

**MEMO# 33803**

October 5, 2021

## **SEC Issues Proposal to Enhance Reporting of Proxy Voting Information; ICI Member Call Tuesday, October 12**

[33803]

October 6, 2021

TO: ESG Advisory Group

Proxy Working Group

SEC Rules Committee

Small Funds Committee RE: SEC Issues Proposal to Enhance Reporting of Proxy Voting Information; ICI Member Call Tuesday, October 12

On September 29, the Securities and Exchange Commission proposed amendments to enhance reporting of proxy voting information by registered investment companies ("funds") and institutional investment managers ("managers").<sup>[1]</sup> The proposed amendments would require:

- Managers to report annually their votes on executive compensation, or "say on pay" matters, as required by the Dodd-Frank Act;
- Funds and managers to:
  - Describe ballot issues using the same language as the issuer's form of proxy;
  - Categorize their votes based on a detailed list of categories and subcategories proposed by the SEC;
  - Disclose the number of shares voted or instructed to be cast, as well as the number of shares loaned and not recalled; and
  - File Form N-PX reports in XML structured data language.

**Comments on the Proposal are due 60 days after publication in the *Federal Register*. ICI will hold a members-only call on Tuesday, October 12, from 3-4 pm ET to discuss the Proposal and our potential comments. The Zoom dial-in information for the call is provided below. We will also send you a calendar invitation with the dial-in information.**

**Zoom link:**

<https://ici-org.zoom.us/j/98285935912?pwd=N01CVjBhRnZXUjU4am5WZnJKYzBoUT09>

**Meeting ID:** 982 8593 5912 **Passcode:** 011987 **Dial by your location:** +1 646 558 8656  
US (New York)

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The Proposal is summarized below.

## **I. Background**

In 2010, the SEC issued a proposal that would have amended reporting requirements for funds on Form N-PX and required managers to report their proxy votes on say on pay matters.<sup>[2]</sup> The say on pay rulemaking was required by Section 951 of the Dodd-Frank Act. The SEC never adopted the 2010 proposal. The Proposal replaces the 2010 proposal, and reflects comments that ICI and others made on the prior proposal.<sup>[3]</sup>

The SEC commissioners approved issuance of the Proposal on a 4-1 vote, with Commissioner Peirce dissenting. Chair Gensler and Commissioners Lee and Crenshaw expressed support for the Proposal, with Commissioners Lee and Crenshaw emphasizing the importance of proxy voting information to investors and the benefits of transparency into the substantial voting power that large managers hold.<sup>[4]</sup> Commissioner Roisman voted to issue the Proposal, but expressed serious reservations about the proposed requirements that (i) funds report the number of shares a fund owns but did not recall for voting; and (ii) funds adhere to a categorization framework to report their votes "that does not appear to be based on rigorous analysis."<sup>[5]</sup> Commissioner Peirce questioned the value of requiring funds to publicly disclose their proxy votes and suggested such disclosure may cause more harm than benefit, citing the use of this information by activists.<sup>[6]</sup>

## **II. Amendments to Reporting Obligations**

The proposed amendments would enhance reporting obligations for funds, but would not change which types of funds are required to report on Form N-PX.<sup>[7]</sup> These proposed amendments also would apply to Form N-PX reports by managers, to the extent they are reporting say on pay votes.

### ***A. Description of Ballot Matters***

To increase standardization of ballot descriptions, the SEC proposes to require funds and managers filing Form N-PX (together, "reporting persons") to use the same language to describe proxy voting matters on Form N-PX as used in the issuer's form of proxy. In addition, each voting matter would be required to be reported in the same order as presented on the issuer's form of proxy. The SEC believes these proposed changes would facilitate identification of identical matters on different Form N-PX filings, even though the SEC acknowledges that issuers are not required to use interactive data tagging in their proxy materials.

