

MEMO# 34343

November 7, 2022

SEC Adopts Amendments to Enhance Reporting of Proxy Voting Information

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TO: ICI Members
ESG Advisory Group
Investment Advisers Committee
Operations Committee
Proxy Working Group
SEC Rules Committee
Small Funds Committee SUBJECTS: Disclosure
ESG
Fund Governance
Investment Advisers
Operations RE: SEC Adopts Amendments to Enhance Reporting of Proxy Voting Information

On November 2, the Securities and Exchange Commission adopted amendments to Form N-PX and related rules (collectively, "amendments") to enhance reporting of proxy voting information by registered investment companies ("funds") and institutional investment managers ("managers").[\[1\]](#) The amendments were adopted by a vote of 3-2, with Commissioners Peirce and Uyeda dissenting.[\[2\]](#) The effective date for the amendments is July 1, 2024 and managers and funds will be required to file their first reports on amended Form N-PX by August 31, 2024.

The amendments were adopted largely as proposed, with certain changes, several of which are consistent with ICI recommendations.[\[3\]](#) The amendments will require reporting persons filing on Form N-PX to:

- identify matters on which a reporting person has voted using the same language and ordering as the issuer's form of proxy card required to be filed with the Commission, if applicable;
- categorize matters voted on pursuant to 14 topical categories;
- disclose the number of shares voted or instructed to be cast, as well as the number of shares loaned but not recalled for voting; and
- file their reports using an XML structured data language.

In addition, new rule 14Ad-1 implements a requirement of the Dodd-Frank Act by

mandating that institutional investment managers report on Form N-PX each say-on-pay vote over which the manager exercised voting power. The Commission also adopted certain additional amendments to Form N-PX, including changes to standardize the order of disclosure requirements and to require that each series of a trust separately file its complete voting record.

The amendments are discussed in more detail below.

Scope of Reporting Obligations

Scope of Fund Reporting Obligations

Funds are currently required to report on Form N-PX information for each matter relating to a portfolio security that is considered at any shareholder meeting held during the reporting period with respect to which the fund is entitled to vote. The amendments change this standard to specify that, for purposes of Form N-PX, a fund would also be considered to be entitled to vote on a matter if its portfolio securities are on loan as of the record date.

Scope of Manager Reporting Obligations

Pursuant to the Dodd-Frank Act, the amendments would add certain reporting obligations on Form N-PX for managers^[4] that are required to file reports under section 13(f) of the Exchange Act. Such managers will be required to report say-on-pay votes over which a manager exercised voting power. The say-on-pay votes required to be reported include the same types of shareholder advisory votes that section 14A of the Exchange Act requires, including "votes on the approval of executive compensation and on the frequency of such executive compensation approval votes, as well as votes to approve 'golden parachute' compensation in connection with a merger or acquisition."^[5]

As proposed, a manager will be considered to have "exercised voting power" over a security if the manager: (1) has the power to vote, or direct the voting of, a security; and (2) "exercises" this power to influence a voting decision for the security. The power to vote, or direct the voting of, a security includes the power to determine whether or not to vote the security or to recall a loaned security before a vote. Voting power can exist or be exercised directly or indirectly through a contract, arrangement, understanding or relationship, and multiple parties could have and/or exercise voting power over the same security. A manager will be considered to "exercise" the power to influence a voting decision for the security when the manager actually votes or influences a vote using its own independent judgment; the analysis "focuses on the exercise, rather than the mere possession, of voting power."^[6] In contrast, a manager will not be required to report a voting decision that was entirely determined by its client or another party or "if the vote is cast differently than the manager's recommendation or suggestion."^[7]

In a change from the proposal, the SEC limited the reporting obligation on Form N-PX for managers that have a disclosed policy not to vote proxies and that have, in fact, not voted proxies during the reporting period. Such managers will file a streamlined Form N-PX requiring only a cover page and signature.

