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## PREDATORY CLOSED-END FUND ACTIVISM DECLINES AS LITIGATION CONTINUES

*This article examines the current state of predatory closed-end fund activism in the United States, noting a decline in activist activity in 2025 compared to the heightened levels observed in 2023 and 2024. Despite this relative decrease, closed-end funds continue to face significant disruption and costly litigation initiated by activist investors holding shares in approximately 40% of listed closed-end funds as of June 2025. This article analyzes several recent decisions involving defensive measures, majority-of-outstanding-shares voting standards in contested board elections, director “holdover” provisions, and shareholder rights plans (i.e., poison pills), employed by closed-end funds. Of particular significance, the article discusses the pending Supreme Court case *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, which will resolve a circuit split on whether Section 47(b) of the Investment Company Act of 1940 creates an implied private right of action for shareholders. The article concludes that while recent court decisions have provided some clarity on defensive measures available to closed-end funds, the legal landscape remains uncertain, and the Supreme Court’s forthcoming ruling — expected in the first half of 2026 — could have substantial implications for closed-end fund litigation and governance.*

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Although predatory “activist” investors have been less active in the U.S. closed-end fund space in 2025 as compared to extraordinary levels of activism in 2023 and 2024,<sup>1</sup> closed-end funds continue to face disruption and costly litigation at the hands of these activist investors.

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<sup>1</sup> Letter from Paul Cellupica, Gen. Counsel & Kevin Ercoline, Asst. Gen. Counsel, Inv. Co. Inst., to Vanessa Countryman, Sec’y, SEC, fig. 6 (Oct. 10, 2025), <https://www.ici.org/sites/default/files/2025-10/25-cl-exempt-new-closed-end-funds-from-annual-meetings.pdf>. Notably, one leading activist devoted significant resources in 2025 to activist campaigns (largely unsuccessful) against U.K. closed-end investment trusts, which may help explain the dip in U.S. activity this year.

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As of June 2025, activist investors held shares in approximately 40% of listed closed-end funds.<sup>2</sup> These significant ownership levels — and the subsequent actions taken to exploit these ownership levels — have seemingly chilled the listed closed-end fund market with closed-end fund launches, mergers, and liquidations dropping significantly over the past several years.<sup>3</sup> Throughout this same period, activist investors have

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<sup>2</sup> *Id.* at fig. 13.

<sup>3</sup> *Id.*; James Duvall, *The Closed-End Fund Market, 2024*, 31 ICI Rsch. Persp. 4 (Apr. 2025), [www.ici.org/files/2025/per31-04.pdf](http://www.ici.org/files/2025/per31-04.pdf).

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