

SEC Proposed Amendments to Form N-PX

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Introduction

On Sept. 29, 2021, the Securities and Exchange Commission (SEC) proposed amendments to Form N-PX (the Proposed Amendments or the Proposal) designed to enhance disclosures by an investment company registered under the 1940 Act (Fund) regarding proxy votes.¹ The Proposed Amendments would significantly alter Fund reporting duties on Form N-PX, through requiring the disclosure of certain additional information regarding each vote, standardization in the order and description of disclosures made on Form N-PX and required categorization of votes by subject matter. In addition, the Proposed Amendments would require certain institutional investment managers to report how they vote on executive compensation matters. Whether these changes are implemented as proposed remains to be seen; although the Commissioners voted 4-1 to advance the Proposed Amendments, two Commissioners expressed concerns regarding certain aspects of the Proposal. Public comments on the Proposal must be received on or before 60 days after it is published in the Federal Register.

Key Observations

- While the Proposed Amendments nominally are designed to “improve the utility of . . . information for investors,”¹⁴ ESG considerations clearly motivate certain aspects:
 - o The Commissioners were divided over the requirement to designate votes according to certain categories and subcategories. While Chair Gensler and Commissioners Lee and Crenshaw applauded the transparency provided by such designation, Commissioners Pierce and Roisman questioned whether shareholders would find the designations useful. In particular, Commissioner Peirce argued that terms such as “environmental justice,” “pay gap” and “other social matters” were unlikely to be helpful given the lack of uniformity in reporting across funds,¹⁵ and Commissioner Roisman stated that the proposed ESG categories and subcategories stood out in terms of their number and ambiguity and that he expected a large number of comments would include Funds asking for clarity regarding such terms.¹⁶
 - o Commissioners Pierce and Roisman also expressed concern regarding the requirement for Funds to disclose lent securities not recalled for the purpose of voting. Commissioner Roisman noted that simply disclosing shares not recalled, without including the amount of interest earned from those shares being out on loan, misses the nuanced balancing that Funds go through when considering how to maximize value for Fund investors.¹⁷
- This Proposal foreshadows additional ESG-related actions, including proposed rules for Funds and Advisers expected next spring¹⁸ as well as possible amendments to Rule 35d-1 under the Investment Company Act of 1940 (*i.e.*, the names rule).

(continued)

Key Observations *(continued)*

- While the Proposed Amendments would continue to require only an annual filing, the SEC asked for comment on whether Funds and Managers should report more frequently. For example, the SEC noted that similar shareholder proposals often appear on the ballots of many issuers in a given proxy season, and timelier public reporting of Funds' proxy votes (either in a filing or on a Fund's website) could facilitate Fund shareholders' ability to monitor their Funds' involvement in the governance activities of portfolio companies, including within a single proxy season.¹⁹

Below, please find a discussion of certain changes addressed in the Proposal that may be relevant to Funds and institutional investment managers (Managers).²

Enhanced Disclosure Requirements on Form N-PX

- **Identification of Proxy Voting Matters**

The Proposed Amendments would require that reports on Form N-PX be in the same order and use the same language as disclosed in the issuer's form of proxy.³ Reports also would be required to use a structured data language.⁴ Funds would be required to identify whether a vote was proposed by the issuer or by a security holder.⁵

- **Identification of Proxy Voting Categories**

The Proposed Amendments would require Funds and Managers to select from standardized categories to identify the subject matter of each of the reported proxy voting items in their Form N-PX disclosures.⁶ Multiple categories or subcategories would be required to be selected when appropriate, and in the event a vote did not fall within a specified subcategory, an "other" subcategory would be available, with the reporting person required to provide a brief description.⁷ Notably, the proposed categories and subcategories include certain ESG (environmental, social and governance) related topics, such as environment or climate; human rights or capital/workforce; and diversity, equity and inclusion.⁸ For a full list of the categories and subcategories, please refer to [Appendix A](#).

- **Quantitative Disclosures**

The Proposed Amendments also would require Funds and Managers to disclose (1) the number of shares voted (or, if this number is unknown, instructed to be voted) and (2) how those shares were voted (e.g., for or against proposal or abstain).⁹ In addition to these requirements, the number of shares loaned, but not recalled would be required to be disclosed.¹⁰

- **Say-on-Pay**

The Proposed Amendments would implement Section 951 of the Dodd-Frank Act, requiring Managers to report how they voted on executive compensation matters, also known as "say-on-pay" matters.¹¹ Incorporating comments from a 2010 proposal, the SEC proposed to limit reporting to securities over which the Manager exercised "voting power."¹² Similar to Form 13F, the Proposed Amendments contemplate: (1) a joint reporting process between Managers to prevent duplicative reports and (2) a confidential treatment process.¹³

¹ See Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (<https://www.sec.gov/rules/proposed/2021/34-93169.pdf>) (proposed Sept. 29, 2021) (to be codified at 17 CFR Parts 232, 240, 249, 270, 274) ("Proposal").

² In particular, the Proposed Amendments would require institutional investment managers (those required to report under Section 13(f) of the Securities Exchange Act of 1934, i.e., if they exercise investment discretion over certain equity securities having an aggregate fair market value on the last trading day in any of the preceding 12 months of at least \$100 million) to report how they voted on executive compensation matters, also known as "say-on-pay" matters. See *Id.* at 96-97.

