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**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 232, 240, 249, 270, and 274**

**[Release Nos. 34-93169; IC-34389; File No. S7-11-21]**

**RIN 3235-AK67**

**Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is proposing to amend Form N-PX under the Investment Company Act of 1940 (“Investment Company Act”) to enhance the information mutual funds, exchange-traded funds (“ETFs”), and certain other funds currently report annually about their proxy votes and to make that information easier to analyze. The Commission also is proposing rule and form amendments under the Securities Exchange Act of 1934 (“Exchange Act”) that would require an institutional investment manager subject to the Exchange Act to report annually on Form N-PX how it voted proxies relating to executive compensation matters, as required by the Exchange Act. The proposed reporting requirements for institutional investment managers, if adopted, would complete implementation of those requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

**DATES:** Comments should be received on or before December 14, 2021.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-11-21 on the subject line; or

*Paper comments:*

- Send paper comments to, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-11-21. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s website (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission’s public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission’s website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** Nathan R. Schuur, Senior Counsel; Angela Mokodean, Branch Chief; or Brian M. Johnson, Assistant Director, at (202) 551-6792, Investment Company Regulation Office; Terri G. Jordan, Branch Chief, at (202) 551-6825 or IMOCC@sec.gov, Chief Counsel’s Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing new 17 CFR 240.14Ad-1 [new rule 14Ad-1] under the Exchange Act.<sup>1</sup> We are also proposing amendments to the following rules and forms:

<b>Commission Reference</b>	<b>CFR Citation</b> <b>[17 CFR]</b>	
Investment Company Act	Rule 30b1-4	§ 270.30b1-4
Exchange Act and Investment Company Act	Form N-PX <sup>2</sup>	§§ 274.129 and 249.326
Securities Act of 1933 (“Securities Act”) <sup>3</sup> and Investment Company Act	Form N-1A	§§ 239.15A and 274.11A
	Form N-2	§§ 239.14 and 274.11a-1
	Form N-3	§§ 239.17a and 274.11b
Securities Act	Rule 101 of Regulation S-T	§ 232.101

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<sup>1</sup> 15 U.S.C. 78a *et seq.*

<sup>2</sup> Form N-PX was adopted under the Investment Company Act only. In this release, we are proposing to amend Form N-PX under both the Exchange Act and the Investment Company Act. 15 U.S.C. 80a-1 *et seq.*

<sup>3</sup> 15 U.S.C. 77a *et seq.*

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## I. Introduction and Background

Mutual funds, ETFs, and other registered management investment companies (collectively, “funds”) hold substantial institutional voting power that they exercise on behalf of millions of fund investors.<sup>4</sup> Funds own around 30 percent of U.S. corporate equities and in some cases funds hold a larger percent of a single company’s stock.<sup>5</sup> As a result, funds can influence the outcome of a wide variety of matters that companies submit to a shareholder vote, including matters related to governance, corporate actions, and shareholder proposals. Funds’ proxy voting decisions can play an important role in maximizing the value of their investments, affecting the more than 45 percent of U.S. households that own funds, as well as other investors in U.S. equity markets.<sup>6</sup>

For certain types of funds and their investors, proxy voting can have particularly heightened importance. For example, because index funds’ investment policies typically do not permit them to sell investments in the relevant index, these funds cannot sell a stock if they are dissatisfied with management. Instead, index funds may use their voting power to become active in corporate governance in order to increase the value of their

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<sup>4</sup> Mutual funds and most ETFs are open-end management investment companies registered on Form N-1A. An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a-4 and 80a-5(a)(1)]. The amendments proposed in this release would also apply to registered closed-end management investment companies (which register on Form N-2) and insurance company separate accounts organized as management investment companies that offer variable annuity contracts (which register on Form N-3).

<sup>5</sup> ICI 2021 Fact Book, *available at* [https://www.ici.org/system/files/2021-05/2021\\_factbook.pdf](https://www.ici.org/system/files/2021-05/2021_factbook.pdf), at figure 2.7 (stating that mutual funds and other registered investment companies held 30 percent of U.S. corporate equities as of year-end 2020).

<sup>6</sup> *Id.*, at figure 7.1 (stating that 45.7 percent of U.S. households owned funds in 2020).

investments.<sup>7</sup> Index funds have grown significantly in recent years. Index funds make up nearly half of the assets in equity funds.<sup>8</sup> More generally, the net assets of index funds as a share of mutual funds and ETFs have more than doubled since 2010.<sup>9</sup>

Due to funds' significant voting power and the effects of funds' proxy voting practices on the actions of corporate issuers and the value of these issuers' securities, investors have an interest in how funds vote.<sup>10</sup> In addition, in recent years, investors have increased their focus on how funds vote on environmental, social, and governance-oriented matters (*i.e.*, ESG matters). Many funds now incorporate sustainability or other ESG factors or put these factors at the center of their investment approach.

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<sup>7</sup> See Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25922 (Jan. 31, 2003) [68 FR 6563 (Feb. 7, 2003)] (“Form N-PX Adopting Release”) at nn.17-18 and accompanying text (noting that, because passive funds have investment policies that do not permit them to sell their shares, they may become more active in corporate governance as a way to maximize value for their shareholders).

<sup>8</sup> See Kenechukwu Anadu, Mathias Kruttli, Patrick McCabe, and Emilio Osambela, “The Shift from Active to Passive Investing: Potential Risks to Financial Stability?”, Finance and Economics Discussion Series 2018-060r1, Washington: Board of Governors of the Federal Reserve System (2020), *available at* <https://doi.org/10.17016/FEDS.2018.060r1> (citing statistics as of March 2020); *see also* ICI 2021 Fact Book, *supra* footnote 6, at figure 2.8 (stating that index funds represented 40% of the mutual fund and ETF market, excluding money market funds, in 2020).

<sup>9</sup> See ICI 2021 Fact Book, *supra* footnote 5, at figure 2.8 (noting index fund growth as a share of the mutual fund and ETF market between 2010 and 2020, excluding money market funds).

<sup>10</sup> Some investors review funds' voting practices by accessing Form N-PX reports directly on EDGAR, while others may obtain information about funds' voting practices through analysis or synthesis of Form N-PX reports by data aggregators or others. A variety of market participants and other stakeholders also use data reported on Form N-PX. *See infra* Section IV.C.1.a.

In most cases, a fund’s adviser votes proxies relating to the fund’s portfolio securities on the fund’s behalf.<sup>11</sup> Investment advisers are fiduciaries that owe duties of care and loyalty to each client.<sup>12</sup> To satisfy its fiduciary duty in making any voting determination on behalf of a fund, an investment adviser must make determinations in the best interest of its client. Further, an investment adviser cannot place its own interests ahead of the interests of its client.<sup>13</sup> An investment adviser that assumes proxy voting authority must adopt and implement policies and procedures reasonably designed to ensure it votes client securities in the best interest of clients.<sup>14</sup>

In 2003, the Commission adopted Form N-PX, which requires funds to report publicly their proxy voting records annually. Form N-PX is designed to improve transparency and enable fund shareholders to monitor their funds’ involvement in the governance activities of portfolio companies.<sup>15</sup> Since its adoption, Form N-PX has

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<sup>11</sup> See Form N-PX Adopting Release, *supra* footnote 7, at nn.11-13 and accompanying text (recognizing that while the fund’s board of directors, acting on the fund’s behalf, has the right and the obligation to vote proxies relating to the fund’s portfolio securities, this function is typically delegated to the fund’s investment adviser).

<sup>12</sup> Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)] (“2019 Fiduciary Interpretation”).

<sup>13</sup> Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Investment Advisers Act Release No. 5325 (Aug. 21, 2019) [85 FR 55155 (Sept. 3, 2019)] (“Proxy Voting Interpretation”).

<sup>14</sup> See 17 CFR 275.206(4)-6.

<sup>15</sup> See Form N-PX Adopting Release, *supra* footnote 7, at paragraph accompanying n.34. Although the Commission proposed to require funds to disclose their proxy voting records in their annual and semiannual shareholders reports, after considering comments, the Commission adopted a separate form—Form N-PX—for funds to use in filing this information with the Commission. See *id.* at Section II.B. In the same release, the Commission also adopted amendments to require funds to disclose the policies and procedures they use to determine how to vote proxies. In that release, the Commission discussed several benefits of providing transparency on how funds vote, including illuminating potential conflicts of interest, discouraging voting that is inconsistent with

advanced transparency into fund voting. However, these reports can be difficult for investors to use and can provide an incomplete picture of a fund's voting practices.

Investors may face difficulties using Form N-PX reports to find a particular fund's voting record, find a specific vote or type of vote that is of interest, or compare funds' voting records for several reasons. First, the organization and presentation of funds' proxy voting records in Form N-PX reports can vary significantly. For example, funds may provide unclear and inconsistent descriptions of voting matters (*e.g.*, by using abbreviations or other shorthand). As another example, although the instructions to the form require separate presentations for each fund, some funds interpret this requirement as providing flexibility to organize voting information first by security, with each fund holding that security listed separately.<sup>16</sup> As a result, a given fund's voting record can be spread throughout the report instead of presented together in one place. Second, Form N-PX reports can be overwhelmingly long due to the number of voting matters and funds the reports often cover.<sup>17</sup> A single fund may own hundreds of securities, each of which may have ten or more proposals each year, and a single Form N-PX report often includes

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fund shareholders' best interests, and encouraging funds to become more engaged in corporate governance of issuers held in their portfolios. *Id.* at Section I.

<sup>16</sup> Many fund complexes include information about several different funds in a single Form N-PX report, given the structure of many funds as series of a trust. *See* Instruction 1 to current Form N-PX ("In the case of a registrant that offers multiple series of shares, provide the information required by this Item separately for each series. The term 'series' means shares offered by a registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with Rule 18f-2(a) under the Act (17 CFR 270.18f-2(a)).").

<sup>17</sup> Based on staff analysis of reports on Form N-PX, larger funds can have filings in excess of 1,000 pages.

information about several different funds' voting records.<sup>18</sup> Third, reports on Form N-PX are not currently filed in a machine readable, or "structured," data language. This can make it more difficult for investors to analyze efficiently the reported data, particularly in light of the inconsistencies and length of Form N-PX reports.<sup>19</sup>

In addition to difficulties in accessing and analyzing the data provided on Form N-PX, certain gaps in the required disclosure may result in an incomplete picture of a fund's proxy voting practices. Funds commonly engage in securities lending activities to generate additional revenue for the fund.<sup>20</sup> When a fund lends its portfolio securities, it transfers incidents of ownership relating to the loaned securities, including proxy voting rights, for the duration of the loan. As a result, while the securities are on loan, the fund is not able to vote the proxies of such securities. If a fund determines that it wants to vote loaned securities, it must recall the securities and receive them prior to the record date for the vote. Recalling loaned securities may decrease the revenue a fund generates from

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<sup>18</sup> For example, during the 2017 proxy season, funds cast more than 7.6 million votes for proxy proposals, and the average fund voted on 1,504 separate proxy proposals for U.S. listed portfolio companies. Letter dated Mar. 15, 2019, from Paul Schott Stevens, President and CEO, Investment Company Institute, submitted in response to the Statement Announcing SEC Staff Roundtable on the Proxy Process, *available at* <https://www.sec.gov/comments/4-725/4-725.htm>.

<sup>19</sup> While some structured data is available commercially, investors seeking to use this information may incur costs, as well as potential limits on the comprehensiveness and timeliness of available information.

<sup>20</sup> According to Form N-CEN filings, 67.2% of funds were authorized to engage in securities lending in their most recent fiscal year, and 40.2% of funds reported lending securities over that same period. These funds reported, in the aggregate, net income from securities lending of \$2.663 billion. *See also* Reena Aggarwal et al., *The Role of Institutional Investors in Voting*, *J. of Finance*, at 2310 (2015) (noting that "[m]ost large pension funds, mutual funds, and other institutional investors have a lending program and consider it an important source of revenue, with estimates of \$800 million in annual revenue for pension funds.").

securities lending activity. The decision of whether to recall a security on loan to vote it is not currently disclosed on Form N-PX, although some investors have expressed interest in information about the relationship between a fund's securities lending and proxy voting.<sup>21</sup>

To improve the utility of Form N-PX information for investors, we are proposing amendments to enhance the information funds currently report about their proxy votes on Form N-PX and to make that information easier to analyze. For example, we are proposing to require funds to tie the description of the voting matter to the issuer's form of proxy and to categorize voting matters by type. We are also proposing to require reporting of information on Form N-PX in a structured data language either via a Commission-supplied web-based form or as an Extensible Markup Language ("XML") file.<sup>22</sup> In addition, we are proposing to require disclosure of the number of shares that were voted (or, if not known, the number of shares that were instructed to be cast) and the number of shares that were loaned and not recalled. To enhance investors' access to

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<sup>21</sup> See, e.g., Letter of the Shareowner Education Network (Oct. 20, 2010) (File No. S7-14-10) ("Shareowner Education Letter on Concept Release") ("Funds should disclose all aspects of securities lending that affect their investors, such as the number of shares on loan over the record date and lending fees, as well as the number of shares from any other missed voting opportunities and the actual number of shares that were voted for each meeting. This information is important to investors who are monitoring the stewardship responsibilities of funds."). See also *infra* footnote 99.

<sup>22</sup> Cf. 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>, at 5 (recommending amendments to Form N-PX to provide for the tagging of data).

funds' proxy voting records, we also are proposing to require a fund to provide its voting record on (or through) its website.

In addition to proposing to amend Form N-PX to enhance disclosure of funds' proxy voting records, we are proposing rule and form changes to require an institutional investment manager subject to section 13(f) reporting requirements (“manager”) to report annually on Form N-PX how it voted proxies relating to shareholder advisory votes on executive compensation (or “say-on-pay”) matters.<sup>23</sup> Similar to funds, managers have substantial voting power. As of March 31, 2021, managers exercised investment discretion over approximately \$39.79 trillion in section 13(f) securities.<sup>24</sup> This aspect of the proposal is aimed at completing implementation of section 951 of the Dodd-Frank

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<sup>23</sup> The term “institutional investment manager” includes 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. *See* section 13(f)(6)(A) of the Exchange Act [15 U.S.C. 78m(f)(6)]. The term “person” includes any natural person, company, government, or political subdivision, agency, or instrumentality of a government. *See* section 3(a)(9) of the Exchange Act [15 U.S.C. 78c(a)(9)]. Entities serving as managers could include, for example: banks, insurance companies, and broker-dealers that invest in, or buy and sell, securities for their own accounts; corporations and pension funds that manage their own investment portfolios; or investment advisers that manage private accounts, mutual fund assets, or pension plan assets. In addition to amendments to Form N-PX, we are proposing new rule 14Ad-1 under the Exchange Act to require managers to annually report their say-on-pay votes on Form N-PX.

<sup>24</sup> This number does not include put or call options and is based on staff review of managers' reports on Form 13F covering the first quarter of 2021. Section 13(f) of the Exchange Act requires a manager to file a report with the Commission if it exercises investment discretion with respect to accounts holding certain equity securities (“section 13(f) securities”) having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100 million. Rule 13f-1 requires that managers file quarterly reports on Form 13F if the accounts over which they exercise investment discretion hold an aggregate of more than \$100 million in section 13(f) securities. *See* 17 CFR 240.13f-1. Section 14A(d) of the Exchange Act requires that “every institutional investment manager subject to section 13(f)” of the Exchange Act report its say-on-pay votes.

Act. The Commission first proposed rule and form changes in October 2010 to implement the Dodd-Frank Act's manager reporting requirements.<sup>25</sup> This proposal takes into account the comments we received in response to that proposal.

Section 951 of the Dodd-Frank Act added new section 14A to the Exchange Act. This section generally requires public companies to hold non-binding shareholder advisory votes to: (1) approve the compensation of its named executive officers; (2) determine the frequency of such votes, with the option of every 1, 2, or 3 years; and (3) approve "golden parachute" compensation in connection with a merger or acquisition (collectively, "say-on-pay votes").<sup>26</sup> Section 14A(d) of the Exchange Act requires that every manager report at least annually how it voted on say-on-pay votes, unless such vote is otherwise required to be reported publicly. The Commission's 2010 proposal to implement this provision would have required managers to file their record of say-on-pay votes with the Commission annually on Form N-PX, and would have amended Form N-PX to accommodate the new manager filings.<sup>27</sup>

Most commenters on the 2010 proposal expressed overall support for the Commission's proposal to implement this requirement through reporting on modified

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<sup>25</sup> See Exchange Act Release No. 63123 (Oct. 18, 2010) [75 FR 66622 (Oct. 28, 2010)] ("2010 Proposing Release").

<sup>26</sup> See section 14A(a) and (b) of the Exchange Act; 17 CFR 240.14a-21; see also Item 402(a)(3) of Regulation S-K (defining the term "named executive officers").

<sup>27</sup> See 2010 Proposing Release, *supra* footnote 25. Unless otherwise indicated, comments cited in this release are the public comments the Commission received in response to the 2010 Proposing Release, which are available at <http://www.sec.gov/comments/s7-30-10/s73010.shtml>. In addition, to facilitate public input on the Dodd-Frank Act, the Commission provided a series of email links, organized by topic, on its website. The public comments received on section 951 of the Dodd-Frank Act are available at <http://www.sec.gov/comments/df-title-ix/executive-compensation/executive-compensation.shtml>.

Form N-PX.<sup>28</sup> As discussed further below, some commenters expressed concerns with particular aspects of the proposal. The rule and form amendments we are proposing include certain modifications from the 2010 proposal, including modifications that take into consideration commenters’ suggestions. In response to comments, we propose to require managers to report say-on-pay votes for securities over which the manager exercised voting power. The proposed definition of exercise of voting power focuses on instances when the manager uses voting power to influence a voting decision. To reduce the potential for duplicative reporting when more than one manager exercises voting power or when a manager exercises voting power on behalf of a fund, we propose to allow managers to rely on joint reporting provisions under these circumstances. We also propose that the amendments to Form N-PX for funds would apply to managers reporting say-on-pay votes on Form N-PX.

## **II. Discussion**

### **A. Scope of Funds’ Form N-PX Reporting Obligations**

Currently, every registered management investment company, other than a small business investment company registered on Form N-5, must file its proxy voting record

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<sup>28</sup> See, e.g., Letter of California Public Employees’ Retirement System (Nov. 18, 2010) (“CalPERS Letter”); Letter of Council of Institutional Investors (Nov. 12, 2010) (“CII Letter”); Letter of Glass Lewis & Co. (Nov. 18, 2010) (“Glass Lewis Letter I”); Letter of Investment Company Institute (Nov. 18, 2010) (“ICI Letter”); Letter of Senator Carl Levin (Nov. 18, 2010) (“Levin Letter”); Letter of Heidi Preston (Oct. 26, 2010). Two commenters acknowledged that the Commission’s proposal was required under the Dodd-Frank Act. Letter of Investment Adviser Association (Nov. 16, 2010) (“IAA Letter”); Letter of Oli Stone (Nov. 17, 2010) (“Stone Letter”). One commenter generally opposed the proposal. Letter of Dennis Reiland (Nov. 8, 2010) (“Reiland Letter”).

annually on Form N-PX.<sup>29</sup> We are not proposing to modify the scope of registered investment companies subject to Form N-PX reporting requirements.

We are, however, proposing to amend the scope of voting decisions these funds must report. Currently, funds are required to report information for each matter relating to a portfolio security considered at any shareholder meeting held during the reporting period and with respect to which the fund was entitled to vote.<sup>30</sup> We are proposing to amend this standard to provide that, for purposes of Form N-PX, a fund would be entitled to vote on a matter if its portfolio securities are on loan as of the record date for the meeting because the fund could recall them and vote them.<sup>31</sup> This proposed amendment is designed to ensure that a fund's filings on Form N-PX reflect the effect of its securities lending activities on its proxy voting, providing context to the information funds already provide about revenue from securities lending.

We request comment on the proposed amendments to the scope of funds' reporting obligations on Form N-PX, including the following:

1. Should we continue to require all registered management investment companies, other than small business investment companies registered on Form N-5, to report on Form N-PX? Are there other types of registered investment companies, such as unit investment trusts, that we should require to report their proxy votes on Form N-PX? If we do so, would these other types of investment companies face unique challenges in reporting their proxy votes? If we extended Form N-PX reporting

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<sup>29</sup> See rule 30b1-4 under the Investment Company Act [17 CFR 270.30b1-4].

<sup>30</sup> See Item 1 of current Form N-PX.

<sup>31</sup> See Item 1 of proposed Form N-PX.

- requirements to unit investment trusts, should we exclude unit investment trusts that invest exclusively in mutual funds, such as those that offer variable annuities and variable life insurance, since the underlying mutual funds would be covered?
2. As proposed, should we amend Form N-PX to provide that a fund will be entitled to vote on a matter if its portfolio securities are on loan as of the record date? If not, why should the form not consider a fund to be entitled to vote loaned securities where the fund could recall the securities in order to vote them?

**B. Scope of Managers' Form N-PX Reporting Obligations**

**1. Managers Subject to Form N-PX and Categories of Votes They Must Report**

We are proposing that Form N-PX reporting obligations for say-on-pay votes would extend to each person that (i) is an “institutional investment manager” as defined in the Exchange Act; and (ii) is required to file reports under section 13(f) of the Exchange Act.<sup>32</sup> This is consistent with the scope of the reporting obligation in section 14A(d) of the Exchange Act. Thus, a manager that is otherwise required to report on Form 13F would be required to disclose its say-on-pay votes on Form N-PX.<sup>33</sup>

We are proposing, consistent with the 2010 proposal, to require a manager’s report on Form N-PX to include the manager’s voting record for say-on-pay votes.<sup>34</sup> The types of votes that the proposal would require managers to report are the same as the

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<sup>32</sup> See proposed rule 14Ad-1(a); 15 U.S.C 78m(f).

<sup>33</sup> Proposed rule 14Ad-1(a).

<sup>34</sup> Proposed rule 14Ad-1(a); Item 1 of proposed Form N-PX. Shareholder votes on executive compensation that are not required by sections 14A(a) and (b), such as in the case of foreign private issuers (as defined in rule 3b-4(c) under the Exchange Act [17 CFR 240.3b-4(c)]) that are exempt from the proxy solicitation rules, would not be required to be reported on proposed Form N-PX.

types provided by section 14A(d) of the Exchange Act. The manager, therefore, would be required to report votes required by section 14A(a) on the approval of executive compensation and on the frequency of such executive compensation approval votes, as well as votes required by section 14A(b) on the approval of executive compensation that relates to an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the issuer's assets.

A few commenters expressed support for broader disclosure of managers' proxy votes, beyond say-on-pay votes.<sup>35</sup> In the 2010 proposal, the Commission did not propose to require reporting of votes other than say-on-pay votes by managers because the purpose of that rulemaking was primarily to implement a statutory mandate.<sup>36</sup> We continue to believe that it is appropriate to focus on managers' say-on-pay votes, consistent with the statutory mandate.

We request comment on the class of managers who would be required to file reports on Form N-PX and the types of votes they would be required to report under the proposal:

3. Is the proposed scope of managers that would be required to report say-on-pay votes on Form N-PX appropriate? Does it sufficiently capture all managers? Does it capture managers that should not be covered? Why or why not?

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<sup>35</sup> See ICI Letter (expressing the belief that all institutional investors should be required to disclose every proxy vote they cast, as funds currently do); Stone Letter (suggesting that manager reporting requirements should cover all proxy items over which the manager has voting authority, rather than just say-on-pay votes).

<sup>36</sup> See, e.g., 2010 Proposing Release, *supra* footnote 25, at Section II.B.1 ("The scope of votes that would be required to be reported under the proposal is the same as the scope provided by new Section 14A(d) of the Exchange Act.").

4. Is there a more appropriate standard for proposed rule 14Ad-1's manager reporting requirements? If so, please explain.
5. Should we, as we are proposing, require managers to report all of their say-on-pay votes? Are any exclusions warranted? If so, please explain.
6. Should we require managers to report say-on-pay votes on Form N-PX, as proposed? Should managers use a different form for reporting these votes? For example, would there be advantages to requiring managers to report say-on-pay votes on Form 13F instead?
7. In addition to requiring managers to report their say-on-pay votes, should we require managers to report any votes other than say-on-pay votes? If so, please identify any other votes that managers should be required to report and the basis for the Commission to introduce such a reporting requirement.
8. Are there circumstances in which managers may want to voluntarily disclose other types of votes, beyond say-on-pay votes, on Form N-PX? If so, are there any impediments in the proposal that would prevent or discourage managers from voluntarily disclosing information about other types of votes?

## **2. Managers' Exercise of Voting Power**

We are proposing to require that a manager report a say-on-pay vote for a security only if the manager "exercised voting power" over the security—that is, if the manager both has voting power and exercises that power.<sup>37</sup> Under the proposal, voting power would exist when a manager has the ability to vote the security or direct the voting of the

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<sup>37</sup> See proposed rule 14Ad-1(a).

security, including the ability to determine whether to vote the security at all, or to recall a loaned security before a vote.<sup>38</sup> The proposal would define exercise of voting power to mean the actual use of voting power to influence a voting decision.<sup>39</sup> Voting power could exist or be exercised directly or through a contract, arrangement, understanding, or relationship, and multiple parties could have voting power over the same securities. For example, a party could exercise voting power if it influences the way a third party votes the security, even where the manager is not the sole decision-maker.<sup>40</sup> The proposed rule thus adopts a two-part test for determining whether a vote must be reported, requiring both power to vote a security (or to cause another party to vote such security) and the actual use of such power to influence the voting decision in the case of the specific vote.<sup>41</sup>

The proposed voting power standard differs from the approach the Commission proposed in 2010 and from how the Commission has identified voting power in certain other contexts. In 2010, the Commission proposed to require that a manager report a say-on-pay vote for a security only if the manager “had or shared the power to vote, or to direct the voting of” the security, using language similar to 17 CFR 240.13d-3(a) (rule 13d-3(a)) under the Exchange Act.<sup>42</sup> Some commenters on the 2010 Proposing Release supported the proposed focus on voting power as the standard for determining whether a

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<sup>38</sup> See proposed rule 14Ad-1(d)(1) (defining voting power).

<sup>39</sup> See proposed rule 14Ad-1(d)(2) (defining exercise of voting power).

<sup>40</sup> If two managers exercise voting power over the same security, they could rely on the joint reporting provisions in the proposal to reduce reporting burdens and address duplicative reporting. See *infra* Section II.D.1.

<sup>41</sup> Proposed rule 14Ad-1(a); Item 1 of proposed Form N-PX.

<sup>42</sup> See 2010 Proposing Release, *supra* footnote 25, at n.18 and accompanying text.

manager must report say-on-pay votes, with one noting that in practice, shared voting arrangements are rare.<sup>43</sup> Other commenters suggested that it would be more appropriate to focus on who actually voted the security, rather than who had the power to vote the security.<sup>44</sup> Another commenter noted that in certain cases, managers cast votes based on client instructions, and that in such cases the manager’s voting power is ministerial in nature.<sup>45</sup>

The revised standard we are proposing is intended to clarify the scope of the say-on-pay vote reporting obligation by focusing more specifically on the *exercise*, rather than mere *possession*, of voting power. Our proposed standard is intended to align responsibility for deciding how to vote securities with responsibility for reporting such votes.<sup>46</sup> The proposed approach is tailored to considerations associated with section 14A(d) of the Exchange Act and the scope of say-on-pay vote reporting obligations. As a result, our proposed definition of “voting power” and the “exercise” of voting power do not affect the meaning of these or similar terms used in other Commission rules.

The proposed test focuses on exercise, rather than mere possession, of voting power to address shared voting power situations and to make managers’ reports of say-on-pay votes more useful for clients and other investors. As an example of the proposed approach, if a manager votes a client’s separate account’s shares based on its own judgment or in accordance with its own guidelines, the manager exercised voting power

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<sup>43</sup> See, e.g., Letter of Chris Barnard (Nov. 13, 2010) (“Barnard Letter”); CalPERS Letter; CII Letter.

<sup>44</sup> See, e.g., Stone Letter; Letter of Managed Funds Association (Dec. 22, 2010) (“MFA Letter”); ABA Letter; Glass Lewis Letter I.

<sup>45</sup> See, e.g., Mayer Brown Letter.

<sup>46</sup> Glass Lewis Letter I (supporting this approach).

over the security and would be required to report those votes. Conversely, if the manager's voting decision on a say-on-pay vote is entirely determined by its client, either because the client communicates its wishes directly to the manager or because the client has a written policy regarding the voting decision that does not call for any independent judgment by the manager, the manager is not exercising voting power over the security because the manager is not influencing the voting decision. The proposal would not require a manager to report these votes. This is the case even if the manager is the party that carries out the actual vote in accordance with its client's wishes. However, if the manager influences the voting decision in this context by, for example, exercising its own judgment in determining how the client's policies should apply to the say-on-pay vote, then the manager would exercise voting power when it carries out the policy and report the vote accordingly. This may be the case, for instance, if a client has a policy of opposing pay packages that are unreasonable but determining if a package is "unreasonable" involves exercise of the manager's judgment. When determining whether the manager exercised voting power, the manager should assess whether it was using its voting power to influence the voting decision—such as by exercising independent judgment or expertise in a way that affects how the security was voted—or whether it was instead simply applying a policy on a formulaic or mechanical basis. As another example, a manager would exercise voting power where the manager casts a vote in accordance with voting policies developed by the manager and adopted by the client. A manager with voting power may also exercise that voting power through other influence over the voting decision, separate from any discretion the manager may have in determining or applying a client's voting policies. The fact patterns in this discussion are

meant to be illustrative examples and are not meant to cover all scenarios in which a manager would be required to report say-on-pay votes because it has voting power and uses that power to influence a voting decision.