### ***B. Categorization of Proxy Votes***

Reporting persons would be required to categorize their proxy votes according to a proposed list of categories and subcategories intended to identify the subject matter of each of the reported proxy voting items. The SEC based the proposed categories on a review of proxy matters on which funds voted in 2020, including say on pay votes.<sup>[8]</sup> The SEC proposes 17 categories, along with numerous subcategories. The proposed categories

are:

Board of directors

Corporate governance

Section 14A say on pay votes

Meeting governance

Audit related

Environment or climate

Investment company matters

Human rights or human capital/workforce

Shareholder rights and defenses

Diversity, equity, and inclusion

Extraordinary transactions

Political activities

Security issuance

Other social

Capital structure

Other

Compensation

### ***C. Quantification of Shares Voted/Loaned***

The SEC proposes to require disclosure of information about the number of shares that were voted or, if not known, the number of shares that were instructed to be cast.<sup>[9]</sup> The SEC also proposes to require disclosure of the number of shares the reporting person loaned and did not recall. In proposing changes from the 2010 proposal, the Commission acknowledged concerns that were raised by ICI and others regarding the difficulties in reporting the number of shares that a reporting person was entitled to vote and the number of shares that were actually voted.<sup>[10]</sup> The Commission clarifies that the reporting person's records could be used to determine the number of shares voted, even if the records do not reflect a confirmed number of actual votes cast and received by the issuer.

As in 2010, the SEC proposes that a reporting person would be required to disclose, in addition to the number of shares, how those shares were voted (e.g., for or against proposal, abstain). If the votes were cast in multiple manners, the reporting person would be required to disclose the number of shares voted in each manner.

In proposing to require disclosure of the number of shares loaned and not recalled, the SEC intends to "provide transparency into how a reporting person's securities lending affects its proxy voting."[\[11\]](#) For purposes of the proposed reporting requirement, a person is considered to have loaned securities if it loaned the securities directly or loaned the securities indirectly through a lending agent.

### **III. New Reporting Obligations for Institutional Investment Managers**

An "institutional investment manager"[\[12\]](#) required to file reports on Form 13F would be required to disclose its say on pay votes on Form N-PX. The types of votes the manager would be required to report are the same as the types of votes required by Section 14A(a) and (b) of the Exchange Act.[\[13\]](#) In a change from the SEC's 2010 proposal, a manager would only be required to report a say on pay vote for a security if it both possesses voting power and exercises that power. For purposes of Form N-PX, the exercise of voting power would mean the actual use of voting power to influence a voting decision.[\[14\]](#) A manager that votes a security based solely on its client's instructions would not be required to report those say on pay votes. A manager would be deemed to exercise voting power, however, if it decides whether to recall loaned securities in advance of a say on pay vote to vote the shares.

The SEC recognizes that its approach may result in a manager's reports on Form N-PX differing from its reports on Form 13F. For example, due to the definition of voting power for purposes of Form N-PX, if a manager exercises investment discretion over a particular 13(f) security, but the client retains voting rights over the security, the security would be reported on Form 13F but the manager would not be required to report say on pay votes regarding that security on Form N-PX. The SEC also does not propose to provide a de minimis threshold, as Form 13F provides, for managers reporting their say on pay votes on Form N-PX. Thus, managers that hold smaller positions that are not required to be reported on Form 13F nonetheless would be required to report on Form N-PX their say on pay votes with respect to those securities.

### **IV. Data Tagging**

The SEC proposes to require reporting persons to file reports on Form N-PX in a custom eXtensible Markup Language (XML)-based structured data language created specifically for reports on Form N-PX ("custom XML"). Tagging the data reported on Form N-PX in this manner is intended to make it easier for reporting persons to prepare and submit the information required by Form N-PX accurately and make the submitted information more useful.[\[15\]](#) The SEC explains that it has used customized XML data languages for reports filed on Form N-CEN, Form N-PORT, and Form 13F.

