

MEMO# 33917

November 23, 2021

ICI Draft Comment Letter on SEC Proposal to Enhance Reporting of Proxy Voting Information: Your Comments Requested by Monday, December 6

[33917]

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TO: ESG Advisory Group

Proxy Working Group

SEC Rules Committee

Small Funds Committee RE: ICI Draft Comment Letter on SEC Proposal to Enhance Reporting of Proxy Voting Information: Your Comments Requested by Monday, December 6

As previously reported, 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").[\[1\]](#)

ICI has prepared the attached draft comment letter, summarized below, for your review and feedback. Comments are due to the SEC by December 14. Accordingly, please provide your written comments to Sarah Bessin at sarah.bessin@ici.org no later than Monday, December 6.

ICI's letter supports the SEC's goals to modernize Form N-PX and make information reported on the form more usable. We explain, however, that several elements of the Proposal, including the proposed requirements to categorize proxy matters according to a detailed taxonomy proposed by the SEC, report the number of shares loaned but not recalled, and describe the ballot matter using language in the issuer's form of proxy, would not accomplish the SEC's goal of increasing the utility of Form N-PX to investors and others and/or would raise significant operational challenges. The key points and recommendations in the letter are summarized below.

The letter explains that the SEC's proposed taxonomy to categorize proxy voting matters would not accomplish the SEC's objective "to allow investors to compare how different managers or funds voted on specific types of matters." Rather, because of the granularity and potential overlap among the SEC's proposed categories, it is likely that reporting persons may classify the same proxy matter differently, resulting in confusion and a lack of

comparability. ICI recommends that: (i) the Commission replace its proposed categories and subcategories with a smaller number of higher level categories ICI suggests that are more likely to be "evergreen" and not require regular updating by the Commission; and (ii) in finalizing any categorization system, the SEC consider the feasibility of the system and any operational challenges it may raise for proxy advisors and other vendors which are likely to provide this function for reporting persons.

ICI urges the SEC to not require reporting of shares loaned and not recalled. Instead, to provide more relevant information about reporting persons' securities lending and share recall practices, the SEC should require reporting persons that engage in securities lending to disclose their policy regarding recalling lent securities for purposes of proxy voting (or reference the policy, if it is already disclosed in another SEC-filed document). We disagree with the premise of the proposed disclosure and do not believe it would provide an accurate view of a reporting person's securities lending practices and their relationship to the person's proxy voting practices. We explain that there are a variety of legitimate reasons why funds and managers may not recall loaned securities prior to a proxy vote.

ICI supports the SEC's goal to increase standardization and comparability of ballot descriptions. However, requiring reporting persons to describe ballot matters using the same language, and present them in the same order, as in the issuer's form of proxy raises significant operational challenges, which we describe in the letter. To address these challenges, we recommend that the SEC require corporate issuers to data tag the description of each ballot matter in their proxy statements so that reporting persons can readily "pull" this data from the issuer's proxy statement.

ICI supports many of the changes in the Proposal, including:

- The SEC's completion of the Dodd-Frank required "say on pay" rulemaking and the changes the SEC proposes from its 2010 proposal;
- Requiring reporting persons to file reports on Form N-PX in a custom eXtensible Markup Language (XML)-based structured data language;
- Requiring that fund proxy voting information be made available on a fund's website, as long as 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; and
- The proposed optional joint reporting provisions, which would provide flexibility to reporting persons and prevent duplicative reporting on Form N-PX.

We strongly support the SEC's proposal to retain the existing reporting time frame for Form N-PX and applying it to institutional investment managers. We also support the SEC retaining the 60-day period after the end of the reporting period to file Form N-PX.

We include a section in the letter noting particular considerations raised by the Proposal for smaller funds. As the SEC works to finalize the proposed amendments to Form N-PX, we urge the Commission to analyze more closely the costs and burdens of the proposed amendments for smaller funds and managers and, more broadly, consider how these increased regulatory obligations cumulatively would affect smaller funds and managers.

We remind the SEC that, in addition to the issues raised in the Proposal, there are other important proxy voting reform matters that the SEC should address without delay including, most importantly for funds, the challenges unique to the fund proxy system, reform of the processing fee framework, reform of the OBO/NOBO system, and the inability to confirm

how shares were voted ("end-to-end vote confirmation"). The letter notes that ICI has addressed these issues extensively in prior letters to the Commission, and provides a brief summary of each issue and our recommendations.

The letter recommends that the SEC provide a longer compliance period for reporting persons to implement any final rule. We recommend a minimum of one year and explain why this additional time is critical for funds and managers to be ready to file amended Form N-PX. We also explain that reporting persons will need additional time to incorporate the new XML taxonomy into their systems and recommend that (i) the SEC release the taxonomy at least six months in advance of the date by which funds must file the revised form; and (ii) the SEC provide for a test period in which reporting persons can make test filings using the taxonomy in advance of the date by which funds must first file the revised form.

Sarah A. Bessin
Associate General Counsel

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"). For a summary of the Proposal, *please* see ICI Memorandum No. 33803 (Oct. 6, 2021), available at <https://www.ici.org/memo33803>. We refer to funds and managers collectively in this memorandum and in our letter as "reporting persons."