The proposed test also provides that a manager exercises voting power when it influences the decision of whether to vote a security. For example, a manager that determines not to vote on a say-on-pay matter would exercise voting power under the proposal. A manager also would exercise voting power when it decides whether to recall loaned securities in advance of a vote in order to vote the shares.<sup>47</sup>

A manager would not exercise voting power if a third party makes all decisions of whether to vote the security. For example, certain clients may have relationships with securities lending agents, and the client or the securities lending agent would determine whether to recall loaned securities, without any involvement by the manager.<sup>48</sup> In this case, the manager would not exercise voting power with respect to the loaned securities because it would not influence the decision of whether to recall the loaned shares.

The framework we are proposing is intended to provide additional insight into how managers are exercising the voting discretion they have been granted by their clients without attributing to managers votes that are dictated fully by their clients or by other managers. The framework is intended to avoid potential confusion that could result from a manager reporting votes where the manager did not influence the voting decision. We believe requiring a manager who does not exercise voting power, for instance because its

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<sup>47</sup> See also *infra* Section C.3.b (discussing proposed disclosure about the number of shares a reporting person has loaned and not recalled, and the benefits of that disclosure).

<sup>48</sup> See ABA Letter.

votes are entirely dictated by a client’s policy, to report those votes on Form N-PX would be of limited benefit to the manager’s clients and potential clients, as well as other investors. It would not provide insight into—and in fact may obscure—how a manager exercises its discretion.<sup>49</sup>

In certain cases, we expect our proposed framework will result in multiple parties determining they exercise voting power (*e.g.*, because more than one manager provides input on applying a client’s voting policies). In these circumstances, all such managers would come within the scope of the reporting requirements under the proposal, although they could rely on the joint reporting provisions discussed below to reduce reporting burdens.

The focus on a manager’s exercise of voting power could result in the manager’s reports on Form N-PX differing from its reports on Form 13F. For example, if a manager exercises investment discretion over a particular section 13(f) security held in a client’s account, but the client retains all rights to vote proxies for that security, the manager generally would report that security on its holdings report on Form 13F. However, it would not be required to report any say-on-pay votes with respect to that security. Conversely, a manager that exercises voting power over a security, but is not required to report the security on Form 13F because it does not have investment discretion over the

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<sup>49</sup> *See, e.g.*, ISS Letter; Mayer Brown Letter (commenting that managers sometimes effectuate client voting decisions by completing the proxy card, but do not have control over or decide how shares will be voted).

security or because it did not hold the security at the end of a calendar quarter, would nonetheless be required to report say-on-pay votes on Form N-PX for that security.<sup>50</sup>

The 2010 proposal asked whether it would be appropriate to use a different standard, such as investment discretion, as the test for reporting say-on-pay votes.<sup>51</sup> We believe that using investment discretion as the test would result in managers having to report votes cast by clients in cases where the manager retains investment discretion but not voting power. We believe this would be confusing to investors and could inaccurately imply that the manager filing the report actually made or influenced the decision it was reporting.<sup>52</sup> We also are not proposing to base the reporting requirement upon whether a manager, in fact, votes rather than on whether the manager exercises voting power.<sup>53</sup> A test based on who physically marks the proxy card (or its electronic equivalent) would omit from its scope managers that participated in determining how to cast the vote, but would simplify the reporting obligation.<sup>54</sup>

We request comment on the proposed approach of requiring managers to report say-on-pay votes when they exercise voting power over the security, and in particular, on the following issues:

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<sup>50</sup> See also discussion *infra* Section II.B.3 (discussing differences in reporting between Form 13F and Form N-PX).

<sup>51</sup> See 2010 Proposing Release, *supra* footnote 25, at Section II.B.2.

<sup>52</sup> CII Letter.

<sup>53</sup> Glass Lewis Letter I (only the “voting entity” should report); MFA Letter (require reporting only when the manager has instructed an intermediary to vote its shares); Letter of Seward & Kissel LLP (Nov. 18, 2010) (“Seward Letter”) (require reporting by manager that “actually voted” the proxy); Stone Letter (party who votes should bear the burden of disclosure and the Commission should not require reporting on the basis of shared voting authority).

<sup>54</sup> ISS Letter (suggesting that the manager who receives the ballot should be the primary filer with respect to the votes covered by that ballot).

9. Should the reporting requirement be based on exercising the power to vote with respect to say-on-pay votes as proposed, or should we use some other basis? For example, should we base the reporting requirement on the possession of investment discretion, the identity of who in fact votes, or the identity of who receives the ballot? As another example, should a vote that was dictated entirely by a client's mandate be treated as an exercise of voting power by the manager, even if the manager did not influence the vote? What are the advantages and disadvantages of the different potential approaches?
10. Should we modify the proposed definitions of voting power or exercise of voting power? For example, instead of considering a manager to exercise voting power when it uses voting power to influence a voting decision, should we use a different standard, such as using voting power to "significantly" influence a voting decision or to "primarily" make a voting decision? If so, what factors would be relevant for determining if a manager's role in a voting decision meets the revised standard?
11. Should we, as proposed, consider a manager to exercise voting power when it has the ability to determine not to vote or to recall loaned securities? Would this provision present challenges to managers? If so, what are those challenges, and are there changes to the reporting requirement that would address such challenges?
12. Should we provide additional guidance concerning the circumstances under which a manager exercises voting power? If so, please specify the type of guidance that managers would find helpful.

13. Does our proposed exercise of voting power standard cover circumstances that should be covered or should not be covered? If so, what are the circumstances that should or should not be covered?

### **3. Additional Scoping Matters for Manager Reporting of Say-on-Pay Votes**

We are proposing to require that a manager report say-on-pay votes with respect to any security over which it meets the voting power test described above.<sup>55</sup> As was the case in the 2010 Proposing Release, we are not proposing to modify the scope of securities to align with those reported on Form 13F or to provide exceptions where the manager does not vote.

Some commenters supported the requirement that managers report any security.<sup>56</sup> Other commenters requested that the Commission limit the reporting obligation to securities that had previously been reported publicly on Form 13F or adopt a *de minimis* threshold below which reporting of say-on-pay votes would not be required.<sup>57</sup> A commenter requesting a *de minimis* threshold argued that not providing an equivalent

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<sup>55</sup> Proposed rule 14Ad-1(a).

<sup>56</sup> CII Letter; Levin Letter.

<sup>57</sup> See, e.g., ABA Letter (recommending non-disclosure of say-on-pay votes for securities not previously reported because they were below the *de minimis* threshold for Form 13F); Seward Letter (suggesting limiting the securities to which the reporting requirements apply to those securities previously reported publicly, or, in the alternative, adopting a threshold position size below which a reporting person need not report proxy votes); Barnard Letter (excluding securities where the manager holds less than 10,000 shares); Reiland Letter (suggesting to limit to holdings on which persons are required to file statements on Schedule 13D or Schedule 13G under the Exchange Act).

exemption from Form N-PX reporting as is available from Form 13F reporting would reduce the value of the 13F exemption and raise costs for managers.<sup>58</sup>

While we acknowledge commenters' suggestion that a *de minimis* threshold could reduce record keeping and reporting burdens on managers for smaller position sizes that currently do not require reporting on Form 13F, a *de minimis* threshold could reduce the value of the say-on-pay disclosure because a fund or manager's full voting record would not be available when the threshold applied. We therefore are not proposing to provide a *de minimis* threshold for institutional managers reporting their say-on-pay votes on Form N-PX.

Because Form 13F reports only disclose holdings as of the close of a calendar quarter, these reports are not required to include securities held during the quarter but subsequently disposed of prior to the end of the quarter. Form 13F reports also do not reflect when a manager increased or decreased its position during a quarter but returned to the "baseline" level reported on its previous Form 13F report by the end of the quarter. As a result, although some commenters requested that the Commission limit say-on-pay reporting to securities that had previously been reported publicly on Form 13F, this approach could exclude a significant number of say-on-pay votes, which we believe would be inconsistent with the purpose of section 14A. The proposed rule therefore would require a manager to report say-on-pay votes without regard to whether the

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<sup>58</sup> See Letter of Intel Corporation (Nov. 19, 2010) ("Intel Letter"). On Form 13F, a manager is permitted to omit holdings of fewer than 10,000 shares (or less than \$200,000 principal amount in case of convertible debt securities) and less than \$200,000 aggregate fair market value. See Special Instruction 10 to Form 13F.

manager had previously reported or been required to report the security as a holding on Form 13F.

In addition to comments suggesting that Form N-PX reporting obligations should more closely align with Form 13F, some commenters suggested other exceptions from Form N-PX reporting for managers who do not vote. For example, two commenters recommended that we not require a manager to report on Form N-PX if, under certain or all circumstances, the manager does not vote.<sup>59</sup> These commenters stated that some investment strategies (such as algorithmic strategies with short holding periods) are unrelated to the economic interests served by voting proxies. One of these commenters stated that, with respect to certain strategies, voting proxies could be characterized as “empty voting.”<sup>60</sup> One of these commenters suggested that, in some cases, securities are held for insufficient periods (such as less than one day) to perform the requisite analysis for proxy voting, and where the manager disclosed a policy not to vote proxies to its clients, the manager’s Form N-PX report would contain little information and would not further the policy objectives of the proposed rule.<sup>61</sup> The other commenter expressed concern about the burdens of developing and implementing technology to track record date holdings in cases where the manager does not vote.<sup>62</sup>

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<sup>59</sup> See Seward Letter (requesting an exception from the reporting requirement where the manager maintains a policy not to vote proxies and discloses that policy to clients); ABA Letter (requesting a blanket exception for holdings that were not voted).

<sup>60</sup> See ABA Letter; see also Exchange Act Release No. 62495 (July 14, 2010) [75 FR 42982, 43017-20 (July 22, 2010)] (“Proxy Mechanics Concept Release”) (discussing the concept of “empty voting”). This release cites some comment letters on the Proxy Mechanics Concept Release. These comment letters are available at <https://www.sec.gov/comments/s7-14-10/s71410.shtml>.

<sup>61</sup> Seward Letter.

<sup>62</sup> ABA Letter.

We believe that an exception from Form N-PX reporting requirements when a manager does not cast a vote on say-on-pay matters may limit the ability of investors to understand fully how a manager votes its shares. In addition, we believe the burden of reporting when the manager does not vote its shares would be lower under our current proposal, as compared to the burden of the equivalent aspect in the 2010 proposal, because the current proposal would not require the manager to track record date holdings to disclose the number of shares the manager was authorized to vote.<sup>63</sup>

A few commenters requested exceptions from Form N-PX reporting requirements in situations where a manager discloses certain information about how it votes to its clients, such as formulaic voting criteria developed by the manager which have been disclosed to clients or where the manager distributes its voting record to a client who had provided the manager its own proxy policies or guidelines to follow.<sup>64</sup> We do not believe that an exception would be warranted in these circumstances because, in addition to benefiting the direct clients of managers, public disclosure of say-on-pay votes could benefit other investors, such as plan participants of employee benefit plans that hire managers.

Finally, to the extent a manager did not exercise voting power over any securities that held say-on-pay votes during a given reporting period, we are proposing to require the manager to file a Form N-PX report affirmatively stating this fact. The Commission

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<sup>63</sup> See *supra* Section II.C.3 (discussing how the quantitative information contained in this proposal differs from the 2010 proposal, including no longer proposing to require the number of shares the manager was authorized to vote).

<sup>64</sup> ABA Letter (formulaic voting criteria); Mayer Brown Letter (distribution to clients).

also proposed this requirement in 2010.<sup>65</sup> One commenter opposed this requirement, stating that it would not contribute to the objective of increased transparency regarding any possible influence over shareholder votes and corporate governance.<sup>66</sup> However, we believe this disclosure would help investors and the Commission differentiate managers with no reportable say-on-pay votes from those that failed to file a Form N-PX report to disclose say-on-pay votes.

We request comment on the circumstances in which the proposal would require a manager to file a Form N-PX report, and, in particular, on the following issues:

14. Should we permit managers to omit votes otherwise reportable where the manager's ownership is below a specific threshold? What are the potential advantages or disadvantages if we permit a manager that holds, on the record date, fewer than 10,000 shares and less than \$200,000 aggregate fair market value to omit say-on-pay votes on such securities? Would such an exception impede investors from understanding how shares were voted? Why or why not?
15. Should we permit managers to omit votes on a particular type of security? Do managers have substantial holdings of securities that are not "section 13(f) securities" as defined by 17 CFR 240.13f-1(c), but are registered pursuant to section 12 of the Exchange Act and thus would have say-on-pay votes? Would there be potential advantages or disadvantages if we required managers to report only their say-on-pay votes on section 13(f) securities? Would such an approach

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<sup>65</sup> Item 1 of proposed Form N-PX.

<sup>66</sup> Seward Letter.

- be consistent with the public interest, and how would it impact investor protection?
16. Should we permit managers to omit votes on securities that were not held as of the end of a calendar quarter (and thus would not be reported on Form 13F)? Should we permit or require any disclosure on Form N-PX or elsewhere to explain differences between information reported on Form N-PX and information reported on Form 13F or related circumstances (*e.g.*, where a manager has significantly more or less voting power on the record date of a say-on-pay vote than its Form 13F report would otherwise suggest)? If so, under what circumstances would this disclosure be helpful? What would the disclosure entail, and should it be permissive or required?<sup>67</sup>
17. Should we expand or limit in any other way the securities with respect to which managers would be required to report say-on-pay votes?
18. Should we modify the proposed approach for managers that do not vote their shares? For example, should we permit these managers to not file Form N-PX reports? Should we exempt non-voting managers from certain disclosure requirements on Form N-PX concerning the various securities they did not vote on say-on-pay matters during the reporting period? What conditions or limitations, if any, should apply? For instance, to rely on a modified approach, should a manager be required to disclose to its clients that it does not vote? Would

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<sup>67</sup> Under the proposal, a manager would be permitted to disclose additional information on the cover page of its Form N-PX report, so long as it does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. *See* General Instruction C.3 of proposed Form N-PX.

a modified approach be particularly applicable to certain categories of managers, such as those whose trading strategies involve relatively short-term ownership?

19. As proposed, should we require a manager without any say-on-pay votes to disclose to file a report on Form N-PX stating that fact? Would such filings effectively distinguish managers that missed a required filing from managers without say-on-pay votes to report?

### **C. Proxy Voting Information Reported on Form N-PX**

We are proposing to enhance funds' current Form N-PX disclosures so investors can more easily understand and analyze proxy voting information. These proposed changes include, for example, more clearly tying the description of the voting matter to the issuer's form of proxy and categorizing voting matters by type. In addition, we are proposing to extend many of these proposed enhancements to the Form N-PX reports that managers would file under this proposal.

#### **1. Identification of Proxy Voting Matters**

We are proposing to require reports on Form N-PX to identify proxy voting matters using the same language as disclosed in the issuer's form of proxy. In 2010, the Commission proposed to require standardized descriptions for say-on-pay votes and brief identifications of other votes.<sup>68</sup> At that time, the Commission requested comment on alternative methods of standardizing descriptions of these voting matters. As part of the Proxy Mechanics Concept Release, the Commission also solicited comment regarding methods for uniform identification of proxy voting matters in Form N-PX reports.<sup>69</sup> In

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<sup>68</sup> See 2010 Proposing Release, *supra* footnote 25, at paragraph accompanying n.89.

<sup>69</sup> Proxy Mechanics Concept Release, *supra* footnote 60, at Section III.C.3.

particular, the Commission asked about ways to standardize identifications if issuers do not themselves create and assign unique interactive data “tags” for each matter on their proxy statements.<sup>70</sup> Several commenters on the Commission’s 2010 proposal supported requiring standardized descriptions for say-on-pay votes, and one commenter on the Proxy Mechanics Concept Release expressed support for standardizing descriptions more broadly.<sup>71</sup> Two commenters expressed concern with standardized descriptions for matters other than say-on-pay votes. These commenters cited the practical challenges posed in uniformly identifying different matters, given both the variety of voting matters before shareholders and the absence of standardized data tags in issuer proxy materials.<sup>72</sup>

We are proposing to require reporting persons to use the same language from the issuer’s form of proxy to identify proxy voting matters on Form N-PX.<sup>73</sup> In addition, each voting matter (including say-on-pay votes and other voting matters) would be

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<sup>70</sup> *Id.*, at requests for comment subsequent to n.237 (“Whether or not we permit or require interactive data tagging, should Form N-PX require standardized reporting formats so that comparisons between funds are easier?”).

<sup>71</sup> *See* CalPERS Letter; Fidelity Letter; Letter of Michael Ostrovsky (Sept. 5, 2013) (File No. S7-14-10) (“Ostrovsky Letter on Concept Release”) (supporting a standardized classification system for voting matters).

<sup>72</sup> *See* Fidelity Letter (citing difficulty “given the wide variety of votes placed before shareholders” and stating that “as a general matter, the variable nature of proxy-related disclosures do not lend themselves to uniform standardization”); Letter of Fidelity Investments (Oct. 20, 2010) (File No. S7-14-10) (“Fidelity Letter on Concept Release”) (questioning feasibility of providing for a uniform identification of each matter voted in reports on Form N-PX); Letter of Investment Company Institute (Oct. 20, 2010) (File No. S7-14-10) (“ICI Letter on Concept Release”) (citing a “significant practical issue” of “how to provide for uniform identification of each matter voted across different funds”).

<sup>73</sup> Special Instruction D.3 to proposed Form N-PX.

required to be reported in the same order as presented on the issuer’s form of proxy.<sup>74</sup> We believe these proposed requirements would facilitate identification of identical matters included on different Form N-PX filings by different reporting persons even though there is no interactive data tagging in issuer proxy materials.<sup>75</sup> We are proposing to apply the identification requirement to all voting matters in order to facilitate the ability of investors to better understand fund and manager proxy disclosure and compare voting records. We believe that reflecting the descriptions and ordering used on an issuer’s form of proxy, which is publicly available and must identify clearly and impartially each separate matter intended to be acted upon, would address the previously identified practical issues associated with standardized descriptions.<sup>76</sup>

We request comment on the proposed requirement to identify proxy voting matters, including the following:

20. Should we require, as we are proposing, that Form N-PX use the descriptions and ordering used on an issuer’s form of proxy? Are there practical considerations we should consider with respect to tying Form N-PX disclosure to forms of proxies?
21. Does using the descriptions and ordering used on an issuer’s form of proxy, which is publicly available, overcome the previously identified practical issues

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<sup>74</sup> *Id.* For matters involving the election of more than one director, reporting persons would be required to identify each director separately in the same order as on the form of proxy, even if the election of directors is presented as a single matter on the form of proxy. *Id.*

<sup>75</sup> *See* 2010 Proposing Release, *supra* footnote 25, at requests for comment subsequent to n.90 (requesting comment on alternatives that could result in uniform tags being assigned by all reporting persons).

<sup>76</sup> *See* Securities Exchange Act rule 14a-4(a)(3) (requiring that the form of proxy identify clearly and impartially each separate matter intended to be acted upon). *See also* Division of Corporation Finance, Compliance and Disclosure Interpretations, Section 301 (Mar. 22, 2016), *available at* <https://www.sec.gov/divisions/corpfin/guidance/exchange-act-rule-14a-4a3-301.htm>.

associated with standardized descriptions? Why or why not? Should we revert to the standardized language approach for say-on-pay votes, as was proposed in the 2010 proposal? If so, why?

22. Would the proposed requirement to use the description and ordering from an issuer's form of proxy facilitate the comparison of Form N-PX data, or otherwise enhance the usefulness of information reported on Form N-PX for users? What obstacles, if any, might prevent reporting persons from being able to comply with the proposed requirement?

## **2. Identification of Proxy Voting Categories**

We are proposing that Form N-PX reporting persons select from standardized categories to identify the subject matter of each of the reported proxy voting items. This requirement would apply to managers and funds. The proposal would require a reporting person to categorize each proxy voting matter from a specified list of categories and subcategories. The proposed categories and subcategories are designed to cover matters on which funds frequently vote, based on our staff's experience and review of the matters on which funds voted in 2020, including say-on-pay votes:

- Board of directors (subcategories: 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 (subcategories: 14A executive compensation, 14A executive compensation vote frequency, or 14A extraordinary transaction executive compensation);<sup>77</sup>
- Audit-related (subcategories: auditor ratification, auditor rotation, or other audit-related matters (along with a brief description));
- Investment company matters (subcategories: 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 (subcategories: 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 (subcategories: merger, asset sale, liquidation, buyout, joint venture, going private, spinoff, delisting, or other extraordinary transaction matters (along with a brief description));

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<sup>77</sup> The proposed Form N-PX categorizations include a separate category for say-on-pay votes to make it easier for investors to identify these votes, which require special disclosure under the Dodd-Frank Act. The Commission similarly proposed to require managers to use standardized descriptions to identify these votes in the 2010 proposal.

- Security issuance (subcategories: equity, debt, convertible, warrants, units, rights, or other security issuance matters (along with a brief description));
- Capital structure (subcategories: 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 (subcategories: 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 (subcategories: articles of incorporation or bylaws, board committees, codes of ethics, or other corporate governance matters (along with a brief description));
- Meeting governance (subcategories: approval to adjourn, acceptance of minutes, or other meeting governance matters (along with a brief description));
- Environment or climate (subcategories: 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 human capital/workforce (subcategories: 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 (subcategories: board diversity, pay gap, or other diversity, equity, and inclusion matters (along with a brief description));
- Political activities (subcategories: lobbying, political contributions, or other political activity matters (along with a brief description));
- Other social (subcategories: data privacy, responsible tax policies, charitable contributions, consumer protection, or other social matters (along with a brief description)); or
- Other (along with a brief description).

Some categories would contain specific subcategories which a reporting person must select when filing a report on Form N-PX. For example, a reporting person would need to distinguish section 14A executive compensation votes from section 14A executive compensation frequency votes. When categorizing a particular voting matter, a reporting person would be required to select multiple categories or subcategories for the matter if applicable. If a vote did not fall within a specified subcategory, the reporting person would select the “other” subcategory and provide a brief description. The brief description need only identify the subject matter of the vote, consistent with the level of detail in the specified subcategories.

We believe that requiring reporting persons to categorize their proxy votes would help investors understand how funds and managers are voting by helping them readily identify votes on matters that are important to them. It also would allow investors to compare how different managers or funds voted on specific types of matters.

We request comment on the proposed requirement to categorize proxy votes reported on Form N-PX, and, in particular, on the following issues:

23. Should we require reporting persons to categorize their votes, as proposed? What are the advantages and disadvantages of this approach?
24. Do the proposed categories or subcategories adequately capture the range of proxy voting matters? Are there other categories or subcategories of votes that we should require reporting persons to identify? Will these categorizations enhance the usefulness of the information reported on Form N-PX for investors and facilitate the comparison of reporting persons' proxy voting records? Are there categories or subcategories we should eliminate?
25. Should we require reporting persons to use high-level categories to identify different types of votes, or should we require reporting persons to use subcategories, as proposed? Are there particular areas where subcategories are more or less difficult for reporting persons to use for purposes of identifying different types of votes? Are there particular areas where subcategories are more or less useful for investors?
26. Are there particular types of votes where the categorization would be unclear or where reporting persons may reasonably categorize the same vote differently? To what extent would the ability to select more than one category for a given vote

address these types of issues? Would the use of subcategories help address or contribute to potentially differing approaches to categorizing a particular vote among reporting persons?

27. Are the proposed categories and subcategories sufficiently clear? Are there any categories or subcategories where additional guidance or definition would be helpful for understanding the parameters of a category or subcategory?

### **3. Quantitative Disclosures**

We are proposing changes to Form N-PX that would 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). We are also proposing a requirement to disclose the number of shares the reporting person loaned and did not recall. These quantitative disclosure requirements would apply to a manager's say-on-pay votes and to all of a fund's votes.

In 2010, the Commission proposed to require that both funds and managers report: (1) the number of shares that the reporting person was entitled to vote (for funds) or had or shared voting power over (for managers); (2) the number of shares voted; and (3) how the reporting person voted the shares and, if the votes were cast in multiple manners (*e.g.*, for and against), the number of shares voted in each manner.<sup>78</sup>

Comments regarding these quantitative disclosure requirements were mixed. Some commenters supported the proposed quantitative disclosures or stated that they

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<sup>78</sup> See 2010 Proposing Release, *supra* footnote 25, at Section II.E.3.

were acceptable.<sup>79</sup> Some commenters stated that providing quantitative disclosures would be burdensome.<sup>80</sup> One commenter opposed requiring funds to quantify votes in particular and stated that quantitative disclosures might cause confusion for investors or result in competitors gaining insight into fund strategies.<sup>81</sup>

Some commenters, while opposing any requirement that reporting persons report quantitative information, agreed that the use of the existing Form N-PX disclosure (*e.g.*, for, against, or abstain) without quantification is not meaningful for “split votes,” *i.e.*, if different votes are cast on the same matter by a reporting person.<sup>82</sup> These commenters suggested, should the Commission determine to adopt quantitative reporting requirements, that it limit such reporting to instances of actual split votes, and allow reporting persons to report the number of shares instructed to be cast.<sup>83</sup> Another commenter suggested that the Commission consider alternative indications of “magnitude” in lieu of requiring disclosure of the number of votes cast.<sup>84</sup>

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<sup>79</sup> See Levin Letter (stating that quantitative disclosure will allow investors to monitor, understand, and hold their proxies accountable for their votes); CalPERS Letter (finding disclosure of the number of shares voted acceptable).

<sup>80</sup> See ICI Letter; Fidelity Letter; Mayer Brown Letter. One commenter, however, while opposing quantitative disclosures for other reasons, noted that from a purely technological perspective, disclosing share positions voted would be straightforward. See ISS Letter.

<sup>81</sup> See ICI Letter (noting that complying with the quantitative disclosure requirements as proposed would be burdensome and difficult, and questioning the value to shareholders).

<sup>82</sup> See Fidelity Letter (stating that “a mere notation of ‘split’ may not be rich disclosure”); ICI Letter (stating that “simply reporting ‘split’ does not provide much meaningful information about the way the reporting entity voted, and additional information may be useful to put the split vote in context”).

<sup>83</sup> See ICI Letter; Fidelity Letter; MFA Letter.

<sup>84</sup> See Mayer Brown Letter.

As discussed in greater detail below, as compared to the 2010 proposal, there are three primary differences in the proposed quantitative disclosures requirements: (1) clarifying that the reporting person's records could be used to determine the number of shares voted, even where those records do not reflect a confirmed number of actual votes cast and received by the issuer; (2) requiring disclosure of the number of shares the reporting person has loaned and not recalled; and (3) not proposing the previously proposed provisions requiring disclosure of the number of shares the reporting person was entitled to vote (for funds) or had or shared voting power over (for managers).

a. Disclosure of Number of Shares Voted

We are proposing, substantially as proposed in the 2010 proposal, a requirement that both funds and managers disclose: (1) the number of shares voted (or instructed to be voted); and (2) how those shares were voted (*e.g.*, for or against proposal, or abstain).<sup>85</sup> If the votes were cast in multiple manners (*e.g.*, both for and against), we propose requiring disclosure of the number of shares voted (or instructed to be voted) in each manner.<sup>86</sup> We are proposing to require disclosure of the number of shares voted or instructed to be voted because, where a manager votes in multiple ways on the same matter, disclosure of that fact alone is largely meaningless without providing a measure of the magnitude of

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<sup>85</sup> Items 1(h) and 1(j) of proposed Form N-PX.

<sup>86</sup> Item 1(j) of proposed Form N-PX. As proposed in the 2010 release, in the case of a shareholder vote on the frequency of executive compensation votes, a reporting person would be required to disclose the number of shares, if any, voted in favor of each of 1-year frequency, 2-year frequency, or 3-year frequency, and the number of shares, if any, that abstained. We are clarifying that the number zero ("0") would be entered if no shares were voted, so that responses to this item would be uniformly numeric in nature. Item 1(h) of proposed Form N-PX.

the different votes.<sup>87</sup> In addition, and in contrast to the 2010 proposal, we are also proposing to require disclosure of the number of shares the reporting person loaned and did not recall.<sup>88</sup> We believe that the context given by disclosing the number of shares voted would allow investors to better understand how securities lending activities affect the voting practices of the reporting person. Without disclosing the amount voted, the amount of shares on loan for a given vote would not provide meaningful insight into how a fund or manager voted.

As suggested by some commenters, we are proposing to modify the 2010 proposal with respect to the disclosure of the number of shares voted because reporting persons may not be able to determine with certainty how many of the votes they instructed to be cast were actually voted in a particular matter.<sup>89</sup> This change would permit a reporting person to use the number of shares voted as reflected in its records at the time of filing a report on Form N-PX. If a reporting person has not received confirmation of the actual number of votes cast, we are proposing that Form N-PX

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<sup>87</sup> While we understand that funds do not split votes regularly, we believe investors would benefit from parity in disclosure between funds and managers in cases where funds do split votes.

<sup>88</sup> Item 1(i) of proposed Form N-PX. *See also infra* Section II.C.3.b for more information with respect to this proposed requirement.