Content of Form N-PX Reporting

Identification of Proxy Voting Matters

Pursuant to the amendments, funds and managers reporting on Form N-PX will be required

to report proxy voting matters (i) using the same language that is on the issuer's form of proxy (or "proxy card") and (ii) in the same order in which they are presented on the proxy card. In a change from the proposal, this requirement only applies to the extent a form of proxy card is required in connection with the matter pursuant to rule 14a-4 under the Exchange Act. In all other cases (i.e., where a form of proxy card is not required in connection with the matter, including proxies of non-US issuers, which are not subject to rule 14a-4), funds and managers will be subject to the current requirement to provide a "brief identification of the matter voted on" with a modification limiting the use of abbreviations in the description of the matter.[\[8\]](#)

Proxy Voting Categories

In a significant change from the proposal, the Commission streamlined the requirement for funds and managers to select from enumerated categories to identify the subject matter of each reported proxy item. The proposal would have required reporting persons to categorize their proxy votes according to 17 categories and 89 subcategories. Consistent with ICI recommendations, the final amendments simplify the reporting categories to provide for 14 broader categories and eliminate the proposed requirement to further specify subcategories, instead including the proposed subcategories as non-exclusive examples.[\[9\]](#)

Quantitative Disclosures

Reporting persons will be required to disclose the number of shares voted and how those shares were voted (i.e., for or against the proposal, or abstain). As recommended by ICI, if the reporting person has not received confirmation of the number of shares voted, the reporting person may instead report the number of shares instructed to be voted.[\[10\]](#) If shares were cast in different ways (e.g., some for the proposal and some against the proposal), reporting persons will be required to disclose the number of shares voted in each manner.

In addition, against ICI recommendations, the Commission has adopted as proposed a requirement that reporting persons disclose the number of shares that the reporting person loaned and did not recall for voting. The Adopting Release acknowledges that "[t]here are legitimate reasons why an adviser or other reporting person may decide not to recall any loaned securities" and explains that the requirement "is not intended to change the analysis reporting persons may undertake currently as to whether to recall a loaned security, such as by creating pressure for reporting persons to programmatically recall lent shares, or to create a negative implication when a reporting person does not recall a loaned security in any given case."[\[11\]](#) The Commission also notes that reporting persons may provide additional information on Form N-PX regarding its share recall practices. Disclosure about securities loaned and not recalled is required only where the reporting person has loaned the securities; in scenarios where the manager is not directly or indirectly involved in lending shares in a client's account, the manager would not be required to include this disclosure.[\[12\]](#)

Additional Amendments to Form N-PX

The Commission also adopted certain additional amendments to Form N-PX, including:

- A requirement that funds with multiple series provide each series' Form N-PX disclosures separately;

- An instruction that information otherwise required or permitted to be included on Form N-PX filings be reported in the order presented on the form;
- Clarified language regarding the requirement that reporting persons disclose whether a vote was for or against management's recommendation;[\[13\]](#) and
- A simplified requirement that a reporting person report only one security identifier, the security's CUSIP or ISIN (the form currently requires both the CUSIP and ticker symbol).

Joint Reporting

As proposed, the Commission has adopted amendments that permit reporting persons to report their say-on-pay votes jointly in the following three scenarios:

- A single manager may report say-on-pay votes in instances where more than one manager exercises voting power;
- A fund may report a manager's say-on-pay votes on behalf of a manager exercising voting power over some or all of the fund's securities; and
- Two or more managers who are affiliated persons may file a single report on Form N-PX for all affiliated managers within the group, even if they do not exercise voting power over the same securities.

In each scenario above, a non-reporting manager would still be required to file a "notice" or "combination" Form N-PX report (discussed below) that identifies the fund or manager filing on its behalf. Joint reporting is optional; reporting persons can choose to report their say-on-pay votes individually.

