

13F Filers Have Another Reporting Obligation Coming Their Way

November 9, 2022

On November 2, 2022, the Securities and Exchange Commission (“SEC”) adopted a new rule and form amendments to Form N-PX to streamline and provide transparency to proxy voting by mutual funds, exchange-traded funds (ETFs) and certain other funds.¹ The new rule also includes Rule 14Ad-1, which will require institutional investment managers² (“Managers”) subject to Section 13(f) of the Securities Exchange Act of 1934 (the “Exchange Act”) to report annually on Form N-PX as to how they voted on say-on-pay votes, including votes on the approval of executive compensation, votes on the frequency of such approval votes and votes to approve “golden parachute” compensation in connection with a merger or acquisition (collectively, “say-on-pay votes”).

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¹ [Securities Act Release No. 34-93169](#) (November 2, 2022).

² An institutional investment manager is an entity that either invests in, or buys and sells, securities for its own account. For example, banks, insurance companies, and broker/dealers are institutional investment managers. So are corporations and pension funds that manage their own investment portfolios. An institutional investment manager is also a natural person or an entity that exercises investment discretion over the account of any other natural person or entity.



Background

In 2003, the SEC adopted Form N-PX, which requires registered management investment companies to report their proxy voting record annually on Form N-PX. The new rules and form amendments are an effort by the SEC to improve investor transparency and usability of the information disclosed on Form N-PX and to complete the implementation of Section 951 of the Dodd–Frank Wall Street Reform and Consumer Protection Act by requiring Managers to report say-on-pay votes on the form.

Amendments to Form N-PX Filings

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”³ as of the “last trading day of any month of any calendar year.”

Say-on-Pay Vote Disclosure for Institutional Investment Managers

The amended Form N-PX will require a Manager to report say-on-pay votes when it “exercised voting power” over the securities it beneficially owns. The SEC adopted a two-part test for determining whether a Manager exercised voting power. A Manager is required to report a say-on-pay vote only if it:

- (1) has the actual power to, directly or indirectly, vote, or direct the voting of, a security (which includes the ability to control whether to vote the security at all, or to recall a loaned security before a vote); and
- (2) “exercises” this power to influence a voting decision for the security (including by determining not to cast a say-on-pay vote).

Where either criterion has not been met (*e.g.*, where the power to vote is solely determined by the

³ Under Rule 13f-1(c), “13(f) securities” are equity securities as described in section 13(d)(1) of the Exchange Act, trading on a national securities exchange, which are

Manager’s client or another party) with respect to a say-on-pay vote, then the Manager would not be required to file Form N-PX with respect to that vote.

Quantitative Disclosure and Securities Lending

The SEC added a new summary page to Form N-PX, on which Managers will be required to disclose the number of shares voted and the manner in which those shares were voted, including any abstentions. In addition, the form also will require the disclosure of shares the Manager loaned out and did not recall. The Manager also may provide additional information to explain any voting or recall decisions.

Joint Reporting Provisions

The Form N-PX amendments permit reporting persons to jointly report their say-on-pay votes in three specified scenarios:

- (1) A Manager will be permitted to file a single Form N-PX to report say-on-pay votes where multiple Managers exercised voting power.
- (2) A fund with a Manager that exercises voting power over some or all of its say-on-pay votes may report these votes on its Form N-PX.
- (3) Two or more affiliated Managers can file on a single Form N-PX, notwithstanding that the affiliated Managers do not vote the same securities.

Where the Form N-PX is filed under one Manager, the other, non-reporting Managers are required to file

found listed on the Official List of Section 13(f) Securities the SEC publishes quarterly, and is available online [here](#).

“notice”⁴ or “combination”⁵ filings that identify each Manager or fund reporting on its behalf, similar to Form 13F.

Confidential Treatment

Managers will be able to request confidential treatment under Rule 24b-2 of the Exchange Act in a manner substantially similar to confidential treatment request for Form 13F.

Transition Periods and Filing Timing

The final rules and form amendments will become effective for proxy votes that occur on or after July 1, 2023.

Form N-PX must be submitted no later than August 31 of each year for the most recent 12-month period ending on June 30. A Manager must file its first Form N-PX under the new rule by August 31, 2024, with the form covering the period of July 1, 2023 to June 30, 2024.

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⁴ The “notice” filing designation can be utilized in two other instances. First, where a Manager does not cast any say-on-pay votes during the reporting period, a Manager can file a notice filing to indicate no say-on-pay votes. Second, a Manager can file on a notice form to disclose a policy of not

voting proxies without having to provide additional information about each voting matter individually.

⁵ The “combination” filing designation can be used in certain circumstances by multiple Managers.