

## Investment Management Update

October 2021

### SEC Proposes Enhanced Proxy Voting Disclosures

On September 29, the Securities and Exchange Commission (SEC) proposed amendments to Form N-PX to enhance annual proxy vote reporting of mutual funds, exchange-traded funds and other registered management investment companies. In doing so, the SEC acknowledged that investors have an interest in how funds' significant voting power can influence the actions of corporate issuers and impact the value of those issuers' securities.

If adopted as proposed, the amendments would:

- prescribe standardized disclosures so investors can easily review a fund's voting record on specific subject matters;
- require funds to include securities on loan when disclosing matters related to portfolio securities with respect to which they are entitled to vote;
- mandate that institutional investment managers subject to Section 13(f) of the Securities Exchange Act of 1934 report their "say-on-pay" votes, i.e., their voting of proxies related to executive compensation; and
- call for additional disclosures on the number of shares a fund or manager voted (or were instructed to vote) and the number of shares a fund loaned out but did not recall.

#### Standardized Disclosures

To make it easier for investors to identify how a fund or investment manager voted on matters, the proposed amendments would require the completion of Form N-PX using the same language as the issuer's form of proxy. The SEC reasoned that using identical language would make it

easier for investors to find and compare voting records. Reporting parties would also be required to classify their proxy votes into 17 standardized categories, including their sub-categories, so investors could easily find votes on issues that are most important to them.

#### Scope of Reporting Obligations

The SEC further seeks to modify the scope of voting decisions that registered investment companies must report. Its proposal requires funds to include portfolio securities on loan among the securities with respect to which they are entitled to vote because funds may recall such loaned securities to exercise their voting power. The SEC's proposal suggests that a decision not to recall loaned securities, and therefore a decision not to vote such securities, is just as significant to investors as how votes are cast.

The SEC proposes to expand the obligations for institutional investment managers to report their say-on-pay votes, resurrecting a 2010 proposal that was never finalized. Managers would be required to disclose their votes on the approval of executive compensation, the frequency of approval votes on executive compensation, and the approval of executive compensation related to an acquisition, merger, consolidation or other disposition of an issuer's assets. Unlike the 2010 proposal, the current proposal would only require a manager to report on votes where it exercised a security's voting power. The SEC clarified that if a manager's say-on-pay vote was entirely determined by its client without the manager's independent judgment, the manager would not have

exercised voting power. However, if a manager chose not to vote a security, the decision to abstain would be an exercise of voting power.

### Additional Disclosures

The amendments would require reporting parties to identify the number of shares voted and how those shares were voted. Conversely, the amendments would also require reporting parties to identify the number of securities on loan that were not recalled and therefore not voted. The SEC commented that requiring the disclosure of unrecalled securities was consistent with the current requirement to report securities that were not voted.

### Technical Specifications

The SEC's proposal includes several amendments to improve the usability of Form N-PX, including standardizing the order of disclosures, changing the cover page and adding a summary page. Under the proposal, reporting parties would need to complete Form N-PX using a custom eXtensible Markup Language created specifically for the form. The amendments would also instruct reporting parties to disclose whether each vote was for or against management's recommendation.

### Comment Deadline

The SEC is accepting comments on the proposed amendments through December 14, 2021.

### FOR MORE INFORMATION

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