Cover Page

The Commission adopted amendments to the cover page of Form N-PX, which are intended to address the addition of managers as reporting persons and the permissibility of joint reporting. Accordingly, reporting persons will check a box on the cover page to identify the report as one of the following:

- Fund Voting Report: to be used by funds with votes to report;
- Fund Notice Report: to be used by funds that do not have votes to report;
- Institutional Manager Voting Report: to be used by a manager reporting all of its say-on-pay votes in a single report;
- Institutional Manager Notice Report: to be used by a manager when the report contains no say-on-pay votes of the manager. This would occur when:
 - all of the manager's say-on-pay votes are reported by other managers or funds;
 - the manager does not exercise voting power for any reportable voting matter during the reporting period; or
 - the manager has a disclosed policy of not voting proxies and did not in fact vote any proxies during the reporting period;
- Institutional Manager Combination Report: to be used by a manager when the report contains some of the manager's say-on-pay votes but additional votes are reported by other managers or funds.

Any "notice" or "combination" report is required to include a list of the file numbers and names, as well as CRD numbers, if applicable, of any other managers and funds whose Form N-PX filings include the manager's say-on-pay votes.

Summary Page

As proposed, the amendments add a summary page to Form N-PX filings (other than Institutional Manager Notice Reports). The summary page will generally include information about any managers with votes reported in the filing, and the form prescribes the content and format of such information. For reports filed by a fund, the summary page will also include the total number of series of the fund included in the filing and the name, LEI, and series identification number of each such series.

Form N-PX Reporting Data Language

As proposed, the amendments will also require funds and managers to file reports on Form N-PX in a custom eXtensible Markup Language (XML) structured data language created specifically for Form N-PX filings. The Adopting Release states that the Commission is developing electronic "style sheets" that will present Form N-PX data in a human-readable format. As recommended by ICI, the Commission will provide the custom XML taxonomy in advance of the compliance date and provide a time period for reporting persons to submit test filings prior to the compliance date of the amendments.

Timing of Reporting

Reporting persons will be required to report on Form N-PX no later than August 31 of each year for the most recent 12-month period ended June 30. This is consistent with the current reporting requirement for funds.

Requests for Confidential Treatment

The Commission adopted, substantially as proposed, instructions permitting managers to request confidential treatment of proxy voting information on Form N-PX. Confidential treatment requests will be filed electronically on EDGAR, and the content, filing procedures, and standard for approving such requests will be the same as for confidential treatment requests under section 13(f) of the Exchange Act.[\[14\]](#)

Website Availability of Fund Proxy Voting Records

The Commission also adopted amendments to Forms N-1A, N-2 and N-3 requiring funds to disclose that their proxy voting records are publicly available on or through their websites[\[15\]](#) and are available upon request, free of charge in both cases.[\[16\]](#)

Effective Date and Transition Rules for Managers

As noted above, the effective date for the amendments is July 1, 2024. This represents a change from the proposal and, consistent with ICI recommendations, is intended to provide funds and managers a full reporting cycle on amended Form N-PX before they are required to file pursuant to the amended requirements.

The Commission adopted as proposed transition rules that govern the timing of a manager's Form N-PX filing obligations. A manager will not be required to file Form N-PX for the 12-month period ending June 30 of the calendar year in which the manager's initial filing on Form 13F is due.[\[17\]](#) A manager will be required to file Form N-PX for the period ending June 30 for the calendar year following the manager's initial filing on Form 13F. The Commission provides the following example:

Initial Form N-PX Filing

Date Manager Exceeds Reporting Threshold

First Form 13F Filing Due

First Proxy Reporting Period

First Form N-PX Due

March 31, 2023

February 15, 2024

July 1, 2024 - June 30, 2025

August 31, 2025

December 31, 2023

February 15, 2024

July 1, 2024 - June 30, 2025

August 31, 2025

January 31, 2024

February 15, 2025

July 1, 2025 - June 30, 2026

August 31, 2026

A manager will not be required to file 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. A manager will be required to file 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 Form N-PX filing will be due no later than March 1 of the following calendar year. The Commission provides the following example:

Final Form N-PX Filing

Date Manager Ceases to Meet Threshold

Final Form 13F Filing Due

Final Proxy Reporting Period

Final Form N-PX Due

March 30, 2023

November 14, 2024

July 1, 2024 - September 30, 2024

March 1, 2025

December 30, 2023

November 14, 2024

July 1, 2024 - September 30, 2024

March 1, 2025

February 1, 2024

November 14, 2025

July 1, 2025 - September 30, 2025

March 1, 2026

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Notes

[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. 96206; Investment Company Act Release No. 34745 (Nov. 2, 2022), available at <https://www.sec.gov/rules/final/2022/33-11131.pdf> ("Adopting Release").

