", all they wanted was to get their money, take it out of the fund, and go home. The idea that there's a line between activists and retail shareholders, in most instances, I certainly won't say all, but in many if not many of the instances out there are not aligned. They are acting in their own interest in that instance, and you can see this when you get to the negotiations what they really want at the end of the day. They don't want improve governance because they don't want to stay in the fund. They want their money and they want to go home.

MIKE TAGGART: Well, and that's where I would go back to my spectrum thing at the beginning, and I would say at the far end of the spectrum with the Sabas, where you're talking about arbitrage and those sorts of activists, I would fully agree, but at the other end of the spectrum where you're talking about longer term shareholders and people who don't hedge out their underlying positions, I would disagree. And that those investors would be aligned with other more retail investors or advisors who are in the funds in that they want the funds to continue longer term, they want the funds to fulfill their investment objectives, and to continue on to hopefully perform well and that sort of thing. So there is a nuance there that we can't just say, "Well, everybody that we consider to be an activist pursues the same course of Saba."

AARON T. MORRIS: I can maybe one-up both of you. I have a magic test that can actually answer your question every single time.

CHUCK JAFFE: Tell me.

AARON T. MORRIS: It's a vote. It's a vote, and we figured that out and we based our democracy on that idea that you just hold a vote. We don't really know who are in these funds. The industry has latched onto this idea of this hypothetical long-term shareholder that is loving the current manager and never wants to change it and the worst thing that could happen to them is someone coming in and changing control. We don't know if that person exists or not, and the only way we can test it is to hold a vote. And we've spent a lot of money and a lot of intellectual brain power coming up with ways to manipulate the vote, to prevent the vote, some day you might as well just let 'em decide for themselves.

MIKE TAGGART: But even when you have the vote you don't know, because people who own the shares don't vote.

AARON T. MORRIS: Well, if they don't vote, that's their vote.

CHUCK JAFFE: If they don't vote, they have voted.

MIKE TAGGART: Right.

CHUCK JAFFE: Folks, we have some time for Q&A. If you've got questions, let me know.

MIKE TAGGART: Uh-oh.

AARON T. MORRIS: Except for him.

CHUCK JAFFE: I ask one favor, which is please identify yourself before you ask the question so that everybody else knows who you are.

KEN BURDON: Hi, it's Ken Burdon, Simpson & Thacher. So is it the answer to this question vote, [inaudible 0:36:28] vote, okay? Why can't you get the majority of the outstanding shareholders and that to vote for whoever you say is in their interest? Spend the money and you say, "Listen, you get a majority of the outstanding shareholders to vote for what you want," and then the shareholders [inaudible 0:36:47], that solves every problem. It solves the annual meeting thing, it solves the Eaton Vance thing, [inaudible 0:36:56] and get people to support you.

MIKE TAGGART: Is that to me?

BRIAN H. SCHAFFER: I think we could all answer.

MIKE TAGGART: Are you talking to me?!

BRIAN H. SCHAFFER: The reality is the solicitation happens. The solicitation happens, the letters go out, the get out to vote, the reminders, if it's non-contested and we're allowed to actually call, and that's a Broadridge issue we can talk about all day, but the effort is there to get the vote, and a lot of times they're pushing out the annual meeting date trying to get to quorum, they continue to do that. It's in everybody's interest to get to quorum, they're trying to get to that point, they're just not able to because we obviously have to differentiate between objecting beneficial owners and non-objecting beneficial owners, but in terms of the latter, it is a Herculean effort to get these people, to reach them to get them to vote, but the effort is being made.

KEN BURDON: Isn't that your investors [inaudible 0:37:52]?

AARON T. MORRIS: I think what we saw in Eaton Vance is there's almost no precedent for reaching that vote threshold in closed-end funds. The attorneys came up with your former colleagues, did a good job of scouring the data, and they found two instances where a trustee election met that threshold. But there were no instances in the past 10 years of any peer fund to those funds, certainly the funds themselves had never come close to meeting that, so it looks to me to be what would be an impossible standard. The judge disagreed in Eaton Vance, and maybe there is some feedback to take from that opinion. She did take note that the activists didn't engage with the retail investors to the extent they could have, didn't make phone calls, didn't do the kinds of things that Brian just listed, so maybe there is some fair feedback to take from that, but I think we all know that's an incredibly difficult standard to meet, and it would certainly work to the advantage of the incumbents always.