<sup>89</sup> *See* ICI Letter; Fidelity Letter; MFA Letter. *See also* Memorandum from the Division of Investment Management regarding November 29, 2010 telephone call with BlackRock, Inc., representatives (November 30, 2010), available at <http://www.sec.gov/comments/s7-30-10/s73010-33.pdf> (in which BlackRock representatives indicated that the burden associated with providing quantitative disclosures may be significantly reduced to the extent that the proposed quantitative disclosure requirement was modified to only require disclosure of the number of votes instructed to be cast). In addition, we recognize that this may be an issue when a manager's client enters an arrangement with a securities lending agent to loan the client's securities without any involvement by the manager.

instead may reflect the number of shares instructed to be cast on the date of the vote.<sup>90</sup>

The proposal would not require a reporting person to seek confirmation of the actual number of votes cast if this information is not otherwise readily available.<sup>91</sup> However, should the reporting person learn prior to filing its Form N-PX that a different number of shares were voted, the reporting person would be required to report the actual number of votes cast.<sup>92</sup> If confirmation of the actual number of votes cast occurs after the reporting person files the Form N-PX report, we are not proposing to require an amendment to the filing. We believe that this approach would reduce the compliance burden of providing information regarding the number of shares voted. At the same time, this disclosure would still achieve the goal of providing meaningful information to investors about how a reporting person voted its shares.

Although suggested by a commenter, we are not proposing disclosure of the number of shares voted only in split voting situations.<sup>93</sup> We believe that requiring different disclosures for votes, depending on whether a reporting person split its vote on a particular matter, could result in potentially confusing inconsistencies within each report on Form N-PX. Providing information about the number of shares voted, in addition to shares on loan and not recalled, also would present a more complete picture of a reporting

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<sup>90</sup> Special Instruction D.5 to proposed Form N-PX. *See* Fidelity Letter (suggesting quantitative disclosure be limited to votes instructed to be cast); ICI Letter (same); MFA Letter (same); Stone Letter (same). *See also* Proxy Mechanics Concept Release, *supra* footnote 60, at Section II.B.1 (discussion of issues surrounding confirmation of proxy votes).

<sup>91</sup> Special Instruction D.5 to proposed Form N-PX.

<sup>92</sup> *Id.*

<sup>93</sup> *See* ICI Letter.

person's voting, including by allowing an investor to understand the extent to which a reporting person determines not to vote.

We also disagree with commenters that disclosure of the number of votes cast could result in competitors gaining insight into reporting persons' holdings.<sup>94</sup> Given the alignment of filing deadlines among forms, this disclosure likely will be publicly available via Form 13F (for managers) and Form N-PART (for funds) before the reporting person is required to file on Form N-PX.<sup>95</sup> Even for securities reported on Form N-PX that are not reported on Form 13F or Form N-PART, proxy votes reported on Form N-PX generally occur up to several months (including as many as 14 months) before the August 31 Form N-PX reporting date. As a result, we do not believe the disclosure would materially affect competition.<sup>96</sup> Reporting persons would also be permitted to request confidential treatment of filed information, as discussed further below.

We are also not proposing the approach advocated by one commenter who suggested that the Commission consider alternative indications of "magnitude" in lieu of requiring disclosure of the number of votes cast. This commenter suggested, for example, that a manager could report how a majority (or plurality) of the shares the manager was entitled to vote was actually voted or managers could report the percentage of total votes

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<sup>94</sup> See ISS Letter; ICI Letter (noting that quantitative disclosure information might be useful to competitors looking for information about fund holdings).

<sup>95</sup> To the extent securities reported on Form N-PX are included on Form 13F, reports from managers on Form 13F for the quarter ending June 30 would be required to be filed no later than August 14. This means that public disclosure of such holdings on Form 13F generally would pre-date the August 31 deadline for filing Form N-PX. Similarly, funds must publicly disclose their holdings on a quarterly basis on Form N-PART. See 17 CFR 270.30b1-9 (requiring filing no later than 60 days after the end of the relevant fiscal quarter).

<sup>96</sup> See also *infra* Section IV.

cast for each position.<sup>97</sup> We are not proposing these approaches because we believe they do not sufficiently demonstrate how a manager exercised its voting power (including any shares on loan and not recalled). We believe this context is important to present a more complete picture of how the manager votes, and these alternatives do not provide additional information relative to our proposal. Further, these methods would not alleviate any burden in retaining and reporting quantitative data regarding the number of votes cast.

We request comment on the proposed disclosure of the number of shares voted, and, in particular, on the following issues:

28. Should we, as proposed, require funds and managers to report the number of shares voted (or instructed to be cast)? Does disclosing the number of shares voted allow investors to understand better how securities lending activities impact the voting practices of the reporting person? Why or why not?
29. As proposed, should we require a reporting person to report the actual number of votes cast if it learns prior to filing its Form N-PX that a different number of shares were voted than the reporting person instructed to be cast? Should we require this reporting only if the reporting person receives information about the actual number of shares voted within a specified period before its Form N-PX filing is due? If so, what should the specified period be (*e.g.*, at least 5, 10, or 30 days before the Form N-PX filing is due)?
30. Are there other ways to promote investor understanding of reporting persons' voting practices (*e.g.*, the occurrence of split voting) that we should require

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<sup>97</sup> Mayer Brown Letter.

- instead of, or in addition to, disclosure of the number of shares voted (or instructed to be cast)? For example, would investor understanding be promoted if we required reporting of another metric, such as the percentage of total shares held that were voted (or instructed to be cast), to be disclosed? Why or why not?
31. We are proposing that, if a reporting person has not received confirmation of the actual number of votes cast, the reporting person instead may reflect the number of shares instructed to be cast on the date of the vote. Does this alleviate concerns about the burden on reporting persons with respect to quantitative disclosures? Is the information disclosed still of utility to data users? Why or why not?
32. Should the requirement to disclose the number of shares voted only apply to certain types of votes or to a subset of reporting persons? For example, should this disclosure be required only in the case of say-on-pay votes or split votes?
33. Does the proposed requirement to disclose the number of shares voted complement the proposed requirement to disclose the number of shares the reporting person loaned and did not recall? Would investors need both figures to understand how securities lending activities affect a reporting person's proxy voting? Are there other figures or types of information one would need to understand the interaction between these two activities?
34. Are there additional quantitative disclosures we should consider that would provide utility to investors?
- b. Disclosure of Number of Shares the Reporting Person Loaned and Did Not Recall

In addition to the number of shares a reporting person voted, we are proposing to require disclosure of the number of shares the reporting person loaned and did not

recall.<sup>98</sup> We understand from commenters that this information about securities lending is important to understand a reporting person's voting record because the reporting person cannot affirmatively cast a vote for or against a matter if the security is on loan over the record date. Several commenters on the 2010 Proposing Release and Proxy Mechanics Concept Release stated that it was important to know how many shares were not voted because they were on loan.<sup>99</sup> The proposed requirement is designed to provide transparency into how a reporting person's securities lending affects its proxy voting.

We also believe the proposed requirement to disclose the number of shares the reporting person loaned and did not recall would help address commenters' concerns with a requirement in the 2010 proposal to disclose the total number of shares a fund was entitled to vote or a manager had or shared voting power over. Some commenters opposed the requirement in the 2010 proposal because of the cost and effort that would be required to aggregate and reconcile the total number of shares a fund is entitled to vote or a manager has or shared voting power over.<sup>100</sup> These commenters noted complexities in the current proxy system, including the intermediation between issuers and shareholders, and the multitude of entities involved (such as transfer agents, proxy

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<sup>98</sup> Item 1(i) of proposed Form N-PX.

<sup>99</sup> Levin Letter; Letter of InterOrganization Network (Oct. 13, 2010) (File No. S7-14-10); Shareowner Education Letter on Concept Release; Letter of Society of Corporate Secretaries & Governance Professionals (Nov. 22, 2010) (File No. S7-14-10) ("SCSGP Letter on Concept Release").

<sup>100</sup> *See, e.g.*, ABA Letter; ICI Letter; Fidelity Letter; Stone Letter. *See also* Letter of Institutional Shareholder Services, Inc. (Oct. 20, 2010) (File No. S7-14-10) ("ISS Letter on Concept Release"); Letter of Sullivan & Cromwell LLP (Oct. 20, 2010) (File No. S7-14-10) ("Sullivan & Cromwell Letter on Concept Release"); Fidelity Letter on Concept Release; Letter of BlackRock (Oct. 29, 2010) (File No. S7-14-10) ("BlackRock Letter on Concept Release"); Letter of CFA Institute (Nov. 22, 2010) (File No. S7-14-10); ICI Letter on Concept Release.

vendors, and tabulators).<sup>101</sup> Some commenters also raised concern that there could be potentially confusing or misleading discrepancies between the reported number of shares voted and the reported number of shares which the reporting person was entitled to vote or over which it had or shared voting power.<sup>102</sup> For example, commenters discussed scenarios in which discrepancies between these figures could arise despite the reporting person's intent to vote all available shares (*e.g.*, discrepancies resulting from differing proxy frameworks in certain jurisdictions or limitations on a manager's ability to vote shares that its client has loaned as part of an agreement solely between the client and its custodian).<sup>103</sup>

We are proposing a requirement that focuses solely on shares a reporting person loaned and did not recall. Under federal law, an investment adviser is a fiduciary.<sup>104</sup> With respect to securities lending, advisers have a fiduciary duty to consider the tradeoffs between continuing to keep securities on loan, or recalling loaned securities in order to vote.<sup>105</sup> The disclosure we are proposing to add to Form N-PX would provide

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<sup>101</sup> See ICI Letter; Sullivan & Cromwell Letter on Concept Release.

<sup>102</sup> See Fidelity Letter; ICI Letter; Mayer Brown Letter.

<sup>103</sup> See Fidelity Letter; Mayer Brown Letter.

<sup>104</sup> 2019 Fiduciary Interpretation, *supra* footnote 12, at text accompanying n.2. See also SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963); Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (July 2, 2004); Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003); Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV, Investment Advisers Act Release No. 1862 (Apr. 5, 2000).

<sup>105</sup> See Proxy Voting Interpretation, *supra* footnote 13, at response to question 1 and at n.34 (indicating that while the application of the investment adviser's fiduciary duty in the context of proxy voting will vary with the scope of the voting authority assumed by the investment adviser, the relationship in all cases remains that of a fiduciary to the client, and an investment adviser must make any determination regarding whether to retain a

transparency regarding whether a reporting person has opted to recall a security and vote the accompanying proxy or to keep the security out on loan. Absent this disclosure, investors would not have information about a manager's decision not to recall a loaned security, which is similar to the decision not to vote on a matter, which currently is reported on Form N-PX.<sup>106</sup> Our proposal also takes into account commenters' concerns on the prior proposal, and we believe the quantitative information we are proposing to require is easier for reporting persons to obtain than the information the 2010 proposal would have required. For instance, the proposal does not implicate the complexities in the current proxy system with determining the number of shares the reporting person was entitled to vote or over which it had or shared voting power that commenters described.

The disclosure we are proposing would be required only where the reporting person has loaned the securities. This would include scenarios where the reporting person loans the securities directly or indirectly through a lending agent.<sup>107</sup> However, it would not include scenarios where the manager is not involved in lending shares in a client's account because, for example, the manager is not a party to the client's securities lending agreement and has not itself (rather than the client) loaned the securities. As recognized above, a manager would not exercise voting power over loaned securities when its client

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security and vote the accompanying proxy or lend out the security in the client's best interest).

<sup>106</sup> See Item 1(g) of current Form N-PX.

<sup>107</sup> See Special Instruction D.7 of proposed Form N-PX. To the extent a reporting person allocates an amount of securities to the lending agent for lending purposes and treats that amount of securities as being on loan when determining how many shares it can vote in a matter, the reporting person should report all of the allocated shares as being on loan and not recalled (excluding any shares the reporting person recalled for the vote).

hires a securities lending agent to loan securities in the client's account and the manager has no involvement in the securities lending arrangement or in decisions to recall loaned securities.<sup>108</sup> Thus, the manager would not have any say-on-pay reporting obligations with respect to those loaned securities.

We request comment on the proposed requirement to disclose the number of shares loaned and not recalled, and, in particular, on the following issues:

35. Should we require disclosure of the number of shares a reporting person loaned and did not recall, as proposed? Is this information valuable to investors? Does the value of the information differ between institutional and retail investors? Are there any changes we could make to enhance the utility of the information for investors?
36. Are there limitations we should be aware of regarding the ability of reporting persons to disclose the number of shares loaned and not recalled? If so, are there ways would could address those limitations?
37. We understand that proxy statements typically are not delivered until after the record date.<sup>109</sup> Does this create challenges for reporting persons to determine whether they want to recall loaned securities before the record date?<sup>110</sup> If so, how might these challenges affect disclosure of the number of shares loaned and not

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<sup>108</sup> See *supra* paragraph accompanying footnote 48.

<sup>109</sup> See Proxy Mechanics Concept Release, *supra* footnote 60, at Section III.C.2.

<sup>110</sup> Some commenters on the Proxy Mechanics Concept Release suggested that the lack of a meeting agenda prior to a record date generally does not affect their ability to anticipate many kinds of voting matters and to make arrangements to recall loaned securities in advance of a record date, if they determine to do so. See, e.g., ICI Letter on Concept Release; Letter of American Bar Association (Dec. 17, 2010) (File No. S7-14-10).

- recalled, or other aspects of this proposal? Are there any changes we should make to the proposed rule to recognize these challenges?
38. Would the proposed requirement to disclose the number of shares a reporting person loaned and did not recall affect decisions a fund or manager currently makes on when to recall a loaned security for purposes of voting and when to keep a security on loan? If so, how might the proposal affect the revenues funds or managers (and, by extension, their investors or clients) receive from securities lending? Would disclosure of this effect be helpful to a fund's investors or a manager's clients? If so, what form should this disclosure take?
39. Beyond information about how securities lending activities affect proxy voting, are there other types of information that would help investors understand a reporting person's approach to voting? If so, are there ways we could capture that information in Form N-PX reports or elsewhere? Similar to the 2010 proposal, should we require that the reporting person disclose the total number of shares a fund was entitled to vote or a manager exercised voting power over?
40. Commenters raised concerns that the quantitative disclosure requirements in the 2010 proposal may lead to investor confusion.<sup>111</sup> Does our proposed approach limit the potential for confusing discrepancies by focusing more directly on the number of shares voted and the number of shares on loan? If not, what areas of potential confusion remain under our current proposal, and are there changes we could make to reduce the potential for confusion?

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<sup>111</sup> See *supra* footnote 103 and accompanying text.

#### 4. Additional Proposed Amendments to Form N-PX

In addition to proposing new categories of disclosure on Form N-PX, we are proposing certain other amendments to enhance the usability of Form N-PX reports and to modernize or clarify existing form requirements. For instance, we are proposing to require a standardized order to the Form N-PX disclosure requirements.<sup>112</sup> We are also proposing an amendment to require a fund that offers multiple series of shares to provide Form N-PX disclosure separately by series (for example, provide Series A’s full proxy voting record, followed by Series B’s full proxy voting record).<sup>113</sup> We believe these proposed changes will make Form N-PX disclosure easier to review and compare among reporting persons. Several commenters supported standardized order requirements, stating the importance of displaying data in a consistent manner to assist in analyzing multiple votes.<sup>114</sup> One commenter, in contrast, stated that we should not adopt a standardized order requirement and that it was not aware of shareholders having any difficulty in deciphering or locating Form N-PX information.<sup>115</sup> However, we are re-proposing the requirement because we continue to believe it would make the disclosure

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<sup>112</sup> See Special Instruction D.1 to proposed Form N-PX.

<sup>113</sup> See Special Instruction D.9 to proposed Form N-PX.

<sup>114</sup> See Levin Letter (supporting standardized order and stating that “[r]equiring the data to be displayed in a consistent manner will assist analysis of multiple votes”); CalPERS Letter (finding standardized order to be acceptable); Letter of the State Board of Administration of Florida (Oct. 20, 2010) (File No. S7-14-10) (“Florida Board Letter on Concept Release”) (supporting standardization of reporting for Form N-PX); Shareowner Education Letter on Concept Release (same); Letter of the United States Proxy Exchange (Oct. 20, 2010) (File No. S7-14-10) (“Proxy Exchange Letter on Concept Release”) (same).

<sup>115</sup> See Fidelity Letter.

easier to review and compare among reporting persons, and believe it will aid our overall objective to increase transparency.

In the 2010 Proposing Release, the Commission proposed to retain the current form's requirement to report both the relevant security's CUSIP number and its ticker symbol. One commenter recommended that a ticker symbol be required only if a CUSIP number was unavailable since certain securities listed on more than one exchange have multiple ticker symbols.<sup>116</sup> In response to this comment, we are proposing to require reporting of only one security identifier. Reporting persons would be required to report the security's CUSIP number unless it is not available through reasonably practicable means (*e.g.*, in the case of certain foreign issuers).<sup>117</sup> If the CUSIP number is not reported, then Form N-PX would require the security's ISIN, unless it also is not available through reasonably practicable means.<sup>118</sup> Consistent with current Form N-PX, a filer may omit disclosure of both the CUSIP and ISIN identifier if neither is reasonably available through practicable means.<sup>119</sup>

In addition, we are proposing two general amendments related to the cover page of Form N-PX.<sup>120</sup> Consistent with the 2010 proposal, amended Form N-PX would

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<sup>116</sup> ABA Letter (noting the difficulties in determining which exchange is the principal exchange for the securities for purposes of the disclosure).

<sup>117</sup> See Item 1(b) of proposed Form N-PX; Special Instruction D.2 to proposed Form N-PX.

<sup>118</sup> See Item 1(c) of proposed Form N-PX; Special Instruction D.2 of proposed Form N-PX. If the security's CUSIP number is reported, then the ISIN would not be required to be reported.

<sup>119</sup> See Instruction 2 to Item 1 of current Form N-PX; Special Instruction D.2 of proposed Form N-PX.

<sup>120</sup> We are also proposing a few other amendments to the cover page of Form N-PX to accommodate manager reporting on Form N-PX. See *infra* Section II.D.2 (discussing these proposed cover page amendments).

contain a new section on the cover page to be used where the filing is an amendment to a previously filed Form N-PX report (*e.g.*, to correct errors in a previous filing or as part of the confidential treatment process).<sup>121</sup> Amendments to a Form N-PX report would be required to either restate the original Form N-PX report in its entirety or include only the additional information that supplements the information already reported in a Form N-PX report for the same period.<sup>122</sup> We also propose to amend the form to allow for additional information so long as it does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information.<sup>123</sup> This optional disclosure would be placed at the end of the cover page or, if it relates to a particular vote, a reporting person could provide additional information about the matter or how it voted after disclosing the required information about that vote.<sup>124</sup> Form 13F provides similar flexibility, where filers use it, among other things, to explain the reasons for an amendment to an earlier filing.<sup>125</sup> We believe this flexibility would also be useful in Form N-PX and would facilitate a reporting person's ability to provide additional information about a particular vote, or about its voting practices in general.<sup>126</sup>

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<sup>121</sup> See, *e.g.*, Confidential Treatment Instruction 7 to proposed Form N-PX (regarding the filing of amendments upon the final adverse disposition of a confidential treatment request or the expiration of confidential treatment); *see also* Section II.G *infra*.

<sup>122</sup> See Special Instruction B.1 to proposed Form N-PX.

<sup>123</sup> Special Instruction B.4 to proposed Form N-PX.

<sup>124</sup> See Special Instructions B.4 and D.10 and Item 1(m) of proposed Form N-PX.

<sup>125</sup> See Special Instruction 5 to Form 13F.

<sup>126</sup> *Cf.* ABA Letter (observing that Form N-PX does not readily permit explanatory disclosure).

Further, we propose to amend the current disclosure in Form N-PX requiring a fund to identify whether a matter was proposed by the issuer or by a security holder.<sup>127</sup> To provide additional information about matters proposed by security holders, we propose to require funds to identify whether such matters are proposals or counterproposals. In addition, we propose to clarify that the disclosure requirement would apply to funds only, and not to managers. We are not proposing that managers make this disclosure because say-on-pay votes relate exclusively to matters proposed by issuers and not by security holders.<sup>128</sup>

We are also proposing a technical amendment to Form N-PX that would require reporting persons to disclose whether each reported vote was “for or against management’s recommendation.” Current Form N-PX requires funds to disclose whether a vote was “for or against management.”<sup>129</sup> The proposed amendment is intended to clarify that Form N-PX should disclose how the vote was cast in relation to management’s recommendation on a particular proxy voting matter, as opposed to how the vote may have affected management. In recognition that there are some circumstances in which management may not provide a voting recommendation on a given matter, we are also proposing an instruction that would direct reporting persons to disclose “none” for the applicable matter in response to this disclosure requirement.<sup>130</sup>

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<sup>127</sup> See Item 1(f) of current Form N-PX; Item 1(g) of proposed Form N-PX.

<sup>128</sup> See 2010 Proposing Release, *supra* footnote 25, at text accompanying n.77.

<sup>129</sup> See Item 1(i) of Form N-PX.

<sup>130</sup> See Special Instruction D.8 of proposed Form N-PX.

The Commission similarly proposed to amend the current Form N-PX item to refer to whether a vote was “for or against management’s recommendation” in the 2010 proposal.<sup>131</sup> Commenters generally supported the proposed change.<sup>132</sup> One commenter stated that we should replace this item instead with a narrative description of what management recommended for the vote, and allow readers to determine on their own if the reporting person voted with or against management.<sup>133</sup> However, our intent in this proposal is to provide useful and easily comparable information to shareholders. As a result, we are proposing to update the required disclosure to clarify that the report is required to disclose how the vote was cast in relation to management’s recommendation.<sup>134</sup>

Unlike the 2010 proposal, which would have removed the definitions section in the instructions to Form N-PX, we are proposing to amend Form N-PX to include a section containing definitions for purposes of identifying terms used in Form N-PX.<sup>135</sup> The terms for which definitions are included are “fund,” “institutional manager,” “reporting person,” and “series.” The current version of Form N-PX also has a definitions section, but it refers filers to the definitions in the Investment Company Act and the rules and regulations thereunder.<sup>136</sup> The terms used in the definitions section are the same as those used in this release. We believe the proposed definitions would clarify the terms

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<sup>131</sup> See 2010 Proposing Release, *supra* footnote 25, at text accompanying n.90.

<sup>132</sup> See CalPERS Letter; Levin Letter.

<sup>133</sup> See Stone Letter.

<sup>134</sup> Item 1(k) of proposed Form N-PX.

<sup>135</sup> See General Instruction E to proposed Form N-PX.

<sup>136</sup> General Instruction E to current Form N-PX.

used on Form N-PX and, in doing so, make the application of the form's requirements to different categories of reporting persons clear. The proposed definitions are also intended to make the proposed form more concise and readable (*e.g.*, by referring to funds, rather than registered management investment companies, throughout the form).

We request comment on the additional proposed amendments to Form N-PX, and, in particular, on the following issues:

41. Should we, as proposed, require the information in Form N-PX reports to be disclosed in a standardized order? Would this facilitate comparisons or be otherwise useful to users of this information? What costs, if any, would be associated with standardization? Should the requirement to standardize apply to managers, funds, or both? If we standardize the order of the information in Form N-PX reports, should we use the order set forth in our proposal, or would some other order of information be more appropriate?
42. In proposing to require a standardized order to the information in Form N-PX, we are also proposing clarifying language with respect to the placement in a report for a fund containing multiple series. Would this requirement make it easier for investors to review reports more efficiently? Is there a different method of disclosing the votes of multiple series that would assist our goal of providing useful and comparative information?
43. Are there other ways we could make the disclosure in Form N-PX easier to review and compare among reporting persons? If so, what are they?
44. We are proposing to require reporting of only one security identifier (either the CUSIP or the ISIN) on Form N-PX. Should we require reporting persons to

- disclose both identifiers? If so, why? Should we also require the ticker symbol in order to identify a security? Why or why not? Is there a more appropriate identifier of securities?
45. Should the cover page permit, as proposed, the inclusion of optional information in addition to the information required by Form N-PX? Are the conditions proposed with respect to the optional information sufficient? Why or why not? In what instances might the inclusion of additional information on the cover page impede the comprehension of the required disclosure? For example, should we limit this additional information by length? Or by presentation? Are there other limits we should consider?
46. Should we allow reporting persons to provide additional information relating to a particular vote after disclosing the required information about that vote, as proposed? What types of information might reporting persons wish to provide about particular votes? Does the proposal provide sufficient flexibility for reporting persons to provide such information, while also limiting the potential for optional disclosure that would impede the understanding or presentation of the required information?
47. To what extent do filers amend Form N-PX filings? What are the typical reasons for an amendment? Should all amended Form N-PX filings be required to restate all information in the prior filing? Should we require any additional clarifying language on amendment filings?
48. As proposed, should we require funds to distinguish between proposals and counterproposals when identifying matters proposed by security holders? Is it

- sufficiently clear to a fund when a matter proposed by a security holder should be classified as a proposal or counterproposal?
49. Should we, as proposed, clarify that managers are not required to disclose whether a matter was proposed by the issuer or by a security holder? Are there other requirements in Form N-PX that should only apply to funds? Are there requirements that should only apply to managers?
50. Does the change of required disclosure on Form N-PX to “for or against management’s recommendation” clarify the intended purpose of the disclosure? Why or why not? Is additional clarification necessary? Should we instead require a narrative disclosure, as suggested by a commenter?
51. We are proposing to amend Form N-PX to add specific definitions to the instructions. Are the proposed definitions effective? Should we modify or remove any of the proposed definitions? Are there other definitions we should add to Form N-PX? Should we instead retain the current definitions section or remove this section, as proposed in the 2010 proposal?
52. Should we modify the proposed content requirements in any way for either managers or funds? Is there any information that we are proposing to require that should not be required? Is there additional information that should be required?
53. Should we provide any additional guidance on the contents of the proposed Form N-PX requirements?

**D. Joint Reporting and Related Form N-PX Amendments to Accommodate Manager Reporting**

**1. Joint Reporting Provisions**

Section 14A(d) of the Exchange Act requires a manager to report any say-on-pay vote unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission. In order to implement this provision and prevent duplicative reporting, we are proposing three sets of amendments to Form N-PX to permit joint reporting, as well as associated disclosure requirements to identify all of a given manager's votes. The Commission proposed similar joint-reporting provisions in the 2010 proposal, and commenters supported this reporting framework.<sup>137</sup> Based on our experience with Form 13F reports, we believe that allowing consolidated reporting in this manner would yield reported data that would be at least as useful as separately reported data while reducing burden for reporting persons who may prefer to report jointly. Furthermore, we expect that the instructions we are proposing that require reports on Form N-PX to be structured and machine-readable would allow tools to be developed so that investors can sort and filter the data to view votes by the relevant manager.

The first amendment would permit a single manager to report say-on-pay votes in cases where multiple managers exercise voting power.<sup>138</sup> This method for preventing duplicative reporting is similar to that employed by Form 13F, which permits a single

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<sup>137</sup> See, e.g., ABA Letter; Letter of The Colorado Public Employees' Retirement Association (Nov. 18, 2010) ("COPERA Letter"); CII Letter; IAA Letter.

<sup>138</sup> General Instruction C.1 to proposed Form N-PX.

manager to include information regarding securities with respect to which multiple managers exercise investment discretion.<sup>139</sup>

In response to a similar provision in the 2010 proposal, one commenter suggested that we require a manager who receives a ballot be the primary filer that all other managers may reference in their filings.<sup>140</sup> We are not proposing this approach because we believe that the joint-reporting provisions should provide flexibility to address different types of voting arrangements. Moreover, under our current proposal, the manager who receives the ballot would not be required to report a say-on-pay vote on Form N-PX under all circumstances (*e.g.*, if it does not exercise voting power). Another commenter requested guidance on whether an adviser or a sub-adviser should be the primary filer when both exercise voting power. We do not believe it is necessary to specify who should report under these circumstances, because the joint reporting provisions are designed to provide flexibility to reporting persons to divide that responsibility among themselves or to each report independently.<sup>141</sup> This may in certain circumstances result in two managers reporting the same vote, for instance if two managers provide voting advice regarding the same securities and have not coordinated with each other regarding who will make a report on Form N-PX. Because both managers would exercise voting power (*i.e.*, would influence the voting decision) under these circumstances, we do not believe it would be inappropriate or confusing for those

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<sup>139</sup> See 15 U.S.C. 78m(f)(6)(B) (directing the Commission to adopt such rules as it deems necessary or appropriate to prevent duplicative reporting by two or more managers exercising investment discretion with respect to the same amount); General Instruction 2 to Form 13F.

<sup>140</sup> See ISS Letter.

<sup>141</sup> See Brown Letter.

managers to report the same vote separately. Like reports on Form N-PX that rely on the joint reporting provisions, reports that separately disclose the same votes would provide insight to clients and other investors into how a manager voted.

The second proposed amendment would permit 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.<sup>142</sup> This provision avoids a fund and its adviser each having to file duplicative reports regarding the same votes. Under our proposed approach, if a manager's say-on-pay votes are reported by one or more funds over whose securities the manager exercises voting power or by one or more other managers, the non-reporting manager would be required to file a Form N-PX report that identifies each manager and fund reporting on its behalf.<sup>143</sup>

The third proposed amendment would permit affiliates to file joint reports on Form N-PX notwithstanding that they do not exercise voting power over the same securities. The Commission did not propose a similar provision in 2010, but a few commenters suggested that we broaden the circumstances where affiliates may file joint reports.<sup>144</sup> These commenters suggested that, to further promote operational efficiencies and ease potential administrative burdens, the Commission should permit affiliated managers to file jointly even where they do not jointly exercise voting power, and allow

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<sup>142</sup> General Instruction C.3 to proposed Form N-PX.

<sup>143</sup> General Instruction C.4 to proposed Form N-PX. *See infra* Section II.D.2 (discussing this proposed requirement).