[2] Commissioner Peirce's statement is available at <https://www.sec.gov/news/statement/peirce-statement-amendments-form-npx-110222> and Commissioner Uyeda's statement is available at <https://www.sec.gov/news/statement/uyeda-statement-amendments-form-npx-110222>.

[3] 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"). ICI's comment letter on the proposal is available at <https://www.ici.org/system/files/2021-12/proxyltr.pdf>. ICI also recommended that the Commission closely analyze the costs and burdens of its proposed amendments to Form N-PX for smaller funds and managers. In the Adopting Release, the Commission addressed certain of these considerations, but declined to make any changes in the final amendments. See, e.g., Adopting Release at 99-100.

[4] 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").

[5] Adopting Release at 12.

[6] Adopting Release at 15.

[7] Adopting Release at 17.

[8] Permitted abbreviations will be limited to commonly understood terms or terms that the issuer abbreviated in its description of the matter.

[9] The 14 categories are: Director elections, Section 14A say-on-pay votes, Audit-related, Investment company matters, Shareholder rights and defenses, Extraordinary transactions, Capital structure, Compensation, Corporate governance, Environment or climate, Human rights or human capital/workforce, Diversity, equity and inclusion, Other social issues, and Other. The proposal also included separate categories for: Security issuance (consolidated with the Capital structure category); Meeting governance (consolidated with the Corporate governance category); and Political activities (consolidated with the Other social issues category). In addition, the proposed Board of directors' category was changed to specifically relate to Director elections, and other board of directors related items have been consolidated into the Corporate governance category.

[10] If a reporting person receives confirmation of the number of shares voted before filing its Form N-PX, the reporting person will be required to report the actual number of shares voted. If confirmation of the actual number is received after the Form N-PX is filed, the reporting person will not be required to amend a previously filed Form N-PX.

[11] Adopting Release at 42. Some commenters raised additional concerns that proxy materials are often not provided until after the record date, which leaves reporting persons with limited information to decide whether or not to recall securities to vote. In response to this concern, the Commission states that "[r]eporting persons today already are analyzing whether to recall loaned securities, even though proxy materials may be distributed after the record date for a vote. This disclosure is not intended to change that analysis." Adopting Release at 43.

[12] In addition, a manager will not be considered to have exercised voting power over loaned securities if a client hires a securities lending agent to lend securities in the client's account and the manager has no involvement in the securities lending arrangement or in the determination of whether to recall the loaned securities. Adopting Release at 44-45.

[13] This is based on an existing reporting requirement in Form N-PX. The Adopting Release indicates that the "changed wording is intended to more clearly describe what is being reported, that is, whether the reporting [person] voted for or against management's recommendation." Adopting Release at 47.

[14] The Adopting Release provides an example, stating that "confidential treatment may be justified when a manager has filed a confidential treatment request for information reported on Form 13F that is pending or has been granted and where confidential treatment of information filed on Form N-PX would be necessary in order to protect information that is the subject of such Form 13F confidential treatment request." Adopting Release at 69-70. The Commission also reiterated its statement from the proposal that it "was 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" and noted that it received no comments on this issue. *Id.* at 68-69.

[15] As requested by ICI, the Commission clarified that this is only required if a fund has a website.

[16] Funds registered on Forms N-1A and N-3 must also provide the email address, if any, that an investor may use to request the fund's proxy voting record. Forms N-1A, N-2, and N-3 have also been amended to clarify that funds may comply with the website disclosure requirement by providing a direct link to the fund's HTML-rendered Form N-PX report on EDGAR.

[17] For these purposes, "initial filing" means any quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendar quarter.