In response to concerns about cost that were raised by commenters on the 2010 proposal, the SEC proposes to replace the current ASCII or HTML reporting requirement with the custom XML reporting requirement. The Commission proposes to bear the costs of developing electronic "style sheets" and applying them to the reported XML data in order to represent that data in a "human readable" form.[\[16\]](#)

### **V. Other Changes to Form N-PX**

The SEC proposes that, if a fund's report on Form N-PX includes the votes of multiple series, the report clearly indicate the name and series identifier (if any) of each series and present the votes of each series separately.[\[17\]](#)

Similar to the 2010 proposal, the SEC proposes optional joint reporting provisions to provide flexibility and prevent duplicative reporting on Form N-PX. The proposed provisions would permit:

- A single manager to report say on pay votes in cases where multiple managers exercise voting power.
- A fund to report its say on pay votes on behalf of a manager exercising voting power over some or all of the fund's securities.[\[18\]](#)
- Affiliates to file joint reports on Form N-PX even though they do not exercise voting power over the same securities. This provision would also allow managers to report at the holding company level if they choose to do so.[\[19\]](#)

A manager would be required to report the number of shares it is reporting on behalf of another manager pursuant to the joint reporting provisions separately from the number of shares the manager is reporting on its own behalf. Further, managers or funds relying on any of these provisions would be required to identify on Form N-PX the manager(s) on whose behalf the filing is being made, as well as the other managers or funds reporting on a manager's behalf. The SEC proposes changes to the cover page of Form N-PX and a new summary page to clarify the nature of the filing.

The SEC also proposes other changes to Form N-PX including, in response to comments on the 2010 proposal, requiring reporting of only one security identifier for each security. As proposed, a reporting person would be required to report the security's CUSIP number, unless it is not available through reasonably practicable means. In that event, Form N-PX would require the security's ISIN, unless it also is not available through reasonably practicable means.

Funds would continue to be required to identify whether a matter was proposed by the issuer or by a security holder (i.e., a shareholder proposal). For shareholder proposals, funds would be required to indicate whether the matter is a proposal or a counterproposal.[\[20\]](#)

## **VI. Website Availability of Fund Proxy Voting Information**

Currently, funds are required to disclose that their proxy voting records are available to shareholders, either on (or through) the fund's website or upon request. The SEC proposes amendments to Forms N-1A, N-2, and N-3 to require a fund to disclose that its proxy voting record is publicly available on (or through) the fund's website and is available upon request, free of charge. The SEC notes that a fund could comply with the proposed requirement to post its voting record on its website by providing a direct link on its website to the HTML-rendered Form N-PX report on the SEC's EDGAR system.

## **VII. Timing of Reporting**

The SEC does not propose to change the current time frame for reporting proxy votes on Form N-PX, which is annually, no later than August 31 of each year, for the most recent 12-month period ended June 30. The Commission proposes to apply the same reporting timeframe for managers. The Commission preliminarily believes that "the benefits of public reporting of proxy votes by funds and managers would not significantly increase with faster reporting."[\[21\]](#)

## **VIII. Requesting Confidential Treatment**

The SEC proposes to add instructions to Form N-PX to provide managers that file on Form 13F with a similar opportunity to request confidential treatment on Form N-PX of confidential information that would be protected from disclosure on Form 13F. The SEC states, however, that, given the intent of Section 14A(d) to provide for public disclosure and the standards for confidential treatment under Rule 24b-2 under the Exchange Act, "confidential treatment generally would not be merited solely in order to prevent proxy voting information from being made public."[\[22\]](#) Further, because funds already are required to report their portfolio holdings on Form N-PX, the Commission is "not aware of any situation in which confidential treatment would be justified under rule 24b-2 for information filed by funds on Form N-PX."[\[23\]](#)

## **IX. Compliance Dates and Transition Rules**

The SEC proposes compliance dates that would vary depending on when the proposed amendments become effective relative to Form N-PX's reporting deadline. The proposed compliance dates, which would be the same for funds and managers, are:

- If the amendments are effective six months before June 30, the first reports on amended Form N-PX would be required to be filed by the August 31 that follows the rule's effective date.
- If the amendments are not effective six months before June 30, funds and managers would be required to file their first reports on amended Form N-PX by August 31 of the first complete reporting timeframe following the effective date of the proposed rule.