<sup>144</sup> *See* Letter of Fidelity Investments (Nov. 18, 2010) ("Fidelity Letter") (suggesting flexibility for affiliated managers to jointly file Form N-PX even where they do not share voting power); IAA Letter (suggesting flexibility for corporate groups to report at the holding company or subsidiary level regardless of whether they share voting authority).

managers to report at the holding company level if they so choose.<sup>145</sup> After considering these comments, we are proposing to permit two or more persons who are affiliated persons to file a single report on Form N-PX for all affiliated persons in the group.<sup>146</sup> This joint reporting provision is designed to provide operational efficiencies without negatively affecting the quality or accessibility of the information reported on Form N-PX.

In all three cases, where another reporting person reports say-on-pay votes on a manager's behalf, the report on Form N-PX that includes the manager's votes would be required to identify the manager (and any other managers) on whose behalf the filing is made and separately identify the securities over which the non-reporting manager exercised voting power.<sup>147</sup> The manager's report on Form N-PX also would have to identify the other managers or funds reporting on its behalf.<sup>148</sup> This approach is designed to allow managers' clients and investors to easily search for all votes where the manager exercised voting power, whether or not those votes are reported on the manager's own Form N-PX.

Use of the proposed joint reporting provisions would be optional. For example, where multiple managers exercise voting power over the same securities, the managers

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<sup>145</sup> *Id.*

<sup>146</sup> See General Instruction C.2 to proposed Form N-PX; section 2(a)(3) of the Investment Company Act (defining "affiliated person").

<sup>147</sup> For example, in the case of a Form N-PX report that includes votes of multiple affiliated managers, the filing must identify each affiliate the report covers and separately identify the securities for which each affiliate exercised voting power.

<sup>148</sup> General Instructions C.5 and C.6 to proposed Form N-PX; Special Instructions C.2 and D.6 to proposed Form N-PX. See *infra* Sections II.D.3 and II.D.4 (discussing these proposed requirements in more detail).

could choose to report the relevant say-on-pay votes individually instead of relying on the joint reporting provisions. If a manager does not rely on the joint reporting provisions, it would not be subject to the disclosure requirements tied to joint reporting that facilitate identification of all of a manager's say-on-pay votes.<sup>149</sup> In this case, the manager's report on Form N-PX would provide its complete proxy voting record for say-on-pay votes during the reporting period, without reference to any other reports on Form N-PX, and would not include any votes where the manager did not exercise voting power.

We request comment on the proposal to address duplicative reporting and, in particular, on the following issues:

54. Should we, as proposed, permit a single manager to report say-on-pay votes in cases where multiple managers exercise voting power? Should we, as proposed, permit a manager to satisfy its reporting obligations by reference to the Form N-PX report of a fund that includes the manager's say-on-pay votes? Is there any reason not to permit joint reporting? For example, would joint reporting confuse investors or make Form N-PX harder to use? Would the potential for confusion or for reduced usability decline if, as proposed, Form N-PX reports were reported in a structured data language?<sup>150</sup> Are there other ways to address potentially duplicative reporting that are consistent with section 14A(d) of the Exchange Act that we should consider?

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<sup>149</sup> In this case, the manager would report on its own behalf and would not have to analyze if any other manager also is required to report the vote.

<sup>150</sup> Proposed rule 14Ad-1(a); Item 1 of proposed Form N-PX.

55. Should the rule and form amendments provide, as we are proposing, that two or more managers that are affiliated persons may file a joint report on a single Form N-PX notwithstanding that the managers do not exercise voting power over the same securities? Does this standard permit a level of consolidated reporting by corporate groups that is sufficient to address common arrangements? Are there other frameworks for consolidated reporting that would be more appropriate? Rather than use the Investment Company Act definition of “affiliated person,” is there a different standard we should use? For example, similar to Form 13F, should we deem a manager to exercise voting power over any securities over which any person under its control exercises voting power?
56. Would the ability of a manager to report say-on-pay votes that another manager or a fund also reports lead to investor confusion or inappropriate double-counting? Should we prohibit a manager from reporting say-on-pay votes that another manager or a fund also reports? Should any such prohibition be qualified based on a manager’s knowledge, belief, or some other standard? Should a manager be required to take any steps to determine whether another manager or fund is reporting say-on-pay votes for the same securities? Would it confuse investors if, as provided in our proposal, joint reporting of say-on-pay votes is optional?
57. Are the joint reporting provisions necessary in light of differences between our current proposal’s standard for exercising voting power and the 2010 proposal’s standard of directly or indirectly having or sharing the power to vote or to direct the voting of a security? If so, are there any changes we should make to the joint

reporting provisions to better align with our proposed standard of exercising voting power over a security?

## **2. The Cover Page**

The Commission proposed changes to the cover page of Form N-PX in the 2010 proposal to address the addition of managers as a class of reporting persons and to help operationalize the joint reporting provisions. Commenters did not address these cover page changes, and we are proposing the same changes. Consistent with current Form N-PX cover page requirements, the proposed cover page of Form N-PX would require the name of the reporting person, the address of its principal executive offices, the name and address of the agent for service, the telephone number of the reporting person, identification of the reporting period, and the reporting person's file number.<sup>151</sup> We also propose that a manager provide its CRD number and other SEC file number, if any, which we believe would facilitate identification of other regulatory filings of the manager and interrelationships between managers who rely on the proposed joint reporting provisions.<sup>152</sup> We are proposing to require that the cover page include information to identify more readily whether the reporting person is a fund or a manager. If the reporting person is a manager, this information would also help investors identify reports filed by other managers and funds that contain say-on-pay votes of the reporting person under the

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<sup>151</sup> In the case of a fund, the file number would be an Investment Company Act number beginning with "811-." In the case of a manager, the file number would be a Form 13F number beginning with "028-."

<sup>152</sup> A CRD number is a number assigned by the Financial Industry Regulatory Authority's Central Registration Depository system or by the Investment Adviser Registration Depository system. The SEC file number would be any file number (e.g., 801-, 8-, 866-, 802-) assigned by the Commission to the manager other than the manager's 13F file number, which all managers would be required to provide on the cover page. *See* Special Instruction B.3 of proposed Form N-PX.

joint reporting provisions. Specifically, the reporting person would be required to check a box in order to identify the report as one of the following four types:

- Registered management investment company report;
- Manager “voting” report when the report contains all say-on-pay votes of the manager;
- Manager “notice” when the report contains no say-on-pay votes of the manager and all say-on-pay votes are reported by other managers or funds under the joint reporting provisions; and
- Manager “combination” report when the report contains some say-on-pay votes of the manager and some say-on-pay votes of the manager are reported by other managers or funds under the joint reporting provisions.

In addition, the cover page of a “notice” or “combination” report would include a list of the file numbers and names, as well as CRD numbers (if any), of the other managers and funds whose Form N-PX reports include say-on-pay votes of the reporting manager.<sup>153</sup> This cross-referencing, which is modeled after Form 13F requirements, will help investors locate the reports of say-on-pay votes by other such managers.<sup>154</sup>

We request comment on the proposed cover page of Form N-PX and, in particular, on the following issues:

58. Should we adopt the cover page of Form N-PX as proposed, or should we modify it in any way, *e.g.*, by adding or removing information? For example, should we

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<sup>153</sup> Special Instruction B.2 to proposed Form N-PX.

<sup>154</sup> See Special Instruction 6 to Form 13F.

- require managers to include their CRD numbers and SEC file numbers, if any, as proposed? Should we also require managers to include their legal entity identifiers (“LEIs”), if any?<sup>155</sup> Would the proposed cover page adequately identify the reporting person and the reporting period? Would the proposed cover page sufficiently enable investors to identify a reporting person’s Form N-PX report for a given period and any amendments to that report? Would the proposed cover page enable users to identify the type of reporting person?
59. In the case of a “notice” or “combination” report filed by a manager, would the proposed cover page adequately enable investors to identify reports filed by other persons that contain say-on-pay votes for which the manager exercised voting power? Should these reports be required to include a list of the file numbers and names, as well as CRD numbers (if any), of the other managers and funds whose Form N-PX reports include say-on-pay votes of the reporting manager, as proposed? Is there other information that would help investors find a given manager’s votes?
60. Should “notice” filings contain any additional required disclosure? As currently contemplated, does the proposed notice filing requirement provide useful information to investors?
61. Is there additional information that would be helpful to include on the cover page of Form N-PX?

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<sup>155</sup> An LEI is a unique identifier generally associated with a single corporate entity and is intended to provide a uniform international standard for identifying counterparties to a transaction.

### 3. The Summary Page

We are proposing to add a new summary page to Form N-PX to enable investors to readily identify any additional managers (besides the reporting person) with say-on-pay votes included on the Form N-PX report.<sup>156</sup> The summary page would be required in any fund's Form N-PX report, as well as any manager's Form N-PX other than a "notice" filing.<sup>157</sup> Commenters did not address the proposed summary page requirements, and we are proposing the summary page requirements largely without any changes from the 2010 proposal.

The summary page of Form N-PX would require reporting persons to identify the names and total number of additional managers with say-on-pay votes included in the report in list format.<sup>158</sup> The proposed instructions to Form N-PX specify the contents of this information, including the title, column headings, and format.<sup>159</sup>

If a Form N-PX report includes the say-on-pay votes of additional managers, the summary page list would be required to include all such managers together with their respective Form 13F file numbers and, if any, CRD numbers and other SEC file numbers.<sup>160</sup> In addition, and similar to Form 13F, the proposal would require the reporting person to assign a number (which need not be consecutive) for each such

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<sup>156</sup> For example, this disclosure might contain managers included under the joint reporting requirements. *See* Special Instruction B.2.b-d of proposed Form N-PX.

<sup>157</sup> Special Instructions B.2.a-d of proposed Form N-PX. The summary page would not be required in a "notice" report by managers because, since the notice report would not contain any say-on-pay votes at all, it would not report any say-on-pay votes of other managers.

<sup>158</sup> Special Instruction C.1 to proposed Form N-PX.

<sup>159</sup> Special Instruction C.2 to proposed Form N-PX.

<sup>160</sup> Special Instruction C.2.b to proposed Form N-PX.

manager, and present the list in sequential order.<sup>161</sup> These numbers would help identify the particular manager(s) who exercised the power to vote the securities. While we are proposing the sequential numbering requirement to make the list easier to use, the proposal would permit non-consecutive numbering to allow managers to retain the same number across filings of different reporting persons and different time periods.

If a Form N-PX filing does not disclose the proxy votes of a manager other than the reporting person, the reporting person would enter the word “NONE” under the title and would not include the column headings and list entries.<sup>162</sup>

To the extent a fund’s report on Form N-PX includes the votes of multiple series, the summary page would require the name and the series identifier (if any) of each series.<sup>163</sup> We believe this would assist investors in discerning the funds covered by the Form N-PX report. While the Commission did not propose this requirement in 2010, the Commission has since adopted Form N-CEN and Form N-PORT, which contain similar series identification requirements for funds.<sup>164</sup>

We request comment on the proposed summary page of Form N-PX and, in particular, on the following issues:

62. Should we adopt the summary page of Form N-PX, as proposed, or should we modify it in any way? For example, should we require the inclusion of additional information with respect to the additional managers in the list? What information would be helpful for investors to review in summary format? Would such

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<sup>161</sup> *Id.*; see also Special Instruction 8.b to Form 13F.

<sup>162</sup> Special Instruction C.2.a to proposed Form N-PX.

<sup>163</sup> Special Instruction C.3 to proposed Form N-PX.

<sup>164</sup> Item B.6.a.ii of Form N-CEN; Item A.2 of Form N-PORT.

- information be practicable for the reporting person to acquire and report? Should we remove any of the proposed information requirements, such as the requirements for CRD numbers and other SEC file numbers for managers, if any?
63. Would the proposed sequential and/or non-consecutive listing of other managers in the summary page help investors identify specific managers? Is the other identifying information we are proposing to require (including a manager's 13F file number and, if any, CRD number and other SEC file numbers) sufficient for purposes of identifying managers whose votes are included in a given report?
64. Would the proposed summary page enable investors to readily identify any managers whose say-on-pay votes are included in a Form N-PX report? Would additional formatting constraints be helpful?
65. Should there be additional summary page requirement differences between funds and managers?
66. Should we, as proposed, require fund Form N-PX reports that include the votes of multiple series to identify on the summary page the names and EDGAR identifier of each series that the report covers? Is there other information we should require of funds that would enable investors to more easily identify which funds the report covers? For example, should we also require disclosure of the series' LEI?
67. Should we provide any exceptions to the summary page reporting requirement? If so, how should any such exception be defined?
68. We request information on how clients of managers or other investors would utilize the information contained on the summary page. Would it provide useful data?

#### 4. Other Proposed Amendments to Form N-PX to Accommodate Manager Reporting

We are proposing other modifications to the format and content of the information currently required by Form N-PX to accommodate the proposed requirement for managers to report on Form N-PX. Specifically, we are proposing to require a manager to report the number of shares the manager is reporting on behalf of another manager pursuant to the joint reporting provisions separately from the number of shares the manager is reporting only on its own behalf.<sup>165</sup> A manager would also be required to separately report shares when the groups of managers on whose behalf the shares are reported are different. For example, if the reporting manager is reporting on behalf of Manager A with respect to 10,000 shares and on behalf of Managers A and B with respect to 50,000 shares, then the groups of 10,000 and 50,000 shares must be separately reported. Similarly, a fund would be required to separately report shares that are reported on behalf of different managers or groups of managers.<sup>166</sup> We believe this requirement would further our goal of providing meaningful information to investors by allowing investors to clearly see how a particular manager exercised voting power.

One commenter suggested limiting disclosure regarding manager shared voting power to the summary page of Form N-PX.<sup>167</sup> We are not proposing this approach because we believe it would make it difficult for investors to identify which entities are

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<sup>165</sup> See Special Instruction D.6 to proposed Form N-PX. See also *supra* Section II.D.1 (discussing the proposed joint reporting provisions).

<sup>166</sup> See *id.* We are also clarifying, as a commenter suggested, that reporting persons would not be required to report shares separately when they are not relying on the joint reporting provisions, even if another manager exercised voting power over some of the shares reported. See IAA Letter.

<sup>167</sup> See ISS Letter.

responsible for the particular say-on-pay votes reported, which would undermine the purpose of reporting say-on-pay votes. The summary page is intended to identify any additional managers (besides the reporting person) with say-on-pay votes included on the Form N-PX report. We believe disclosure with respect to shared voting power should be included in the body of Form N-PX containing proxy voting information, in order to assist identifying which of the votes reported on Form N-PX were those over which the manager exercised voting power.

We request comment on the other proposed amendments to Form N-PX to accommodate new reporting requirements for managers, including the following:

69. Should we, as proposed, require a reporting person relying on the joint reporting provisions to identify, for each applicable vote reported, each manager who exercised voting power as to the securities voted? Why or why not? Alternatively, would it be sufficient to require a reporting person to disclose on the summary page the managers for whom it is reporting, without identifying, for each vote reported, the managers that exercised voting power?
70. Are there other changes we should make to Form N-PX to accommodate manager say-on-pay vote reporting requirements?

#### **E. Form N-PX Reporting Data Language**

We are proposing to require reporting persons to file reports on Form N-PX in a structured data language.<sup>168</sup> In particular, and as discussed in more detail below, we are

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<sup>168</sup> See General Instruction D.2. of proposed Form N-PX (specifying that reporting persons must file reports on Form N-PX electronically on EDGAR, except as provided by the form's confidential treatment instructions, and consult the EDGAR Filer Manual for EDGAR filing instructions). See also 17 CFR 232.301 (requiring filers to prepare electronic filings in the manner prescribed by the EDGAR Filer Manual). We are also

proposing to require filing of Form N-PX reports in a custom eXtensible Markup Language (“XML”) -based structured data language created specifically for reports on Form N-PX (“custom XML”).<sup>169</sup> We believe use of a custom XML language would make it easier for reporting persons to prepare and submit the information required by Form N-PX accurately, and would make the submitted information more useful.

Reports on Form N-PX are currently required to be filed in HTML or ASCII.<sup>170</sup> We understand that, in order to prepare reports in HTML and ASCII, reporting persons generally need to reformat required information from the way the information is stored for normal business uses. In this process, reporting persons typically strip out incompatible metadata (*i.e.*, syntax that is not part of the HTML or ASCII specification) that their business systems use to ascribe meaning to the stored data items and to represent the relationships among different data items. The resulting code, when rendered in an end-user’s web browser, is comprehensible to a human reader, but it is not suitable for automated validation or aggregation.

The Commission requested comment in both the 2010 Proposing Release and the Proxy Mechanics Concept Release on whether to require reporting of the information

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proposing to amend rule 101(a)(1)(iii) of Regulation S-T to provide that reports filed pursuant to section 14A(d) of the Exchange Act must be submitted in electronic format. Reports filed pursuant to section 30 of the Investment Company Act are already subject to electronic filing. *See* rule 101(a)(1)(iv) of Regulation S-T.

<sup>169</sup> This would be consistent with the approach used for other XML-based structured data languages created by the Commission for certain EDGAR Forms, including the data languages used for reports on each of Form N-CEN, Form N-PORT, and Form 13F.

<sup>170</sup> *See* Regulation S-T, 17 CFR 232.101(a)(1)(iv); 17 CFR 232.301; EDGAR Filer Manual (Volume II) version 58 (June 2021), at 5-1 (requiring EDGAR filers generally to use ASCII or HTML for their document submissions, subject to certain exceptions).

required by Form N-PX in a structured data language.<sup>171</sup> Among other things, we requested comment on the feasibility of identifying proxy voting matters in a uniform way and on the costs of providing data in a structured data language.<sup>172</sup> Commenters on these releases were mixed. Commenters that expressed support suggested that structured data would: improve investor analysis or allow for more informed decision-making, improve third-party analyses of voting information or reduce the costs associated with preparing them, and generally benefit investors or improve the usefulness and accessibility of reported data.<sup>173</sup> The Commission’s Investor Advisory Committee also recommended that reports on Form N-PX be filed in a structured data language, stating that investors would be better able to assess the voting records of mutual funds.<sup>174</sup> We believe that the modifications we are proposing regarding the identification of proxy

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<sup>171</sup> 2010 Proposing Release, *supra* footnote 25, at text subsequent to footnote 91 (“Are there methods other than standardizing the order of information that would render the information reported on Form N-PX more useful? Should we require reporting persons to provide the information reported on Form N-PX in interactive data format?”); Proxy Mechanics Concept Release, *supra* footnote 60 at text accompanying n. 225. The 2010 Proposing Release and the Proxy Mechanics Concept Release referred to an “interactive data format.” Some comments on these releases similarly referred to an “interactive data format.” For purposes of this release, we consider the terms “interactive data format” and “structured data language” to be synonymous and use the terms “structured data language” or “structured data” throughout for consistency.

<sup>172</sup> 2010 Proposing Release, *supra* footnote 25, at requests for comment subsequent to n. 91; Proxy Mechanics Concept Release, *supra* footnote 60, at requests for comment at n. 225.

<sup>173</sup> Letter of Broadridge Financial Solutions (Oct. 19, 2010) (File No. S7-14-10) (“Broadridge Letter on Concept Release”); Florida Board Letter on Concept Release; ISS Letter on Concept Release; Letter of Dominic Jones (Nov. 2, 2010) (“Jones Letter”); Ostrovsky Letter on Concept Release; Proxy Exchange Letter on Concept Release; Letter of Shareowners Education Network (Oct. 20, 2010) (File No. S7-14-10) (“Shareholder Education Letter on Concept Release”); Towns Letter on Concept Release; Letter of VoterMedia.org (Sept. 29, 2010) (File No. S7-14-10) (“VoterMedia Letter on Concept Release”).

<sup>174</sup> *See supra* footnote 22.

voting matters would result in reported data that is sufficiently standardized to make structured data useful for interested parties.<sup>175</sup>

Two commenters on the Proxy Mechanics Concept Release urged the Commission to evaluate its then-new structured data requirements before adopting similar requirements elsewhere.<sup>176</sup> In the time since the Commission issued the 2010 Proposing Release and the Proxy Mechanics Concept Release, we have gained additional experience with different reporting data languages, including with reports in an XML-based structured data language. For example, we have used customized XML data languages for reports filed on Form N-CEN, Form N-PORT, and Form 13F.<sup>177</sup> We have found the XML-based structured data languages used for those reports allow investors to aggregate and analyze reported data in a much less labor-intensive manner than data filed in ASCII or HTML. Based on our consideration of comments and our understanding of how fund and managers currently disclose required information in a structured data language, we believe that requiring a custom XML language for Form N-PX would minimize reporting costs while yielding reported data that would be more useful to investors. Reporting persons would be able to, at their option, either submit XML reports

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<sup>175</sup> See *supra* Section II.C.1 (Identification of Proxy Voting Matters). Some commenters agreed with statements in the 2010 Proposing Release and the Proxy Mechanics Concept Release suggesting that having uniform identification of proxy voting matters would make structured data more useful. See Fidelity Letter on Concept Release; ICI Letter on Concept Release; see also Ostrovsky Letter on Concept Release (indicating that uniform identification is essential, but feasible).

<sup>176</sup> Fidelity Letter on Concept Release; ICI Letter on Concept Release.

<sup>177</sup> See *e.g.*, Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (adopting Form N-CEN and Form N-PORT); Adoption of Updated EDGAR Filer Manual, Securities Act Release 9403 (May 14, 2013) [78 FR 29616 (May 21, 2013)] (requiring managers to report their holdings in an XML-based structured data language on Form 13F).

directly or use a web-based reporting application developed by the Commission to generate the reports, as managers are able to do today when submitting holdings reports on Form 13F.

Some commenters observed that interested data users can procure structured voting data from third-party service providers.<sup>178</sup> Another commenter, however, expressed concerns with the cost, comprehensiveness, and timeliness of the data cited by those commenters.<sup>179</sup> While similar data may be available commercially, we believe that this information should be made freely available to investors and that current users of data made available by third-parties could nonetheless benefit from structured Form N-PX reports if the costs associated with third-party data analysis fell.

One commenter stated that it did not believe shareholders were interested in proxy voting information using a structured data language.<sup>180</sup> Other commenters and the Investor Advisory Committee, however, have indicated that investors would benefit from proxy voting data reported in a structured data language. Among other things, commenters have noted that structured data would improve investor analysis or allow for more informed decision-making.<sup>181</sup> We believe that reporting in custom XML language will allow investors to aggregate and analyze the reported data in a much less labor-intensive manner.

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<sup>178</sup> Fidelity Letter on Concept Release; ICI Letter on Concept Release.

<sup>179</sup> See Ostrovsky Letter on Concept Release.

<sup>180</sup> ICI Letter on Concept Release.

<sup>181</sup> See *supra* footnote 173 and accompanying text.

One commenter stated that a structured data reporting requirement would increase reporting costs, noting the costs of reporting data in both the current ASCII or HTML markup language, as well as any structured data language.<sup>182</sup> Another commenter suggested it would not be necessary to continue to require ASCII or HTML reporting, in addition to reporting in a structured data language, because data in a structured data language could be translated to human-readable form in an automated manner and at low cost.<sup>183</sup> In order to minimize reporting burdens, we are proposing to replace the ASCII or HTML reporting requirement with the custom XML reporting requirement. We recognize that current Form N-PX filers could bear some additional reporting costs related to adjusting their systems to a different data language. However, in the intervening time period since the 2010 proposal, many reporting persons have acquired substantial experience with reporting on web-based applications (or directly submitting information in a structured data language). We believe that aligning Form N-PX's reporting data language with the type of data language of other required reports may reduce costs and introduce additional efficiencies for reporting persons already accustomed to reporting using structured data and may reduce overall reporting costs in the longer term.<sup>184</sup>

Finally, a commenter indicated that there would be costs associated with rendering the reported data in a form that could be comprehensible to a human reader.<sup>185</sup> We agree that there would be some costs associated with rendering XML data in a

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<sup>182</sup> ICI Letter on Concept Release.

<sup>183</sup> Ostrovsky Letter on Concept Release.

<sup>184</sup> *See infra* Section IV.

<sup>185</sup> ICI Letter on Concept Release (noting that the Proxy Mechanics Concept Release did not make clear who would bear those costs); *but see* Ostrovsky Letter on Concept Release (characterizing these costs as “trivial”).

human-readable format, and we believe that it is appropriate for the Commission to bear these costs. We are proposing that the Commission would develop electronic “style sheets” that, when applied to the reported XML data, would represent that data in human-readable form. We developed similar style sheets for holdings data reported by managers in XML on Form 13F, and they have yielded useful, consistently formatted documents.

We request comment on the reporting data language we are proposing to require for reports filed on Form N-PX, and, in particular, on the following issues:

71. Should we require, as we are proposing, Form N-PX reports to be filed in a custom XML language? Is a custom XML language the appropriate type of data language for Form N-PX reports? Why or why not? If another structured data language would be more appropriate, which one, and why?
72. Would this proposed requirement yield reported data that is more useful to investors, compared with not requiring Form N-PX to be filed in a custom XML language, or requiring Form N-PX to be filed in a structured data language other than a custom XML language?
73. Are the standardized identification requirements we are proposing compatible with the proposed reporting data language?
74. Should any subset of funds or managers be exempt from the proposed structured data reporting requirement? If so, what subset and why?

**F. Time of Reporting**

Currently, funds must report their proxy voting records annually on Form N-PX no later than August 31 of each year, for the most recent 12-month period ended June

30.<sup>186</sup> We are proposing to retain the same reporting timeframe for funds and to apply this reporting timeframe to managers' reporting of say-on-pay votes.<sup>187</sup> Commenters on the 2010 proposal generally supported retaining the current reporting timeframe, though certain commenters advocated for longer or shorter timeframes.<sup>188</sup>

We preliminarily believe that the proposed reporting timeframe for managers—and retaining the current reporting timeframe for funds—appropriately balances the benefits of prompt reporting and the burdens associated with that reporting. We are not proposing to require, as suggested by one commenter, that managers and funds report their votes shortly after the relevant shareholder meeting.<sup>189</sup> We preliminarily believe that the benefits of public reporting of proxy votes by funds and managers would not significantly increase with faster reporting and that publicly reporting each vote individually would make it difficult for investors reading a manager's Form N-PX reports to evaluate overall patterns in the manager's voting behavior.

As it relates to managers' reporting of say-on-pay votes, the relevant proposals are typically unique to the issuer in question and votes may be heavily dependent on the

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<sup>186</sup> See rule 30b1-4 under the Investment Company Act. We refer to this twelve-month period ending on June 30 of each year as the “reporting timeframe” or the “timeframe.”

<sup>187</sup> Proposed rule 14Ad-1(a); General Instruction A to proposed Form N-PX. The timing of a manager's Form N-PX filing obligations would differ when the manager enters and exits from the obligation to file Form 13F reports. See *infra* Section II.J.

<sup>188</sup> See, e.g., ABA Letter; CalPERS Letter; CII Letter; COPERA Letter; Glass Lewis Letter I; *but see* Jones Letter (requesting that managers and funds be required to report their votes on Form N-PX within four business days of each shareholder meeting); Letter of Adrienne Brown of Nationwide Investment Management Group (Nov. 18, 2010) (“Brown Letter”) (suggesting a later filing deadline, such as September or October); Fidelity Letter (suggesting the filing deadline be moved from August 31 to October 31).

<sup>189</sup> See Jones Letter.

particular facts and circumstances applicable to that issuer. Moreover, because such votes are reported on a retrospective basis, investors will not necessarily be able to use the information reported by managers on Form N-PX to engage in a dialogue with their manager about its voting policies or to switch to a manager who will vote differently with respect to any specific say-on-pay vote.<sup>190</sup> In the context of fund reporting of proxy votes, however, we are mindful of the fact that similar proposals often appear on the ballots of many issuers in a given proxy season, especially those issuers within the same industry. In these instances, timelier public reporting of funds' proxy votes has the potential to facilitate fund shareholders' ability to monitor their funds' involvement in the governance activities of portfolio companies, including within a single proxy season.<sup>191</sup> We request comment below on whether the benefits of timelier reporting of proxy votes—including those of both managers and funds—might outweigh any potential drawbacks.

We also are not proposing, as some commenters on the 2010 proposal suggested, to extend the deadline for filing reports from August 31 to a later date because of additional proposed disclosure requirements.<sup>192</sup> We believe that further delay after the close of the reporting period is unnecessary, particularly in light of other changes from the 2010 proposal that we believe should result in reporting persons having sufficient

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<sup>190</sup> Requiring managers to disclose their intended votes on a prospective basis would allow investors to make such a change, but such an approach would be inconsistent with the statute and we are not proposing it here.

<sup>191</sup> Shareholders of a given fund may be able to monitor the fund's proxy voting record to evaluate whether the fund's votes are consistent with its disclosure. This information would promote shareholders' ability to engage with fund management on timely issues in the midst of proxy season, including as it relates to future votes on the same subject matter at another issuer.

<sup>192</sup> See Brown Letter; Fidelity Letter.

time to gather the data necessary to make the filing, such as the reduction in the quantitative information required to be disclosed.<sup>193</sup>

We request comment on the proposed reporting timeframe for filing Form N-PX reports and, in particular, on the following:

75. Should we, as proposed, require funds to file their proxy voting records on the same reporting timeline as currently required? Would investors benefit from more timely reporting of funds' proxy votes? Please explain. Do funds need more time than currently permitted to file Form N-PX reports that include the new disclosure this proposal would require? If so, why, and how much time?
76. Should we, as proposed, require managers to report their say-on-pay votes annually on Form N-PX not later than August 31, for the most recent 12-month period ended June 30? Should we instead require reporting as of some other period end date (*e.g.*, May 31 or December 31), or with a shorter or longer lag period after the end reporting period (*e.g.*, a 45-day lag period to align with Form 13F)?
77. Should we require reporting for managers and funds to occur more frequently than annually, such as monthly, quarterly, or close in time to each vote? Should we require more frequent voting to be reported on firm websites and annual reporting on Form N-PX? For example, should we require funds and managers to report their votes on a monthly or quarterly basis on their websites, and annually on Form N-PX? Would requiring more frequent reporting to occur on managers'

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<sup>193</sup> See *supra* Section II.C.3 (discussing modifications to the proxy voting information required on Form N-PX).