³ *Id.* at 33-35.

⁴ *Id.* at 75.

⁵ *Id.* at 57. In addition to these requirements, the SEC proposed additional revisions to Form N-PX. For instance, Form N-PX would be amended to allow for additional information to be disclosed, so long as it does not "impede the understanding or presentation of the required information." *Id.* at 56. Also, an additional section is proposed to be added that would specifically define terms used in Form N-PX. *Id.* at 58.

⁶ *Id.* at 36. For Managers, the only relevant category would be "Section 14A say-on-pay votes," but Managers also would have to designate the appropriate sub-category (e.g. 14A executive compensation, 14A executive compensation vote frequency, or 14A extraordinary transaction executive compensation).

⁷ *Id.* at 39.

⁸ *Id.* at 38-39.

⁹ *Id.* at 43.

¹⁰ *Id.* at 44.

¹¹ *Id.* at 17.

¹² *Id.* at 19.

¹³ *Id.* at 62-66, 86-89. The Proposed Amendments indicate that confidential treatment only will be justified in narrowly tailored circumstances. *Id.* at 89.

¹⁴ *Id.* at 12.

¹⁵ Hester M. Peirce, Commissioner, U.S. Sec. & Exch. Comm'n, "Statement on Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers" (<https://www.sec.gov/news/public-statement/peirce-open-meeting-2021-09-29>) (Sept. 29, 2021).

¹⁶ Elad L. Roisman, Commissioner, U.S. Sec. & Exch. Comm'n, "Statement of Proposed Changes to Asset Managers' Proxy Voting Disclosures" (<https://www.sec.gov/news/public-statement/roisman-open-meeting-2021-09-29>) (Sept. 29, 2021).

¹⁷ *Id.*

¹⁸ Press Release 2021-99, SEC Announces Annual Regulatory Agenda (<https://www.sec.gov/news/press-release/2021-99>) (June 11, 2021).

¹⁹ Proposal, *supra* n. 1, at 84-85.

Appendix A: Proposed Proxy Voting Categories and Subcategories

Category	Subcategory
Board of Directors	Director Election, Term Limits, Committees, Size of Board or Other Board of Directors Matters (along with a brief description)
Section 14A Say-on-Pay Votes	14A Executive Compensation, 14A Executive Compensation Vote Frequency or 14A Extraordinary Transaction Executive Compensation
Audit-Related	Auditor Ratification, Auditor Rotation or Other Audit-Related Matters (along with a brief description)
Investment Company Matters	Change to Investment Management Agreement, New Investment Management Agreement, Assignment of Investment Management Agreement, Business Development Company Approval of Restricted Securities, Closed-end Investment Company Issuance of Shares Below Net Asset Value, Business Development Company Asset Coverage Ratio Change or Other Investment Company Matters (along with a brief description)
Shareholder Rights and Defenses	Adoption or Modification of a Shareholder Rights Plan, Control Share Acquisition Provisions, Fair Price Provisions, Board Classification, Cumulative Voting or Other Shareholder Rights and Defenses Matters (along with a brief description)
Extraordinary Transactions	Merger, Asset Sale, Liquidation, Buyout, Joint Venture, Going Private, Spinoff, Delisting or Other Extraordinary Transaction Matters (along with a brief description)
Security Issuance	Equity, Debt, Convertible, Warrants, Units, Rights or Other Security Issuance Matters (along with a brief description)
Capital Structure	Stock Split, Reverse Stock Split, Dividend, Buyback, Tracking Stock, Adjustment to Par Value, Authorization of Additional Stock or Other Capital Structure Matters (along with a brief description)
Compensation	Board Compensation, Executive Compensation (other than Section 14A say-on-pay), Board or Executive Anti-hedging, Board or Executive Anti-pledging, Compensation Clawback, 10b5-1 Plans or Other Compensation Matters (along with a brief description)
Corporate Governance	Articles of Incorporation or Bylaws, Board Committees, Codes of Ethics or Other Corporate Governance Matters (along with a brief description)
Meeting Governance	Approval to Adjourn, Acceptance of Minutes or Other Meeting Governance Matters (along with a brief description)

Category	Subcategory
Environment or Climate	Greenhouse Gas (GHG) Emissions, Transition Planning or Reporting, Biodiversity or Ecosystem Risk, Chemical Footprint, Renewable Energy or Energy Efficiency, Water Issues, Waste or Pollution, Deforestation or Land Use, Say-on-Climate, Environmental Justice or Other Environment or Climate Matters (along with a brief description)
Human Rights or Capital/Workforce	Workforce-related Mandatory Arbitration, Supply Chain Exposure to Human Rights Risks, Outsourcing or Offshoring, Workplace Sexual Harassment or Other Human Rights or Human Capital/Workforce Matters (along with a brief description)
Diversity, Equity and Inclusion	Board Diversity, Pay Gap, or Other Diversity, Equity and Inclusion Matters (along with a brief description)
Political Activities	Lobbying, Political Contributions or Other Political Activity Matters (along with a brief description)
Other Social	Data Privacy, Responsible Tax Policies, Charitable Contributions, Consumer Protection or Other Social Matters (along with a brief description)

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