The SEC also proposes transition rules regarding a manager's Form N-PX filing obligations based on when the manager enters or exits the obligation to file Form 13F reports. The SEC proposes that:

- A manager would not be required to file a Form N-PX report for the 12-month period ending June 30 of the calendar year in which the manager's initial filing on Form 13F is due. Instead, the manager would be required to file a report on Form N-PX for the period ending June 30 for the calendar year following the manager's initial filing on Form 13F. The SEC provides the following examples of initial Form N-PX filing:

Date Filer Exceeds Reporting Threshold

First Form 13F Filing Due

First Proxy Reporting Period

First Form N-PX Due

Mar. 31, 2023

Feb. 15, 2024

July 1, 2024-June 30, 2025

Aug. 31, 2025

Dec. 31, 2023

Feb. 15, 2024

July 1, 2024-June 30, 2025

Aug. 31, 2025

Jan. 31, 2024

Feb. 15, 2025

July 1, 2025-June 30, 2026

Aug. 31, 2026

- A manager would not be required to file a report on Form N-PX with respect to any shareholder vote at a meeting that occurs after September 30 of the calendar year in which the manager's final filing on Form 13F is due. Instead, the manager would be required to file a report on Form N-PX for the period July 1 through September 30 of the calendar year in which the manager's final filing on Form 13F is due. This short-period Form N-PX filing would be due no later than March 1 of the immediately following calendar year. The SEC provides the following examples of final Form N-PX filing:

Date Filer Ceases to Meet Threshold

Final Form 13F Filing Due

Final Proxy Reporting Period

Final Form N-PX Due

Mar. 30, 2023

Nov. 14, 2024

July 1, 2024-Sept. 30, 2024

Mar. 1, 2025

Dec. 30, 2023

Nov. 14, 2024

July 1, 2024-Sept. 30, 2024

Mar. 1, 2025

Feb. 1, 2024

Nov. 14, 2025

July 1, 2025-Sept. 30, 2025

Mar. 1, 2026

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#### endnotes

[1] See Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Exchange Act Release No. 93169; Investment Company Act Release No. 34389 (Sept. 29, 2021), available at <https://www.sec.gov/rules/proposed/2021/34-93169.pdf> ("Proposal").

[2] Reporting of Proxy Votes on Executive Compensation and Other Matters, Exchange Act Release No. 63123 (Oct. 18, 2010), 75 Fed. Reg. 66622 (Oct. 28, 2010).

[3] ICI's 2010 letter is *available at* <https://www.ici.org/system/files/attachments/pdf/24721.pdf> ("ICI 2010 Comment Letter").

[4] See Chair Gary Gensler, Statement on Proposal to Enhance Reporting of Proxy Votes by Registered Management Investment Companies And Reporting of Executive Compensation Votes by Institutional Investment Managers (Sept. 29, 2021), available at [https://www.sec.gov/news/public-statement/gensler-open-meeting-2021-09-29?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/news/public-statement/gensler-open-meeting-2021-09-29?utm_medium=email&utm_source=govdelivery); Commissioner Allison Herren Lee, Shining a Light on Corporate Democracy: Statement on Updates to Form N-PX (Sept. 29, 2021), available at [https://www.sec.gov/news/public-statement/lee-open-meeting-2021-09-29?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/news/public-statement/lee-open-meeting-2021-09-29?utm_medium=email&utm_source=govdelivery); Commissioner Caroline A. Crenshaw, Statement on N-PX Proposal (Sept. 29, 2021), available at [https://www.sec.gov/news/public-statement/crenshaw-open-meeting-2021-09-29?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/news/public-statement/crenshaw-open-meeting-2021-09-29?utm_medium=email&utm_source=govdelivery).