- and funds' websites rather than on Form N-PX mitigate any of the potential issues with more frequent reporting, such as the cost of reporting or the ability of investors to read and identify patterns in fund or manager voting records?
78. Would investors benefit from more frequent voting disclosure? For example, would more frequent disclosure enhance fund shareholders' ability to monitor their funds' involvement in the governance activities of portfolio companies? Conversely, would investors generally be most interested in analyzing a reporting person's voting record more holistically rather than focusing on individual votes on more frequent intervals or shortly after a vote is held? What are the advantages and disadvantages of more frequent reporting of proxy votes?
79. Certain types of funds, such as index funds and the majority of exchange-traded funds, provide a degree of transparency as to their holdings more frequently than required by Form N-PORT. Transparency as to these funds' holdings arises as a result of either: (1) full portfolio disclosure (in the case of transparent ETFs), or (2) the tracking of an index whose constituents and weightings are transparent (in the case of index funds). Because of this transparency, more frequent disclosure of these funds' proxy voting records might not contribute to the potential risks otherwise associated with such a requirement. Should the Commission require more frequent or timely disclosure of proxy voting information for these or other types of funds whose characteristics mitigate the risks of such a requirement?
80. Should funds and managers file Form N-PX reports on the same schedule, as proposed? Are there reasons they should be subject to different reporting schedules?

## G. Requests for Confidential Treatment

The information filed on Form N-PX would be publicly available through the Commission's EDGAR system, as is information filed on Form 13F.<sup>194</sup> Certain managers filing reports on Form 13F request confidential treatment of certain or all the positions reported on their Form 13F, and those managers may request that confidential information reported on their Form 13F also be treated as confidential on their Form N-PX.<sup>195</sup> Pursuant to 17 CFR 240.24b-2 under the Exchange Act ("rule 24b-2"), which governs requests for confidential treatment of information required to be filed under the Act, a manager can request confidential treatment of information reported on proposed Form N-PX.<sup>196</sup>

Managers seeking confidential treatment for information on their Form 13F are required to file multiple lists of securities. One, filed publicly, lists only those securities for which it is not seeking confidential treatment, as well as a statement indicating that

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<sup>194</sup> See rule 80(c)(3) promulgated under the Freedom of Information Act [17 CFR 200.80(c)(3)] (stating that filings made through the EDGAR system are publicly available on the Commission's website).

<sup>195</sup> Requests for confidential treatment can be based either on a claim that the information would identify securities held by the account of a natural person or an estate or trust, other than a business trust or investment company, in which case the Commission is required to keep the information confidential indefinitely, or on a claim that the information is confidential commercial or financial information (consistent with the requirements of Freedom of Information Act ("FOIA") Exemption 4), in which case the grant is discretionary and generally only for a period of time. See generally sections 13(f)(4) and (5) of the Exchange Act [15 U.S.C. 78m(f)(4)] [15 U.S.C. 78m(f)(5)]; Form 13F Instructions for Confidential Treatment Requests; Rulemaking for EDGAR System, Investment Company Act Release No. 23640 (Jan. 12, 1999) [64 FR 2843].

<sup>196</sup> See 17 CFR 240.24b-2; Confidential Treatment Instruction 1 to proposed Form N-PX. The confidential treatment instructions we are proposing for Form N-PX are based on the Form 13F confidential treatment instructions, which apply in similar circumstances. See Form 13F Instructions for Confidential Treatment Requests.

confidential information has been omitted and filed with the Commission. Managers must also file a separate list including those securities positions for which the manager seeks confidential treatment. Confidential treatment granted by the Commission may be subject to an expiration date, as is often the case when confidential treatment is granted to protect commercial information, such as a position that is still being built. Therefore, when the confidential treatment period ends, or if the confidential treatment request is denied, the manager must file an additional report on Form 13F publicly disclosing those securities for which confidential treatment expired, or was denied.

We are proposing instructions in Form N-PX that are designed to provide a similar opportunity to prevent confidential information that is protected from disclosure on Form 13F from being disclosed on Form N-PX.<sup>197</sup> These instructions provide that a person requesting confidential treatment of information filed on Form N-PX should follow the same procedures set forth in Form 13F for filing confidential treatment requests. They also prescribe the required content of a confidential treatment request and the required filing of information that is no longer entitled to confidential treatment.<sup>198</sup>

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<sup>197</sup> Section 13(f)(4) of the Exchange Act provides that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of information filed on Form 13F in accordance with the Freedom of Information Act. Section 13(f)(4) also provides that any information filed on Form 13F that identifies the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public. As a result, we are unable to conclude, in advance, that confidential treatment of information filed on Form N-PX could, under no circumstances, be appropriate as suggested by one commenter. *See* Barnard Letter.

<sup>198</sup> Confidential Treatment Instructions to proposed Form N-PX. Upon the final adverse disposition of a request for confidential treatment, or upon the expiration of the confidential treatment, a reporting person would be required to electronically submit within six business days an amendment to its Form N-PX reporting the previously confidential proxy voting information. *See* Confidential Treatment Instruction 7 to proposed Form N-PX. Such amendment specifically would make publicly available

For instance, the confidential treatment request would be required to provide enough factual support for the request, including a demonstration that the information is both customarily and actually kept private by the reporting person, and that release of this information could cause harm to the reporting person. Although this differs somewhat from the current language in Form 13F regarding confidential treatment requests, we are proposing this standard in Form N-PX to conform to a June 2019 U.S. Supreme Court decision that overturned the standard for determining whether information is “confidential” under Exemption 4 of the FOIA on which the current Form 13F instruction is based.<sup>199</sup>

In light of the public disclosure intent of section 14A(d) and the confidential treatment requirements of rule 24b-2 under the Exchange Act, we believe that confidential treatment generally would not be merited solely in order to prevent proxy voting information from being made public. One commenter on the 2010 Proposing Release suggested that we should expand the standards for requesting and obtaining confidential treatment to cover situations in which a manager has a confidentiality agreement with a client regarding disclosure of portfolio information.<sup>200</sup> We do not

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through the Commission’s EDGAR system the proxy voting information that previously was confidential. In the event that the required amendment is not filed, the Commission could make the proxy voting information available to the public through other means.

<sup>199</sup> 5 U.S.C. 552(b)(4). *See Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019) (“Food Marketing v. Argus Leader”) (stating that “[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4”); *see also* Reporting Threshold for Institutional Investment Managers, Exchange Act Release No. 89290 (July 10, 2020) [85 FR 46016 (July 31, 2020)] (proposing a similar conforming amendment to the confidential treatment instructions in Form 13F).

<sup>200</sup> Mayer Brown Letter.

believe that such a private agreement should override the requirement to report proxy voting information publicly. We believe that confidential treatment could be justified only in narrowly tailored circumstances. For example, 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, and the information is also customarily treated as private, non-public information by the manager.<sup>201</sup>

Existing Form N-PX does not include any confidential treatment instructions and, apart from Form N-PX, funds already disclose their portfolio holdings.<sup>202</sup> As a result, we are 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.

We request comment on the proposed provisions regarding confidential treatment requests, including the following:

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<sup>201</sup> In the case of information that is not reported on Form 13F but would have been the subject of a Form 13F confidential treatment request if it were required to be reported (for example, a *de minimis* position that is not required to be reported on Form 13F but would have been eligible for confidential treatment if it were required to be reported on the form), we would follow similar procedures and apply similar standards to those followed for reports on Form 13F in processing requests for confidential treatment of information filed on Form N-PX.

<sup>202</sup> Portfolio holdings information is required to be disclosed by funds on a quarterly basis with a 60-day lag, through semiannual shareholder reports pursuant to rule 30e-1 under the Investment Company Act [17 CFR 270.30e-1] and Form N-PORT [17 CFR 274.150]. An exception exists for “miscellaneous securities” comprising less than 5% of a fund’s portfolio and held for less than one year, but the number of votes relating to the securities in that category is generally expected to be small because of its short-term nature.

81. Should we modify the proposed confidential treatment provisions in any way?  
Would it be appropriate to tie the confidential treatment provisions for Form N-PX to the confidential treatment provisions for Form 13F, for example by automatically granting confidential treatment for positions reported on Form N-PX when confidential treatment has been granted for those positions on Form 13F?
82. As proposed, should we require reporting persons to file confidential treatment requests for Form N-PX in the same manner as Form 13F requires? Are there reasons for the filing processes for confidential treatment requests to differ between the two forms? If so, what approach should we permit or require reporting persons to use to file confidential treatment requests for Form N-PX?
83. Do the proposed instructions for confidential treatment requests appropriately reflect the current requirements of FOIA, including the effect of the U.S. Supreme Court's June 24, 2019, decision in *Food Marketing Institute v. Argus Leader Media* on the type of information that is required to substantiate confidential treatment in accordance with rule 24b-2 under the Exchange Act?
84. Are there circumstances in which say-on-pay votes should be publicly disclosed but our proposal could permit confidential treatment? Alternatively, are there circumstances in which our proposal would require public disclosure of a say-on-pay vote but where confidential treatment should be granted? Please explain.
85. Should we allow funds to request confidential treatment under some circumstances? For example, should we allow a fund to request confidential treatment of votes on securities that were reported in the "miscellaneous

securities” category of its most recent disclosure of its portfolio holdings? If so, why should the result under the proposed rule differ from the result under current Form N-PX?

#### **H. Proposed Website Availability of Fund Proxy Voting Records**

When the Commission adopted Form N-PX in 2003, it also required a fund to disclose that its proxy voting record is available to shareholders, either on (or through) the fund’s website or upon request.<sup>203</sup> We understand that, currently, most funds make their proxy voting records available to shareholders upon request but do not provide this information on their websites. We are proposing 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) its website and available upon request, free of charge in both cases.<sup>204</sup> We believe this proposed change would make a fund’s proxy voting record more accessible to investors. Investors’ access to the internet has increased substantially since 2003, and many investors go to fund or intermediary websites to get information about a fund.<sup>205</sup>

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<sup>203</sup> See Form N-PX Adopting Release, *supra* footnote 7; Items 17(f) and 27(d)(5) of Form N-1A; Items 18.16, 24.6.d, and 24.8 of Form N-2; Item 23(f) and Instructions 4(d) and 6 to Item 31(a) of Form N-3.

<sup>204</sup> See proposed amendments to Items 17(f) and 27(d)(5) of Form N-1A; proposed amendments to Items 18.16, 24.6.d, and 24.8 of Form N-2; proposed amendments to Item 23(f) and Instructions 4(d) and 6 to Item 31(a) of Form N-3. The Commission has proposed other amendments that would replace current Item 27(d)(5) of Form N-1A with disclosure about the availability of different types of information for investors, including proxy voting information. See Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 33963 (Aug. 5, 2020) [85 FR 70716 (Nov. 5, 2020)] (“Tailored Shareholder Reports Proposing Release”). If those amendments were to be adopted, we would not amend current Item 27(d)(5) of Form N-1A as part of this rulemaking because it would no longer exist in its current form.

<sup>205</sup> See, e.g., ICI Research Perspective, “Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2020” (Nov. 2020) (noting that 96 percent of

Because the proposal would require funds to file Form N-PX reports in a custom XML language, we are proposing to specify that the proxy voting record the fund posts on its website and provides upon request must be in a human-readable format. A fund could comply with this requirement by using the human-readable version of its Form N-PX report that would appear on EDGAR (*e.g.*, by providing a direct link on its website to the HTML-rendered Form N-PX report on EDGAR).

We also propose to make conforming changes to Form N-1A and Form N-3 provisions that discuss how a fund may make its proxy voting record available on request to require a fund to provide the email address, if any, that an investor may use to request the proxy voting record. Form N-2 currently includes a similar provision, while Form N-1A and Form N-3 only refer to a fund providing a toll-free telephone number.

We request comment on our proposed amendments to Forms N-1A, N-2, and N-3 to require funds to disclose that their proxy voting records are available on websites and upon request, including the following:

86. Should we require funds to disclose that their proxy voting records is publicly available on (or through) their websites, free of charge and in a human-readable format, as proposed? Why or why not?
87. Should we only require a fund to disclose that its proxy voting record is publicly available on (or through) its website, and not also require disclosure that the record is available upon request? Do investors need the option to request a copy

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households owning mutual funds had internet access in 2020, up from 68 percent in 2000), available at <https://www.ici.org/system/files/attachments/per26-08.pdf>; Tailored Shareholder Reports Proposing Release, *supra* footnote 204, at n.69 and accompanying text.

of a fund's proxy voting record, or is website availability sufficient? If we retain the availability upon request provisions, should we require a fund to provide the email address, if any, that investors can use to request the proxy voting record, as proposed? If not, why not? Are there any other changes we should make that relate to an investor's ability to request delivery of a fund's proxy voting record, including that relate to the timeframe in which a fund delivers the voting record?

88. Are there other ways we could improve the accessibility of funds' proxy voting records for investors? Please explain.

### **I. Compliance Dates**

As described above, we are proposing that managers would be required to report their say-on-pay votes annually on Form N-PX not later than August 31 of each year, for the most recent 12-month period ended June 30.<sup>206</sup> We are proposing compliance dates that would vary depending on when the amendments become effective relative to the form's reporting deadline.

In the 2010 Proposing Release, we proposed that the first reports under then-proposed rule 14Ad-1 and amended Form N-PX would be required to be filed by August 31, 2011 (the same calendar year as the earliest anticipated adoption date). A number of commenters requested a delay in filing due to the compliance burden during initial implementation, with some commenters suggesting a compliance date as late as August

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<sup>206</sup> Proposed rule 14Ad-1(a); General Instruction A to proposed Form N-PX. For further discussion of the time of reporting provisions, see the discussion in Section II.F.

31, 2012 (*i.e.* one calendar year after the proposed compliance date),<sup>207</sup> or covering votes beginning no earlier than six months after such proposed rule's effective date.<sup>208</sup>

We agree with commenters that a longer compliance period is appropriate to provide reporting persons with a sufficient transition period to implement the changes that would be needed to record and report the information required by amended Form N-PX. We similarly provided a period between the effective date and the beginning of required compliance when we adopted proxy vote reporting requirements for funds.<sup>209</sup> We are therefore proposing that, 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. For a fund, the first report would disclose votes occurring at least six months after the effective date in conformance with the amended form, while applicable votes occurring before this period could be reported in conformance with current form requirements. A manager's requirement to report votes would begin six months after the effective date, since managers are not currently subject to Form N-PX reporting requirements. For example, if the amendments become effective on September 1, 2022, reporting persons would be required to report votes occurring between March 1, 2023 and June 30, 2023 in compliance with the amended form and include those votes in a report filed by August 31, 2023.

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

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<sup>207</sup> See, *e.g.*, ICI Letter; ISS Letter; Glass Lewis Letter I.

<sup>208</sup> See Letter of Glass Lewis & Co. (June 3, 2011).

<sup>209</sup> See Form N-PX Adopting Release, *supra* footnote 7, at Section III.

31 of the first complete reporting timeframe following the effective date of the proposed rule. As with the prior compliance date alternative, the first reports would be required to disclose votes occurring six months after the effective date of the amendments and thereafter in conformance with the amended form. That is, if the proposed rule takes effect on February 1, 2022, the first reports on amended Form N-PX would be due on August 31, 2023. For a fund, the first report would cover the reporting period of July 1, 2022 through June 30, 2023, with votes occurring between August 1, 2022 and June 30, 2023 reported in conformance with the amended form. For a manager, the first report would cover votes occurring between August 1, 2022 and June 30, 2023.

We believe that, under either alternative, the initial reporting period would allow reporting persons and their third-party service providers additional time to develop or modify the necessary systems in order to record and report information on amended Form N-PX.

We are proposing to require funds to comply with the amendments to Form N-PX at the same time as managers. This also allows funds additional time to implement applicable new Form N-PX requirements in the current proposal, including structured data reporting requirements, new quantification requirements, and new requirements to identify proxy voting matters and proxy voting categories. The proposed compliance date also is intended to provide a uniform mechanism of reporting votes at meetings that occur during the first reporting timeframe after the effective date of the proposed rule, because funds would be permitted to report say-on-pay votes for managers. As is currently the case, funds would be required to comply with current Form N-PX requirements until the end of the compliance period.

We request comment on the proposed compliance dates, and in particular, on the following issues:

89. Would the proposed compliance dates provide adequate time for managers that would be required to file Form N-PX for the first time and for funds that would be required to comply with the proposed amendments to Form N-PX? What, if any, implementation issues would managers and funds encounter in complying with the proposed rule and form amendments, and how should we address those issues (e.g., permit delayed filing for the first full reporting period after the rule is enacted)?
90. Should we provide different compliance dates for managers or funds to comply with certain provisions of the proposal? For example, should the compliance date for structured data reporting differ from the compliance date for other amendments to Form N-PX?

#### **J. Transition Rules for Managers**

We are proposing, as we did in the 2010 proposal, transition rules that govern the timing of a manager's Form N-PX filing obligations whenever the manager enters and exits from the obligation to file Form 13F reports.<sup>210</sup> In particular, the proposal would not require a manager 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.<sup>211</sup> Instead, the manager would be required to file a report on Form N-PX for the period ending June 30

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<sup>210</sup> For commenters supporting the transition rule, *see* ABA Letter; Fidelity Letter.

<sup>211</sup> Proposed Rule 14Ad-1(b); General Instruction F to proposed Form N-PX. For this purpose, an "initial filing" on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendared quarter. *Id.*

for the calendar year following the manager’s initial filing on Form 13F. For example, assume that a manager does not meet the \$100 million threshold test on the last trading day of any month in 2023 but does meet the \$100 million threshold test on the last trading day of at least one month in 2024. As a result, under the rules that currently apply to Form 13F, the manager would be required to file a Form 13F report no later than February 15, 2025, for the period ending December 31, 2024.<sup>212</sup> Additionally, under proposed rule 14Ad-1(b), the manager would be required to file a Form N-PX report no later than August 31, 2026, for the 12-month period from July 1, 2025, through June 30, 2026.<sup>213</sup> The following chart illustrates the timing of the entrance of a manager to its obligation, under the proposed rule, to file Form N-PX.

#### 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

In addition we are proposing, as we did in the 2010 Proposing Release, to not require a manager 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

<sup>212</sup> Currently, under rule 13f-1, the obligation to file Form 13F arises when a manager exercises investment discretion over accounts holding at least \$100 million in section 13(f) securities as of the “last trading day of any month of any calendar year.” However, the manager’s obligation to file Form 13F commences with the report for December 31 of that year, which is required to be filed within 45 days after December 31. Rule 13f-1(a)(1); General Instruction 1 to Form 13F. *See* rule 0-3 under the Exchange Act [17 CFR 240.0-3].

<sup>213</sup> Proposed Rule 14Ad-1(b); General Instruction F to proposed Form N-PX.

filing on Form 13F is due.<sup>214</sup> 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.<sup>215</sup> A manager's obligation to file Form 13F reports always terminates with the September 30 report, and the transition rule we are proposing conforms the ending date for reporting say-on-pay votes with the ending date for Form 13F reporting.<sup>216</sup> The proposed February 28 due date would provide a two-month period for filing after December 31, when the manager's Form 13F filing status would be conclusively determined for the coming year.<sup>217</sup>

For example, assume that a manager ceases to meet the \$100 million threshold in 2023. In other words, the manager meets the threshold on at least one of the last trading days of the months in 2022, but does not meet the threshold on any of the last trading days of the months in 2023. The manager's final report on Form 13F would be filed for the quarter ended September 30, 2023. The manager's final report on Form N-PX would include all say-on-pay votes cast during the period from July 1, 2023, through September

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<sup>214</sup> Proposed Rule 14Ad-1(c); General Instruction F to proposed Form N-PX. For this purpose, a "final filing" on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F is required for the immediately subsequent calendar quarter. *Id.*

<sup>215</sup> Proposed Rule 14Ad-1(c); General Instruction F to proposed Form N-PX.

<sup>216</sup> See rule 13f-1(a) (manager that meets \$100 million threshold on last trading day of any month of any calendar year is required to file Form 13F for December 31 of that year and the first three calendar quarters of the subsequent calendar year).

<sup>217</sup> A manager is required to file a report on Form 13F in the coming year if it meets the \$100 million threshold on the last trading day of any month of the current calendar year. As a result, in cases where the manager does not meet the threshold in January through November, its status will not be determined until December 31.

30, 2023, and would be required to be filed no later than March 1, 2024. The following chart illustrates the timing of the exit of a manager from its obligation to file Form N-PX.

### 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

We request comment on the proposed transition rules for managers required to file Form N-PX reports and, in particular, on the following:

91. The proposal would not require a manager 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. Is this transition rule appropriate for managers entering the Form 13F and Form N-PX filing requirements, or is some other rule more appropriate? For example, should we require a manager to report say-on-pay votes for the period commencing January 1 (rather than July 1) of the calendar year in which the manager’s initial filing on Form 13F is due? Instead should we require a manager to report say-on-pay votes for the period commencing on the first day of the month immediately following the date on which it meets the \$100 million threshold?
92. Should we, as proposed, not require a manager to file a Form N-PX report 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? Should we instead require a manager to report say-on-pay votes cast at meetings that occur

during some period after September 30 of the calendar year in which the manager's final filing on Form 13F is due? If so, what should that period be?

#### **K. Technical and Conforming Amendments**

We are proposing, as we did in the 2010 Proposing Release, two technical and conforming amendments. First, we are proposing to amend the heading of Subpart D of Part 249 of the Code of Federal Regulations to include new section 14A of the Exchange Act and to indicate that Exchange Act reports are filed by both issuers and other persons (*e.g.*, managers). We are also proposing amendments to reflect the fact that Form N-PX would be an Exchange Act form, as well as an Investment Company Act form.<sup>218</sup>

### **III. General Request for Comments**

The Commission requests comment on the rule and form amendments proposed in this release, whether any changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed rule and form amendments, and other matters that might affect the proposals contained in this release.

### **IV. Economic Analysis**

#### **A. Introduction**

The Commission is proposing to amend Form N-PX to enhance the information funds currently report annually about their proxy votes on both executive compensation and other matters to make these reports more informative and easier to analyze. The proposed amendments to Form N-PX would standardize the order in which reporting persons disclose information, categorize votes, structure and tag the data reported, and make the description of proxy voting issues consistent across multiple filings. The

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<sup>218</sup> Rule 30b1-4; 17 CFR 249.326 and 274.129.

proposed amendments would also provide additional information about the extent to which a fund votes or loans its shares. The Commission is also proposing rule and form amendments that would complete the implementation of section 951 of the Dodd-Frank Act by requiring a manager to report how it voted proxies relating to executive compensation matters. Specifically, the proposed rule and form amendments would require managers to report their say-on-pay votes annually on Form N-PX.

The Commission is sensitive to the economic effects, including the costs and benefits, imposed by the proposed rule and form amendments. At the outset, the Commission notes that, where practicable, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed rule and form amendments. In some cases, however, data needed to quantify these economic effects are not currently available to the Commission or otherwise publicly available. For example, there would be costs and benefits associated with managers disclosing information about their votes on executive compensation. Those costs and benefits may depend on existing levels of voluntary disclosure by managers and the extent to which they exercise voting power on behalf of funds because such votes are already reported on Form N-PX, and the proposal would not require managers to report them separately. Furthermore, costs associated with the proposal may depend on existing systems and levels of technology expertise within the funds and managers, which could differ substantially across reporting persons.<sup>219</sup>

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<sup>219</sup> We do not anticipate any significant costs associated with the technical and conforming amendments discussed in *supra* Section II.K.

## **B. Economic Baseline and Affected Parties**

The economic baseline against which we measure the economic effects of this rule, including its potential effects on efficiency, competition, and capital formation, is the state of the world as it currently exists.

### **1. Funds' Reporting of Proxy Voting Records**

Due to funds' significant voting power and the effects of funds' proxy voting practices on the actions of corporate issuers and the value of these issuers' securities, investors have an interest in how funds vote.<sup>220</sup> Since 2003, funds have used Form N-PX to report their proxy voting records annually for each matter relating to a portfolio security considered at any shareholder meeting held during the reporting period and with respect to which the fund was entitled to vote. In 2020, we estimate that there were approximately 2,087 funds with total assets of \$29.86 trillion that were required to file reports on Form N-PX.<sup>221</sup>

On the current Form N-PX, among other things, a fund discloses whether it cast its votes on each proposal, how it voted (*e.g.*, for or against the proposal, or abstained), and whether any votes cast were for or against management recommendations. Although the form specifies the information that each fund must provide, it does not specify the format of the disclosure or how funds must present or organize the information. Reports on Form N-PX also are not currently filed in a machine-readable, or "structured," data

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<sup>220</sup> See, *e.g.*, Stuart Gillan and Laura Starks, "The Evolution of Shareholder Activism in the United States." *Journal of Applied Corporate Finance*, Volume 19 (2007).

<sup>221</sup> These estimates are based on staff review of Form N-CEN filings of management investment companies registered with the Commission as of December 2020.

language. Investors can access a fund's Form N-PX filings online through the EDGAR website. Funds also must disclose that their proxy voting records are available to investors either upon request or on (or through) their websites, with most funds disclosing that this information is available upon request.

Current Form N-PX reports advanced transparency into fund voting. However, these reports can be difficult for investors to read and analyze. For example, under the current rules, Form N-PX is routinely filed as a large HTML or plain-text (ASCII) file. Many funds use automated systems to produce their Form N-PX records, which is often a simple output from a database maintained by the filer that covers meetings, proposals, and votes over a given period. A fund may own hundreds of securities, sorted by firm, each of which may have ten or more proposals each year. As a result, Form N-PX reports disclosing proxy voting records for all securities and proposals can be overwhelmingly long.<sup>222</sup> Investors also may have difficulty finding a particular fund's voting history within a single Form N-PX filing. Many fund complexes include information about several different funds in a single Form N-PX report, given the structure of many funds as series of a trust.

Funds also often use their own descriptions and abbreviations when describing a particular voting matter, which differ from the descriptions on an issuer's form of proxy. This can make it difficult for investors to identify a particular voting matter or category of similar voting matters, and to compare funds' voting records.

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<sup>222</sup> See *supra* footnote 17.

In addition to difficulties to collect and analyze the data provided on Form N-PX, certain gaps in the required current disclosure may provide an incomplete picture of a fund's proxy voting practices. For example, current Form N-PX does not require funds to provide information about the potential effects of a fund's securities lending activities on its proxy voting. A fund's securities lending activities can generate additional income for the fund and its shareholders. However, when a fund lends its portfolio securities, it transfers incidents of ownership, including proxy voting rights, for the duration of the loan. As a result, the fund loses its ability to vote the proxies of such securities, unless the securities are recalled, the loan is terminated and the securities are returned to the fund before the record date for the vote. Current Form N-PX does not provide information about this effect.

## **2. Managers' Reporting of Say-on-Pay Votes**

Section 951 of the Dodd-Frank Act added new section 14A to the Exchange Act requiring issuers to provide shareholders with a vote on say-on-pay matters, and requires managers to report how they voted on those matters. 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. Section 14A(d) requires that every manager report at least annually how it voted on say-on-pay votes, unless such vote is otherwise required to be reported publicly. However, there are currently no rules or forms in place governing how

managers are to comply with their reporting obligation under section 14A(d).<sup>223</sup> Some managers, such as public pension funds, do disclose their proxy voting records on their websites, although we understand that their disclosures generally do not contain quantitative information and presentation practices of website reporting vary across managers. Adopting say-on-pay vote reporting requirements for managers would complete implementation of section 951 of the Dodd-Frank Act.

As of March 31, 2021, 7,550 managers with investment discretion over approximately \$39.79 trillion in section 13(f) securities.<sup>224</sup>

### **C. Costs and Benefits**

#### **1. Amendments to Funds' Reporting of Proxy Votes**

##### **a. Benefits**

The fund-related proposed amendments to Form N-PX would benefit fund investors, other market participants, and other proxy voting data users,<sup>225</sup> by enhancing the information funds currently report about their proxy votes and making that information easier to collect and analyze. The proposed amendments include the following principal elements: (1) requiring the disclosure of information about the number of shares that were voted (or instructed to be voted) and the number of shares that a fund loaned and did not recall before the record date for the vote; (2) requiring that funds describe a voting matter using the description in the issuer's form of proxy; (3)

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<sup>223</sup> Although managers are not currently required to file reports on Form N-PX, there is a subset of managers that advise funds, and each of these funds is required to report its own proxy voting record, including say-on-pay votes, annually on Form N-PX.

<sup>224</sup> These estimates are based on staff review of Form 13F filings covering the first quarter of 2021. *See also supra* footnote 24 and *infra* footnote 265.

<sup>225</sup> Other proxy voting data users include, for example, regulators such as the Commission, proxy voting advisers, equity analysts, corporate issuers, and third-party data providers.

requiring funds to categorize voting matters by type; (4) requiring funds to report information in a standardized order and provide disclosure separately by series of shares; (5) requiring the reporting of information on Form N-PX in a custom XML language created specifically for Form N-PX; and (6) requiring funds to disclose that their proxy voting records are publicly available on (or through) their websites and available upon request, free of charge in both cases.

