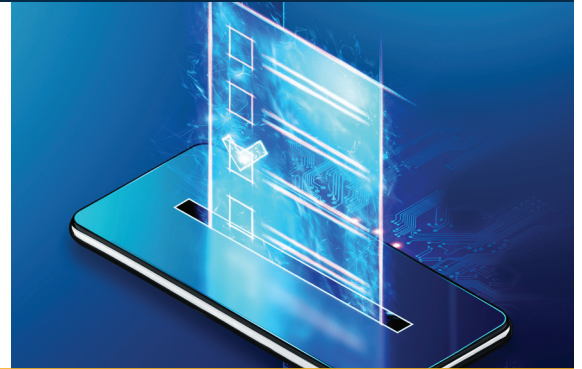


Client Alert | November 8, 2022

Form N-PX Amendments Adopted by SEC



On Nov. 2, 2022, the Securities and Exchange Commission (SEC), in a 3-2 vote, adopted amendments to Form N-PX (the Final Amendments) designed to enhance disclosures by an investment company registered under the 1940 Act (Fund) regarding proxy votes and require disclosure of say-on-pay votes by institutional investment managers (Managers).¹ Although we highlight below some modifications, key components of the Final Amendments remain largely unchanged from the proposal (Proposal).² The Final Amendments will be effective for votes occurring on or after July 1, 2023, with the first reports on amended Form N-PX required by Aug. 31, 2024.³

Key Observations:

- While the SEC consolidated the required categories and eliminated the subcategories a Fund must use to bucket the subject matter of proxies, the Final Amendments suggest that a report should include any category that might apply to a matter. This will involve subjective judgment as to which category or categories a matter belongs and leave funds subject to second-guessing.⁴
- The SEC adopted as proposed the requirement to disclose the number of shares out on loan and not recalled for voting. While the SEC recognized that this disclosure would not provide the full context or considerations underlying an analysis of whether to recall shares to vote, the majority stated that the “costs to respondents in providing the quantitative disclosures are justified in light of the increased level of information and transparency provided to investors.”⁵ In their dissenting statements, Commissioners Peirce and Uyeda expressed concerns about the quantitative disclosure including the deterrent effect it may have on securities lending and the possible risk of private litigation.⁶

Below, please find a summary of the Final Amendments, including a discussion of certain changes from the Proposal.

Identification of Proxy Voting Matters:

- The Final Amendments require reports on Form N-PX to be in the same order and use the same language as disclosed in the issuer’s form of proxy. In response to comments, particularly with regard to proxies by foreign companies, this requirement only will apply if a form of proxy in connection with a matter is subject to Rule 14a-4 under the Securities Exchange Act of 1934 (SEC Proxy). When an SEC Proxy is not available, reports

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only will be required to include “a brief identification of the matter voted on.”⁷ Consistent with the Proposal, the Final Amendments require reports to use structured data language to identify whether a vote was proposed by the issuer or by a security holder, to report separately for each series of a Fund and for a Fund to make its proxy voting record available on its website.

Identification of Proxy Voting Categories:

- The Final Amendments require Funds and Managers to select from standardized categories to identify the subject matter of each proxy vote. In response to comments that selecting from the 17 categories and 90 subcategories would be burdensome and not helpful to investors, the Final Amendments consolidate the categories to 14 and eliminate the requirement to assign proxy voting matters to subcategories.⁸

Quantitative Disclosures:

- Consistent with the Proposal, the Final Amendments require Funds and Managers to disclose qualitative information on the number of shares that were voted (or instructed to be voted) and how those shares were voted. In addition, the report must include the number of shares that were loaned and not recalled for voting.

Say-on-Pay:

- The Final Amendments implement Section 951 of the Dodd-Frank Act, requiring Managers to report how they voted on executive compensation matters, also known as “say-on-pay” matters. In response to comments, Form N-PX will permit Managers that have a disclosed policy of not voting proxies and that did not vote during the reporting period to indicate this on the form without providing additional information about each voting matter individually.⁹

¹ Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (<https://www.sec.gov/rules/final/2022/33-11131.pdf>), (adopted Nov. 2, 2022) (17 CFR Parts 200, 232, 240, 249, 270 and 274). Commissioners Peirce and Uyeda dissented.

² Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (<https://www.sec.gov/rules/proposed/2021/34-93169.pdf>) (Sept. 29, 2021).

³ *Id.* at 71-72.

⁴ See Hester Peirce, Commissioner, U.S. Sec. & Exch. Comm’n, “Voting Obsession: Statement on Final Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers” (Peirce Statement) (<https://www.sec.gov/news/statement/peirce-statement-amendments-form-npx-110222>), (Nov. 2, 2022) (“These groupings will fail of their purpose because of the unavoidable level of subjectivity involved in classifying each voting topic. Rather than run the risk of being second-guessed by Exams, Enforcement and third parties, funds likely will err on the side of caution and take the ‘All of the above’ approach”).

⁵ *Id.* at 40.

⁶ See Peirce Statement and Mark T. Uyeda, U.S. Sec. & Exch. Comm’n, “Statement on Final Rule: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment” (<https://www.sec.gov/news/statement/uyeda-statement-amendments-form-npx-110222>) (Nov. 2, 2022).

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⁷ See, Item 1(e) of current Form N-PX.

⁸ *Id.* at 28-32.

⁹ *Id.* at 55. Funds that did not hold any securities entitled to vote during the reporting period are permitted to make a similar short-form filing. *Id.* at 78.



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