

**MEMO# 24632**

October 20, 2010

## **SEC Proposes Two Rules to Implement Section 951 of the Dodd-Frank Act**

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 21-10  
SEC RULES COMMITTEE No. 44-10  
SMALL FUNDS COMMITTEE No. 59-10 RE: SEC PROPOSES TWO RULES TO IMPLEMENT SECTION 951 OF THE DODD-FRANK ACT

The Securities and Exchange Commission has proposed two rules that are called for by Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The first proposal relates to advisory votes on executive compensation and "golden parachute" arrangements. The second proposal relates to the disclosure of those votes by institutional investors, including funds. The proposals are briefly summarized below.

Comments are due to the SEC by November 18, 2010. For reasons explained below, we anticipate commenting on the second proposal relating to proxy vote disclosure, but not the first. If there are specific aspects of either proposal that you believe ICI should comment upon, please contact Bob Grohowski at [rcg@ici.org](mailto:rcg@ici.org) or 202-371-5430.

### **Proposed Rule on "Say on Pay," "Say on Frequency," and "Golden Parachute" Advisory Votes**

Section 951 of the Dodd-Frank Act amends the Securities Exchange Act of 1934 (the "Exchange Act") by adding Section 14A, which requires companies to obtain three new types of shareholder votes:

- "Say on pay" votes. Companies must conduct a separate shareholder advisory vote to approve the compensation of executives, as disclosed pursuant to Item 402 of

Regulation S-K or any successor to Item 402.

- “Say on frequency” votes. Companies must conduct a separate shareholder advisory vote to determine how often an issuer will conduct a “say on pay” vote.
- “Golden parachute” votes. Companies soliciting votes to approve merger or acquisition transactions must provide disclosure of certain “golden parachute” compensation arrangements and, in certain circumstances, conduct a separate shareholder advisory vote to approve the golden parachute compensation arrangements.

The first rule proposed by the SEC would implement these requirements for operating companies. [\[1\]](#) Because registered investment companies do not have compensated executive officers and, accordingly, are not required to provide executive compensation disclosure pursuant to Item 402 of Regulation S-K, this proposal should not have much, if any, impact on funds as issuers of securities. [\[2\]](#) As a result, we do not expect to comment on it.

## **Proposed Rule on Proxy Vote Disclosure**

Section 951 of the Dodd-Frank Act also added Section 14A(d) to the Exchange Act, which requires certain institutional investment managers to report at least annually how they voted on the three new types of shareholder advisory votes discussed above (the “Section 14A Votes”), unless such vote is otherwise required to be reported publicly by SEC rule or regulation. The second rule proposed by the SEC implements this reporting requirement. [\[3\]](#)

Registered investment companies have been required to publicly disclose their proxy votes on Form N-PX since 2004. [\[4\]](#) Section 951 of the Dodd-Frank Act does not affect this requirement. It does, however, extend proxy voting disclosure to other investment managers, at least with respect to Section 14A Votes. ICI has long supported such an extension. [\[5\]](#)

Section 14A(d) extends proxy vote disclosure to institutional investment managers that are required to report portfolio holdings on Form 13F under the Exchange Act. This covers any manager that exercises investment discretion with respect to accounts holding \$100 million or more in certain types of equity securities (known as “Section 13(f) securities”).

The proposed rule would require these managers to report their Section 14A Votes annually on Form N-PX not later than August 31 of each year, for the most recent twelve-month period ended June 30. This is the same form and the same schedule on which funds are required to report their complete proxy voting records. Funds would continue to use Form N-PX to disclose proxy votes, including their Section 14A Votes.

The proposed rule seeks to prevent duplicative reporting, in the event that a fund reporting on Form N-PX and a manager required to report under the new rules share the power to vote, or to direct the voting of, the same securities on a Section 14A Vote. The proposed rule would amend Form N-PX to permit: (1) a single institutional investment manager to report Section 14A Votes in cases where multiple institutional investment managers share voting power; and (2) an institutional investment manager to satisfy its reporting obligations by reference to the Form N-PX report of a fund that includes the manager’s

Section 14A Votes. This approach would be optional; funds and managers could choose to separately report Section 14A Votes on the same securities.

Compliance Dates. If the proposed amendments are adopted, the Commission expects to require institutional investment managers to file their first reports on Form N-PX covering Section 14A Votes at meetings that occur on or after January 21, 2011 (the first date on which the voting requirements of Section 14A apply to shareholder meetings), and ending on June 30, 2011. The reports would be required to be filed not later than August 31, 2011.

The Commission also expects to require that funds comply with the amendments to Form N-PX in their reports filed for the period July 1, 2010, through June 30, 2011, which are required to be filed not later than August 31, 2011, except that, for votes at meetings that occur before January 21, 2011, funds would be permitted to include the information currently required by Form N-PX in the format currently required by Form N-PX.

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#### **endnotes**

[1] Shareholder Approval of Executive Compensation and Golden Parachute Compensation, SEC Rel. Nos. 33-9153 and 34-63124 (October 18, 2010), avail. at <http://www.sec.gov/rules/proposed/2010/33-9153.pdf>.

[2] Registered investment companies are required to provide certain types of compensation disclosure in proxies pursuant to Item 22(b)(13) of Schedule 14A.

[3] Reporting of Proxy Votes on Executive Compensation and Other Matters, SEC Rel. Nos. 34-63123 and IC-29463 (October 18, 2010), avail. at <http://www.sec.gov/rules/proposed/2010/34-63123.pdf>.

[4] See Rule 30b1-4 under the Investment Company Act.

[5] See, e.g., Statement of the Investment Company Institute on “Corporate Governance and Shareholder Empowerment” before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services, United States House of Representatives (April 21, 2010), available at [http://www.ici.org/govaffairs/testimony/10\\_house\\_corp\\_gov\\_tmny](http://www.ici.org/govaffairs/testimony/10_house_corp_gov_tmny).