The amendments are designed to facilitate the benefits the Commission sought to provide with Form N-PX as articulated in the adopting release, namely: (1) to provide better information to investors who wish to determine to which fund managers they should allocate their capital, and whether their existing fund managers are adequately maximizing the value of their shares; (2) to deter fund voting decisions that are motivated by considerations of the interests of a fund’s adviser rather than the interests of the fund’s investors; and (3) to provide stronger incentives for fund managers to vote their proxies carefully.<sup>226</sup> One academic study suggests that, currently, investors may be less inclined to use information provided in Form N-PX because the costs of gathering and understanding more granular details about the fund’s proxy voting exceed the benefits.<sup>227</sup>

We expect that the proposed amendments to the Form N-PX format and content would help investors and other data users more easily collect and analyze proxy voting

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<sup>226</sup> Form N-PX Adopting Release, *supra* footnote 7. The discussion of the interests of funds’ investors is not intended to describe the interests of any particular investor or investors, but instead refers to the fund’s investors, considered as a whole.

<sup>227</sup> See Jonathon Zytnick, “Do Mutual Funds Represent Individual Investors?” *NYU Law and Economics Research Paper* No. 21-04 (March 7, 2021) at page 4, (finding “evidence consistent with limited attention, in which the costs [to shareholders] of acquiring more granular detail about funds, as compared to readily available information, exceed the benefits”), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3803690](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3803690).

information, resulting in lower costs of gathering and understanding this information. Specifically, the proposed amendments would require funds to use a consistent and standardized description, categorize voting matters, report in a custom XML data language, and make the form available on the fund's website and provide it to investors upon request, free of charge in both cases. We also expect these amendments could facilitate comparisons of voting patterns across a wide range of funds or within an individual fund over time. To the extent that investors choose among funds based on their proxy voting policies and records, in addition to other factors such as expenses, performance, and investment policies, we expect that investors would be able to select funds that suit their preferences more efficiently.

We expect additional benefits to investors and other proxy voting data users from accessing the new information on the amended Form N-PX regarding the number of shares voted and the number of shares loaned. We believe that this additional information could benefit investors and other data users by helping them understand the scope of a fund's participation in proxy voting activities, the fund's voting preferences, and the fund's ability to affect the outcome of shareholder votes and influence the governance of corporate issuers. As an example, the additional transparency the proposal would provide may help assess concerns regarding the extent to which loaned shares could be used to sway proxy votes towards outcomes that enhance borrowers' private benefits instead of outcomes considered beneficial for funds' shareholders.<sup>228</sup>

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<sup>228</sup> It may be possible that investors who borrow securities primarily to obtain votes could sway proxy votes towards outcomes that enhance their private benefits instead of outcomes considered beneficial for funds' shareholders. Hu and Black (2008) provide examples of situations when the use of borrowed shares may have swayed the outcome of a shareholder vote. *See* Henry Hu and Bernard Black, "Equity and Debt Decoupling and

In light of the increased transparency the amendments would provide on fund voting, the proposal may also provide an incentive for fund managers to devote additional time and resources to their participation in voting proxies, which could lead to an improvement in the performance of corporate issuers and enhance shareholder wealth.<sup>229</sup> Academic research provides some evidence that actively voting funds help sway shareholder votes toward value-maximizing outcomes when voting on the matters such as CEO turnover, executive compensation, anti-takeover provisions, and mergers.<sup>230</sup> We note that these potential corporate governance improvements resulting from more active participation in proxy voting by funds could have a positive externality effect as the benefits would be accessible to all equity holders, and not limited to fund investors.

In addition, the proposed amendments to the format and content of Form N-PX may also help deter fund votes motivated by conflicts of interest that compromise the

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Empty Voting: II Importance and Extensions.” *University of Pennsylvania Law Review*, Volume 156 (2008). To date, we are not aware of evidence on whether such voting with borrowed shares occurs on a regular basis or whether it has a significant effect on proxy voting outcomes.

<sup>229</sup> See Peter Iliev and Michelle Lowry, “Are Mutual Funds Active Voters?” *Review of Financial Studies*, Volume 28 Issue 2 (2015); Vincente Cunat, Mireia Gine, and Maria Guadalupe, “The Vote is Cast: The Effect of Corporate Governance On Shareholder Value.” *Journal of Finance*, Volume 67 Issue 5 (2012). (finding that passing a governance provision is associated with an increase in shareholder value, and more so when proposals are sponsored by institutional investors).

<sup>230</sup> See, e.g., Angela Morgan, Annette Poulsen, Jack Wolf, and Tina Yang, “Mutual Funds as Monitors: Evidence from Mutual Fund Voting.” *Journal of Corporate Finance*, Volume 17 (2011). (finding that, “in general, mutual funds vote more affirmatively for potentially wealth-increasing proposals and funds’ voting approval rates for these beneficial resolutions are significantly higher than those of other investors”). See also Jean Helwege, Vincent Intintoli, and Andrew Zhang, “Voting with Their Feet or Activism? Institutional Investors’ Impact on CEO Turnover.” *Journal of Corporate Finance*, Volume 18 Issue 1 (2012) for a review of the literature.

fund's voting on proposals considered beneficial for the fund's investors.<sup>231</sup> For example, some academic research finds that mutual funds' proxy voting may be affected by their business ties with the portfolio firms where the fund's adviser also manages the firm's pension plan, as well as through personal connections between fund managers and corporate executives.<sup>232</sup> More generally, fund managers' proxy voting decisions may be driven by their economic interest in attracting more business for the fund.<sup>233</sup> A fund's

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<sup>231</sup> See, e.g., Gerald Davis and Han Kim, "Business Ties and Proxy Voting by Mutual Funds." *Journal of Financial Economics*, Volume 85 Issue 2 (2007) ("To the extent that good corporate governance leads to higher valuations, fund managers have incentives to use their voting power to demand good corporate governance and accept (reject) proposals that may benefit (harm) investors. However, such fiduciary responsibilities may be compromised if mutual fund parents manage employee benefit plans (such as 401(k) plans) for their portfolio firms at the behest of management."). According to the article, on average, earnings from 401(k)-related business equal 14% of the revenues that mutual fund families earn from their equity funds, and such income can represent as much as 25% of fund family revenues.

<sup>232</sup> See, e.g., Ashraf, Jayaraman, and Ryan (2012) find that "fund families support management when they have pension ties to the firm" and Cvijanovic, Dasgupta, and Zachariadis (2016) find that "business ties significantly influence pro-management voting at the level of individual pairs of fund families and firms." Butler and Gurun (2012) observe that "mutual funds whose managers are in the same educational network as the firm's CEO are more likely to vote against shareholder-initiated proposals to limit executive compensation than out-of-network funds are." See Rasha Ashraf, Narayanan Jayaraman, and Harley Ryan, "Do Pension-Related Business Ties Influence Mutual Fund Proxy Voting? Evidence from Shareholder Proposals on Executive Compensation." *Journal of Financial Quantitative Analysis*, Volume 47 Issue 03 (2012); Dragana Cvijanovic, Amil Dasgupta, and Konstantinos Zachariadis, "Ties That Bind: How Business Connections Affect Mutual Fund Activism", *Journal of Finance*, Volume 71 Issue 6 (2016); Gerald Davis and Han Kim, "Business Ties and Proxy Voting by Mutual Funds." *Journal of Financial Economics*, Volume 85 Issue 2 (2007); and Alexander Butler and Umit Gurun, "Educational Networks, Mutual Fund Voting Patterns, and CEO Compensation." *Review of Financial Studies*, Volume 25 Issue 8 (2012).

<sup>233</sup> See, e.g., Lucian Bebchuk, Alma Cohen, and Scott Hirst, "The Agency Problems of Institutional Investors." *Journal of Economic Perspectives*, Volume 31 Number 3 (2017) (discussing that fund managers' proxy voting decisions may be driven by their economic interest in attracting more business for the fund rather than engaging in generating governance gains at portfolio companies.) The Commission has brought at least one enforcement action against a registered investment adviser for having proxy voting policies that did not address material potential conflicts when the adviser selected voting guidelines explicitly favored by certain clients to vote all its clients' securities, in order to

proxy voting also may be affected by the fund manager’s personal preferences that do not align with the best interests of the fund’s investors.<sup>234</sup>

To the extent that the increased transparency about fund’s proxy votes, resulting from the proposed amendments, would provide an incentive for fund managers to focus more on shareholder value maximization, this could lead to an improvement in the performance of corporate issuers and enhance shareholder value. We note that assets held in funds account for approximately 30% of the market capitalization of all publicly traded U.S. corporations as of year-end 2020, and therefore funds have the ability to exercise a considerable amount of influence in proxy votes which could affect the value of these corporations.<sup>235</sup>

b. Costs

The proposed amendments to Form N-PX would lead to some additional costs for funds. Any portion of these costs that is not borne by a fund’s adviser or other sponsor would ultimately be borne by the fund’s shareholders. Direct costs for funds would consist of both internal costs (for compliance attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and

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improve the adviser’s ranking in a third-party proxy voting survey. *See, In the Matter of INTECH Investment Management LLC*, Investment Advisers Act Release No. 2872 (May 7, 2009) (settled order).

<sup>234</sup> *See, e.g.*, Paul Mahoney and Julia Mahoney, “The New Separation of Ownership and Control: Institutional Investors and ESG.” *Columbia Business Law Review*, Volume 2 Number 2 (2021).

<sup>235</sup> ICI 2020 Fact Book, *supra* footnote 5, Figure 2.7.

external costs (such as any costs associated with third-party service providers to collect and report the information disclosed in Form N-PX).<sup>236</sup>

We anticipate that any additional direct costs associated with the proposed amendments aimed at reducing the costs of accessing and gathering proxy voting information for investors and other users of the data—the requirements to use a custom XML language and to publish proxy voting records on the fund’s website—would be relatively low given that funds already accommodate similar requirements in their other reporting and can utilize their existing capabilities for preparing and publishing an updated Form N-PX.

Indirect costs for funds would include the costs associated with additional actions that funds may decide to undertake in light of the increased transparency of their voting records and practices. To the extent that the proposed amendments provide an incentive for fund managers to devote additional time and resources to voting proxies, this may result in additional expenses for funds, some of which may be passed on to funds’ investors. Also, as a result of the increased scrutiny by investors, a fund may be incentivized to vote against an issuer firm’s management with whom the fund has

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<sup>236</sup> Based on the results of the PRA analysis provided in Table 2, it is estimated that the annual direct costs attributable to information collection requirements in the proposed amendments for funds that hold equity securities would be approximately \$6,577 per fund, which consists of \$6,077 in internal costs and \$500 in external costs. For funds not holding equity securities, the direct costs are not expected to change. For funds of funds, the direct costs would comprise internal and external costs and are estimated at \$414 per fund. These annual direct costs include both ongoing, and initial costs, with the latter being amortized over three years.

business ties. This could jeopardize the fund's relationship with the client firm and result in lost revenue if the firm decides to relocate their employee benefit accounts elsewhere.

The proposed requirement for funds to disclose the number of shares a fund voted and the number of shares the fund loaned and did not recall for voting could reduce the fund's proceeds from securities lending, which would reduce returns to the fund's investors.<sup>237</sup> Specifically, in light of the increased transparency the amendments would provide on funds' securities lending activities, some funds may decide to recall their loaned securities to be able to vote the proxies of these securities. A change in the fund's lending activity could also affect the fund's adviser and its affiliates. For example, some funds use securities lending agents that are affiliated with the fund's adviser and that are compensated in their role as agent with a share of the proceeds generated by the lending program.

However, we expect the scope of the possible impact of the proposed amendments on funds' securities lending practices and income would be limited for the following reasons:

- First, according to a survey of institutional investors referenced in one academic study, 37.9% of the respondents stated that a formal policy on securities lending is part of their proxy voting policy, with some institutional investors requiring a total recall of shares ahead of proxy voting, while others weigh the lost income from securities lending against

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<sup>237</sup> Based on Form N-CEN filings received through May 2021, 67% of funds were authorized to engage and 40% participated in lending their securities. Funds that lent their securities reported aggregate net income from securities lending in the last year of \$2.663 billion, representing an average of 0.036% of average total net assets in the last year.

the benefits of voting on a specific proposal.<sup>238</sup> For funds with such existing securities lending policies, we expect no changes to their lending practices as a result of the proposed amendments.

- Second, even if some funds decide to recall loaned securities ahead of proxy voting, we anticipate that these funds would lend their shares again immediately after the vote record date, thus resuming the income stream obtained through security lending. This is consistent with findings in academic research showing that the supply of shares available to lend starts to decrease about 20 days before the vote record date and it increases to its pre-event levels immediately after the vote record date.<sup>239</sup> Therefore, we expect that the lost income to the funds from recalling their loaned shares to participate in proxy voting would be limited to the income from securities lending that could have been generated over the recall period.
- Third, we expect that funds would factor income from securities lending, among other considerations, into their lending decision and recall loaned securities when they expect the value of their voting rights would exceed lost income from securities lending. This is consistent with findings in academic research showing that the recall of shares ahead of the voting record date is sensitive to the borrowing fee and that recall is lower if the

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<sup>238</sup> See, e.g., Aggarwal et al. (2015) at page 2314, *supra* footnote 20.

<sup>239</sup> See *id* at page 2316.

fee paid by borrowers is higher.<sup>240</sup> Therefore, if, under the proposed amendments, some funds decided to recall their loaned shares to be able to participate in proxy voting, we anticipate that the fund managers will have determined that the benefits to these funds associated with their decision would outweigh the potential loss of lending income.

Since stock loans can be used for many different purposes, including short selling and arbitrage and hedge trading strategies, changes in funds' securities lending practices could have an impact on these activities, which may impose additional costs on market participants. However, as discussed earlier, we would expect the securities lending supply to be largely unaffected by the proposed amendments and, therefore, we would expect other market activities that rely on securities lending to be largely unaffected too. If, as a result of increased transparency under the proposed amendments, some funds decide to recall their loaned shares, we expect the impact of this change on other related market activities such as short selling and arbitrage trading to be limited for the following reasons:

- As discussed earlier, we would expect the recall to be short-term and funds to return to their normal securities lending practices immediately after the vote record date. Therefore, we anticipate that other market activities that rely on securities lending would also return to normal levels after the vote record date.
- Additionally, we expect that the market for securities lending has sufficient depth to withstand these short-term recalls by some funds ahead

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<sup>240</sup> See *id* at page 2328.

the voting record date without experiencing significant changes. One academic study shows that the equity lending market has a slack in supply with approximately a quarter of a corporate issuer's market capitalization typically available for lending and less than one-fifth of these shares being on loan.<sup>241</sup> Therefore, we expect that if some funds decided to recall their securities to participate in proxy voting, other lenders would step in to supply shares for loan on similar terms. This is consistent with findings in academic research showing that changes in borrowing fees during the recall period tend to be economically small or insignificant.<sup>242</sup>

- The impact on borrowing fees could be more pronounced for hard-to-borrow stocks such as stocks with low lendable supply and/or high borrowing demand, also known as “special.”<sup>243</sup> If funds recalled a significant number of shares of such stocks ahead of the vote record date, it may potentially have an impact on the stock price.<sup>244</sup> However,

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<sup>241</sup> See *id* at page 2315.

<sup>242</sup> See *id* at page 2327. See also Susan Christoffersen, Cristopher Geczy, David Musto, and Adam Reed, “Vote Trading and Information Aggregation.” *Journal of Finance*, Volume 62 Issue 6 (2007) at page 2912.

<sup>243</sup> The Aggarwal et al. (2015) study estimated that such special stocks represented about 9% of their considered equity lending sample, which covers more than 85% of the securities lending market. The study finds that “special” stocks have a higher average annualized borrowing fee of 429 basis points, compared with a fee of 9.3 basis points for the non-special stocks.

<sup>244</sup> See, e.g. Jesse Blocher, Adam Reed, and Edward Van Wesep, “Connecting Two Markets: An Equilibrium Framework for Shorts, Longs, and Stock Loans.” *Journal of Financial Economics*, Volume 108 Issue 2 (2013) (finding that when share loan supply is “reduced around dividend record dates, prices of hard-to-borrow stocks increase 1.1% while prices of easy-to-borrow stocks are unaffected”). While the study looks at the effect around the dividend record date, it is possible that similar results could hold around vote record dates.

“special” stocks are typically associated with higher borrowing fees<sup>245</sup> and, therefore, funds may be more reluctant to recall these shares from loans if the income from lending them exceeds the benefits of participating in proxy voting. For example, one academic study shows that lendable supply of “special” stocks changes by less than that of the non-special stocks prior to the vote record date.<sup>246</sup> Therefore, we expect that the proposed amendments are unlikely to have an impact on securities lending and other related market activities for these stocks.

## **2. Amendments to Require Manager Reporting of Say-on-Pay Votes**

### **a. Benefits**

Under the proposal, managers would publicly disclose annually on Form N-PX information about their proxy votes relating to say-on-pay matters. The information would include a description of say-on-pay matters that is consistent with the description on an issuer’s form of proxy, their standardized classification, the number of shares voted and number of shares loaned and not recalled, and how the shares were voted by the manager.

We believe the proposed rule may benefit the securities markets by providing access to information about how managers vote on issuers’ say-on-pay recommendations. As of March 31, 2021, managers that file reports on Form 13F exercised investment discretion over approximately \$39.79 trillion in section 13(f) equity securities. In many cases, fund managers also exercise voting power for proxies relating to these equity

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<sup>245</sup> *Supra* footnote 243.

<sup>246</sup> *See* Aggarwal et al (2015) at page 2323.

securities. This voting power gives fund managers significant ability to affect the outcomes of shareholder votes and influence the governance of corporations.

Recent academic literature shows that the requirement of holding say-on-pay votes could have an impact on executive compensation and other corporate governance practices for corporate issuers.<sup>247</sup> The proposed rule would enable investors to observe how managers exercised their proxy votes regarding such matters. To the extent the information contained in say-on-pay votes is understood and valued by investors,<sup>248</sup> investors can benefit from using this additional information in selecting managers, and in determining whether managers are adequately maximizing the value of their assets.

This information may also help deter votes motivated by conflicts of interest and promote accountability of executives who often are in a position to shape their own pay arrangements. To the extent that executives are sensitive to approval from their institutional shareholder base, the adoption of the proposed rule should help align the incentives of executives and investors, which would result in better corporate governance practices at corporate issuers.

Public companies currently subject to the Dodd-Frank Act's say-on-pay vote requirements may also benefit from the transparency provided by this rule. Knowing how

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<sup>247</sup> See Peter Iliev and Svetla Vitanova, "The Effect of the Say-on-Pay Vote in the United States." *Management Science*, Volume 65 (2019); James Cotter, Alan Palmiter and Randall Thomas, "The First Year of Say-on-Pay under Dodd-Frank: An Empirical Analysis and Look Forward." *George Washington Law Review*, Volume 81 Issue 3 (2013).

<sup>248</sup> See, e.g., David Larcker, Ronald Schneider, Brian Tayan, and Aaron Boyd, "2015 Investor Survey Deconstructing Proxy Statements – What Matters to Investors." *Stanford University, RR Donnelley, and Equilar Report* (February 2015) (finding that 58 percent of shareholders believes that say-on-pay is effective in influencing or modifying pay practices).

managers have voted on executive compensation matters in the past, and knowing how they voted on say-on-pay matters at similar firms or other firms in the same industry, could be useful for the companies as they consider their own executive compensation practices and policies.

b. Costs

The proposed rule would lead to some additional direct and indirect costs for managers associated with disclosing required information about their say-on-pay votes annually on Form N-PX. If a manager exercises voting power for a client's securities, the costs to report the vote may be passed on to the client. Some of these costs are a direct result of section 14A(d)'s statutory mandate for managers to report annually how they have voted.<sup>249</sup>

Direct costs to each manager would include both internal costs (for compliance attorneys and other non-legal staff, such as computer programmers, to prepare and review the required disclosure) and external costs (such as any costs associated with third-party service providers to collect and report the information disclosed in Form N-PX).<sup>250</sup> We anticipate that costs for managers associated with obtaining the information required to be reported by the proposed rule would be limited because we believe that many managers are already tracking some of these data.

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<sup>249</sup> In the 2010 Proposing Release, no commenter provided specific empirical data quantifying costs that may be incurred by a reporting person in complying with those proposed amendments.

<sup>250</sup> Based on the results of the PRA analysis provided in Table 2, it is estimated that the annual direct costs attributable to information collection requirements in the proposed amendments for managers would be approximately \$5,925 per manager, consisting of \$4,925 in internal costs and \$1,000 in external costs. These annual direct costs include ongoing as well as initial costs, with the latter being amortized over three years.

Indirect costs to managers associated with the proposed amendments would be similar to the indirect costs to funds discussed in the prior section. More specifically, to the extent that the proposed amendments may provide an incentive for managers to devote additional time and resources to proxy voting, this may result in additional expenses for managers, some of which may be passed on to their clients. Also, an increase in scrutiny by investors as a result of increased transparency under the proposed amendments may incentivize managers to vote against the management of an issuer with which the manager may have a business relationship, which could weaken the manager's relationship with the issuer firm and result in lost revenue.

Further, the proposed disclosure requirements for managers could create incentives for them to recall their loaned securities to cast proxy votes on say-on-pay matters for these securities. This could reduce these managers' and their clients' revenues and may have a short-term impact on the securities lending and underlying stock markets.<sup>251</sup> However, similar to the impact on funds discussed in the prior section, we expect that the scope of the possible impact of the proposed amendments on managers' securities lending practices and revenues would be limited.

We believe that the costs arising from the proposal to use Form N-PX to implement section 14A's say-on-pay vote reporting requirements for managers would be mitigated by the experience that managers that are advisers to funds already have with filing Form N-PX reports on behalf of funds. In addition, the proposed move to a custom

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<sup>251</sup> See *supra* footnotes 238-240 and accompanying text for the discussion related to the effect on securities lending for funds. See *supra* footnotes 241-246 and accompanying text for a discussion of the potential effects on underlying markets, which would also apply to changes in managers' securities lending activities.

XML data language for Form N-PX is not expected to impose significant costs on managers subject to say-on-pay voting requirements, as managers have experience filing other EDGAR forms that use similar custom XML data languages, such as Form 13F.

The costs associated with the proposed rule may vary depending on existing levels of voluntary disclosure, organizational structure, and investment objectives of each manager. For example, the cost of compliance with the proposed rule is likely to be lower for managers that exercise voting power on behalf of funds because such votes are already reported on Form N-PX, and the proposal would not require managers to separately report say-on-pay votes cast on behalf of funds in compliance with the joint reporting provisions. Also, the costs are likely to be lower for managers who already voluntarily track and disclose some of the data the proposed rule would require.

#### **D. Effects on Efficiency, Competition, and Capital Formation**

In this section we consider whether the proposed rule and form amendments would promote efficiency, competition, and capital formation.

##### **1. Amendments to Funds' Reporting of Proxy Votes**

The proposed amendments to Form N-PX would provide investors with greater access to information regarding the proxy voting decisions of the funds they invest in. This could help investors make better informed investment decisions when they want to take into account funds' voting records, which could promote more efficient allocation of capital by investors to funds.

The amendments would also make it easier for investors and other proxy voting data users to compare and evaluate proxy voting records across a wide variety of funds. This may improve competition among funds, as funds may seek to differentiate

themselves based on their voting records. This could further promote a more efficient allocation of capital by investors among competing funds.

Further, as proxy voting information becomes easier to gather and analyze, data-collecting service providers could face an increased competitive pressure to improve and develop new tools and methodologies and/or reduce their service fees.

Finally, we do not anticipate any significant effects of the proposed amendments on capital formation.

## **2. Amendments to Require Manager Reporting of Say-on-Pay Votes**

Because the proposed rule applies equally to all managers that are required to file reports under section 13(f) of the Exchange Act, we do not anticipate that any competitive disadvantages would be created. To the contrary, we anticipate that the proposed rule may encourage competition by raising awareness about manager voting on say-on-pay matters and may facilitate differentiation among managers.

The proposed amendments to require manager reporting of say-on-pay votes could promote more efficient allocation of capital to managers. The proposed amendments could enable investors to obtain managers' proxy voting information which could help investors allocate assets to managers who cast proxy votes that are more consistent with investors' preference for voting on executive compensation matters.

Finally, we do not anticipate any significant effects of the amendments on capital formation.

## **E. Reasonable Alternatives**

### **1. Scope of Managers' Say-on-Pay Reporting Obligations**

We considered as an alternative whether to more closely align managers' reporting requirements on Form N-PX with their reporting requirements on Form 13F by

adding a *de minimis* exception. Filers on Form 13F are permitted to exclude positions when the positions have a dollar value of less than \$200,000 and consist of fewer than 10,000 shares. Several commenters on the 2010 proposal suggested that we include a *de minimis* exception, with one suggesting that not doing so would reduce the value of the exception to Form 13F reporting and a different commenter suggesting that this could permit their positions to be front-run.<sup>252</sup>

The benefits of say-on-pay vote reporting to managers' clients and to other investors, as discussed above, do not appear to be limited to votes of a certain size. We also believe that the cost savings of a *de minimis* exception would be minimal. To the extent that a filing could reveal information about a filer's trading strategy that would permit it to be front-run, we believe that the instructions for requesting confidential treatment address this concern.

We also considered as an alternative whether to reduce the burden on managers who have a stated practice of not voting shares, for instance by reducing their reporting obligations or not requiring them to make a filing at all. While this approach would reduce costs for relevant managers, it may limit the ability of investors to understand fully how managers exercise their voting power, including by determining not to vote shares.

Another alternative we considered was allowing managers to not file on Form N-PX when they did not exercise voting power over securities that held say-on-pay votes during the reporting period. We do not believe this alternative would substantially reduce

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<sup>252</sup> Intel Letter (suggesting that this would reduce the value of the Form 13F exception); Seward Letter (front-running). *See also* ABA Letter (general support for *de minimis* exception); Barnard Letter (same).

costs for relevant managers relative to the proposal because the proposal only requires these managers to state in a Form N-PX filing that they have no votes to report.

Moreover, we believe that requiring all managers to make a filing would permit both Commission staff and investors to identify more easily managers who may have missed a filing obligation. Not requiring all managers to make a filing could reduce the usefulness of Form N-PX filings because investors would not necessarily understand whether a manager did not make a filing because it did not exercise voting power or because it simply neglected to file the form.

## **2. Amendments to Proxy Voting Information Reported on Form N-PX**

We are proposing changes to Form N-PX that would 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), as well as disclosure of the number of shares the reporting person loaned and did not recall.

We considered proposing a requirement to disclose the number of shares voted (or instructed to be cast) and not proposing the requirement to disclose the number of shares the reporting person loaned and did not recall for these votes. This approach would provide information to understand split votes, but may have limited utility otherwise. Specifically, this approach would not provide information to help investors understand the full extent to which a reporting person is voting shares. While the alternative approach would reduce reporting burdens for some funds and managers, it would also have fewer benefits for investors such as transparency into how a reporting person's securities lending affects its proxy voting.<sup>253</sup>

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<sup>253</sup> See *supra* Section II.C.3.b. for detailed discussion.

### 3. Amendments to the Time of Reporting on Form N-PX or Placement of Funds' Voting Records

As an alternative to maintaining the current timeline for filing reports on Form N-PX, we considered requiring funds or managers to report relevant proxy votes more frequently, such as on a semiannual, quarterly, or monthly basis, or shortly after a given vote is held. We also considered maintaining the current annual reporting requirement, but requiring reporting persons to file their reports more quickly (*e.g.*, by the end of July, rather than by the end of August). In general, these alternatives would provide investors and other data users with more timely information about how a fund or manager votes.

A semiannual reporting requirement could be incorporated into funds' current reporting of annual and semiannual shareholder reports on Form N-CSR. The Commission proposed a similar approach to requiring disclosure of funds' proxy voting records in 2002.<sup>254</sup> At that time, some commenters raised concern about the burdens of such an approach for fund complexes with staggered fiscal year ends, as these fund complexes could be required to file reports on Form N-CSR with complete proxy voting records as many as twelve times per year.<sup>255</sup> An approach to requiring more frequent reporting of proxy voting records that is tied to funds' fiscal year ends would likely create administrative complexity for many fund complexes and would increase costs associated with filing proxy voting information more frequently.

As for a semiannual or quarterly reporting requirement on Form N-PX that is based on the calendar year, either of these approaches may not significantly enhance the

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<sup>254</sup> See Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act File No. 25739 (Sept. 20, 2002).

<sup>255</sup> See Form N-PX Adopting Release, *supra* footnote 7, at paragraph accompanying n.39.

timeliness of voting information in many cases because most corporate issuers hold proxy votes within the few months leading up to June 30, which is the end of the current Form N-PX annual reporting period. As a result, if we required semiannual or quarterly reporting of Form N-PX, most votes would likely be in the reporting person's report for the first half of the year (for semiannual reports) or for the second calendar quarter (for quarterly reports). A semiannual or quarterly reporting requirement would also increase reporting costs, as reporting persons would be required to file either two or four Form N-PX reports per year rather than one report per year.

A requirement to report monthly or shortly after each proxy vote is held would provide voting information much more quickly to investors and this could provide certain benefits. For example, timelier public reporting of funds' proxy votes has the potential to facilitate fund shareholders' ability to monitor their funds' involvement in the governance activities of portfolio companies, including within a single proxy season.<sup>256</sup> We currently are not proposing these alternative approaches, however, because we do not have evidence that most fund shareholders generally are interested in analyzing votes on a monthly basis or shortly after they are held rather than focusing on a reporting person's voting record more holistically. Also, these alternative approaches would require reporting persons to disclose a position in a security before disclosure of the position is required on Form 13F or Form N-PORT, increasing the potential for disclosure of sensitive information that competitors could use to front-run or reverse engineer investing strategies. In addition, we would expect both alternative approaches to increase costs associated with reporting proxy voting information more frequently.