[5] Commissioner Elad L. Roisman, Statement on Proposed Changes to Asset Managers' Proxy Voting Disclosures (Sept. 29, 2021), available at <https://www.sec.gov/news/public-statement/roisman-open-meeting-2021-09-29> ("Roisman Statement").

[6] Commissioner Hester M. Peirce, Statement on Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (Sept. 29, 2021), available at <https://www.sec.gov/news/public-statement/peirce-open-meeting-2021-09-29> ("Peirce Statement"). Commissioner Peirce raised in her statement the following question for commenters:

Instead of these proposed amendments to Form N-PX, should the Commission be proposing a complete withdrawal of all non-statutorily mandated voting disclosures to eliminate the expense of reporting, allow for presumptive confidentiality of votes, and emphasize that the Commission does not take a position on whether or not funds should vote?

[7] Every registered management investment company, other than a small business investment company registered on Form N-5, is required to file its proxy voting record annually on Form N-PX.



[8] Commissioner Roisman questioned the basis for this approach, raising concerns that the proposed categories were based only on the 2020 proxy season and that several of the categories are ambiguous or may overlap with others. See Roisman Statement.

[9] The SEC explains that it declined to take the approach of requiring indications of magnitude in lieu of requiring disclosure of the number of votes cast/instructed to be cast. The Commission explains that such an approach would "not sufficiently demonstrate how a manager exercised its voting power (including any shares on loan and not recalled)." Proposal at 47.

[10] See ICI 2010 Comment Letter. The SEC disagreed with commenters on the 2010 proposal, including ICI, that quantitative disclosure information might be used by competitors to obtain information about fund holdings, a concern similar to that recently raised by Commissioner Peirce regarding the Proposal. See Peirce Statement.

[11] Proposal at 49.

[12] An "institutional investment manager" is defined as "any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person." For example, banks, insurance companies, and broker-dealers are institutional investment managers. So are corporations and pension funds that manage their own investment portfolios. Investment advisers that manage private accounts, mutual fund assets, or pension plan assets are also institutional investment managers, as are bank trust departments. See Section 13(f)(6)(A) of the Securities Exchange Act of 1934 ("Exchange Act"); SEC, Frequently Asked Questions About Form 13F, available at <https://www.sec.gov/divisions/investment/13ffaq.htm>.

[13] Section 14A generally requires public companies to hold non-binding say on pay shareholder advisory votes to: (1) approve the compensation of its named executive officers; (2) determine the frequency of such votes; and (3) approve "golden parachute" compensation in connection with a merger or acquisition.

[14] See Rule 14AD-1(d), as proposed to be amended.

[15] The SEC notes that its Investor Advisory Committee recommended that reports on Form N-PX be filed in a structured data language to make it easier for investors to assess the voting records of funds. See Recommendations of the Investor Advisory Committee Regarding the SEC and the Need for the Cost Effective Retrieval of Information by Investors (adopted July 25, 2013), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/data-tagging-resolution-72513.pdf> (recommending amendments to Form N-PX to provide for the tagging of data).

[16] The Commission has developed similar style sheets for holdings data reported by managers in XML on Form 13F.

[17] The SEC explains that, while Form N-PX currently instructs funds to provide information separately for each series, some funds interpret this requirement as providing flexibility to organize voting information first by security, with each fund or series holding that security listed separately. Proposal at 10.

[18] This provision is intended to prevent a fund and its adviser from each having to file reports regarding the same say on pay votes.

[\[19\]](#) Importantly, this provision would permit two or more affiliated persons to file a single report on Form N-PX for all affiliated persons in the group.

[\[20\]](#) These requirements would not apply to managers because say on pay votes are issuer proposals, not shareholder proposals.

[\[21\]](#) Proposal at 82.

[\[22\]](#) Proposal at 88.

[\[23\]](#) Proposal at 89. The Commission requests comment, however, on whether funds should be allowed to request confidential treatment under some circumstances, such as for votes on securities that were reported on Form N-PORT in the "miscellaneous securities" category. *Id.* at 90.