CHUCK JAFFE: Let me stop you there. We've got time for one more question if somebody's got one? Phil Goldstein, you get the last one.

PHIL GOLDSTEIN: [inaudible 0:39:05] not so much the discount but the lack of accountability [inaudible 0:39:21] open-ended fund. Obviously [inaudible 0:39:29] redemptions go up, AUM goes down, fees go down, everybody gets the message. [inaudible 0:39:43] voting requirement that makes it virtually impossible to replace the board, eliminating annual meetings, [inaudible 0:40:18] but what does that mean? [inaudible 0:40:34] can you sue the board for violating [inaudible 0:40:36] it's underperformed its benchmark for the last 20 years and it's striking at a 40% discount [inaudible 0:40:45]. So what is the accountability mechanism that the investors can have to hold the fund accountable? There's a fund, I'll finish up, it's a [inaudible 0:41:04]

CHUCK JAFFE: I am, I've covered that story a few times.

PHIL GOLDSTEIN: [inaudible 0:41:11] actually the market price of the fund, the market cap of the fund is less than the accrued management fees [inaudible 0:41:27] they don't have the cash so the board has been completely remiss. [inaudible 0:41:35]

AARON T. MORRIS: They've got a majority of outstanding standards, so they've kept that fund and run it into the ground.

PHIL GOLDSTEIN: [inaudible 0:41:43]

CHUCK JAFFE: Phil, I gotta cut you off. I don't mean to, but what's the accountability?

PHIL GOLDSTEIN: What's the accountability mechanism?

AARON T. MORRIS: Yeah!

BRIAN H. SCHAFFER: The accountability mechanism is the performance of the fund in relation to its investment objective, and if it's not meeting its investment objective, we've seen this time and time again, where if there's no action taken by shareholders, you will see the funds themselves either voluntarily open up, they will voluntarily liquidate, they will look for other opportunities for mergers, but the idea that I think that they just run on in perpetuity and in gross underperformance, and if you want to say in dereliction of their fiduciary duty, I don't think that happens. In some instances does it happen perhaps longer and should somebody have stepped in earlier? I think you can make that argument, but this idea that the funds will just run rampant and continue to underperform and the discount continue to be there for longer periods of time, I don't see that.

RON MASS: Well, how often in the US has a fund underperformed where the board took action such as terminating that manager? If that manager underperforms for a long period of time, have we ever seen a case where the manager was terminated by the board and they selected another manager? I think that's incredibly rare, and many funds have outperformed their benchmark, but you have a lot of examples of funds who have underperformed for one, three, five, 10 years, and yet the board takes no action. That's why I think maybe closed-end fund 3.0 needs to have automatic measures such as required buybacks at thresholds, things that are accretive that are long term, to be the benefit of shareholders, and will keep the discounts in check. Because I also don't like the idea of in the proxy, I get calls all the time, "There's a proxy fight and your board recommends that you vote with the choice of the directors." Well, why should I be having the fund pay my shareholder money for people to call up soliciting a vote saying that the board recommends that I vote with them when that's potentially the problem in itself, is the board's not taking action?

CHUCK JAFFE: I'm going to cut us off there because we have it at a good spot where we're talking about what would happen with closed-end fund 3.0. That I am sure will be a topic for another discussion at another AICA conference, and I wholeheartedly encourage you to come back to that. I'd like to point out there's a cocktail party coming, I think drinks are on Mike Taggart, or at least they're on abrdn, so please--

MIKE TAGGART: Abrdn.

CHUCK JAFFE: So please make sure if you like what Mike said, that you celebrate with him, and if you dislike what he said, drink heavily. Thank you gentlemen for doing this, this was great.

MIKE TAGGART: Thanks, everybody.

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