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<sup>256</sup> See *supra* footnote 191 and accompanying text.

Shortening the timeline for filing annual Form N-PX reports, which is currently about two months after the end of the reporting period, would marginally improve the timeliness of the reported information. However, shortening the filing timeline by more than a few weeks would increase the possibility of a reporting person being required to disclose a vote on a security before otherwise being required to disclose a position in that security on Form 13F or Form N-PORT. As a result, this approach could to some extent increase the potential for disclosure of sensitive information that competitors could use to front-run or reverse engineer investing strategies.

#### **F. Request for Comment**

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed amendments and alternatives thereto, and whether the amendments, if we were to adopt them, would promote efficiency, competition, and capital formation. In addition, we request comments on our selection of data sources, empirical methodology, and the assumptions we have made throughout the analysis. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates. In addition, we request comment on:

93. To what extent would the proposed amendments affect funds' or managers' securities lending and have an impact on short-selling and arbitrage trading activities? What additional materials and data should we consider for estimating these effects?
94. Are we correct to assume that the costs associated with the use of a custom XML language for preparing Form N-PX would be minimal for funds and managers? What would the impact of these costs be for small reporting persons?

95. We considered requiring funds to report proxy votes semiannually, quarterly, or shortly after the vote is held. What are the costs and benefits of requiring funds to report proxy votes semiannually, quarterly, monthly, or shortly after the vote is held? Are we correct to assume that investors and other users of Form N-PX data generally are interested in analyzing a reporting person’s voting record more holistically rather than focusing on individual votes held during time horizons shorter than one year and therefore likely would derive little additional benefit from this increased reporting frequency?

#### **V. Paperwork Reduction Act**

Certain provisions of the proposed rules and form amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>257</sup> We are submitting the proposed collections of information to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.<sup>258</sup> The title for the collection of information is: “Form N-PX — Annual Report of Proxy Voting Record” (OMB Control No. 3235-0582).<sup>259</sup> An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 14A(d) of the Exchange Act requires that every manager subject to section 13(f) of the Exchange Act report at least annually how it voted on say-on-pay

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<sup>257</sup> 44 U.S.C. 3501 *et seq.*

<sup>258</sup> 44 U.S.C. 3507(d); 5 CFR 1320.11.

<sup>259</sup> The title for the collection of information relating to Form N-PX would be renamed from “Form N-PX — Annual Report of Proxy Voting Record of Registered Management Investment Companies.”

votes, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission. To implement section 14A(d), we are proposing new rule 14Ad-1 under the Exchange Act, which would require managers to file their record of say-on-pay votes with the Commission annually on Form N-PX.<sup>260</sup> We are also proposing to amend Form N-PX, which was adopted pursuant to section 30 of the Investment Company Act and is currently used by funds to file their complete proxy voting records with the Commission, to accommodate the new filings by managers and to enhance the information funds provide on their proxy votes.<sup>261</sup> In addition, we propose to amend Forms N-1A, N-2, and N-3 to disclose that their proxy voting records are available on (or through) their websites. Although the website availability requirement would be located in the relevant registration form, the Commission is reflecting the burden for these requirements in the burden estimate for Form N-PX — Annual Report of Proxy Voting Record, and not in the burden for Forms N-1A, N-2, or N-3.

Form N-PX, including the amendments, contains collection of information requirements. Compliance with the disclosure requirements of the form is mandatory. Responses to the disclosure requirements will not be kept confidential unless granted confidential treatment.<sup>262</sup>

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<sup>260</sup> For purposes of the PRA analysis, the burden associated with the requirements of proposed rule 14Ad-1 is included in the collection of information requirements of Form N-PX.

<sup>261</sup> 15 U.S.C. 80a-29.

<sup>262</sup> See Section II.F *supra*.

The Commission estimates that there are approximately 2,087 funds registered with the Commission.<sup>263</sup> These registrants represent approximately 11,619 fund portfolios that are required to file Form N-PX reports. The 11,619 portfolios are composed of approximately 7,064 portfolios that do or may hold equity securities, 3,188 portfolios holding no equity securities, and 1,367 portfolios holding fund securities (*i.e.*, fund of funds).<sup>264</sup> In addition, the Commission estimates that there are approximately 7,550 managers required to file Form 13F reports with the Commission, which would be required to file Form N-PX reports under the proposal.<sup>265</sup>

The tables below summarize the currently approved Form N-PX burden estimates and our initial and ongoing annual burden estimates associated with the proposed amendments, including proposed requirements to identify proxy matters using the language of the issuer's form of proxy, categorize proxy votes, provide quantitative information related to shares voted (or instructed to be voted) and shares the fund loaned and did not recall, follow specific formatting and presentation instructions, file Form N-

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<sup>263</sup> The estimate of 2,087 funds is based on staff review of Form N-CEN filings of management investment companies registered with the Commission as of December 2020.

<sup>264</sup> The Commission staff estimates that there are approximately 6,301 portfolios that invest primarily in equity securities, 763 "hybrid" portfolios that may hold some equity securities (6,301 + 763 = 7,064), 2,848 bond portfolios that hold no equity securities and 340 money market fund portfolios (2,848 + 340 = 3,188), and 1,367 funds of funds, for a total of 11,619 portfolios required to file Form N-PX reports. *See* ICI 2021 Fact Book, *supra* footnote 5, at 214-221.

<sup>265</sup> The estimate of 7,550 filers is based on the number of managers who made Form 13F-HR or Form 13F-NT filings covering the first quarter of 2021. Form 13F-NT filers report their holdings on the Form 13F-HR of a different filer; while certain of those filers may be eligible to use the joint reporting provisions of Form N-PX, we have assumed for the purpose of this analysis that they will file their own reports on Form N-PX.

PX using a custom XML language, and make proxy voting records available on (or through) fund websites.<sup>266</sup>

**TABLE 1: CURRENTLY APPROVED FORM N-PX PRA ESTIMATES<sup>1</sup>**

	Internal burden		Wage rate	Cost of Internal Burden	Annual External Cost Burden
<b>Funds Holding Equity Securities</b>					
Estimated annual burden of current Form N-PX per response	7.2	×	\$368	\$2,650	\$1,000
Estimated number of annual responses <sup>2</sup>	<u>× 6,392</u>			<u>× 6,392</u>	<u>× 6,392</u>
Total annual burden	46,022			\$16,936,243	\$6,392,000
<b>Funds Not Holding Equity Securities</b>					
Estimated annual burden of current Form N-PX per response	0.17	×	\$368	\$63	
Estimated number of annual responses <sup>2</sup>	<u>× 2,857</u>			<u>× 2,857</u>	
Total annual burden	486			\$178,734	
<b>Funds of Funds</b>					
Estimated annual burden of current Form N-PX per response	1	×	\$368	\$368	\$100
Estimated number of annual responses <sup>2</sup>	<u>× 1,476</u>			<u>× 1,476</u>	<u>× 1,476</u>
Total annual burden	1,476			\$543,168	\$147,600
<b>Total Burden</b>					
Total annual burden	47,984			\$17,658,112	\$6,539,600

Certain products and sums do not tie due to rounding.

1. These estimates were previously submitted to OMB in connection with a revision of the then-currently approved collection in 2020.
2. These estimates are conducted for each fund portfolio, not for each filing. In certain cases, a single Form N-PX filing will report the proxy voting records of multiple fund portfolios. In those circumstances, the filer would bear the burden associated with each fund portfolio it reported.

**TABLE 2: FORM N-PX PRA ESTIMATES**

	Internal initial burden hours	Internal annual burden hours <sup>1</sup>	Wage rate <sup>2</sup>	Internal time costs	Annual external cost burden
<b>Funds Holding Equity Securities</b>					

<sup>266</sup>

The estimates differ from the estimates in the 2010 Proposing Release for a variety of reasons, including that our current proposal differs from the 2010 proposal in several ways and the burden estimates of current Form N-PX have changed to some extent since 2010. We are further updating our PRA estimates based on our current estimates of the number of funds required to file Form N-PX.

Estimated annual burden of current Form N-PX per response		7.2	×	\$373 <sup>3</sup>	\$2,686	\$1,000
Estimated initial burden to accommodate new reporting requirements	24	8	×	\$325 <sup>4</sup>	\$2,600	
Additional estimated annual burden associated with amendments to Form N-PX		10	×	\$335 <sup>5</sup>	\$3,350	\$500
Proposed website availability requirement <sup>6</sup>		0.5	×	\$254 <sup>6</sup>	\$127	
Estimated number of annual responses <sup>8</sup>		<u>× 7,064</u>			<u>× 7,064</u>	<u>× 7,064</u>
Total annual burden		181,545			\$61,901,832	\$10,596,000
<b>Funds Not Holding Equity Securities</b>						
Estimated annual burden of current Form N-PX per response		0.17	×	\$373 <sup>3</sup>	\$63	
Additional estimated annual burden associated with amendments to Form N-PX						
Estimated number of annual responses <sup>8</sup>		<u>× 3,188</u>			<u>× 3,188</u>	
Total annual burden		542			\$200,844	
<b>Funds of Funds</b>						
Estimated annual burden of current Form N-PX per response		1	×	\$373 <sup>3</sup>	\$373	\$100
Additional estimated annual burden associated with amendments to Form N-PX		0.5	×	\$373 <sup>3</sup>	\$187	\$100
Proposed website availability requirement <sup>6</sup>		0.5	×	\$254 <sup>6</sup>	\$127	
Estimated number of annual responses <sup>8</sup>		<u>× 1,367</u>			<u>× 1,367</u>	<u>× 1,367</u>
Total annual burden		2,734			\$939,129	\$273,400
<b>Institutional Investment Managers</b>						
Changes to systems to accommodate new reporting requirements	30	10	×	\$325 <sup>9</sup>	\$3,250	
Estimated annual burden associated with Form N-PX filing requirement		5	×	\$335 <sup>10</sup>	\$1,675	\$1,000
Estimated number of annual responses <sup>11</sup>		<u>× 7,744</u>			<u>× 7,744</u>	<u>× 7,744</u>
Total annual burden		116,160			\$38,139,200	\$7,744,000
<b>Total Burden</b>						
Current burden estimate		52,770			\$18,973,904	\$7,200,700

Additional burden estimate	248,211	\$82,207,101	\$11,412,700
Total annual burden	300,981	\$101,181,005	\$18,613,400

Certain products and sums do not tie due to rounding.

1. Includes initial burden estimates amortized over a three-year period.
2. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. Represents the estimated hourly wage rate of a compliance attorney.
4. Represents the blended estimated hourly wage rates of a programmer (4 hours at \$277/hour) and a compliance attorney (4 hours at \$373/hour).
5. Represents the blended estimated hourly wage rates of a programmer (4 hours at \$277/hour) and a compliance attorney (6 hours at \$373/hour).
6. While the proposed amendments would require funds to disclose that their proxy voting records both are available on fund websites and will be delivered to investors upon request, the Form N-PX PRA estimates includes only the burdens associated with website posting. Funds' registration forms currently require them to disclose that they either make their proxy voting records available on their websites or deliver them upon request. We understand most funds deliver proxy voting records upon request and, therefore, the burdens of delivery upon request are already included in the information collection burdens of each relevant registration form.
7. Represents the estimated hourly wage rate of a webmaster.
8. These estimates are conducted for each fund portfolio, not for each filing, and are an average estimate across all Form N-PX filers. In certain cases, a single Form N-PX filing will report the proxy voting records of multiple fund portfolios. In those circumstances, the filer would bear the burden associated with each fund portfolio it reported. This average estimate takes into account higher costs for funds filing reports for multiple portfolios without assuming any economies of scale that multiple-portfolio fund complexes may be able to achieve.
9. Represents the blended estimated hourly wage rates of a programmer (5 hours at \$277/hour) and a compliance attorney (5 hours at \$373/hour).
10. Represents the blended estimated hourly wage rates of a programmer (2 hours at \$277/hour) and a compliance attorney (3 hours at \$373/hour).
11. Includes 7,550 initial filings and assumes an additional 194 filings as a result of the final adverse disposition of a request for confidential treatment or upon expiration of confidential treatment.

Some commenters suggested that the burdens of the 2010 proposal on funds and managers would be greater than the Commission's estimates at that time, although none submitted quantitative estimates of a higher burden.<sup>267</sup> We also received a comment letter in connection with the Proxy Mechanics Concept Release regarding the estimated average burden hours per response on current Form N-PX, in which the commenter indicated that it believed the then-current PRA burden estimate understated the burden of

<sup>267</sup> Brown Letter; Fidelity Letter; Glass Lewis Letter I (suggesting that the time and expense to provide disclosure regarding shared voting authority would be greater than estimated); ICI Letter (suggesting that the preparation, filing, and recordkeeping activities associated with the proposed Form N-PX amendments in 2010 would involve more than 1.5 hours of review by a compliance attorney); ISS Letter; Reiland Letter.

an investment company's Form N-PX reporting obligations.<sup>268</sup> We are updating our estimates of the PRA burden associated with Form N-PX to reflect our proposed amendments and have taken commenters' feedback into account when developing these estimates.

We estimate that the proposed amendments would result in initial and ongoing burdens for funds. For example, we recognize that funds may need to make systems and other changes to comply with the proposed requirement to file Form N-PX reports in an XML structured data language and to categorize proxy voting matters. In addition, we understand that the proposed requirement to categorize votes may require some manual categorization or review on an ongoing basis. Further, while funds should already have information about the number of shares they voted (or instructed to be voted), the number of shares loaned and not recalled, and the description of the voting matter from the issuer's form of proxy, some changes may be needed to report the currently available information on Form N-PX.

In the 2010 proposal, we estimated that each manager required to file its record of say-on-pay votes on Form N-PX would have the same total internal hours burden and external cost burden as a fund. Our revised estimates take into account differences between the 2010 proposal and our current proposal, as well as that managers will only

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<sup>268</sup> See BlackRock Letter on Concept Release (stating that the then-estimated PRA burden of 9.6 hours "grossly understates" the time and expense required for an investment company to complete Form N-PX); Memorandum from the Division of Investment Management regarding November 29, 2010 telephone call with BlackRock, Inc., representatives (November 30, 2010), available at <http://www.sec.gov/comments/s7-30-10/s73010-33.pdf>. Based on the staff's subsequent conversation with the commenter, we believe that the burden estimates of the current form requirements in this release are appropriate, recognizing that the burden estimates are on a per portfolio basis, rather than a per filing basis, and that Form N-PX filings often contain multiple portfolios.

be required to report say-on-pay votes whereas funds are required to file their complete voting record. For example, we anticipate the proposed categorization requirement would be more burdensome for funds, which would be required to categorize each proxy vote, than for managers, which would be required to categorize only say-on-pay votes. We accordingly estimate that managers would bear approximately one-half of the ongoing annual burden borne by funds. We also estimate that managers would have larger initial burdens than funds because managers do not currently report on Form N-PX. While some managers advise funds and have experience with Form N-PX reporting, and some managers may otherwise be required to maintain records of their proxy voting decisions, we understand some systems or other changes may be needed to report information about say-on-pay votes on Form N-PX or to rely on the joint reporting provisions.<sup>269</sup>

We also estimate that managers would file approximately 194 amendments to Form N-PX reports as a result of the final adverse disposition of a request for confidential treatment or upon expiration of confidential treatment.<sup>270</sup> For purposes of this estimate,

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<sup>269</sup> See DOL Interpretive Bulletin 2016-01 [29 CFR 2509.2016-01] (noting the Department of Labor's view that an investment manager or other ERISA plan fiduciary would be required to maintain accurate records as to proxy voting decisions). Some commenters on the 2010 proposal indicated that some changes to recordkeeping and reporting systems may be necessary if the Commission were to adopt those proposed amendments. See Glass Lewis Letter I; IAA Letter; ISS Letter; ABA Letter.

<sup>270</sup> See Confidential Treatment Instructions 6 and 7 to Form N-PX. In the 2010 proposal, we estimated that approximately 200 amendments to Form N-PX reports would be filed annually by managers as a result of the final adverse disposition of a request for confidential treatment or upon expiration of confidential treatment. Our current estimate is based on the number of Form 13F amendments received by the Commission during each of the four quarters in 2020, divided by four. For purposes of this estimate, we are conservatively assuming that all 194 amendments filed are related to the adverse disposition of a request for confidential treatment or the expiration of confidential treatment, and that this results in the full burden of a new Form N-PX filing being borne by the manager. We do so even though we recognize that Form 13F amendments also are filed to correct errors or omissions in a filing that does not relate to a request for

we are assuming that every manager will file its full record of say-on-pay votes on “voting” report, and not file a “notice” report. In practice, because certain managers exercise voting power over the same securities as other managers, or exercise voting power over say-on-pay votes that funds already report, the number of parties who need to separately maintain records and prepare filings may be lower.

We request comment on whether our estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission’s estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, MBX.OMB.OIRA.SEC\_desk\_officer@omb.eop.gov, and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File No. S7-11-21. OMB is required to

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confidential treatment. Like the existing PRA estimate for Form N-PX, our estimate does not allocate a separate burden to amendments that merely correct errors or omissions in a separate filing. For that reason, and because we assume funds would not file confidential treatment-related amendments, we are not including a burden estimate for amendments filed by funds. *See supra* Section II.G.

make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-11-21, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

## **VI. Regulatory Flexibility Act Certification for Managers and Initial Regulatory Flexibility Analysis for Funds**

### **A. Regulatory Flexibility Act Certification for Managers**

Pursuant to section 605(b) of the Regulatory Flexibility Act (“RFA”), the Commission hereby certifies that proposed rule 14Ad-1 and the proposed amendments to Form N-PX relating to managers would not, if adopted, have a significant economic impact on a substantial number of small entities.<sup>271</sup> The Commission’s rule under the Exchange Act that defines a “small business” and “small organization” does not explicitly reference managers.<sup>272</sup> However, rule 0-10 provides that the Commission may “otherwise define” small entities for purposes of a particular rulemaking proceeding. For purposes of the proposed amendments relating to Form N-PX reporting requirements for managers, the Commission has determined to use the definition of small entity under 17 CFR 275.0-7(a) as more appropriate to the functions of managers. The Commission believes that the proposed definition would help ensure that all persons or entities that

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<sup>271</sup> 5 U.S.C. 605(b).

<sup>272</sup> 17 CFR 240.0-10 (“rule 0-10”).

might be managers under section 13(f) of the Exchange Act will be included within a category addressed by the definition. Therefore, for purposes of this rulemaking and the RFA, a manager is a small entity if it: (i) has assets under management having a total value of less than \$25 million; (ii) did not have total assets of \$5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year.<sup>273</sup> The Commission requests comments on the use of this definition.

We are proposing that rule 14Ad-1 and associated Form N-PX reporting obligations for say-on-pay votes would extend to each person that (i) is an “institutional investment manager” as defined in the Exchange Act; and (ii) is required to file reports under section 13(f) of the Exchange Act. Managers are not required to submit reports on Form 13F unless they exercise investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100 million.<sup>274</sup> Therefore, no small entities for purposes of rule 0-10 under the Exchange Act are affected by proposed rule 14Ad-1 and the amendments to Form N-PX relating to managers. Thus, there would be no significant economic impact on a substantial number of small entities associated with these aspects of the proposal. The Commission requests comment regarding this certification. The Commission requests that commenters describe the nature of any

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<sup>273</sup> 17 CFR 275.0-7(a) (“rule 0-7(a)”).

<sup>274</sup> See *supra* footnote 32.

impact on small businesses and provide empirical data to support the extent of the impact.

## **B. Initial Regulatory Flexibility Act Analysis for Funds**

This Initial Regulatory Flexibility Analysis (“IRFA”) has been prepared in accordance with section 3 of the RFA.<sup>275</sup> It relates to the Commission’s proposed amendments to Form N-PX relating to funds, as well as proposed amendments to Forms N-1A, N-2, and N-3.

### **1. Reasons for and Objectives of the Proposed Actions**

The Commission is proposing to amend Form N-PX under Investment Company Act to enhance the information mutual funds, ETFs, and certain other funds currently report annually about their proxy votes and to make that information easier to analyze. In addition, we are proposing amendments to Forms N-1A, N-2, and N-3 to require these funds to disclose that their proxy voting records are publicly available on (or through) their websites and available upon request, free of charge in both cases.

### **2. Legal Basis**

The Commission is proposing the rule and form amendments that affect funds contained in this document under the authority set forth in the Securities Act [15 U.S.C. 77a *et seq.*], particularly sections 6, 7, 10, and 19(a) thereof, the Exchange Act, particularly sections 10(b), 13, 15(d), 23(a), 24, and 36 thereof [15 U.S.C. 78a *et seq.*], the Investment Company Act [15 U.S.C. 80a *et seq.*], particularly sections 8, 30, 31, 38, and 45 thereof.

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<sup>275</sup> 5 U.S.C. 603.

### **3. Small Entities Subject to the Rule**

For purposes of Commission rulemaking in connection with the RFA, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>276</sup> Commission staff estimates that, as of December 2020, approximately 31 registered open-end mutual funds, 9 registered open-end ETFs, and 27 registered closed-end funds (collectively, 67 funds) are small entities.

### **4. Projected Reporting, Recordkeeping, and Other Compliance Requirements**

We are proposing to amend Form N-PX, which funds currently use to file their complete proxy voting records with the Commission, to require reporting in a custom XML language, to require other formatting and presentation changes, and to add certain new or modified disclosure items.

We are proposing amendments to Form N-PX that would affect funds that are currently required to report on the form, including those that are small entities. For instance, we propose to require funds to tie the description of the voting matter to the issuer's form of proxy and to categorize voting matters by type. In addition, we are proposing to require information about the number of shares that were voted (or, if not known, the number of shares that were instructed to be cast), as well as the number of shares the fund loaned and did not recall. We are also proposing to require reporting of

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<sup>276</sup> See 17 CFR 270.0-10(a) [rule 0-10(a) under the Investment Company Act] (“rule 0-10”).

information on Form N-PX in a structured data language either via a Commission-supplied web-based form or as an XML file.

We are proposing a new section on the cover page of Form N-PX where the reporting person would provide information in cases where the form is filed as an amendment to a previously filed Form N-PX report. We are also requiring that the cover page include information to help users identify whether the reporting person is a fund or a manager. We are adding a new summary page to Form N-PX, on which a fund would be required to provide information about series whose votes are included in the report, if applicable.

For purposes of the PRA analysis, we have estimated that the aggregate annual reporting, administrative, and paperwork costs imposed by the form amendments on funds will be approximately \$29 million.<sup>277</sup> We also estimate aggregate one-time reporting, administrative, and paperwork costs of approximately \$55 million for funds that hold equity securities.<sup>278</sup>

## **5. Duplicative, Overlapping, or Conflicting Federal Rules**

Except as otherwise discussed below, the Commission has not identified any Federal rules that duplicate, overlap, or conflict with the proposed rule. Currently, funds must file their proxy voting records on EDGAR and either disclose that they make those records available on their websites or deliver them to investors upon request. Under the proposal, funds would disclose that their proxy voting records are available on their websites and delivered upon request to investors. We acknowledge that filing proxy

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<sup>277</sup> See *supra* Section V, Table 2.

<sup>278</sup> *Id.*

voting records with the Commission, posting them online, and delivering them upon request could result in some investors being able to access the same information in multiple ways or at multiple times, which could be duplicative. However, each of these different requirements would serve a unique purpose. We believe it is important for regulatory disclosures to be filed with the Commission for oversight and compliance purposes. Website posting would provide investors with broad access to this information and conforms with evolving investor preferences regarding the availability of fund disclosures.<sup>279</sup> Finally, delivery-upon-request could be especially important for investors who might not have reliable access to the internet or who might prefer paper disclosures.

## **6. Significant Alternatives**

The RFA directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments, the Commission considered the following alternatives: (i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the amendments, or any part thereof, for small entities.

The Commission believes that, at the present time, special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate. The proposed amendments are designed to increase

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<sup>279</sup> See *supra* footnote 205.

transparency about how funds vote. Different disclosure requirements for small entities, such as reducing the level of proxy voting disclosure for small entities, could raise investor protection concerns for investors in small funds to the extent they would not have access to the same disclosures as investors in large funds. Small funds currently must follow the same proxy voting reporting requirements as large funds in light of these concerns.

We have endeavored through the proposed amendments to Form N-PX to minimize the regulatory burden, including on small entities, while meeting our regulatory objectives. In response to comments on the 2010 proposal, we have modified the proposed quantitative disclosures in Form N-PX to: (1) clarify the proposed disclosure of the number of shares voted; and (2) no longer propose to require disclosure of the number of shares the fund was entitled to vote. Reporting persons would be able to use a web-based reporting application developed by the Commission to generate the reports. We believe that these modifications to the approach in the 2010 proposal result in retention of key disclosures to help investors understand how a fund votes, while reducing the burdens on funds.

We have endeavored to clarify, consolidate, and simplify the proposed requirements applicable to funds, including those that are small entities. Finally, we do not consider the use of performance rather than design standards to be consistent with our statutory mandate of investor protection with respect to reporting of proxy voting records.

## **7. General Request for Comment**

The Commission requests comments regarding this IRFA. We request comments on the number of small entities that may be affected by our proposed rules and guidelines, and whether the proposed rules and guidelines would have any effects not

considered in this analysis. We request that commenters describe the nature of any effects on small entities subject to the rules and forms and provide empirical data to support the nature and extent of such effects. We also request comment on the proposed compliance burdens and the effect these burdens would have on smaller entities.

## **VII. Consideration of Impact on the Economy**

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”),<sup>280</sup> the Commission must advise OMB whether a proposed regulation constitutes a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a “major rule” for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries;  
and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

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<sup>280</sup> Public Law 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

## **VIII. Statutory Authority**

The Commission is proposing new rule 14Ad-1 pursuant to the authority set forth in sections 13, 14A, 23(a), 24, and 36 of the Exchange Act [15 U.S.C. 78m, 78n-1, 78w(a), 78x, and 78mm]. The Commission is proposing amendments to rule 30b1-4 pursuant to the authority set forth in sections 8, 30, 31, 38, and 45 of the Investment Company Act [15 U.S.C. 80a-8, 80a-29, 80a-30, 80a-37, and 80a-44]. The Commission is proposing amendments to Form N-PX pursuant to the authority set forth in sections 13, 14A, 23(a), 24, and 36 of the Exchange Act [15 U.S.C. 78m, 78n-1, 78w(a), 78x, and 78mm]; and sections 8, 30, 31, 38, and 45 of the Investment Company Act [15 U.S.C. 80a-8, 80a-29, 80a-30, 80a-37, and 80a-44]. The Commission is proposing amendments to Forms N-1A, N-2, and N-3 pursuant to the authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z-3], sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-6(c), 80a-8, 80a-24(a), 80a-29, and 80a-37]. The Commission is proposing amendments to rule 101 of Regulation S-T pursuant to the authority set forth in sections 14A(d), 23(a), and 35A of the Exchange Act [15 U.S.C. 78n-1, 78w(a), and 78ll]. The Commission is proposing to amend the heading of Subpart D of Part 249 pursuant to the authority set forth in sections 13 and 14A(d) of the Exchange Act [15 U.S.C. 78m and 78n-1].

### **List of Subjects**

#### **17 CFR Part 232**

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

**17 CFR Parts 240 and 249**

Reporting and recordkeeping requirements, Securities.

**17 CFR Parts 270 and 274**

Investment companies, Reporting and recordkeeping requirements, Securities.

**TEXT OF RULE AND FORM AMENDMENTS**

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

**PART 232 — REGULATION S-T - GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS**

1. The general authority citation for part 232 is amended to read as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78n-1, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

2. Amend section 232.101 by revising paragraph (a)(1)(iii) to read as

follows:

**§ 232.101 Mandated electronic submissions and exceptions.**

(a) \* \* \*

(1) \* \* \*

(iii) Statements, reports, and schedules filed with the Commission pursuant to

sections 13, 14, 14A(d), 15(d), or 16(a) of the Exchange Act (15 U.S.C. 78m, 78n, 78n-

1(d), 78o(d), and 78p(a)), and proxy materials required to be furnished for the

information of the Commission in connection with annual reports on Form 10-K (§ 249.310 of this chapter), or Form 10-KSB (§ 249.310b of this chapter) filed pursuant to section 15(d) of the Exchange Act;

Note 1 to paragraph (a)(1)(iii). Electronic filers filing Schedules 13D and 13G with respect to foreign private issuers should include in the submission header all zeroes (i.e., 00-0000000) for the IRS tax identification number because the EDGAR system requires an IRS number tag to be inserted for the subject company as a prerequisite to acceptance of the filing.

Note 2 to paragraph (a)(1)(iii). Foreign private issuers must file or submit their Form 6-K reports (§ 249.306 of this chapter) in electronic format, except as otherwise permitted by paragraphs (b)(1) and (b)(7) of this section.

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## **PART 240 — GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

3. The general authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

4. Add section 240.14Ad-1 to read as follows:

**§ 240.14Ad-1 Report of proxy voting record.**

(a) Subject to paragraphs (b) and (c) of this section, every institutional investment manager (as that term is defined in Section 13(f)(6)(A) of the Act (15 U.S.C. 78m(f)(6)(A))) that is required to file reports under Section 13(f) of the Act (15 U.S.C. 78m(f)) must file an annual report on Form N-PX (§§249.326 and 274.129 of this chapter) not later than August 31 of each year, for the most recent 12-month period ended June 30, containing the institutional investment manager's proxy voting record for each shareholder vote pursuant to Sections 14A(a) and (b) of the Act (15 U.S.C. 78n-1(a) and (b)) with respect to each security over which the manager exercised voting power (as defined in paragraph (d) of this section).

(b) An institutional investment manager is not required to file a report on Form N-PX (§§249.326 and 274.129 of this chapter) for the 12-month period ending June 30 of the calendar year in which the manager's initial filing on Form 13F (§249.325 of this chapter) is due pursuant to §240.13f-1 of this part. For purposes of this paragraph, "initial filing" on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendar quarter.

(c) An institutional investment manager is not required to file a report on Form N-PX (§§249.326 and 274.129 of this chapter) 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 (§249.325 of this chapter) is due pursuant to §240.13f-1 of this chapter. An institutional investment manager is required to file a 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 pursuant to §240.13f-1 of this chapter; this filing is required to

be made not later than March 1 of the immediately following calendar year. For purposes of this paragraph, “final filing” on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F is required for the immediately subsequent calendar quarter.

(d) For purposes of this section:

(1) *Voting power* means the ability, through any contract, arrangement, understanding, or relationship, to vote the security or direct the voting of a security, including the ability to determine whether to vote the security or to recall a loaned security.

(2) *Exercise of voting power* means using voting power to influence a voting decision with respect to a security.

#### **PART 249 — FORMS, SECURITIES EXCHANGE ACT OF 1934**

5. The general authority citation for part 249 continues to read as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; and 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904; Sec 102(a)(3) Pub. L. 112-106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112-106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114-94, 129 Stat. 1312 (2015, and secs. 2 and 3 Pub. L. 116-222, 134 Stat. 1063 (2020), unless otherwise noted.

\* \* \* \* \*

#### **Subpart D — Forms for Annual and Other Reports of Issuers and Other Persons Required Under Sections 13, 14A, and 15(d) of the Securities Exchange Act of 1934**

6. Revise the heading for Subpart D to read as set forth above:

7. Add § 249.326 to read as follows:

**§ 249.326 Form N-PX, annual report of proxy voting record.**

This form shall be used by institutional investment managers to file an annual report pursuant to § 240.14Ad-1 of this chapter containing the manager’s proxy voting record.

**PART 270 — RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

8. The general authority citation for part 270 continues to read as follows:

**Authority:** 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

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**§ 270.30b1-4 [Amended]**

9. Amend § 270.30b1-4 by removing the phrase “Form N-PX (§ 274.129 of this chapter)” and adding in its place “Form N-PX (§§ 249.326 and 274.129 of this chapter)”.

**PART 274 — FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

10. The authority citation for part 274 is revised to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78n-1, 78o(d), 80a-8, 80a-24, 80a-26, 80a-29, and Pub L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

11. Amend Form N-1A (referenced in §§ 239.15A and 274.11A) by revising Item 17(f) and Item 27(d)(5).

The revisions read as follows:

**Note: The text of Form N-1A does not, and these amendments will not, appear in the Code of Federal Regulations.**

## **FORM N-1A**

\* \* \* \* \*

### **Item 17. Management of the Fund**

\* \* \* \* \*

(f) *Proxy Voting Policies.* Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (2) on or through the Fund's website at a specified internet address; and (3) on the Commission's website at <http://www.sec.gov>.

### **Instructions**

1. A Fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's proxy voting record by phone or email, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX in a human-readable format, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. A Fund must make publicly available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must be in a human-readable format and remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of Rule 30b1-4 (17 CFR 270.30b1-4).

\* \* \* \* \*

## **Item 27. Financial Statements**

\* \* \* \* \*

(d) *Annual and Semiannual Reports.* Every annual and semiannual report to shareholders required by rule 30e-1 must contain the following:

\* \* \* \* \*

(5) *Statement Regarding Availability of Proxy Voting Record.* A statement that information regarding how the Fund voted proxies relating to portfolio securities during

the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (ii) on or through the Fund's website at a specified internet address; and (iii) on the Commission's website at <http://www.sec.gov>.

### **Instructions**

1. If a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's proxy voting record by phone or email, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX in a human-readable format, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

2. A Fund must make publicly available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must be in a human-readable format and remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of rule 30b1-4 (17 CFR 270.30b1-4).

\* \* \* \* \*

12. Amend Form N-2 (referenced in §§ 239.14 and 274.11a-1) by revising Item 18.16, Item 24.6.d, and Item 24.8.

The revisions read as follows:

**Note: The text of Form N-2 does not, and these amendments will not, appear in the Code of Federal Regulations.**

## FORM N-2

\* \* \* \* \*

### **Item 18. Management**

\* \* \* \* \*

16. Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's shareholders, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (ii) on or through the Registrant's website at a specified internet address; and (iii) on the Commission's website at <http://www.sec.gov>.

#### ***Instructions.***

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record by phone or email, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N-PX [17 CFR 274.129] in a human-readable format, within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. A Registrant must make publicly available free of charge the information disclosed in the Registrant's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N-PX must be in a human-readable format and remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of Rule 30b1-4 under the Investment Company Act [17 CFR 270.30b1-4].

\* \* \* \* \*

#### **Item 24. Financial Statements**

\* \* \* \* \*

6. Every annual and semiannual report to shareholders required by Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder shall contain the following information:

\* \* \* \* \*

d. A statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free telephone

number and, if any, contacting a specified email address; (2) on or through the Registrant's website at a specified internet address; and (3) on the Commission's website at <http://www.sec.gov>.

\* \* \* \* \*

8. a. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information most recently disclosed in response to Item 18.16 of this Form or Item 7 of Form N-CSR within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

b. If a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record by phone or email, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N-PX in a human-readable format, within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

c. A Registrant must make publicly available free of charge the information disclosed in the Registrant's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N-PX must be in a human-readable format and remain available on or through the

Registrant's website for as long as the Registrant remains subject to the requirements of Rule 30b1-4 under the Investment Company Act.

\* \* \* \* \*

13. Amend Form N-3 (referenced in §§ 239.17a and 274.11b) by revising Item 23(f), Item 31.4(d), and Item 31.6.

The revisions read as follows:

**Note: The text of Form N-3 does not, and these amendments will not, appear in the Code of Federal Regulations.**

### FORM N-3

\* \* \* \* \*

#### **Item 23. Management of the Registrant**

\* \* \* \* \*

(f) *Proxy Voting Policies.* Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of investors, on the one hand, and those of the Registrant's investment adviser; principal underwriter; or any affiliated person of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge,

upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (2) on or through the Registrant's website at a specified internet address; and (3) on the Commission's website at <http://www.sec.gov>.

### **Instructions**

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record by phone or email, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N-PX [17 CFR 274.129] in a human-readable format, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. A Registrant must make publicly available free of charge the information disclosed in the Registrant's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N-PX must be in a human-readable format and remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of rule 30b1-4 [17 CFR 270.30b1-4].

\* \* \* \* \*

### **Item 31. Financial Statements**

\* \* \* \* \*

4. Every report required by section 30(e) of the 1940 Act and rule 30e-1 under it [17 CFR 270.30e-1] shall contain the following information:

\* \* \* \* \*

(d) a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free telephone number and, if any, contacting a specified email address; (ii) on or through the Registrant's website at a specified internet address; and (iii) on the Commission's website at <http://www.sec.gov>;

\* \* \* \* \*

6. (a) When a Registrant (or financial intermediary through which units of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information disclosed in response to Item 23(f) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(b) If a Registrant (or financial intermediary through which units of the Registrant may be purchased or sold) receives a request for the Registrant's proxy voting record by phone or email, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N-PX [17 CFR 274.129] in a human readable format, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(c) A Registrant must make publicly available free of charge the information disclosed in the Registrant's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N-PX must be in a human-readable format and remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of rule 30b1-4 under the Investment Company Act [17 CFR 270.30b1-4].

\* \* \* \* \*

14. The heading of § 274.129 is revised to read as follows:

**§ 274.129 Form N-PX, annual report of proxy voting record.**

\* \* \* \* \*

15. Form N-PX (referenced in §§ 249.326 and 274.129) is revised to read as follows:

**Note: The text of Form N-PX does not, and these amendments will not, appear in the Code of Federal Regulations.**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

**FORM N-PX  
ANNUAL REPORT OF PROXY VOTING RECORD  
GENERAL INSTRUCTIONS**

**A. Rule as to Use of Form N-PX.**

Form N-PX is to be used by a registered management investment company, other than small business investment company registered on Form N-5 (17 CFR 239.24 and 274.5), to file the registered management investment company's complete proxy voting record pursuant to Section 30 of the Investment Company Act of 1940 ("Investment

Company Act”) and Rule 30b1-4 thereunder (17 CFR 270.30b1-4). Form N-PX also is to be used by a person that is required to file reports under Rule 13f-1 (“Institutional Manager”), to file the Institutional Manager’s proxy voting record regarding votes pursuant to Sections 14A(a) and (b) of the Securities Exchange Act of 1934 (“Exchange Act”) on certain executive compensation matters, pursuant to Section 14A(d) of the Exchange Act and Rule 14Ad-1 thereunder (17 CFR 240.14Ad-1). Form N-PX is to be filed not later than August 31 of each year for the most recent 12-month period ended June 30, except in the case of Institutional Managers that make initial or final filings on Form 13F during the relevant 12-month period as described in General Instruction F.

## **B. Application of General Rules and Regulations.**

The General Rules and Regulations under the Investment Company Act and the Exchange Act contain certain general requirements that are applicable to reporting on any form under those Acts. These general requirements should be read and observed carefully in the preparation and filing of reports on this form, except that any provision in the form or in these instructions is controlling.

## **C. Joint Reporting Rules.**

1. If two or more Institutional Managers, each of which is required by Rule 14Ad-1 to file a report on Form N-PX for the reporting period, exercised voting power over the same securities on a vote pursuant to Section 14A(a) or (b) of the Exchange Act, only one such Institutional Manager must include the information regarding that vote in its report on Form N-PX.
2. Two or more Institutional Managers that are affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act, may file a joint report on a single Form N-PX notwithstanding that such Institutional Managers do not exercise voting power over the same securities.
3. An Institutional Manager is not required to report proxy votes that are reported on a Form N-PX report that is filed by a Fund.
4. An Institutional Manager that exercised voting power over any security with respect to proxy votes that are reported by another Institutional Manager or Managers pursuant to General Instruction C.1 or C.2, or are reported on a Form N-PX report filed by a Fund, must identify each Institutional Manager and Fund reporting on its behalf in the manner described in Special Instruction B.2.c. and d.
5. An Institutional Manager reporting proxy votes on behalf of another Institutional Manager pursuant to General Instruction C.1 or C.2 must identify any other Institutional Managers on whose behalf the filing is made in the manner described in Special Instruction C.2.
6. A Fund reporting proxy votes that would otherwise be required to be reported by an Institutional Manager must identify any Institutional Managers on

whose behalf the filing is made in the manner described in Special Instruction C.2.

**D. Signature and Filing of Report.**

1. a. For reports filed by a Fund, the report must be signed on behalf of the Fund by its principal executive officer or officers. For reports filed by Institutional Managers, the report must be signed on behalf of the Institutional Manager by an authorized person. Attention is directed to Rule 12b-11 under the Exchange Act and Rule 8b-11 under the Investment Company Act concerning signatures.
- b. The name and title of each person who signs the report shall be typed or printed beneath his or her signature.
2. A reporting person must file reports on Form N-PX electronically using the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system in accordance with Regulation S-T, except as provided by the Confidential Treatment Instructions. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

**E. Definitions.**

As used in this Form N-PX, the terms set out below have the following meanings:

"Fund" means a registered management investment company (other than a small business investment company registered on Form N-5 (17 CFR 239.24 and 274.5)) or a separate Series of the registered management investment company.

"Institutional Manager" means a person that is required to file reports under Rule 13f-1 under the Exchange Act.

"Reporting Person" means the Institutional Manager or Fund filing this report or on whose behalf the report is filed.

"Series" means shares offered by a registered management investment company that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with Rule 18f-2(a) under the Investment Company Act [17 CFR 270.18f-2(a)].

**F. Transition Rules for Institutional Managers**

1. An Institutional Manager is not required to file a report on 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 pursuant to Rule 13f-1 under the Exchange Act. For purposes of this paragraph, an "initial filing" on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendar quarter.

2. An Institutional Manager is not 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 pursuant to Rule 13f-1 under the Exchange Act. An Institutional Manager is required to file a 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 pursuant to Rule 13f-1 under the Exchange Act; this filing is required to be made not later than March 1 of the immediately following calendar year. For purposes of this paragraph, a "final filing" on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F is required for the immediately subsequent calendar quarter.

## **SPECIAL INSTRUCTIONS**

### **A. Organization of Form N-PX.**

1. This form consists of three parts: the Form N-PX Cover Page ("Cover Page"), the Form N-PX Summary Page ("Summary Page"), and the proxy voting information required by the form ("Proxy Voting Information").
2. Present the Cover Page and the Summary Page information in the format and order provided in the form. Do not include any additional information on the Summary Page.

### **B. Cover Page.**

1. Amendments to a Form N-PX report must either restate the Form N-PX report in its entirety or include only proxy voting information that is being reported in addition to the information already reported in a current public Form N-PX report for the same period. If the Form N-PX report is filed as an amendment, then the reporting person must check the amendment box on the Cover Page, enter the amendment number, and check the appropriate box to indicate whether the amendment (a) is a restatement or (b) adds new Proxy Voting Information. Each amendment must include a complete Cover Page and, if applicable, a Summary Page.
2. Designate the Report Type for the Form N-PX report by checking the appropriate box in the Report Type section of the Cover Page, and include, where applicable, the List of Other Persons Reporting for this Manager (on the Cover Page), the Summary Page, and the Proxy Voting Information, as follows:
  - a. For a report by a Fund, check the box for Report Type "Registered Management Investment Company Report," omit from the Cover Page the List of Other Persons Reporting for this Manager, and include both the Summary Page and the Proxy Voting Information.

- b. For a report by an Institutional Manager that includes all proxy votes required to be reported by the Institutional Manager, check the box for Report Type “Institutional Manager Voting Report,” omit from the Cover Page the List of Other Persons Reporting for this Manager, and include both the Summary Page and the Proxy Voting Information.
  - c. For a report by an Institutional Manager, when all proxy votes required to be reported by the Institutional Manager are reported by another Institutional Manager or Managers or by one or more Funds, check the box for Report Type “Institutional Manager Notice,” include (on the Cover Page) the List of Other Persons Reporting for this Manager, and file the Cover Page and required signature only.
  - d. For a report by an Institutional Manager, if only part of the proxy votes required to be reported by the Institutional Manager are reported by another Institutional Manager or Managers or one or more Funds, check the box for Report Type “Institutional Manager Combination Report,” include (on the Cover Page) the List of Other Persons Reporting for this Manager, and include both the Summary Page and the Proxy Voting Information.
3. If the Institutional Manager has a number assigned by the Financial Industry Regulatory Authority’s Central Registration Depository system or by the Investment Adviser Registration Depository system (“CRD number”), provide the Manager’s CRD number. If the Institutional Manager has a file number (e.g., 801-, 8-, 866-, 802-) assigned by the Commission (“SEC file number”), provide the Manager’s SEC file number.
  4. The Cover Page may include information in addition to the required information, so long as the additional information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. Place all additional information at the end of the Cover Page, except as permitted by paragraph (m) of Item 1.

**C. Summary Page.**

1. Include on the Summary Page the number of included Institutional Managers with votes reported in this Form N-PX report pursuant to General Instruction C. Enter as the number of included Institutional Managers the total number of Institutional Managers in the list of included Institutional Managers on the Summary Page, and do not count the reporting person filing this report. *See* Special Instruction C.2. If none, enter the number zero (“0”).
2. Include on the Summary Page the list of included Institutional Managers with votes reported in this Form N-PX report pursuant to General Instruction C. Use the title, column headings, and format provided.

- a. If this Form N-PX report does not report the proxy votes of any Institutional Manager other than the reporting person, enter the word “NONE” under the title and omit the column headings and list entries.
  - b. If this Form N-PX report reports the proxy votes of one or more Institutional Managers other than the reporting person, enter in the list of included Institutional Managers all such Institutional Managers together with their respective Form 13F file numbers, if known and their respective CRD Numbers and SEC File Numbers, if applicable and if known. (The Form 13F file numbers are assigned to Institutional Managers when they file their first Form 13F). Assign a number to each Institutional Manager in the list of included Institutional Managers, and present the list in sequential order. The numbers need not be consecutive. Do not include the reporting person filing this report.
3. For reports filed by a Fund, include on the Summary Page the total number of Series of the Fund reported in this Form N-PX, if any, the name of each Series included, and each Series identification number. If this Form N-PX report does not report the proxy votes of any Series, enter the word “NONE” under the title and omit the column headings and list entries.

**D. Proxy Voting Information.**

1. Disclose the information required or permitted by Item 1 in the order presented in paragraphs (a) through (m) of Item 1.
2. The CUSIP number or ISIN required by paragraph (b) or (c) of Item 1 may be omitted if it is not available through reasonably practicable means, *e.g.*, in the case of certain securities of foreign issuers. The ISIN may also be omitted if the CUSIP number is reported.
3. Item 1(e) requires an identification of the matter for all matters. In responding to Item 1(e), identify all matters in the same order as on the form of proxy and identify each matter using the same language as on the form of proxy. For election of directors, identify each director separately in the same order as on the form of proxy, even if the election of directors is presented as a single matter on the form of proxy.
4. Item 1(f) requires the reporting person to categorize each matter from a list of categories and subcategories that may apply to such matter. In responding to Item 1(f), a reporting person must choose all categories or subcategories applicable to such matter.
5. In responding to paragraph (h) of Item 1, a reporting person may use the number of shares voted as reflected in its records at the time of filing a report on Form N-PX. If the reporting person has not received confirmation of the actual number of votes cast prior to filing a report on Form N-PX, the

numbers reported may reflect the number of shares instructed to be cast. A reporting person is not required to amend a previously filed Form N-PX report if the reporting person subsequently receives confirmation of the actual number of votes cast.

6. In responding to paragraphs (h) and (i) of Item 1:
  - a. An Institutional Manager must report the number of shares that the Institutional Manager is reporting on behalf of another Institutional Manager pursuant to General Instruction C.1 or C.2 separately from the number of shares that the Institutional Manager is reporting only on its own behalf. An Institutional Manager also must separately report shares when the groups of Institutional Managers on whose behalf the shares are reported are different. For example, if the reporting Institutional Manager is reporting on behalf of Manager A with respect to 10,000 shares and on behalf of Managers A and B with respect to 50,000 shares, then the groups of 10,000 and 50,000 shares must be separately reported.
  - b. A Fund must separately report shares that are reported on behalf of different Institutional Managers or groups of Institutional Managers pursuant to General Instruction C.3.
7. For purposes of paragraph (i) of Item 1, a reporting person is considered to have loaned securities if it loaned the securities directly or loaned the securities indirectly through a lending agent.
8. If management did not make a recommendation on how to vote on a particular matter, a reporting person should respond “none” to paragraph (k) of Item 1 for that matter.
9. In the case of a reporting person that is a Fund that offers multiple series of shares, provide the information required by Item 1 separately by Series (for example, provide Series A’s full proxy voting record, followed by Series B’s full proxy voting record).
10. In response to paragraph (m), a reporting person may provide additional information about the matter or how it voted, provided the information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. The disclosure permitted by paragraph (m) is optional. A reporting person is not required to respond to paragraph (m) for any vote, and if a reporting person does provide additional information for one or more votes, it is not required to provide this information for all votes.

## **CONFIDENTIAL TREATMENT INSTRUCTIONS**

1. A reporting person should make requests for confidential treatment of information reported on this form in accordance with Rule 24b-2 under the Exchange Act (17 CFR 240.24b-2).
2. Rule 24b-2 requires a person filing confidential information with the Commission to indicate at the appropriate place in the public filing that the confidential portion has been so omitted and filed separately with the Commission. A reporting person should comply with this provision by including on the Summary Page, after the number of included Institutional Managers and prior to the list of included Institutional Managers, a statement that confidential information has been omitted from the public Form N-PX report and filed separately with the Commission.
3. A reporting person must file all requests for and information subject to the request for confidential treatment in accordance with the instructions for filing confidential treatment requests for information filed on Form 13F.
4. A reporting person requesting confidential treatment must provide enough factual support for its request to enable the Commission to make an informed judgment as to the merits of the request, including a demonstration that the information is both customarily and actually kept private by the reporting person, and that release of this information could cause harm to the reporting person. If a request for confidential treatment of information filed on Form N-PX relates to a request for confidential treatment of information included in an Institutional Manager's filing on Form 13F, the Institutional Manager should so state and identify the related request. In such cases, the Institutional Manager need not repeat the analysis set forth in the request for confidential treatment in connection with the Form 13F filing. The Institutional Manager's request, however, must explain whether and, if so, how the Form N-PX and Form 13F confidential treatment requests are related and should identify if any of the analysis in its request for confidential treatment on Form 13F does not apply, or applies differently, to its report on Form N-PX.
5. State the period of time for which confidential treatment of the proxy voting information is requested. The time period specified may not exceed one (1) year from the date that the Form N-PX report is required to be filed with the Commission. The request must include a justification of the time period for which confidential treatment is requested, as required by Rule 24b-2(b)(2)(ii).
6. At the expiration of the period for which confidential treatment has been granted (the "Expiration Date"), the Commission, without additional notice to the reporting person, will make the proxy voting information public unless a *de novo* request for confidential treatment of the information that meets the requirements of Rule 24b-2 and these Confidential Treatment Instructions is filed with the Commission at least fourteen (14) days in advance of the Expiration Date.

7. Upon the final adverse disposition of a request for confidential treatment, or upon the expiration of the confidential treatment previously granted for a filing, unless a hardship exemption is available, the reporting person must submit electronically, within six (6) business days of the expiration or notification of the final disposition, as applicable, an amendment to its publicly filed Form N-PX report that includes the proxy voting information as to which the Commission denied confidential treatment or for which confidential treatment has expired. An amendment filed under such circumstances must not be a restatement; the reporting person must designate it as an amendment which adds new proxy voting information. The reporting person must include at the top of the Form N-PX Cover Page the following legend to correctly designate the type of filing being made:

This filing lists proxy vote information reported on the Form N-PX filed on (date) pursuant to a request for confidential treatment and for which (that request was denied/confidential treatment expired) on (date).

#### **PAPERWORK REDUCTION ACT INFORMATION**

Form N-PX is to be used by a Fund to file reports with the Commission pursuant to Section 30 of the Investment Company Act and Rule 30b1-4 thereunder. Form N-PX also is to be used by an Institutional Manager to file reports with the Commission as required by Section 14A(d) of the Exchange Act and Rule 14Ad-1 thereunder. Form N-PX is to be filed not later than August 31 of each year, containing the reporting person's proxy voting record for the most recent 12-month period ended June 30. The Commission may use the information provided on Form N-PX in its regulatory, disclosure review, inspection, and policymaking roles.

Funds and Institutional Managers are required to disclose the information specified by Form N-PX, and the Commission will make this information public. Funds and Institutional Managers are not required to respond to the collection of information contained in Form N-PX unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

**FORM N-PX**

**ANNUAL REPORT OF PROXY VOTING RECORD**

**FORM N-PX COVER PAGE**

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(Name of reporting person) (For registered management investment companies, provide exact name of registrant as specified in charter)

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(Address of principal executive offices)

(Zip code)

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(Name and address of agent for service)

Telephone number of reporting person, including area code: \_\_\_\_\_

Report for the [year ended June 30, \_\_\_\_] [period July 1, \_\_\_\_ to September 30, \_\_\_\_]

SEC Investment Company Act or Form 13F File Number: [811- ] [028- ] \_\_\_\_\_

CRD Number (if applicable): \_\_\_\_\_

Other SEC File Number (if applicable): \_\_\_\_\_

Check here if amendment ; Amendment number: \_\_\_\_\_

This Amendment (check only one):  is a restatement.

adds new proxy voting entries.

Report Type (check only one):

Registered Management Investment Company Report.

Institutional Manager Voting Report  
(Check here if all proxy votes of this reporting manager are reported in this report.)

Institutional Manager Notice (Check here if no proxy votes reported are in this report, and all proxy votes are reported by other reporting person(s).)

Institutional Manager Combination Report (Check here if a portion of the proxy votes for this reporting manager are reported in this report and a portion are reported by other reporting person(s).)

List of Other Persons Reporting for this Manager:  
[If there are no entries in this list, omit this section.]

Investment Company Act or Form 13F File Number	CRD Number (if applicable)	Other SEC File Number (if applicable)	Name
[811- ] [028- ] _____	_____	_____	_____

[Repeat as necessary.]

**FORM N-PX SUMMARY PAGE**

**Information about Institutional Managers.**

Number of Included Institutional Managers: \_\_\_\_\_

List of Included Institutional Managers:

Provide a numbered list of the name(s), 13F file number(s), CRD Numbers (if applicable), and SEC File Number(s) (if applicable) of all Institutional Managers with respect to which this report is filed, other than the reporting person filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No.	Form 13F File Number	CRD Number (if applicable)	SEC File Number (if applicable)	Name
_____	28-_____	_____	_____	_____

[Repeat as necessary.]

**Information about the Series.**

Number of Series: \_\_\_\_\_

Provide a list of the name(s) and identification number(s) of all Series with respect to which this report is filed.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

Series Identification Number	Series Name
_____	_____

[Repeat as necessary.]

## FORM N-PX

### Item 1. Proxy Voting Record.

If the reporting person is a Fund, disclose the following information for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the reporting person was entitled to vote, including securities on loan for purposes of this form. If the reporting person is an Institutional Manager, disclose the following information for each shareholder vote pursuant to Sections 14A(a) and (b) of the Exchange Act over which the manager exercised voting power, as defined in Rule 14Ad-1(d) under the Exchange Act [17 CFR 240.14Ad-1]. If a reporting person does not have any proxy votes to report for the reporting period, the reporting person must file a report with the Commission stating that the reporting person does not have proxy votes to report.

- (a) The name of the issuer of the security;
- (b) The Council on Uniform Securities Identification Procedures (“CUSIP”) number for the security;
- (c) The International Securities Identification Number (“ISIN”) for the security;
- (d) The shareholder meeting date;
- (e) An identification of the matter voted on;
- (f) All categories and subcategories applicable to the matter voted on from the following list of categories and subcategories:
  - (A) Board of directors (subcategories: director election, term limits, committees, size of board, or other board of directors matters (along with a brief description));
  - (B) Section 14A say-on-pay votes (subcategories: 14A executive compensation, 14A executive compensation vote frequency, or 14A extraordinary transaction executive compensation);
  - (C) Audit-related (subcategories: auditor ratification, auditor rotation, or other audit-related matters (along with a brief description));
  - (D) Investment company matters (subcategories: 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));

- (E) Shareholder rights and defenses (subcategories: 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));
- (F) Extraordinary transactions (subcategories: merger, asset sale, liquidation, buyout, joint venture, going private, spinoff, delisting, or other extraordinary transaction matters (along with a brief description));
- (G) Security issuance (subcategories: equity, debt, convertible, warrants, units, rights, or other security issuance matters (along with a brief description));
- (H) Capital structure (subcategories: 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));
- (I) Compensation (subcategories: 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));
- (J) Corporate governance (subcategories: articles of incorporation or bylaws, board committees, codes of ethics, or other corporate governance matters (along with a brief description));
- (K) Meeting governance (subcategories: approval to adjourn, acceptance of minutes, or other meeting governance matters (along with a brief description));
- (L) Environment or climate (subcategories: 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));
- (M) Human rights or human capital/workforce (subcategories: 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));

- (N) Diversity, equity, and inclusion (subcategories: board diversity, pay gap, or other diversity, equity, and inclusion matters (along with a brief description));
- (O) Political activities (subcategories: lobbying, political contributions, or other political activity matters (along with a brief description));
- (P) Other social (subcategories: data privacy, responsible tax policies, charitable contributions, consumer protection, or other social matters (along with a brief description)); or
- (Q) Other (along with a brief description).
- (g) For reports filed by Funds, disclose whether the matter was proposed by the issuer or by a security holder and, if by a security holder, whether the matter was a proposal or counterproposal;
- (h) The number of shares that were voted, with the number zero (“0”) entered if no shares were voted;
- (i) The number of shares that the reporting person loaned and did not recall;
- (j) How the shares in paragraph (h) were voted (e.g., for or against proposal, or abstain; for or withhold regarding election of directors) and, if the votes were cast in multiple manners (e.g., for and against), the number of shares voted in each manner;
- (k) Whether the votes disclosed in paragraph (j) represented votes for or against management’s recommendation;
- (l) Identify each Institutional Manager on whose behalf this Form N-PX report is being filed (other than the reporting person filing the report) and that exercised voting power over the securities voted by entering the number assigned to the Institutional Manager in the List of Included Institutional Managers; and
- (m) Any other information the reporting person would like to provide about the matter or how it voted.

## SIGNATURE

[See General Instruction D]

Pursuant to the requirements of the [Securities Exchange Act of 1934 (for Institutional Managers)] [Investment Company Act of 1940 (for Funds)], the reporting person has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Reporting Person)\_\_\_\_\_

By (Signature and Title)\*\_\_\_\_\_

Date\_\_\_\_\_

\* Print the name and title of each signing officer under his or her signature.

By the Commission.

Dated: September 29, 2021.

Vanessa A. Countryman,

Secretary.